

THE NON-VIABILITY OF SINGLE-RACE, SINGLE-SEX SCHOOLS

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In 1954, a unanimous United States Supreme Court in *Brown v. Board of Education* overturned the “separate but equal” doctrine of *Plessy v. Ferguson* in the field of public education.¹ Congress enacted the 1964 Civil Rights Act to bolster the federal effort to disestablish racial segregation in public accommodations.² Title VI of the Act stipulates that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”³ In accordance with Title VI, race can never be the basis for either segregating or excluding any person from participation in a federally-funded program.⁴ Similarly, Title IX of the 1972 Education Amendments, with limited exceptions, prohibits the exclusion from federally-funded programs of any person on the basis of sex.⁵ Yet despite these laws and the Supreme Court’s ruling in *Brown*, self-styled black nationalists and some feminists are urging state education authorities to skirt their legal responsibilities in order to open “special” public schools or classes exclusively for black boys or single sexes.⁶

School boards rarely admit to practicing racial segregation. Instead, they seek to distinguish the new segregation as an “affirmative action” effort which, they contend, Title VI either embraces or does not expressly prohibit.⁷ They claim the intent of the segregated male academies is not to

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1. 347 U.S. 483 (1954) (citing *Plessy*, 163 U.S. 537 (1896)).

2. Pub. L. No. 88-352, Title II, at 201, 78 Stat. 243 (codified as amended at 42 U.S.C. § 2000a (1994)).

3. Pub. L. No. 88-352, Title VII, at 601, 78 Stat. 252 (codified as amended at 42 U.S.C. § 2000d (1994)).

4. *Id.*

5. Pub. L. No. 92-318, Title IX, at 901, 86 Stat. 373 (codified as amended at 20 U.S.C. § 1681 (1994)).

6. See Hanson Clarke, *State Gov't News*, periodical, Jan. 1992, at 16 (discussing the merits of single-sex schools); *Education & Achievement of Young Black Males*, in YOUNG, BLACK & MALE IN AMERICA 77, 80-82 (Jewelle Taylor Gibbs ed., 1988) (assessing educational opportunities of young black males in America); Pamela J. Smith, *All-Male Black Schools & the Equal Protection Clause: A Step Forward Toward Education*, 66 TUL. L. REV. 2003, 2004-05 (1992) (discussing social factors leading to proposals from within the African-American community for all-male African-American schools); Thomas E. Midgette & Eddie Glenn, *African-American Male Academies: A Positive View*, 21 J. MULTICULTURAL COUNSELING & DEV. 69, 69 (1993) (offering an assessment of the African-American all-male academy).

7. See generally Clarke, *supra* note 6, at 16.

discriminate against students because of their color or gender.⁸ But, a Title VI violation does not require a showing of intent.⁹ The recipient of federal funds who sets up a public school or program that has even the *effect* of segregating pupils or faculty by race is breaking the law, particularly when the inevitable segregation of the population is foreseeable and avoidable. Moreover, any discrimination based on sex is suspect.¹⁰ As Justice Sandra Day O'Connor stated in *Mississippi University for Women v. Hogan*, "Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotyping notions."¹¹

Undoubtedly disgusted with frequent and intense white resistance to desegregation as well as with white flight from cities, many blacks doubt the efficacy and even the merits of integrated schooling. I got a whiff of some blacks' hostility to integrated schools when I appeared on *The Oprah Winfrey Show* in 1991.¹² While arguing against public schools for black boys, I cited the 1964 Civil Rights Act (specifically, Title VI) as prohibiting the establishment of such schools. Blacks fought for the enactment of this law, I said. A black woman, obviously speaking for the almost all black studio audience, shot back, "Well, we've changed our minds." More recently, a black academician declared at a dinner party in my presence, "I want segregation — without the lynching."

Shockingly, many blacks *have* changed their minds about integration, not only with whites, but with other minorities as well.¹³ In New York City, the public school system is largely black, Hispanic (mostly Puerto Ricans and Dominicans) and Asian. Public School 137K in Brooklyn inaugurated a special class for "at risk" black boys.¹⁴ The New York Civil Rights Coalition filed a complaint with the U.S. Department of Education's Office of Civil Rights (OCR), charging that single-race, single-sex classes violated federal civil rights laws. Two years later, the OCR has yet to issue a finding or make a decision on the complaint, despite previous rulings from other OCR offices in regions outside of New York that have interpreted Title VI and Title IX as prohibiting in-school segregation by race and/or sex.¹⁵ A

8. *Id.*

9. 42 U.S.C. §§ 2000d et seq.

10. *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

11. *Id.* at 725.

12. *The Oprah Winfrey Show: Boyz in the Hood* (ABC television broadcast, Jul. 10, 1991).

13. See Larry Tye, *U.S. Sounds Retreat in School Integration: America's Schools in New Segregation*, BOSTON GLOBE, Jan. 5, 1992, at 1 (discussing the quiet abandonment of the battle against segregated schools); see also Ron Russell & Gregory Skwira, *Supporters of All-Male Schools Organize to Continue Fight*, GANNETT NEWS SERVICE, Aug. 29, 1991, available in Lexis, Nexis Library, News File (discussing the pressing needs of black males and how these needs should take precedence over other arguments about integration).

14. Michael Meyers, *Separate Is Not Equal*, WASH. POST, Sept. 23, 1992, at A19.

15. See Kenneth J. Cooper, *Bush, Citing Boy Scouts, Backs All-Boy Black Public Schools: President Criticizes Federal Ruling in Detroit Case*, WASH. POST, Sept. 10, 1991, at A2 (discussing the current status as well as the background of the separate schools issue).

partial explanation for OCR's delay lies with then President Bush's declared support for separate educational programs for black boys. The support for such programs came notwithstanding then Secretary of Education Lamar Alexander's admonition that *Brown v. Board of Education* strictly prohibits separate schools for black boys.¹⁶ Still, President Bush's sympathy for segregation allowed former Assistant Secretary for Civil Rights Michael Williams, who is black, to say, "There could very well be a benefit [for black boys] . . . to being isolated for a temporary period of time, or for special purposes."¹⁷ Williams told the Heritage Foundation at a forum in Washington, D.C., "There is something in the relationship between a black man and a black kid that could very well work to the benefit of those youngsters."¹⁸ Apparently, Mr. Williams not only supported the segregation of black boys in special classrooms, but he endorsed the assignment of teachers on the basis of race and sex as well. Curiously, public officials who comprehend "separate but equal" schemes seem to be ignoring the requirements of Title VI and Title IX instead of using them to guide their decision-making processes.

The back-to-segregation movement is as intense as it is ironic. As whites recant on promises of equal opportunity by demonstrating, for example, strident opposition to school busing for desegregation and to affirmative action programs, the climate for racial integration is now worse than ever.¹⁹ Meanwhile, black separatists look backward to the era of legal segregation and contemplate a future black renaissance through separate development and strategies of self-determination. Black segregationists speak as though they are saving black youths by opposing their interaction with children of other races from similar age groups. Like the white segregationists of a previous era, these blacks set aside all legal and constitutional rulings that prohibit racial classifications and categorizations.

Not surprisingly, many whites endorse black racial segregation.²⁰ They view black racial pride as the best chance of reducing racial conflict and raising the self-esteem of these persons of lower-status. Furthermore, Americans of all philosophical persuasions and political stripes have been listening to this form of racism and sexism. In so doing, they are confusing self-help with racial fanaticism.

Educational programs with an Afrocentric focus typically constitute the core of the curriculum at special schools for black boys. Such programs are often replete with African-style, sexist "rites of passage" to manhood.

16. See *All Male Schools Illegal, U.S. Education Chief Says*, CHI. TRIB., Aug. 29, 1991, at C17 (discussing Lamar Alexander's stance on the issue of segregated schools).

17. Meyers, *supra* note 14, at A19.

18. *Id.*

19. See, e.g., Anthony J. Lukas, *Common Ground: A Turbulent Decade In the Lives of Three American Families* (1985).

20. See Michael Meyers, *All-Male, Black Schools Unequal*, OREGONIAN, Sept. 30, 1992, at C9.

By placing an emphasis on racial identity, these programs, such as the one at an all black academy in Los Angeles, encourage black boys to "think black, act black, speak black, buy black, pray black, love black and live black."²¹ Such schools are dedicated not to free inquiry and critical thought, but to indoctrination and ideological programming. Some choose to focus on the seven principles of Kwanza, which indoctrinate students with such ideological concepts as racial unity and "faith in our [racial and political] leaders."²² If such repeat-after-me schooling were designed for white students, one doubts whether educational authorities would tolerate such drivel, much less allow such schools to be subsidized by taxpayers. They would undoubtedly recognize without hesitation that segregation of this type involves illegal state action.

Those who advocate separate classes or schools for black boys on the premise that such programs raise their self-image, thereby saving them from the afflictions of their environment, only transmit and reinforce negative stereotypes about black boys. As Federal Judge Robert L. Carter has said, "The advocates of their panacea place no blame on the public school system," but black boys "are stigmatized from others in order to develop into productive adults."²³

The all-male black school concept is also paternalistic. It stigmatizes boys, ignores girls, and brazenly discounts women as capable teachers of boys. In the minds of all-male black school advocates, only males can teach boys to become men. Shockingly, advocates of this segregation blame black boys' parents, their homelives, and their loose morals for their underachievement.²⁴ These separatists overgeneralize black males' social problems, using these problems as a scapegoat. As a result, they build their case based on outmoded stereotypes.²⁵ They offer a racial explanation for a variety of educational deficits.²⁶ These arguments goad the education establishment into recognizing, accepting, and institutionalizing these supposed racial and gender differences as learning styles. For example, blacks

21. Meyers, *supra* note 14, at A19.

22. Michael Meyers, *Should States Support Single-Sex Black Schools?*, STATE GOV'T NEWS, Jan. 1992, at 16.

23. Judge Robert L. Carter, speech to the NAACP Education Conference (transcript on file with the author).

24. See Lyn Nell Haycock, *Ujamaa Means Controversy: A Proposed All-Black High School For Young Men Includes Hopes For Success and Fears of Segregation*, VILLAGE VOICE, Nov. 6, 1990, at 11 (asserting that this race/gender segregated learning strategy has a troubling "blame the woman" flavor).

25. *Id.*; see also JAMES D. MCGHEE, *RUNNING THE GAUNTLET: BLACK MEN IN AMERICA* 10-16 (1984).

26. See, e.g., DETROIT PUBLIC SCHOOLS, *MALE ACADEMY GRADES K-8: A DEMONSTRATION PROGRAM FOR AT-RISK MALES* (draft) (1990); AFRICAN-AMERICAN MALE TASK FORCE, MILWAUKEE PUBLIC SCHOOLS, *EDUCATING AFRICAN-AMERICAN MALES: A DREAM DEFERRED* (1990) (proposing solutions such as more flexible structuring, access to more quality after school, and summer and Saturday programs); MCGHEE, *supra* note 25.

who do poorly in English can become certified as speakers of "black English."²⁷

With such popular myth-making in full force, the task of preparing children to interact with others who look different than themselves and to cease stereotyping individuals because of their race or gender promises to be a terribly difficult one. Indeed, self-segregation is now so fashionable that even cities like Milwaukee, Portland, and Seattle — where white flight has not even occurred — have experimented with special schooling for blacks.²⁸ Organizing classrooms and schools by separating pupils according to race and gender has become more realistic than racist, more progressive than sexist. This erosion of the equal treatment provisions of the civil rights laws constitutes a functional repeal of the desegregation mandate of *Brown vs. Board of Education*.²⁹ It represents, as well, an inversion of the meaning of its words and, as such, is another Orwellian development in our legal discourse.

If "separate but equal" is no longer *inherently* unequal, then we ought to brace ourselves for the official balkanization of our public school systems. Separate schools for black boys would mark only the beginning of a dangerous trend. We could extend such equal protection principles to justify separate schools for Puerto Rican boys and girls, Asian boys and girls, and so on. Who, then, would be left to object if the parents of white ethnics and other minorities wanted special classes or schools for *their* children? The civil rights laws are the only tools available to enforce the *Brown* ruling and to keep our nation moving toward a unified society. Yet, many people both in and outside of government are intent on distorting the plain meaning of these laws. The notion that law-abiding authorities and citizens would establish and maintain rigorous standards for ridding our society of taxpayer-supported segregation should not be tossed away so easily.

27. See JOHN W. CHAMBERS, JR., *BLACK ENGLISH: EDUCATIONAL EQUITY AND THE LAW* (1983) (discussing Black English and its use in schools).

28. See Huntly Collins, *Afrocentrism's Popularity on Rise as a Way to Lift Up Urban Schools*, PHILA. INQUIRER, Mar. 4, 1991, at A1.

29. *Brown v. Board of Educ.*, 347 U.S. 483, 495, 74 S.Ct. 686, 692 (1954).

