



## Desegregation Litigation: An Overview

### Why is desegregation litigation important?

After the landmark decision in *Brown v. Board of Education*<sup>i</sup>, district courts throughout the nation began ordering unconstitutionally segregated school districts to desegregate. In Louisiana, many school and government officials, resistant to the change, impeded desegregation for years by only offering token, ineffective policy changes. Substantive desegregation was only achieved after district courts issued binding, detailed desegregation orders to the school districts. These desegregation orders mandated the school district comply with specific policies to effect desegregation, including student reassignment, busing, facility upgrades, and compliance monitoring. The orders were meant to be temporary, and the lawsuits were to be resolved once the school district became meaningfully desegregated. However, after more than forty years, many of these cases remain pending. Approximately forty of Louisiana's seventy school districts remain under federal court supervision.

The specific provisions of the district's individual court order dictate the manner and extent to which the court becomes involved with the operations of the district. Most commonly, these orders include: "busing" provisions; student assignment provisions requiring a minimum or maximum percentage of minority students at each school; facility improvements for schools with a dominant minority student population; and extensive compliance and reporting requirements to the court. The school board is generally required to report detailed, specified data to the court on an annual basis. Of the many provisions, the compliance requirements are the most onerous, mandating that the school board receive permission from the court before taking any action that could affect the desegregation efforts (*e.g.*, school openings and closures, student attendance rezoning, major construction projects, levying taxes, and authorizing charter schools).

### What is desegregation litigation?

Desegregation litigation begins when a party files a lawsuit in federal district court against a school board, claiming the board has violated the civil rights of minority students by intentionally fostering segregation within the district.<sup>ii</sup> The lawsuit may be filed by parents of affected minority children, or, in some instances, by groups who represent the interests of those children, such as the NAACP. Title IV of the Civil Rights Act of 1964 gives the U.S. Department of Justice the authority to file and prosecute these claims, so the United States is a plaintiff in the overwhelming majority of desegregation suits filed after 1964. After hearing evidence from both sides, the judge determines whether the school district is unconstitutionally segregated. If the judge holds the school board liable for a constitutional violation, the judge will issue an order to that effect, requiring the school district to implement remedial measures to desegregate the school district. Typically, the court gives the school board an opportunity to present a comprehensive desegregation plan for consideration. The government and other interested groups are often allowed to submit desegregation proposals as well. If the judge is dissatisfied with the school board's plan, the board may be given opportunities to revise the plan, or the judge may adopt or create a different plan. The final desegregation plan is incorporated into the desegregation order, and is binding on the school board.





The court will then continue to monitor the school district through a variety of methods. The court will most likely require regular reports from the school board pertaining to the implementation and maintenance of the plan, and the court might even appoint a compliance officer to oversee the desegregation process. The court will also compel the board to seek the court's permission before taking any action that may conflict with the order or affect the racial balance of the district. Finally, the court may intervene in the district's affairs, unsolicited, at any time, in order to enforce or amend the provisions of the order.

After the order has been issued, the nature of the relationships between school boards and judges vary. Some districts have remained faithful to the requirements of their orders for decades—and for these districts, federal supervision has become a routine consideration in school operations. Other districts, seemingly forgotten by the courts, have slipped out of compliance over the years. Districts that have ignored or purposely violated their court orders are at risk of the plaintiff or the judge reviving the suit in attempt to bring the school district back into compliance.

However, even after years of non-compliance, school boards may resolve the litigation and end judicial supervision. The litigation can be resolved by either a settlement between the parties, or a judicial declaration that the school district has attained “unitary” status. A judge will declare a school district to be “unitary” when the school board has shown that it has affirmatively eliminated all remnants of state-imposed segregation. The board may be required to update its desegregation plan and implement new policies in order to persuade the judge that federal supervision of the school district is no longer necessary. The settlement procedure requires all of the parties to draft and accept a shared “consent agreement.” The consent agreement, much like an updated desegregation order, requires the school district to take specific steps to further desegregation. The consent agreement is then submitted to the judge. If the judge accepts the agreement, he or she will issue a “consent order,” binding the school board to the terms of the agreement. The order usually specifies a period of time during which the court will retain supervision of the board to ensure the terms of the agreement are complied with. If, after this period of time has passed, the school board has observed its duties in good faith, the court will declare the school district to be “unitary.” As a result, the desegregation lawsuit is dismissed, finally terminating judicial oversight of the district.<sup>iii</sup>

### **How does a school district achieve unitary status?**

To be declared “unitary” by a judge, a school district must demonstrate that it has eliminated all traces of intentional segregation in six areas, called the “Green factors”: 1) student assignment, 2) faculty assignment, 3) staff assignment, 4) transportation, 5) extracurricular activities, and 6) facilities.<sup>iv</sup> Occasionally, when petitioned for a declaration of unitary status, the judge will find that that school district has implemented the original court order in good faith, and will require no further action or correction by the school board. More often though, before granting unitary status, a judge will require the school board to make substantial changes in its current operations. Below are a few of the methods frequently utilized by school boards to bring their districts into compliance with desegregation orders.

- Implementing voluntary majority-to-minority transfer plans – these plans allow and encourage children to transfer from schools where their race is the majority, to schools where their race is the minority
- Creating magnet schools



- “Busing” – assigning children to schools away from their neighborhoods in order to effect more desegregated student populations
- Redrawing of attendance zones to effect more racial desegregation within neighborhood schools
- Pairing/Grouping/Clustering – combining two or more attendance zones with contrasting racial makeup and instituting a kind of exchange program where a large proportion of the students in each school attend the paired school for a period of time
- Reassigning existing faculty and staff to schools so that the ratio of black to white faculty and staff in each school is the same district-wide
- Advocating affirmative action hiring practices where minorities are underrepresented in the school system
- Intentionally focusing recruiting practices to specifically target minority faculty and staff
- Opening new schools strategically located within a desegregated attendance zone
- Closing desegregated schools
- Improving and equalizing facilities district-wide
- Expanding and enlarging campuses to combine the populations of one or more schools with differing racial makeup
- Developing programs purposed to equalize opportunities for minority students – *e.g.*, remedial reading programs, in-service trainings for teachers, development of non-discriminatory testing programs, counseling and career guidance programs

Typically, a successful desegregation plan will not rely on a single method, but will include a combination of several different methods.

### **Why should school districts seek unitary status?**

First of all, a judge will only grant unitary status to a school district that is actually desegregated. This forces school boards to make much-needed changes to ensure equal opportunity for minority students in their new desegregation plans. Recently, desegregation consent orders have included provisions going beyond the scope of the *Green* factors, such as ensuring racial equity in AP classes and discipline practices. Thus, the process of resolving desegregation litigation can be an effective tool to implement important changes in the school that may help finally equalize academic opportunity for all students.

Furthermore, once school districts are granted unitary status, they are released from judicial oversight. School districts, by nature, are meant to be structured and operated according to the needs and desires of the local community. Local school board members are elected to represent the interests of parents, students, and community members. Resolving desegregation litigation will once again enable local school boards to make significant operations decisions for the district, without first seeking permission from the court. These decisions may include: school closures and openings; approval of charter schools; redrawing of attendance zones; tax rate changes; faculty and staff hiring decisions; and facility improvements. In addition, the end of federal oversight means that school districts will no longer have to pay for costs associated with their desegregation orders, including lawyer’s fees, court fees, and paperwork costs resulting from court-ordered reporting requirements.



An ideal plan will enable a school district that has bused students across attendance zones for years to become fully desegregated while simultaneously allowing the school board to use other factors besides race to determine student attendance zones, such as: geographic proximity, transportation considerations, and/or non-racial criteria purposed to promote diversity (such as socioeconomic status or educational background of parents). In like manner, the pursuit of unitary status provides school districts a valuable and unique opportunity to make meaningful, large-scale changes to not only effect desegregation, but to improve and equalize education for all students in the district.

Furthermore, school districts still under court order may be hindered from participating in state programs or receiving state benefits that conflict with their federal court orders. Because “facilities” is an important consideration in desegregation litigation, it is possible that any future state facilities funding program would be complicated by individual desegregation orders. For example, a school district under court order might be restricted to using facilities funding for particular schools with specified racial percentages. At the very least, school districts under court order would have to receive permission from the court for any substantial use of state facilities funding. This additional layer of government involvement will no doubt complicate the efficient and timely distribution of much-needed funding for facilities. In contrast, a unitary school district will be able to direct facilities funding to areas of the greatest need, limited only by state regulations and the district’s own self-imposed guidelines.

Finally, it is possible that unresolved desegregation litigation could frustrate school districts seeking to fulfill Race to the Top criteria, particularly in the area of school turnarounds. Under the majority of desegregation orders, the school board is prohibited from opening or closing a school, or making significant changes to the governance of a school without permission from the court. A district seeking to permanently close an underperforming school, open a new charter school, or change the governance structure for an underperforming school may be precluded from doing so by the court.

### **Why haven’t more districts sought unitary status?**

While there are many benefits associated with resolving desegregation litigation, the process of seeking unitary status is often complicated, expensive, and controversial. Some districts have become accustomed to federal oversight and do not view the advantages of ending litigation to be particularly persuasive. A district may expect to face opposition from community members and groups who fear the end of the desegregation order might result in a return to segregation. These individuals and groups may worry that, without court supervision, school officials will revert to their old, unconstitutional ways. However, it is important to remember that there are now numerous, politically powerful individuals and groups that are willing and able to hold school boards accountable. There are multiple special interest and citizen groups dedicated to monitoring school systems for constitutional violations. Likewise, a significant number of minority citizens serve as school board members. These groups and individuals are likely in a far better position to regulate the conduct of the school board than the federal court. In addition, as a further safeguard from resegregation, judges will often require the board to create a self-monitoring “post-unitary plan” outlining the procedures and policies by which the school district will maintain its desegregated character.

Aside from a fear of resegregation, community groups and members may oppose a board’s decision to pursue unitary status because they have not been included in the decisionmaking process. To avoid this conflict, it is essential that the school district take special care to involve the community in the process to resolve desegregation litigation from the very beginning. The school board should hold community forums discussing the decision to seek unitary status, and continue to communicate with,



and receive feedback from the public at every stage of the process. It is also important that the school board involve citizen groups in the creation of the consent agreement or updated desegregation order.

Once a revised desegregation plan or consent order is in place, the district will most likely face pushback as a result of school closures and student reassignments. Community opposition to these changes is inevitable and can never be completely obviated. However, the degree of protest may be lessened by developing simplified attendance rules which may be easily communicated to the public, appropriately notifying affected students, and allowing a degree of flexibility for transfers in particular situations.

### **What first steps should the school board take to resolve desegregation litigation?**

Although the process to resolve desegregation litigation is inherently lengthy and complex, there are several preliminary steps a school board should take before commencing legal action to increase the likelihood of a smooth transition to unitary status. The board should:

- 1) Consult the school district's attorney to determine the district's current legal status (under court order, unitary, or never under court order). If the district is under court order, the attorney should determine whether the district has been in compliance with the terms of the agreement.
- 2) Work with the school district attorney and school district staff to determine the probable costs and benefits of pursuing unitary status.
- 3) Obtain outside counsel specializing in desegregation litigation.
- 4) Procure from outside counsel a more complete analysis of the implications of seeking unitary status, tailored specifically to the particular school district.
- 5) Work with outside counsel and public relations personnel to devise a plan of action to communicate with outside groups and community members regarding the pursuit of unitary status.
- 6) Contact and meet with interested community groups to discuss the possibility of seeking unitary status, and to encourage these groups to participate in the decisionmaking process.
- 7) Hold a community forum to present the board's initial findings respecting the pursuit of unitary status, and to answer questions and elicit feedback from the public.

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<sup>i</sup> 347 U.S. 483 (1954).

<sup>ii</sup> Intentional segregation violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

<sup>iii</sup> In some rare instances, the court may reopen the case after the declaration if it is apparent that the school district once again becomes unconstitutionally segregated. More conventionally though, subsequent to the declaration, the court will require complaining parties to commence a new lawsuit.

<sup>iv</sup> These six factors were formulated by the U.S. Supreme Court in *Green v. New Kent County School Board*, 391 U.S. 430 (1968), and are commonly referred to as the "Green factors."