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Constitutional Law: Eradicating the Effects of Past Purposeful Racial Discrimination in the Public School System

Debra P. v. Turlington, 474 F. Supp. 244 (M.D. Fla. 1979)

by Alexandra Moore

In 1979, the United States District Court for the Middle District of Florida issued the seminal decision of *Debra P. v. Turlington*, which would help pave the way for creating a public school system that was no longer marred by past racial discrimination. Judge George C. Carr¹ presided for the court and ruled that requiring students to pass a functional literacy test before receiving a high school diploma disproportionately barred black students from receiving diplomas due to the inferior education they had received as a result of the past segregation of public schools.² Judge Carr held that the testing requirement violated the students' Fourteenth Amendment equal protection and due process rights.³

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1 The Honorable George C. Carr was nominated to the United States District Court for the Middle District of Florida by President Jimmy Carter on November 21, 1977 and was confirmed by the Senate on December 15, 1977. Judge Carr served as chief judge from 1989 to 1990. *History of the Federal Judiciary*, FEDERAL JUDICIAL CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=382&cid=53&ctype=dc&instate=fl> (last visited July 6, 2012).

2 *Debra P. v. Turlington*, 474 F. Supp. 244, 257 (M.D. Fla. 1979).

3 *Id.* at 257, 267.

In rendering this decision, the district court continued the task initiated by *Brown v. Board of Education*— that of eradicating the effects of past racial discrimination in the public school system.

Racial Disparities in Literacy Exam Passage Rates

In 1967, the Florida Legislature enacted a piece of legislation known as the “Educational Accountability Act of 1967” (“Act”) in an effort to promote equal educational opportunities for all public school students regardless of geographic location and to create a system of accountability for education in the state.⁴ A subsection of the Act entitled “Pupil Progression” set forth the standards for graduation from Florida public high schools, one of which was satisfactory performance in functional literacy as determined by the State Board of Education.⁵ In 1978, the Florida Legislature amended the Act to require passage of a functional literacy examination prior to receipt of a high school diploma as a means to measure such satisfactory performance.⁶ Students who completed the required number of credits to graduate but did not pass the exam would receive a certificate of completion rather than a diploma.⁷

The exam, known as the State Student Assessment Test, Part II (“SSAT II”), was first administered in October 1977.⁸ The results of the first three administrations of the test showed a much greater rate of failure among black students than white students.⁹ In May 1977, of the approximately 91,000 Florida public high school seniors, 20.049% of black students had not passed the test and were ineligible for a diploma compared with only 1.9% of white students.¹⁰ Suit was brought by the present and future twelfth grade students who had failed or who would thereafter fail the SSAT II. They filed a class action in federal district court against the state and local officials responsible for adopting the exam, contending that the SSAT II violated their Fourteenth Amendment due

4 FLA. STAT. § 229.55(2)(a), (d), (f) (1976).

5 FLA. STAT. § 232.245(3) (1977). The legislation also provided for a comprehensive testing program to evaluate students’ basic skills development. FLA. STAT. § 229.57 (1976).

6 FLA. STAT. § 232.246 (1979).

7 FLA. STAT. § 232.246(3) (1979).

8 *Debra P.*, 474 F. Supp. at 248.

9 *Id.* at 248-49.

10 *Id.*

process and equal protection rights.¹¹ They claimed that the exam was constitutionally invalid and served to perpetuate the effects of past purposeful segregation.¹² Specifically, they argued that they were given inadequate notice of the exam passage requirement in violation of the due process clause.¹³ The district court issued an injunction enjoining the state from requiring passage of the SSAT II as a condition of graduation for a period of four years and held that utilization of the exam as a diploma requirement in the present context violated the Fourteenth Amendment's equal protection and due process clauses.¹⁴

Eliminating Public School Segregation and its Effects

The U.S. Supreme Court has emphasized the importance of providing equal educational opportunities to public school students regardless of their race. In 1955, the Court decided the landmark case of *Brown v. Board of Education (Brown I)*, where it held that racial segregation in public schools deprives black students of the Fourteenth Amendment's guarantee of equal protection of the laws.¹⁵ In that case, black public school students were denied admission to schools attended by white students as a result of laws requiring or permitting segregation based on race.¹⁶ Such legislation had been permissible under the prevailing "separate but equal" doctrine, which allowed segregation based on race as long as the races were provided substantially equal facilities.¹⁷ Emphasizing the sense of inferiority such a system inflicted on black students and the resulting negative impact it had on their educational development, the Court concluded that separate educational facilities are inherently unequal.¹⁸ Therefore, state laws establishing separate public schools for students based on race were unconstitutional.¹⁹ This landmark decision helped to pave the way for the integration of public schools. After this decision, the Court separately addressed the issue of the relief to be awarded

11 *Id.* at 246-47.

12 *Id.* at 250.

13 *Id.* at 247.

14 *Id.* at 269.

15 347 U.S. 483 (1954).

16 *Id.* at 487-88.

17 *Id.* at 488 (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896)).

18 *Brown I*, 347 U.S. at 494-95.

19 *See id.* at 495.

in *Brown v. Board of Education (Brown II)*.²⁰ There, the Court held that school boards were required to effectuate a transition to a nondiscriminatory school system.²¹

Although *Brown I* outlawed *de jure*—or state-mandated—segregation, the negative effects of decades of racial segregation in public schools still prevailed after the case was decided. Over a decade later, in *Green v. County School Board*, the Supreme Court considered what responsibilities the states have with respect to addressing the negative consequences of racial segregation in public schools.²² In that case, a school board implemented a plan that allowed each student, regardless of race, to choose which public school to attend in an effort to achieve a racially nondiscriminatory school system as mandated by the *Brown II* decision.²³ In *Green*, the school district contained only two schools; one that had historically been designated for white students while the other was reserved for black students.²⁴ During the first three years of the plan's operation, 115 black children had enrolled in the historically white school, but no white students had chosen to attend the historically black school.²⁵ The school board contended that by enacting the plan, it had fully discharged its obligation under *Brown II*.²⁶ The Court disagreed, holding that the plan was not sufficient to effectuate a transition to a unitary system as required by *Brown II* because the school system was effectively still a dual system.²⁷ The Court explained that it was the school board's duty to take the steps necessary to completely eradicate racial discrimination in public schools.²⁸ After *Green*, school boards were required not only to put an end to the physical segregation of public schools, but they must also eliminate the effects of the past purposeful discrimination.²⁹

20 349 U.S. 294 (1955).

21 *Id.* at 300.

22 391 U.S. 430 (1968).

23 *Id.* at 431-32, 437.

24 *Id.* at 432.

25 *Id.* at 441.

26 *Id.* at 437.

27 *Id.* at 441.

28 *Id.* at 437-38.

29 *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *see also* *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 460-61 (1979) (holding that a school board had an affirmative duty to eliminate the dual school system); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 537 (1979) (holding that a school board had a continuing duty to eradicate the effects of intentionally segregated schools).

One way in which negative impacts of past racial discrimination in educational systems are manifested is through policies that require passage of a literacy test prior to obtaining a particular right. For example, in *Gaston County v. United States*, the Supreme Court held that requiring individuals to pass a literacy test before becoming registered voters served to perpetuate the past denial of equal educational opportunities in the state.³⁰ Noting that the county had deprived black residents of equal educational opportunities through its history of racial segregation in public schools, the Court found that it was reasonable to infer that black children would achieve a markedly lower degree of literacy than would their better-educated white contemporaries.³¹ In striking down the literacy test requirement, the Court held that impartial administration of the test was impermissible while these racial discrepancies in literacy still prevailed.³² The Court reasoned that the requirement served only to perpetuate past inequities in a different form.³³

The *Debra P.* Decision

In *Debra P.*, the district court was presented with issues similar to those considered in *Gaston County*. Like the Supreme Court in that case, the instant court invalidated a facially neutral testing program that perpetuated past racial discrimination.³⁴ The court ruled that requiring students to pass a functional literacy test, the SSAT II, before receiving a high school diploma disproportionately barred black students from receiving diplomas due to the inferior education they had received as a result of the past segregation of public schools.³⁵ The requirement thus violated the Fourteenth Amendment's equal protection clause.³⁶ The inadequate notice provided to students before instituting the diploma requirement was also a violation of the Fourteenth Amendment's due process clause.³⁷

30 395 U.S. 285, 296-97 (1969).

31 *Id.* at 291, 295.

32 *Id.* at 297.

33 *Id.*

34 *Debra P. v. Turlington*, 474 F. Supp. 244, 257 (M.D. Fla. 1979).

35 *Id.*

36 *Id.*

37 *Id.* at 267.

Citing the Supreme Court's emphasis on the essential role of public education in our society,³⁸ the district court stressed the importance of administering education in a manner that comports with our historical and constitutional notions of fairness and equality.³⁹ In its decision, the instant court emphasized the grave significance of denying high school diplomas to students, explaining that students would face a number of economic and academic deprivations if they did not receive diplomas.⁴⁰ The court noted that very few jobs were available to students who had no high school diploma and that these students would also be unable to attend college.⁴¹ As a result, the court acknowledged that the plaintiffs had a property right in graduating from high school with a standard diploma.⁴² The court further found that the plaintiffs had a right to be free of the adverse stigma associated with receiving a certificate of completion instead of a diploma, which created a protected liberty interest in the diploma.⁴³ Thus, the court held that denial of a diploma without adequate notice of the new SSAT II passage requirement was a violation of due process.⁴⁴

In considering the SSAT II requirement's validity under the equal protection clause, the district court rejected the plaintiffs'

38 *Id.* at 268. In *Brown I*, the Supreme Court explained: Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today is it a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

39 *Debra P.*, 474 F. Supp. at 269.

40 *Id.* at 249.

41 *Id.*

42 Citing the Supreme Court's holding in *Goss v. Lopez*, 419 U.S. 565 (1975), that students have a property right in attending school, the district court noted that Florida law required students to attend school and that "graduation is the logical extension of successful attendance." *Debra P.*, 474 F. Supp. at 266.

43 *Id.*

44 *Id.* at 267. The evidence presented to the court indicated that only two months of school instruction were available between the distribution of the SSAT II's functional literacy objectives to the teachers and the first administration of the test. *Id.* at 263. A report by the Task Force on Educational Assessment Programs found that the schedule for implementing the new graduation standards was too severe, noting that students had been informed of the changes "at the eleventh hour and with virtually no warning." *Id.* at 265.

claim that the test contained racially biased questions, finding that the test had been developed using generally accepted methods and that any unfairness based on race was minimal.⁴⁵ The court further opined that the test was rationally related to a valid state interest, and thus the test instrument itself was constitutional.⁴⁶ However, the court explained that a facially neutral testing program would still be invalidated if it served to perpetuate past racial discrimination.⁴⁷ Thus, the issue was whether it was unconstitutional to use the test as a diploma requirement during a time when black students remained at a disadvantage due to the inferior education they had received in prior years.

Noting that ten times as many black students as white students were ineligible for diplomas because they were unable to pass the SSAT II, the instant court found that the disproportionate impact of the diploma sanction on black students was clear.⁴⁸ The court examined the history of Florida public school education—which had been subject to state-mandated segregation until 1967 and remained segregated until 1971—and found that schools attended by black students during that time were inherently inferior to those attended by white students.⁴⁹ It was clear to the court that this disparity in educational opportunities was a direct cause of many black students' inability to pass the SSAT II. The court emphasized the school system's affirmative duty not only to eliminate the physical segregation of schools, but also to remedy the effects of such segregation.⁵⁰ In the instant case, the Florida public school system's efforts to eradicate the learning deficits created during the dual school period had not sufficiently addressed the educational disparities caused by segregation, as evidenced by the SSAT II results.⁵¹ Thus, the school system had not met its burden of rectifying the negative effects of segregation.

The district court opined that utilization of the SSAT II as a diploma requirement served to punish victims of past racial

45 *Id.* at 260-62.

46 The court found that the state had a legitimate interest in ensuring the functional literacy of public high school graduates and that the SSAT II was an adequate measure of students' functional literacy. *Id.* at 261.

47 *Id.* at 254-57.

48 *Id.* at 252-53.

49 *Id.* at 249-50.

50 *Id.* at 256.

51 *Id.* at 256-57.

discrimination for deficits created by an inferior educational environment, which was neither sufficient to remedy the negative effects nor to create better educational opportunities.⁵² Use of the testing requirement in the present context, the court held, was a violation of the equal protection clause.⁵³ The court explained that although the SSAT II was facially neutral, it could not be used as a diploma requirement until the effects of the dual school system no longer placed some students at a disadvantage due to their race.⁵⁴ As a remedy, the court enjoined the state from requiring passage of the SSAT II prior to receiving a high school diploma for a period of four years.⁵⁵

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the district court's holding that use of the SSAT II in the present context violated equal protection.⁵⁶ The Fifth Circuit agreed that the test and the diploma sanction served to perpetuate past purposeful discrimination.⁵⁷ Because the Florida state officials could neither demonstrate that the disproportionate failure of black students was not due to the effects of past segregation nor that the diploma sanction was necessary to remedy those effects, the court concluded that the immediate use of the sanction would punish black students for deficiencies created by the dual school system.⁵⁸

In its opinion, the Fifth Circuit also elaborated on the notion announced by the instant court that students have a valid property interest in receiving a diploma upon graduation from a public high school. The circuit court noted that although the State of Florida was not constitutionally obligated to establish a public school system, by doing so and requiring children to attend, the state had created an expectation that successful students would receive a diploma.⁵⁹ Such an expectation, the court held, constituted a property interest that would be afforded constitutional protection.⁶⁰

52 *Id.* at 257. Creating better educational opportunities was one of the stated goals of the Educational Accountability Act of 1976. FLA. STAT. § 229.55(2) (a) (1976).

53 *Debra P.*, 474 F. Supp. at 257.

54 *Id.*

55 *Id.* at 269.

56 *Debra P. v. Turlington*, 644 F.2d 397, 407 (5th Cir. 1981).

57 *Id.* at 407.

58 *Id.*

59 *Id.* at 403-04.

60 *Id.* at 404.

Thus, the circuit court affirmed the instant court's holding that the implementation schedule of the test violated the Fourteenth Amendment's due process guarantee.⁶¹

***Debra P.*'s Emphasis on Eradicating Past Discrimination**

The *Debra P.* case served to recognize the significance of a student's interest in receiving a diploma upon graduating from a public high school by granting constitutional protection to that interest. The district court's frequent references to education's crucial role in our society throughout the opinion indicate its substantial concern for having a quality public education system. The case also served to acknowledge the gravity of the situation that past purposeful discrimination in public schools had created for black students. The instant court's holding as well as its repeated emphasis on the need to achieve fairness and equality in the public school system illustrate our court system's eagerness to eliminate not only racial segregation itself, but also the effects of the dual system.

The significance of the court's objective to eradicate the effects of past purposeful discrimination becomes more apparent when comparing the instant case to other similar cases, which did not place as much emphasis on establishing a public school system where all students received the same opportunities regardless of their race. After *Debra P.*, other suits were filed that challenged state laws requiring the passage of a literacy exam prior to graduating or being promoted to the next grade level on the basis that these requirements resulted in racial discrimination.⁶² Compared to the instant case, these cases had only limited success in the courts.⁶³

Issues similar to those considered in *Debra P.* were presented in *GI Forum v. Texas Educational Agency*.⁶⁴ In that case, students and

61 *Id.*

62 See, e.g., *GI Forum v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. 2000) (challenging the passage of a literacy exam as a graduation requirement because disproportionate numbers of black and Hispanic students failed the exam); *Erik V. v. Causby*, 977 F. Supp. 384 (E.D.N.C. 1997) (challenging a requirement that students pass a state standardized test before being promoted to the next grade).

63 Rachel F. Moran, *Sorting and Reforming: High-Stakes Testing in the Public Schools*, 34 AKRON L. REV. 107, 128-29 (2000) (noting the legacy created by the *Debra P.* decision).

64 87 F. Supp. 2d 667 (W.D. Tex. 2000).

advocacy organizations filed a class action challenging the use of the Texas Academic Assessment System (TAAS) exam as a graduation requirement, arguing that the test discriminated against minority students and violated due process.⁶⁵ Like in *Debra P.*, evidence presented to the *GI Forum* court indicated that the TAAS exam did have a disproportionate negative impact on minority students.⁶⁶ The court nevertheless upheld the exam requirement, holding that the policy did not perpetuate prior educational discrimination and therefore did not violate due process.⁶⁷

One notable difference between the instant case and *GI Forum* is how the courts treated the plaintiffs' claims that the literacy testing requirement violated the equal protection clause. The *GI Forum* court granted defendants' motion for summary judgment on the plaintiffs' equal protection claims, finding that there was insufficient evidence of intentional discrimination for those claims to go to trial.⁶⁸ In contrast, the *Debra P.* court also found insufficient evidence of intentional discrimination, but still struck down use of the SSAT II as a graduation requirement.⁶⁹ Evidence of the inferiority of black students' education under the dual system and the disproportionate failure rates of those students on the exam were sufficient to persuade the court that the exam requirement violated equal protection.

In the absence of intentional discrimination, the *GI Forum* court did not find an equal protection violation based on the perpetuation of past racial discrimination, but it explained that intent to discriminate was not required for such perpetuation to constitute a violation of due process.⁷⁰ However, the court required plaintiffs to prove by a preponderance of the evidence that the TAAS exam perpetuated disparities in education based on race.⁷¹ Evidence of the state's history of racial discrimination in public education and the statistics showing that the exam requirement had a disproportionate impact on minority students were insufficient to convince the court that the exam requirement

65 *Id.* at 668.

66 In 1991, 67% of black students and 59% of Hispanic students failed the exam, compared to only 31% of white students. *Id.* at 671, 673.

67 *Id.* at 683-84.

68 *Id.* at 670.

69 *Debra P. v. Turlington*, 474 F. Supp. 244, 254-55 (M.D. Fla. 1979).

70 *GI Forum*, 87 F. Supp. 2d at 669.

71 *Id.* at 670.

served to perpetuate discrimination.⁷² In contrast, the *Debra P.* court, when presented with the same type of evidence, found this evidence was indeed sufficient to show that the SSAT II perpetuated racial discrimination.

Much of the *Debra P.* court's analysis with respect to this issue centered on the precedent set out in *Green v. County School Board* that required states to eliminate not only physical segregation of public schools, but also the effects of the discrimination.⁷³ Judge Carr was clearly very concerned about eradicating the effects of past discrimination. Perhaps this explains his willingness to find perpetuation of such discrimination based only on the fact that black students had higher failure rates on the SSAT II than whites did when the same evidence had not been sufficient to persuade the *GI Forum* court. Another possible explanation for the seeming disparity between the two cases is the fact that *GI Forum* was decided over two decades after the end of public school segregation, whereas *Debra P.* came about only seven years after segregation ended. Regardless of the specific reason, what is clear is that the *Debra P.* court was determined to remedy any possible effects of past discrimination so as to promote a public education system that afforded equal opportunities to all students regardless of race.

This resolve to correct racial discrimination is also apparent when considering the lack of deference Judge Carr afforded the state concerning decisions about public education. In *Debra P.*, the court held that while using the SSAT II as a graduation requirement was unconstitutional, the exam could be administered to identify students' learning deficiencies.⁷⁴ Thus, the court did not feel compelled to defer to the state's judgment about how the SSAT II should be used. In contrast, other courts have afforded significant deference to states that implement similar testing requirements. In *Erik V. v. Causby*, a North Carolina district court rejected a challenge to a state requirement that students pass an exam before being promoted to the next grade, noting that "federal courts have no business substituting their judgment for that of the local school board when it comes to qualitative achievement standards."⁷⁵ Similarly, the court in *GI Forum* upheld use of the TAAS exam

⁷² *Id.*

⁷³ *Debra P.*, 474 F. Supp. at 256-57.

⁷⁴ *Id.* at 244, 269.

⁷⁵ 977 F. Supp. 384, 388, 390 (E.D.N.C. 1997).

as a graduation requirement even though state officials did not meet their burden of showing a causal connection between the test's administration and students' improved performance.⁷⁶ The court reasoned that policies regarding education were the responsibility of state governments and that courts should avoid intruding on these decisions.⁷⁷ Judge Carr's decision not to provide this same deference to the state's use of the SSAT II in *Debra P.* further illustrates the concern for rectifying the effects of past discrimination.

Conclusion

Even today, the disparities in educational opportunities created by decades of racial segregation in public schools are widely prevalent, as evidenced by the inferior facilities and resources often characteristic of predominantly black public schools.⁷⁸ However, equality in education has improved significantly compared to the days when *de jure* segregation was the law of the land. Our court system has played a substantial role in effectuating much of this progress. *Brown I*⁷⁹ and *Brown II*⁸⁰ brought an end to state-mandated segregation and required public schools to create a unitary system. *Green v. County School Board* then imposed an affirmative duty on

76 Such a showing was required as the state officials bore the burden of establishing that the test was educationally necessary. Rachel F. Moran, *Sorting and Reforming: High-Stakes Testing in the Public Schools*, 34 AKRON L. REV. 107, 126-27 (2000).

77 *GI Forum v. Tex. Educ. Agency*, 87 F. Supp. 2d 667, 668 (W.D. Tex. 2000).

78 See, e.g., Bruce D. Baker, *Exploring the Sensitivity of Education Costs to Racial Composition of Schools and Race-Neutral Alternative Measures: A Cost Function Application to Missouri*, 86 PEABODY J. EDUC. 58, 60-61 (2011) (explaining that predominantly black schools are assigned lower quality teachers than schools with mostly white students); Howard Blume, *LAUSD Agrees to Revise How English Learners, Blacks Are Taught*, L.A. TIMES, Oct. 11, 2011, available at <http://articles.latimes.com/2011/oct/11/local/la-me-1012-laUSD-feds-20111011> (explaining that schools with predominantly black student enrollment had lower quality technology and library resources compared to schools serving mostly white students); Charles T. Clotfelter, Helen F. Ladd & Jacob L. Vigdor, *School Segregation Under Color-Blind Jurisprudence: The Case of North Carolina*, 16 VA. J. SOC. POL'Y & L. 46, 58 (2008) ("[I]n a world where schools attended by white and middle class students tend to have better resources and more qualified teachers than schools populated by low-income and disadvantaged students, segregation leads directly to resource disparities.").

79 *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

80 *Brown v. Bd. of Educ.*, 349 U.S. 295 (1955).

states to eliminate the effects of past purposeful discrimination.⁸¹ Following in these progressive footsteps, the district court in *Debra P.* continued the Supreme Court's legacy of striving for racial equality in public schools by protecting black students' right to be free from punishment for deficits created by past discrimination. Our society depends on courts to uphold the Constitution's dictates of equality and fairness when laws are passed that pose a threat to these values. Thus, it is incumbent on courts to invalidate laws that perpetuate racial discrimination in our educational system. The instant court recognized this duty when it ruled on *Debra P.*, and it thereby upheld the values most cherished by our society.

81 391 U.S. 430, 437-38 (1968).