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## Turnaround in Reverse: Brown, School Improvement Grants, and the Legacy of Educational Opportunity

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# TURNAROUND IN REVERSE: *BROWN*, SCHOOL IMPROVEMENT GRANTS, AND THE LEGACY OF EDUCATIONAL OPPORTUNITY

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“Since the time of Brown, what might be called the paradox of progress has played out in our schools. Our students have made enormous progress, and yet the rising significance of education in the global economy has made America’s large achievement gaps so much more consequential.”

- U.S. Department of Education Secretary, Arne Duncan, 2014<sup>1</sup>

## I. INTRODUCTION

On May 20, 2014, U.S. Department of Education Secretary Arne Duncan met with journalists at the Education Writers Association Annual Conference in Nashville, Tennessee to discuss the landmark Supreme Court decision, *Brown v. Board of Education*.<sup>2</sup> Duncan outlined various new initiatives such as the Preschool for All Plan and President Obama’s Connect Ed initiative in addition to identifying

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<sup>1</sup> Arne Duncan, *Sixty Years after Brown, Where is the Outrage?*, U.S. DEP’T OF EDUC. (May 20, 2014), <http://www.ed.gov/news/speeches/sixty-years-after-brown-where-outrage>.

<sup>2</sup> 347 U.S. 483 (1954).

four reasons why *Brown* remains important. First, Duncan asserted that *de facto* school segregation remains and has worsened in some instances since *Brown*. Second, he argued that without *Brown*, there would be no education policy targeted to students with disabilities (e.g., the Individuals with Disabilities Education Act) or from economically disadvantaged backgrounds (e.g., Title I of the Elementary and Secondary Education Act). Duncan also noted that “educational opportunity” as espoused in *Brown* required a more nuanced, collective understanding of the link between a quality education and the opportunity for success, particularly in the lives of Black and economically disadvantaged students post-*Brown*. Finally, Duncan hearkened back to a theme recurrent in his previous public addresses: that access to a quality education remains an unresolved “civil rights” issue and contributes to the inability to close the achievement gap between White/Asian students and Black/Hispanic students.

For educational policy pertaining to the achievement gains of students, in particular for students who are Black or Hispanic and/or enrolled at low-performing schools, the assertion that a “paradox of progress” post-*Brown* exists is well-founded. In the 2014 report from the National Center for Education Statistics (reporting on four-year on-time graduation rates for all students for school years (SY) 2010-11 and 2011-12), the estimated national four-year adjusted cohort graduation rate (ACGR) was at seventy-nine and eighty percent, respectively.<sup>3</sup> For SY 2010-11, American Indian/Alaska Native, Black, and Hispanic students had four-year ACGRs below the national average at sixty-five, sixty-seven, and seventy-one percent, respectively.<sup>4</sup> Similarly, for SY 2011-12, American Indian/Alaska Native, Black, and Hispanic students had a four-year ACGR below the national average at sixty-seven, sixty-nine, and seventy-three percent, respectively.<sup>5</sup> Graduation rates are even lower for economically disadvantaged students, students with limited English proficiency, and students with disabilities.<sup>6</sup> As we reflect upon the sixtieth anniversary of *Brown*, it is critical to not only assess policies advanced during the Obama administration that are aimed at reducing the continuing disparity for minority and economically disadvantaged students, but to also reflect upon what Secretary Duncan called the paradox of educational progress that continues to persist.

Part II explores the effort to realize *Brown*’s promise of integration and equal educational opportunity. It describes a slow but significant history of gains, which has since been thwarted as *Brown* has been rendered doctrinally impotent. It then considers the relationship between *Brown* and Title I of the Elementary and Second Education Act (ESEA), and suggests ways to give new life to *Brown*’s promise of equal educational opportunity. Part III examines a recent effort by the Obama

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<sup>3</sup> NAT’L CTR. FOR EDUC. STATISTICS, PUBLIC HIGH SCHOOL FOUR-YEAR ON-TIME GRADUATION RATES & EVENT DROPOUT RATES: SCHOOL YEARS 2010-11 AND 2011-12 (2014), available at <http://nces.ed.gov/pubs2014/2014391/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> For SY 2010-11, economically disadvantaged students, students with limited English proficiency, and students with disabilities all had 4-year ACGR rates below the national average for all students at 72, 59, and 61 percent. For SY 2011-2012, the 4-year ACGR rates were also below the national average (at 72, 59, and 61 percent, respectively).

administration to increase educational opportunity for Title I schools that serve primarily economically disadvantaged and Black/Hispanic students through use of School Improvement Grants (SIG). It then outlines the eligibility requirements for Title I and Title I-eligible schools, mandated school improvement models for turnaround contingent upon SIG-funding, and new provisions for school leadership. Part IV considers the preliminary results associated with SIG grant-funding for Cohorts I and II, with a particular focus given to Cohorts I and II in the State of Ohio using data collected by the U.S. and Ohio Departments of Education. Finally, Part V concludes with a critique of the turnaround models attached to SIG grant funding and suggests a revised approach to school reform that would revitalize *Brown's* promise of equal educational opportunity.

## II. *BROWN* IN AN AGE OF RESEGREGATION

### A. *Brown* Enfeebled

Decennial anniversaries of *Brown v. Board of Education* were once occasions for a mixture of celebration and hopeful anticipation of future gains in achieving its goals of equal educational opportunity and school integration. Regrettably, recent decennial anniversaries have been far less happy and hopeful moments. We still have reason to celebrate the decision. We honor the extraordinary accomplishment of the NAACP lawyers who mounted the extended litigation campaign that finally culminated in *Brown* and *Bolling v. Sharpe*.<sup>7</sup> We remember the courage and determination of the parents and students who challenged state-enforced school segregation. Moreover, we recognize the importance of *Brown* and the campaign in the courts against segregation as part of a broader movement to transform race relations in America, as well as a source of legal and moral authority for other rights movements and the expansion of rights consciousness.<sup>8</sup> Indeed, *Brown's* place of honor in American law, while sometimes challenged by critics, seems secure. As Professor Jack Balkin has argued, no normative theory of constitutional interpretation can gain standing in the legal academy if it does not accommodate *Brown*.<sup>9</sup> Balkin writes, “[w]e reject its rightness on penalty of being thought deliberately provocative or off-the-wall.”<sup>10</sup>

Yet, disappointment and the recognition of hopes unfulfilled have long ago displaced celebration as the dominant tone at *Brown* anniversaries, including this year. It is important to remember that *Brown* has made a difference, as we also acknowledge that it is now in retreat. In the face of Southern resistance and minimal federal support, desegregation made little progress in the first decade after *Brown*. In 1964, only Texas and Tennessee had more than two percent of their African-

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<sup>7</sup> 347 U.S. 497 (1954).

<sup>8</sup> The debate about *Brown's* causal impact is beyond the scope of this article. See generally MICHAEL KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 344-442 (2004); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 40-156 (2d ed. 2008). We believe that *Brown*, coupled with congressional and executive action was critical to effect desegregation.

<sup>9</sup> Jack M. Balkin, *What Brown Teaches Us About Constitutional Theory*, 90 VA. L. REV. 1537, 1576 (2004).

<sup>10</sup> *Id.*

American students enrolled in integrated schools.<sup>11</sup> By the mid-sixties, however, momentum had changed. For a brief period all three branches of the federal government worked in tandem to integrate *de jure* segregated schools. Prodded by President Lyndon Johnson, Congress enacted the Civil Rights Act of 1964.<sup>12</sup> In addition to outlawing discrimination in public accommodations and employment, the act brought federal force to school desegregation. Title IV empowered the Justice Department to bring desegregation suits.<sup>13</sup> Title VI prohibited discrimination by government agencies that received federal aid.<sup>14</sup> This provision became more potent the following year when Congress passed the ESEA, which greatly increased the flow of federal funds to school districts, thereby greatly increasing the costs of noncompliance with the desegregation mandate of the 1964 Civil Rights Act.<sup>15</sup> In turn, the Justice Department and the Department of Health, Education, and Welfare (HEW) increased enforcement pressure. Federal courts, especially those in the Fifth Circuit, whose jurisdiction included much of the deep South, grew tired of southern obstructionism and ruled more aggressively in favor of plaintiffs seeking desegregation.<sup>16</sup> While only 2.3 percent of African American children attended integrated schools in the South in 1964, that percentage had increased to 12.5 percent in 1966.<sup>17</sup>

The Supreme Court struck an important blow against Southern resistance to school desegregation in *Green v. County School Board of New Kent County, Virginia*<sup>18</sup> when it rejected the county's freedom of choice plan, which nominally opened its historically all-white school to African American children, but effectively kept its schools segregated.<sup>19</sup> The Court made clear that it would no longer tolerate delay in implementation of *Brown II*'s desegregation mandate, and that dual school systems must adopt plans that would create a unitary system speedily and effectively.<sup>20</sup> By decade's end, one third of Black school children in the South attended majority white schools.<sup>21</sup> This trend would reach its peak of nearly forty-

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<sup>11</sup> GARY ORFIELD, *THE RECONSTRUCTION OF SOUTHERN EDUCATION: THE SCHOOLS AND THE 1964 CIVIL RIGHTS ACT* 20 (1969).

<sup>12</sup> Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2, 28 and 42 U.S.C.).

<sup>13</sup> 42 U.S.C.A. § 2000c-6 (West 2014).

<sup>14</sup> 42 U.S.C.A. § 2000d (West 2014).

<sup>15</sup> ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, 79 Stat. 27.

<sup>16</sup> *E.g.*, *Singleton v. Jackson Mun. Sch. Dist.*, 348 F.2d 729 (5th Cir. 1965); *U.S. v. Jefferson Cnty. Bd. of Educ.*, 380 F.2d 385 (5th Cir.) (en banc), *cert. denied, sub nom.*, *Bd. of Educ. of City of Bessemer v. U.S. and Caddo Parish Sch. Bd. v. U.S.*, 389 U.S. 840 (1967).

<sup>17</sup> JOHN MORTON BLUM, *YEARS OF DISCORD: AMERICAN POLITICS AND SOCIETY, 1961-1974* 196 (1991).

<sup>18</sup> 391 U.S. 430 (1968).

<sup>19</sup> *Id.* at 441.

<sup>20</sup> *Id.* at 438-39.

<sup>21</sup> GARY ORFIELD & ERICA FRANKENBERG, *BROWN AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE* 10, Table 3 (2014).

four percent of Southern Black students attending majority-white schools in 1988.<sup>22</sup> Despite important victories in school cases elsewhere in the United States, desegregation numbers lagged in other regions compared to the South.<sup>23</sup>

Despite this positive trend, the seeds of retrenchment and turnaround quickly began to appear. HEW guidelines that required real progress toward desegregation prompted mounting congressional opposition.<sup>24</sup> The election of President Richard Nixon in 1968 deprived school desegregation advocates of a presidential ally. Judicial decisions also began to hint at turnaround. Northern plaintiffs had limited success establishing a right to integrated schools where school segregation was deemed not to be the result of intentional state action but, rather, the result of “private choice” regarding residential patterns.<sup>25</sup> Civil rights advocates who pressed creative litigation strategies to broaden the definition of intentionality and to contextualize “private choice” found the courts to be generally unreceptive.<sup>26</sup>

In 1974, school desegregation litigants suffered their first Supreme Court setback in the post-*Brown* era. In *Milliken v. Bradley*,<sup>27</sup> the Court disallowed a multi-district remedy for Detroit litigants, notwithstanding the recognition that desegregation would be impossible if the remedy was restricted to the Detroit schools.<sup>28</sup> In what Justice Marshall described as “a giant step backwards,” the Court essentially foreclosed almost any possibility for a multi-district remedy.<sup>29</sup> Consequently, white flight to the suburbs, along with the decision to abandon the public schools, made integration more difficult and sometimes unachievable. In a series of decisions in the 1990s, the United States Supreme Court held that once a school district had achieved unitary status, or, in other words, had eliminated the last vestiges of *de jure* segregation, the courts could no longer order the district to take steps to maintain

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 18, Table 8 and Figure 3. That does not mean there was no progress in these regions. Significant gains were made especially in border and western states.

<sup>24</sup> ORFIELD, *supra* note 11, at 264-304.

<sup>25</sup> THOMAS J. SUGRUE, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH* 477-81 (2009).

<sup>26</sup> One judge who did adopt a more expansive approach was J. Skelley Wright in *Hobson v. Hansen*, 269 F. Supp. 401 (1967), *appeal dismissed*, 393 U.S. 801 (1968).

<sup>27</sup> 418 U.S. 717 (1974).

<sup>28</sup> District Court Judge Steven Roth concluded that given the composition of Detroit’s school population, desegregation would be impossible under any plan limited to the Detroit school system. He then considered inter-district plans submitted by the parties and adopted an inter-district remedy. *Bradley v. Milliken*, 345 F. Supp. 914, 916-21 (E.D. Mich. 1972). In partially affirming the district court’s decision, the United States Court of Appeals for the Sixth Circuit stated that a denial of an inter-district remedy “calls up haunting memories of the now long overruled and discredited ‘separate but equal doctrine’ of *Plessy v. Ferguson* . . . . If we hold that school district boundaries are absolute barriers to a Detroit school desegregation plan, we would be opening a way to nullify *Brown v. Board of Education* . . . .” *Bradley v. Milliken*, 484 F.2d 215, 249 (6th Cir. 1973) (en banc). For a discussion of *Milliken*, see SUGRUE, *supra* note 25, at 481-87.

<sup>29</sup> *Milliken*, 418 U.S. at 782 (Marshall, J., dissenting).

integrated schools, even if release from existing court orders would result in resegregation.<sup>30</sup>

Ever since, the momentum for desegregation has been backwards. According to the latest report of The Civil Rights Project at UCLA, the percentage of Black students in majority white schools in the South has fallen to pre-1968 levels.<sup>31</sup> Using as one measure of school segregation the percentage of African American students in schools with a ninety to one hundred percent minority student population, the authors note that since 1991, every region of the U.S. has “experienced an increase in the percentage of black students in 90-100% minority schools . . . and the two most populous, diverse regions—the South and the West—have witnessed the sharpest increases in the shares of black students attending intensely segregated schools.”<sup>32</sup>

The resegregation of our public schools is not simply a return to the past. Because of various demographic trends, today’s segregation is more complex than the segregation of the 1950s and 1960s. Substantial declines in the number of white students in the public schools since the late 1960s have been matched by substantial increases in the number of Latino students, who now constitute the second largest demographic group of school children.<sup>33</sup> Segregation has soared during this period for Latino students, who often find themselves in the same schools as their African American peers.<sup>34</sup> Finally, the issue of “double segregation,” the concentration of the poor in schools that are overwhelmingly Black/Hispanic, has become increasingly apparent as have the tragic consequences of segregation both by race and class.<sup>35</sup>

### B. Restoring *Brown*

In order to better fulfill *Brown*’s promise, its fuller meaning must be restored and revitalized. Part of the difficulty of that task is the ambiguity of the case’s meaning. As any number of commentators have noted, it is not altogether clear what the basis for the Court’s holding in *Brown* was.<sup>36</sup> As Professor Balkin notes, courts and advocates have repeatedly reinterpreted *Brown*, and its meaning has evolved and has been “domesticated” over time.<sup>37</sup>

Part of Chief Justice Warren’s political genius was to build ambiguity into *Brown*, in order to achieve a unanimous opinion. At one point in the opinion the

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<sup>30</sup> Bd. of Educ. of Okla. City v. Dowell, 498 U.S. 237 (1991); Freeman v. Pitts, 503 U.S. 467 (1992); Missouri v. Jenkins, 515 U.S. 70 (1995). On the impact of these decisions, see ORFIELD & FRANKENBERG, *supra* note 21, at 27-31. The Court did further damage in 2007 when it disallowed the use of race as a factor in voluntary school desegregation plans in Seattle and Louisville. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).

<sup>31</sup> ORFIELD & FRANKENBERG, *supra* note 21 at 10, tbl.3.

<sup>32</sup> *Id.* at 18, tbl.8.

<sup>33</sup> *Id.* at 6-8, tbl.1.

<sup>34</sup> *Id.* at 15.

<sup>35</sup> *Id.* at 15-16.

<sup>36</sup> Balkin, *supra* note 9, at 1564.

<sup>37</sup> *Id.* at 1563-68.

basis of the decision appears to be the harm that segregation does to African American school children.<sup>38</sup> Elsewhere it appears that the basis might be the Court's skepticism regarding a state's use of racial classification in school assignments, implicitly requiring strict scrutiny review of the classification.<sup>39</sup> Finally, the opinion suggests that education is so important that it should be treated as a fundamental interest or right and must be offered to all children on an equal basis.<sup>40</sup>

The Court has tamed, and in the instance of regarding education as a fundamental right, rejected all of these rationales for *Brown*. We believe, nonetheless, that elements of each should be revived, if not as legal doctrine, as political and moral imperatives. For strategic reasons, given current legal and political constraints, and the current mood regarding educational policy, we believe that it is particularly important at the moment to emphasize *Brown*'s focus on the importance of education and on its promise of equal educational opportunity.<sup>41</sup>

In a critical passage, Chief Justice Warren emphasized the necessity of education to equip every child to become a full participant in the civil, political, cultural, and economic life of the nation. Only with a quality education would that girl or boy be equipped to succeed as an adult. He wrote:

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 it is the 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. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>42</sup>

Today's children similarly will not grow up prepared for full participation as citizens, as members of civil society, and as contributors to a complex economy if their schools have not given them a quality education. Education enables the exercise of our fundamental constitutional rights and prepares us for participatory citizenship. Nevertheless, in a rejection of this thread of *Brown*'s reasoning, the Supreme Court has held that education, though important, is not a constitutionally guaranteed fundamental right.<sup>43</sup> In so limiting *Brown*'s message, the Court has not foreclosed an argument grounded in this reading of *Brown*. It simply has closed one avenue,

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<sup>38</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493-94 & nn.10-11 (1954).

<sup>39</sup> Balkin, *supra* note 9, at 1564-68.

<sup>40</sup> *Brown*, 347 U.S. at 493.

<sup>41</sup> In this regard, we are not alone. *See, e.g.*, Taunya Lovell Banks, *Brown at 50: Reconstructing Brown's Promise*, 44 WASHBURN L.J. 31, 40-44 (2004).

<sup>42</sup> *Brown*, 347 U.S. at 493.

<sup>43</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30-31 (1973).



litigation, for advancing these values of *Brown*. *Brown*'s moral authority, and the power of its argument regarding the necessity for equal educational opportunity remains potent in the political sphere and in the realm of education policy.

Indeed, we believe that in enacting the ESEA of 1965, and especially its Head Start and Title I provisions, Congress and President Johnson were codifying the equal educational opportunity promise of *Brown* in federal law.<sup>44</sup>

On its face, the ESEA seems unconnected to *Brown* except in the most attenuated ways. Given how little progress had been made in school desegregation in 1965 and how intense the fight over the schools remained at the time, it is perhaps surprising that neither the House nor the Senate Reports on the bill mentioned *Brown* or desegregation, especially given the leverage that it coupled with the 1964 Civil Rights Act would give the federal government to desegregate southern schools. Nor is there anything beyond stray incidental mentions in the congressional debate on the bill. Whatever the reason for this omission, finding an express connection to *Brown* in the legislative history is like finding a needle in a sea of haystacks. Nonetheless, at the very least, *Brown* belongs on the ESEA's family tree.

President Johnson, of course, saw the act as one of the cornerstones of his "war on poverty" and his Great Society. In that sense, legislation intended to expand educational resources for the poor was partly grounded in notions of creating more equal educational opportunities, though the lens through which the Act projected this was class, not race.

Title I's connection to *Brown* is obscured but real. First, in submitting the legislation to Congress, President Johnson explained the rationale for the bill in terms that closely echo Chief Justice Warren's discussion of the importance of education in contemporary America. Like the Chief Justice, President Johnson emphasized the importance of education in training for citizenship and preparation for participation in civic life, including, as had Chief Justice Warren, preparation for military service. Both emphasized the necessity of education to fully participate in the world. Finally, as soon became very apparent, the ESEA, coupled with Title VI of the 1964 Act, the forcefulness of HEW guidelines and the deference of the federal courts to those guidelines became the engine of desegregation in the South.<sup>45</sup>

The Act provided for a variety of programs ranging from the creation of Head Start to funding of educational research. By far the biggest financial commitment in the Act related to Title I, which provided for federal funds to public school districts to strengthen school programs for impoverished students. The initial funding scheme focused on targeting individual students as a means for avoiding a fight over funding of parochial schools. Over time the funding mechanism has changed, and schools with a high number of poor students are entitled to Title I funding.

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<sup>44</sup> Seen as a major legislative accomplishment in its time, the ESEA has since garnered criticism and praise. For two different critical analyses, see ALLEN J. MATUSOW, *THE UNRAVELING OF AMERICA: A HISTORY OF LIBERALISM IN THE 1960S* 221-26 (1984); SANDRA J. STEIN, *THE CULTURE OF EDUCATION POLICY* 26-45 (2004). For a more positive account, see BLUM, *supra* note 17, at 178-79. Gary Orfield argues that desegregation "would have been impossible without the lure of money from the Elementary and Secondary Education Act." ORFIELD, *supra* note 11, at 228.

<sup>45</sup> ORFIELD, *supra* note 11, at 228; ROSENBERG, *supra* note 8, at 97-100.

## III. WHAT ARE SCHOOL IMPROVEMENT GRANT PROGRAMS?

Early in President Obama's first administration, the President announced major changes for Title I schools via SIG funding grants.<sup>46</sup> The administration intended the grants as a means to transform schools that serve students who are most economically disadvantaged and in need of a quality education.<sup>47</sup> When announcing the grant application process in 2009, Secretary Duncan commented that, "[i]f we are to put an end to stubborn cycles of poverty and social failure, and put our country on track for long-term economic prosperity, we must address the needs of children who have long been ignored and marginalized in chronically low-achieving schools."<sup>48</sup>

SIGs are designed to fund significant reforms in "consistently lowest-achieving" Title I and Title I-eligible schools.<sup>49</sup> SIG-funded schools receive up to \$2 million annually for three years to improve student outcomes. The program, first authorized in Fiscal Year (FY) 2002, changed in FY 2009 due to significant increases in congressional appropriations. Congress increased SIG funding from \$125 million in FY 2007 to \$3.5 billion in AFY 2009 (\$3 billion of which was provided under the American Recovery and Reinvestment Act of 2009, the economic stimulus act). Schools started spending funds during school year (SY) 2010-2011.<sup>50</sup> An additional \$1.6 billion was appropriated in FY 2010-2012.

The U.S. Department of Education awards SIGs to state education agencies (SEA) under § 1003(g) of the No Child Left Behind Act of 2002 ESEA.<sup>51</sup> SEAs then award subgrants to local educational agencies (LEAs) or school districts within the state.<sup>52</sup> Each state's funding is determined by a formula based on their Title I allocation.<sup>53</sup> Each SEA can then award these funds to districts that applied on behalf of some or all of their SIG-eligible schools.<sup>54</sup>

A component of the state application process requires states to identify and prioritize eligible schools into three tiers: Tiers I, II, and III. Tier I schools receive priority for SIG funding and are the state's lowest-achieving five percent of Title I schools (or five lowest-achieving schools, whichever number is greater) in

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<sup>46</sup> Arne Duncan, U.S. Sec'y of Educ., *Turning Around the Bottom Five Percent* (June 22, 2009), available at <http://www2.ed.gov/news/speeches/2009/06/06222009.html>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Michael Yudin, Deputy Assistant Sec'y for Pol'y & Strategic Initiatives, Office of Elementary & Secondary Educ., U.S. DEP'T OF EDUC. (Dec. 8, 2010), available at [https://www.rtinetwork.org/index2.php?option=com\\_content&task=emailform&id=345&itemid=66](https://www.rtinetwork.org/index2.php?option=com_content&task=emailform&id=345&itemid=66).

<sup>50</sup> 75 Fed. Reg. 66363 (Oct. 28, 2010).

<sup>51</sup> NO CHILD LEFT BEHIND ACT OF 2001, 115 Stat. 1425.

<sup>52</sup> *Id.*

<sup>53</sup> Steven Hurlburt et al., *School Improvement Grants: Analyses of State Applications and Eligible and Awarded Schools*, U.S. DEP'T OF EDUC. 2 (Oct. 2012), available at <http://ies.ed.gov/ncee/pubs/20124060/pdf/20124060.pdf>.

<sup>54</sup> NO CHILD LEFT BEHIND ACT OF 2001, *supra* note 51; *see also* 75 Fed. Reg. 66363, *supra* note 50.

improvement status.<sup>55</sup> States can also identify “Title I-eligible elementary schools that: 1) are not higher achieving than any Title I school in Tier I; and 2) have not made adequate yearly progress (AYP) for at least two consecutive years or are in the state’s lowest quintile” (e.g., as reflected in proficiency rates).<sup>56</sup> Tier II schools are Title I-eligible schools with performances comparable to Tier I schools that are among the lowest-achieving five percent of such secondary schools in the state or have had a graduation rate below sixty percent for a period of years.<sup>57</sup> Tier III schools are not Tier I or Tier II schools but have been state-identified as schools in need of improvement, corrective action, or restructuring.<sup>58</sup> States have the option of identifying a Title I-eligible school as Tier 3 when the school has not met the requirements to be Tier I or Tier 2, has not made AYP for at least two consecutive years, or is in the state’s lowest quintile based on proficiency rates.<sup>59</sup>

Once schools eligible for SIG funding are identified, each school must choose one of four mandated school improvement models:

- 1) Restart Model – The school must reopen under the management of a contractor, such as a charter school operator, management organization, or education management organization.
- 2) School Closure Model – The district must close the school and students are transferred to higher-achieving schools in the district.
- 3) Turnaround Model – The school’s current principal and a significant part of the teaching staff are fired. The district must hire a new principal who can retain no more than fifty percent of the existing staff.
- 4) Transformation Model – Under the transformation model, an evaluation system for teachers and principals based on student achievement must be put into place; curriculum development for students must be made; professional development and training must also be implemented.<sup>60</sup>

In addition, SIG schools are directed to provide effective leaders and teachers, a supportive and safe school environment, increased time for teaching and collaboration, operational flexibilities and capacity building; strong, aligned and responsive instruction; and family and community engagement.<sup>61</sup> Since the 2010

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<sup>55</sup> To identify the lowest five percent of Title I schools, school districts must identify their persistently lowest-achieving schools based on schools’ absolute performance on state Language Arts and Math assessments and documented lack of progress over a period of time. High schools with low graduation rates are also eligible. Hurlburt et al., *supra* note 53, at 3.

<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 4; *see also supra* note 50.

<sup>61</sup> *An Overview of School Turnaround*, U.S. DEP’T OF EDUCATION (Nov. 28, 2011), <https://www2.ed.gov/programs/sif/sigoverviewppt.pdf>.

modifications to the SIG program, states have awarded funding to two cohorts. In the first cohort, 1,009<sup>62</sup> U.S. schools received SIG funding and 600<sup>63</sup> U.S. schools received SIG funding in the second cohort. In the State of Ohio, forty-one schools were SIG-awarded in Cohort I and forty-five schools were SIG-awarded in Cohort II.<sup>64</sup>

#### IV. HAVE SCHOOLS IMPROVED WITH SCHOOL IMPROVEMENT GRANT FUNDING?

Because the increase in SIG funding has only been in place since 2010, results, either positive or negative, are only preliminary. Future study is necessary to establish whether the increased funding and school reform of Title I and Title I-eligible schools have truly met *Brown's* clarion call for equal educational opportunity. However, the preliminary results from the use of SIG funds to improve schools are not altogether promising, both nationally and in the State of Ohio. Since 2010, SIG-funded cohorts of Title I and Title I-eligible schools have been monitored and tracked for school improvement. A 2012 report funded by the Institute of Education Sciences examined states' Cohort 1 and 2 applications, and also examined school progress of SIG-funded schools across cohorts.<sup>65</sup> In addition, the U.S. Department of Education released a summary of SIG National Assessment results on February 14, 2014.<sup>66</sup>

The 2014 results suggest that SIG schools have made gains since being awarded SIG funding, particularly in math<sup>67</sup> and reading.<sup>68</sup> However, a careful analysis of this

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<sup>62</sup> Hurlburt et al., *supra* note 53, at 18.

<sup>63</sup> *Id.* at 19.

<sup>64</sup> OHIO DEP'T OF EDUC., Notification of SIG Awards: School Improvement Grant 1003g Award Funding, *available at* [education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/FY11-Cohort-1-Awards-and-Applications.pdf.aspx](http://education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/FY11-Cohort-1-Awards-and-Applications.pdf.aspx); OHIO DEP'T OF EDUC., SIG Cohort 2 Budget (June 24, 2013), *available at* [education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/SIG-Cohort-2-Budget-document-1-1.pdf.aspx](http://education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/SIG-Cohort-2-Budget-document-1-1.pdf.aspx).

<sup>65</sup> Hurlburt, et al., *supra* note 53.

<sup>66</sup> For Cohort I, there were 13,741 SIG-eligible schools, with 12,732 schools not awarded SIG funding. For Cohort II, there were 12,445 SIG-eligible schools (9,903 schools still eligible from Cohort I applications; 2,336 schools were newly eligible for SIG funding), and 11,845 were not awarded SIG funding. *Id.* at 18.

<sup>67</sup> For math scores in Cohort 1 the review reports, "189/485 schools (39%) show gains of 10 percentage points (pp) or more since the pre-funding year (2009-10), 144 (30%) show gains from 1-9pp, 12 (2%) show no change, 113 (23%) show declines of 1-9pp, and 27 (6%) show declines of 10pp or more." For math scores in Cohort II, "69/350 schools (20%) show gains of 10pp or more since the pre-funding year (2010-11), 128 schools (37%) show gains of 1-9pp, 22 schools (6%) show no change, 109 schools (31%) show declines of 1-9pp, and 22 schools (6%) show declines of 10pp or more." U.S. DEP'T OF EDUC., *School Improvement Grant (SIG) National Assessment Results Summary: Cohorts 1 and 2*, 3 (Feb. 14, 2014), <http://www2.ed.gov/programs/sif/assessment-results-cohort-1-2-sig-schools.pdf>.

<sup>68</sup> For reading scores in Cohort I, "165/549 schools (30%) show gains of 10 pp or more since the pre-funding year (2009-10), 190 schools (35%) show gains of 1-9pp, 19 schools (3%) show no change, 135 schools (25) show declines of 1-9pp, and 40 schools (7%) show declines of 10pp or more." For reading scores in Cohort II, "66/375 schools (18%) show gains of 10pp or more since the pre-funding year (2010-11), 166 schools (44%) show gains of 1-

summary reveals several notable data limitations. A primary limitation is that only approximately 40% of Cohort I Sig schools and 30% of Cohort 2 SIG schools were included in the analyses. Moreover, the explanations provided for this limitation suggest problems with the data.<sup>69</sup> Finally, states have different assessments and proficiency standards, thus compromising the ability to compare schools across states. Due to the large amount of missing data within the 2014 summary report, the results and implications associated therein with SIG funding are skewed and unreliable.

The State of Ohio has released data on SIG-funded schools for FY 2011 and 2012. For FY11, there were 41 identified SIG-funded schools in the first cohort. In the second cohort funded in FY 12, there were 45 newly SIG-funded schools, in addition to 40 renewed from the first cohort that were guided through the implementation and progress-monitoring phase for one of the four intervention models.<sup>70</sup> Ohio SIG-funded schools overwhelmingly adopted the transformation model (n = 59, 69%), with the second-most popular choice being the turnaround model (n = 15, 17%). The restart model has only been implemented in one school (1%) and no school has adopted the school closure model as of July 2014.<sup>71</sup>

For SIG-funded schools in Ohio that have adopted an improvement model, the intended goal to increase academic gains has not been met. In an examination of the limited data collected since the start of SY 2011-2012 and 2012-2013, SIG-funded schools have experienced decline in academic achievement. In SY 2012-2013, school achievement was measured using performance indicators, and the state gave schools grades of A-F on its report cards based on the number of indicators met.<sup>72</sup>

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9pp, 22 schools (6%) show no change, 95 schools (25%) show declines of 1-9pp, and 26 schools (7%) show declines of ten percentage points or more.” *Id.* at 3.

<sup>69</sup> The 2014 report included the following limitations for data: “a) significant state assessment or cut score changes during the grant years; b) more than one tested grade added or subtracted; c) no tested grades; d) school split or merger; e) missing proficiency rates; f) school closure; and g) data quality concerns.” *Id.* at 18.

<sup>70</sup> See *supra* note 64; OHIO DEP’T OF EDUC., School Improvement Grant 1003g Awarded Funding-Cohort 1 FY12 Renewal Funding (May 9, 2012), *available at* [education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/Cohort-1-FY12-Renewal-Awards.pdf.aspx](http://education.ohio.gov/getattachment/Topics/School-Improvement/Transforming-Schools/Cohort-1-FY12-Renewal-Awards.pdf.aspx). In 2013, the U.S. Department of Education announced that 11 states will receive funding to continue efforts to improve schools through the SIG program. Ohio will receive \$20.2 million, more than double the grant to any other state. *U.S. Dept. of Education Continues Funding School Improvement Grants*, COUNCIL FOR EXCEPTIONAL CHILDREN (Mar. 12, 2013, 12:43 PM), <http://www.policyinsider.org/2013/03/us-dept-of-education-continues-funding-school-improvement-grants.html>.

<sup>71</sup> See *supra* note 64. In Cohort II for Ohio, five schools (11%) did not adopt an intervention model due to: refusal of funding (n = 1), denial of eligibility or funding (n = 3), or school closure due to non-related SIG reasons (n=1). In Cohort II, six Tier III schools were awarded SIG funds to implement Tier III strategies, in lieu of adopting a turnaround model. *Id.*

<sup>72</sup> Molly Bloom, *2012-13 Ohio School Building Report Cards*, STATEIMPACT.ORG (Aug. 22, 2013, 6:10 PM), [stateimpact.npr.org/ohio/2013/08-22/2012-13-ohio-school-building-report-cards/](http://stateimpact.npr.org/ohio/2013/08-22/2012-13-ohio-school-building-report-cards/); Amy Hansen, *2013-14 Ohio School Building Report Cards*, STATEIMPACT.ORG (Sept. 12, 2014, 3:15 PM), [stateimpact.npr.org/ohio/2014/09/12/2013-14-ohio-school-building-report-cards/](http://stateimpact.npr.org/ohio/2014/09/12/2013-14-ohio-school-building-report-cards/).

Schools were also measured on gap closing using Annual Measurable Objectives (AMOs), which measured the academic performance of specific groups of students to determine if academic achievement gaps exist between groups of students.<sup>73</sup> For SIG-funded schools in Cohorts I and II, only one school received a performance/indicator grade at the 'B' level. The grades for the remaining Ohio SIG-funded schools ranged from 'C' to 'F.'<sup>74</sup>

The U.S. Department of Education, Office of Inspector General (OIG) has criticized Ohio SIG implementation.<sup>75</sup> In 2012, the OIG released its final audit report of SIG grants awarded under the ARRA of 2009 to five states Florida, Georgia, New York, Ohio, and Texas.<sup>76</sup> In the specific audit of the State of Ohio's identification, monitoring, and appropriation of funds to SIG-eligible schools, the OIG found that Ohio awarded funds to LEAs that did not initially demonstrate the strongest commitment to using the funds to raise student achievement.<sup>77</sup> It also found Ohio's process for reviewing and approving LEA applications for SY 2010-11 inadequate to ensure that a SIG-eligible school could implement one of the four improvement models upon SIG reward.<sup>78</sup>

#### V. TURNAROUND IN REVERSE

If the preliminary results from the national and Ohio SIG cohorts are any indication, the paradox of progress continues to persist for economically disadvantaged and minority students. Not only is there an incomplete picture provided to illustrate student achievement gains made across U.S. SIG-funded schools, but the documented gains are also at best small and incremental. While there is limited data here to assert definitively that SIG's do not aid schools in narrowing the achievement gap, there is cause for concern based on the data that has been collected. Further, there is some evidence that schools that have used a different strategy from the adoption of draconian turnaround models have produced better results.<sup>79</sup> Moreover, there are lingering problems that serve to contradict both the

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.* This information was compiled by comparing the report cards with the lists of SIG grant recipients.

<sup>75</sup> U.S. DEP'T OF EDUC. OFFICE OF INSPECTOR GEN., SCHOOL IMPROVEMENT GRANTS: SELECTED STATES GENERALLY AWARDED FUNDS ONLY TO ELIGIBLE SCHOOLS (Mar. 2012), available at <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2012/a0510002.pdf>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 13-14.

<sup>78</sup> Once the State of Ohio was informed of the audit results, plans were made to provide additional information. On September 15, 2011, the Department of Education granted a waiver that allows Ohio schools that started the implementation process during SY 2010-2011 to further "develop evaluation systems during SY 2011-2012 and . . . pilot . . . [new systems] for all principals and teachers no later than SY 2012-2013." *Id.* at 13.

<sup>79</sup> In 2004, as the Superintendent of Chicago schools, Arne Duncan experimented with the turnaround model. The gains that resulted were modest. By contrast, a group of thirty-three high-poverty elementary schools that were community controlled significantly outperformed their turnaround peers. DIANNE RAVITCH, REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA'S PUBLIC SCHOOLS 215-20 (2013).

enduring legacy of *Brown* and the Obama administration's stated commitment to address the needs of students who have been marginalized historically.

*A. SIG turnaround models are not evidence-based and are costly to implement*

First, turnaround models have not been evidence-based, and this remains a problem source if SIG funding remains contingent upon adoption of one of four turnaround models.<sup>80</sup> A study by Professors Tina Trujillo and Michelle Renée, found the research on turnaround models to be seriously flawed and not capable of supporting the claims of school reform advocates.<sup>81</sup> Turnaround models for SIG-funded schools also provide administrative obstacles. Since the initial announcement of SIG grants, schools in competition have had to quickly compile applications that, under the most benign school turnaround model, must include new teacher-evaluation systems that are linked to student performance and include plans for hiring new personnel and/or firing principals and replacing them with new principals. This has created additional hurdles for rural and urban school districts that were already difficult to staff. Implementing an improvement model also requires technical and logistical expertise, which has meant that states receiving SIG funds have hired an array of costly consultants and turnaround specialists. In Colorado, for instance, thirty-five percent of SIG funds went to consultants.<sup>82</sup> The *Brown* decision noted that education is "the most important function of state and local governments,"<sup>83</sup> yet current policy hinders state and local governments from fulfilling this commitment with the promotion of fatally-flawed transformation models that include large administrative costs for states and districts prior to any services for students.

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<sup>80</sup> As Robert Balfanz, school reform researcher and director of the Everyone Graduates Center at Johns Hopkins University stated, "[SIG's are] not the Oldsmobile of comprehensive school reform . . . . [This is] a souped-up model coming hard and fast and getting big changes quick . . . . The big question is whether those changes are going to lead to improvement." Alyson Klein, *What's the Payoff for \$4.6 billion in School Improvement Grants?*, THE HECHINGER REPORT, Apr. 15, 2012. For a critical discussion of the lack of underlying evidence to support these mandated improvement models, see DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION* 223-88 (2010).

<sup>81</sup> Michelle Renée & Tina Trujillo, *Democratic School Turnarounds: Pursuing Equity and Learning from Evidence*, NAT'L EDUC. POLICY CTR. 7-12 (2012), <http://nepc.colorado.edu/publication/democratic-school-turnarounds>.

<sup>82</sup> It is difficult to find compiled data on consultant fees for SIG turnaround model implementation, because the federal government does not require reporting on this information, and most states do not report. According to an analysis published by *The Denver Post* in February 2012, in states that reported consulting fees an average of roughly twenty-five percent of all SIG money went to private consultants. Jennifer Brown, *Cost Doesn't Spell Success for Colorado Schools Using Consultants to Improve Achievement*, DENVER POST, Feb. 19, 2012, [http://www.denverpost.com/ci\\_19997418](http://www.denverpost.com/ci_19997418).

<sup>83</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493-94 (1954).

*B. SIG turnaround models weaken school and community ties*

Since the SIG application announcement in 2009, community and civil rights advocates have responded critically to the improvement mandate.<sup>84</sup> Noting that the four mandated models have not been evidence-based, advocates have argued that SIG-mandated improvement models have rendered Title I Schools laboratories for testing school reform innovations.<sup>85</sup> They also note that the current SIG model has not required or facilitated input from students, parents, members of the communities, or even educators in determining the model best suited for the school and community.<sup>86</sup> Without access to quality schools with instruction, curriculum, and leadership based on evidence-based practices, nor the ability to participate in planning and implementing turnaround policies, these students and their families are effectively disenfranchised. This contradicts the legacy of *Brown*.

Civil rights opposition to school turnaround models culminated in May 2014 with a series of filed complaints under Title IV and VI of the Civil Rights of 1964 by community organizations in Chicago, Newark, and New Orleans, all members of the national Journey for Justice Alliance, with the Education Opportunities Section of the Department of Justice's Civil Rights Division ("DOJ") and the Department of Education's Office for Civil Rights ("OCR"). With the primary assertion that "children of color are not collateral damage,"<sup>87</sup> the complaint alleged two related claims as to turnaround models used in the City of New Orleans: 1) Complainants challenged the State of Louisiana's policy and practice of subjecting African-American students to school closures at much higher rates than white students; and 2) Complainants challenged the State's policy and practice of discriminating against African-American students by failing to provide adequate educational alternatives once their schools were closed.<sup>88</sup> Two of the schools in question were SIG-funded schools.

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<sup>84</sup> James Cersonsky, *Fighting Education Shock Therapy*, THE AM. PROSPECT, Jan. 10, 2013, [prospect.org/article/fighting-educational-shock-therapy](http://prospect.org/article/fighting-educational-shock-therapy).

<sup>85</sup> *Brown*, 347 U.S. at 493-94.

<sup>86</sup> Cersonsky, *supra* note 84; NAT'L OPPORTUNITY TO LEARN CAMPAIGN, *Civil Rights Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act*, July 26, 2010, <http://www.otlcampaign.org/resources/civil-rights-framework-providing-all-students-opportunity-learn-through-reauthorization-el> (joint statement from the Lawyers Committee for Civil Rights under Law, the NAACP, the NAACP Legal Defense and Educational Fund, Inc., the National Council for Educating Black Children, the National Urban League, the Rainbow Push Coalition, and the Schott Foundation for Public Education).

<sup>87</sup> Letter from Journey for Justice Alliance to Eric Holder, Att'y Gen., and Arne Duncan, Sec'y of Educ. (May 13, 2014), *available at* [http://b3cdn.net/advancement/24a04d1624216c28b1\\_4pm6y9lvo.pdf](http://b3cdn.net/advancement/24a04d1624216c28b1_4pm6y9lvo.pdf).

<sup>88</sup> The letter further notes, "[i]n essence, the State has robbed these children of their neighborhood schools while keeping them trapped in failing, underperforming schools. This complaint is also filed on behalf of students who would have attended these schools in the future had they not been closed, and the parents, teachers, and communities who have been impacted by these closures." *Id.* at 3.



## VI. CONCLUSION: GOING BACK TO CENTRAL HIGH

As we consider struggling Ohio schools and the students who are forced to navigate them, perhaps we can learn something from the history of another Ohio school, Cleveland's Central High School.

When it opened its doors in 1846, Central was the first public high school west of the Alleghenies. Among its notable alumni are industrialists and politicians including, John D. Rockefeller and Marcus Hanna.<sup>89</sup> Other alumni include: John P. Green, Cleveland's first African American lawyer and its first African American elected official; Mary B. Martin, Cleveland's first African American elected school Board member; former Congressman Louis Stokes; General Benjamin Davis, the first African American to achieve that rank in the U.S.; and African American poet, playwright, and novelist, Langston Hughes.<sup>90</sup>

Langston Hughes, whose attendance more or less coincided with World War I, writes positively of Central High in his first autobiography, *The Big Sea*.<sup>91</sup> He remembers it as a nurturing place where he was encouraged to find his voice as a poet. What made Central High work for Hughes? He describes an integrated school that largely reflected the changing demographics of Cleveland. Once the high school of Cleveland's established elites, it had become predominantly populated by the children of recent migrants, whether from Southern and Eastern Europe, or the American South. The two largest groups were ethnic Catholics and Jews. A growing number of African Americans also attended, and their number would grow as the great migration increased Cleveland's Black population and housing discrimination concentrated Cleveland's African American population in Central High's neighborhood.<sup>92</sup> The faculty, as well, was somewhat integrated.<sup>93</sup>

In addition to this sense of community and openness was a dedicated core of "wise and very good teachers,"<sup>94</sup> and an intellectually engaged student body. Though the student body was overwhelmingly poor—Hughes notes that "there was no money for college in most of Central's families"—the school was a good school with quality teachers, along with numerous other opportunities for growth through

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<sup>89</sup> Central High School, THE ENCYCLOPEDIA OF CLEVELAND HISTORY, <http://ech.case.edu/cgi/article.pl?id=CHS>.

<sup>90</sup> *Id.*; John Patterson Green, THE ENCYCLOPEDIA OF CLEVELAND HISTORY, <http://ech.case.edu/cgi/article.pl?id=GJP>; Mary Brown Martin, THE ENCYCLOPEDIA OF CLEVELAND HISTORY, <http://ech.case.edu/cgi/article.pl?id=MMB>; Louis Stokes, BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., <http://bioguide.congress.gov/scripts/biodisplay.pl?index=s000948>; General Benjamin Oliver Davis Jr., U.S. Air Force, <http://www.af.mil/AboutUs/Biographies/Display/tabid/225/Article/107298/general-benjamin-oliver-davis-jr.aspx>.

<sup>91</sup> LANGSTON HUGHES, *THE BIG SEA* 26-34, 51-53 (1940).

<sup>92</sup> *Id.* at 29-30.

<sup>93</sup> Hughes specifically mentions "Miss Chesnutt," the daughter of African American novelist and essayist Charles W. Chesnutt, as one of his teachers. *Id.* at 28. Writing for Cleveland's African American newspaper in 1915, Journalist Robert Drake noted that there were 30 African American teachers in the Cleveland school system who were dispersed throughout the system without regard to the racial composition of the schools. Robert I. Drake, *The Negro in Cleveland*, THE CLEVELAND ADVOCATE, Sept. 18, 1915.

<sup>94</sup> HUGHES, *supra* note 91, at 28.

clubs and athletics.<sup>95</sup> Hughes thanks several of his teachers expressly for their good humor and for particular important lessons and skills that they imparted. Most important, he thanks one English teacher who opened him up to what was then the shockingly new and controversial free verse of Carl Sandburg and who encouraged him to find his voice without regard to convention and to experiment in his own writing.<sup>96</sup> It was, in sum, a place where students felt safe to experiment with ideas and their own voice, where they interacted freely with peers from various backgrounds, and where such experiences as mastering de Maupassant in the original French was thrilling.<sup>97</sup>

How then can we recapture that sort of atmosphere and go back to Central High? How can we create or nurture schools for children, especially for minority and economically disadvantaged children that can foster the same love of literature and of ideas, and the same confidence to take chances and find one's voice and one's way that Central High gave to Langston Hughes? We begin by recognizing the enormity of the challenge and by looking both to the near and the long term. Regrettably, part of what Hughes experienced, and part of what *Brown* promised, is in the near-term unobtainable for many students under current legal doctrine. That does not mean that we do not have an obligation to find solutions where they are possible, whether through magnet schools, voluntary inter-district plans, or other creative means. It does mean, however, that in the near-term we should focus on *Brown*'s other two threads: recognizing and remedying school practices that do harm to minority students and delivering on the promise of equality of educational opportunity, regardless of a school's demographics. Often that may require moral suasion rather than litigation.

To begin with, the principle first do no harm should govern. As we have shown, the binding of SIG grants to supposed school reform models is not supported by educational research and threatens to make schools worse and to harm students and their communities. Turnaround models that threaten the massive firing of teachers simply for the sake of firing teachers do harm for appearances sake. A genuine atmosphere of learning will not emerge from the turnaround models attached to SIG grants. Defenders of *Brown*'s legacy must urge the Obama administration to restore the equal educational opportunity spirit to Title I by supporting these schools in need without unproven and counter-productive strings attached.

Moreover, it is time to build a movement for fair and adequate school funding. Given Supreme Court precedent, such a movement must focus on legislation, not litigation. Professor Derrick Bell long ago argued that civil rights advances do not occur in America except at moments where the interest of a significant portion of the white majority converges with minority interests.<sup>98</sup> For a long time our politics have reflected a lack of convergence. Perhaps we are entering a moment of renewed interest in equal educational opportunity. Not only do we profess deep concern about the ability of our students to compete within a global economy, but our political

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<sup>95</sup> *Id.* at 29-30, quoted text on 53.

<sup>96</sup> *Id.* at 28-32.

<sup>97</sup> *Id.* at 33-34.

<sup>98</sup> Derrick A. Bell Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524-25 (1980).

discussion has turned once again to the question of inequality, and our changing demographics create real possibilities for new coalitions. As we begin to see results from SIG funding, we may be ready for a more daring educational reform policy that promises real commitment to equal opportunity. Once we have made real short-term gains, perhaps we can also find ways to fully realize all of *Brown's* promise.

**TABLE 1**  
**Ohio SIG-funded Schools - Cohort 1 (2010-2011)**

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 11 Budget</u>	<u>FY 12 Budget</u>	<u>FY 13 Proposed Budget</u>	<u>Intervention Model</u>
CPS	Hays/ Porter	I	434	1,086,347.80	897,215.09	913,079.71	Transformation
CPS	Rothenberg Prep	I	398	949,658.30	889,468.10	905,332.73	Transformation
CPS	South Avondale	I	618	994,000.80	936,810.80	952,675.43	Transformation
CPS	William H Taft	I	282	1,002,684.30	864,505.59	880,370.21	Transformation
CPS	Virtual Woodward	II	300	797,726.30	567,889.08	581,189.01	Transformation
CPS	Career Technical	II	997	2,000,000.00	1,103,959.37	1,127,641.69	Transformation
CMSD	Collinwood	I	810	1,091,110.00	1,091,110.00	1,091,110.00	Turnaround
CMSD	East Technical	I	749	1,091,110.00	1,091,110.00	1,091,110.00	Turnaround
CMSD	Franklin D. Roosevelt	I	519	725,800.00	725,800.00	725,800.00	Turnaround
CMSD	Glenville	I	907	691,110.00	691,110.00	691,110.00	Turnaround
CMSD	John F Kennedy	I	867	1,091,110.00	1,091,110	1,091,110.00	Turnaround
CMSD	Lincoln-West	I	1506	1,091,110.00	1,091,110.00	1,091,110.00	Turnaround
CMSD	Luis Munoz Marin	I	754	451,750.00	451,750.00	451,750.00	Transformation
CMSD	Martin Luther King Jr	I	238	584,250.00	584,250.00	584,250.00	Transformation
CMSD	Mary B Martin	I	343	723,790.00	723,790.00	723,790.00	Turnaround
CMSD	Patrick Henry	I	331	451,750.00	451,750.00	451,750.00	Transformation
CMSD	Stokes Academy	I	501	451,750.00	451,750.00	451,750.00	Transformation
CMSD	Woodland Hills*	I	303	723,790.00	723,790.00	723,790.00	Turnaround
CCS	Columbus Global Academy	I	484	1,036,000.00	1,046,000.00	836,000.00	Transformation
CCS	Champion Crittenton	I	294	1,041,147.00	990,147.00	943,147.00	Transformation
CCS	Community School	I	125	246,750.00	204,750.00	198,750.00	Transformation
CCS	Linden-McKinley STEM ScholArts	I	571	1,477,500.00	1,237,500.00	1,057,500.00	Transformation
CCS	Preparatory & Care	I	178	500,000.00	500,000.00	500,000.00	Transformation
CCS	Southmoor	I	268	1,264,000	994,000.00	904,000.00	Transformation
CCS	Weinland Park	I	396	825,100.00	818,400.00	744,400.00	Transformation
CCS	West	I	1043	948,140.00	936,140.00	846,140.00	Transformation
CCS	Alum Crest	II	126	774,900.00	750,900.00	710,900.00	Transformation
SCSD	Keifer Center	I	215	1,657,000.00	1,537,000.00	1,150,170.51	Transformation
LCS	Progressive Academy	II	396	1,756,847.55	1,150,170.51	1,150,170.51	Transformation

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 11 Budget</u>	<u>FY 12 Budget</u>	<u>FY 13 Proposed Budget</u>	<u>Intervention Model</u>
CHUH	Bellefaire	II	100	712,097.00	632,525.00	648,338.00	Transformation
DPS	Belmont	II	808	350,537.00	230,537.00	350,537.00	Transformation
DPS	Dunbar	II	586	350,537.00	350,537.00	350,537.00	Transformation
DPS	Meadow-dale HS	II	611	350,537.00	350,537.00	350,537.00	Transformation
YCS	East	II	983	805,820.00	611,147.00	611,146.00	Transformation
YCS	Odyssey	II	100	913,166.00	723,043.00	723,043.00	Transformation
MHCS	Hoop	III	908	1,327,441.00	1,100,000.00	900,000.00	Tier III SI Strategies
XCS	Cox	III	309	1,030,504.30	753,554.00	753,554.00	Tier III SI Strategies
XCS	McKinley	III	437	728,032.00	490,781.00	490,781.00	Tier III SI Strategies
XCS	Shawnee	III	270	611,853.00	458,530.00	458,530.00	Tier III SI Strategies
TLS	Trimble	III	339	105,680.00	96,050.00	62,550.00	Tier III SI Strategies
TLS	Trimble	III	262	235,305.00	225,550	136,550.00	Tier III SI Strategies

Key. \* = SIG-funding not renewed after initial funding year. CPS = Cincinnati Public Schools. CMSD = Cleveland Municipal School District. CCS = Columbus City Schools. SCSD = Springfield City School District. LCS = Lima City Schools. CHUH = Cleveland Heights – University Heights City School District. DPS = Dayton Public Schools. YCS = Youngstown City Schools. MHCS = Mount Healthy City Schools. XCS = Xenia Community Schools. TLS = Trimble Local Schools.

**Source:** Ohio Department of Education, 2014

**TABLE 2**  
**Ohio SIG-funded Schools - Cohort II (2011-2012)**

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 12 Budget</u>	<u>FY 13 Final Budget</u>	<u>FY 14 Budget Amount</u>	<u>Intervention Model</u>
APS	Buchtel High School Bridges	II	873	1,200,930.49	1,318,966.00	769,100.00	Transformation
APS	Learning Center Akron	I	114	882,092.14	546,636.68	557,150.00	Transformation
APS	Opportunity Center Canton	I	104	1,150,943.87	923,239.22	830,005.16	Transformation
CCSD	City Digital Academy*	II	145	335,171.00	Withdrew Application	Withdrew Application	Refused Funding
CPS	Western Hills Engineering High School*	II	125	1,700,000.00	Not Eligible	Not Eligible	Not Eligible

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 12 Budget</u>	<u>FY 13 Final Budget</u>	<u>FY 14 Budget Amount</u>	<u>Intervention Model</u>
CPS	James N. Gamble Montessori High School	II	275	1,540,798.22	1,249,500.00	786,450.00	Turnaround
CMSD	Paul Revere Elementary School	I	329	806,940.00	763,610.00	466,500.00	Transformation
CMSD	Marion-Sterling Elementary School	I	356	806,940.00	710,610.00	672,790.00	Transformation
CMSD	Mary M Bethune School	I	342	1,129,650.00	1,098,112.00	890,500.00	Transformation
CMSD	School of One	I	245	1,231,500.00	935,500.00	915,500.00	Turnaround
CBA	Columbus Bilingual Academy	I	102	253,778.00	325,000.00	225,000.00	Transformation
CCS	Heyl Avenue Elementary School*	I		1,405,201.00	Closed	Closed	Closed
CCS	Fairwood Alternative Elementary School	I	394	1,257,933.00	875,000.00	765,500.00	Turnaround
CCS	South High School	I	722	1,345,007.00	1,310,000.00	1,263,000.00	Restart
CCS	Lincoln Park Elementary School	I	305	1,297,933.00	941,000.00	885,000.00	Turnaround
DPS	Westwood PreK-8 School	I	426	1,494,237.44	1,315,237.44	945,890.44	Transformation
DPS	Fairview PreK-8 School	I	460	1,054,857.13	1,054,857.13	722,620.04	Transformation
DPS	E.J. Brown PreK-8 School	I	398	920,236.89	947,928.00	746,896.95	Transformation
DPS	Thurgood Marshall High School	II	599	1,495,320.00	1,395,320.00	1,139,820.00	Transformation
ECCS	Shaw High School	II	1,054	1,459,400.00	1,295,000.00	775,000.00	Transformation
EECHSD**	East End Comm Heritage School	I	84	353,925.25	530,397.00	450,000.00	Turnaround
GLS	Green High School	II		497,775.00	482,275.00	427,365.00	Transformation
LJA	Lion of Judah Academy*	I		221,385.00	Non Funded	Non Funded	Non Funded

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 12 Budget</u>	<u>FY 13 Final Budget</u>	<u>FY 14 Budget Amount</u>	<u>Intervention Model</u>
<b>LCSD</b>	Academic Enrichment Academy*	I	210	961,713.42	Returned Funding	Returned Funding	Transformation
<b>MCS</b>	Mansfield Integrated Learning Center (Alternative School)	II	147	913,019.80	816,608.34	839,479.00	Transformation
<b>MEA</b>	Mansfield Elective Academy*	I	32	395,034.00	Non Funded	Non Funded	Non-funded
<b>OVA</b>	Ohio Virtual Academy	I	12,616	687,000.00	658,418.12	1,000,000.00	Transformation
<b>RRCSD</b>	Roming Road Community School*	I	467	975,450.00	753,900.00	Closed	Transformation
<b>SLSD</b>	Southern Local Jr/ Sr High School	II	414	1,225,941.65	1,134,000.00	755,400.00	Transformation
<b>Summit Academy</b>	Summit Academy	I	59	532,902.00	413,785.00	388,408.00	Transformation
<b>Columbus Summit Academy</b>	Columbus Summit Academy	I	129	438,723.00	368,743.00	256,900.00	Transformation
<b>Community School-Toledo Summit Academy</b>	Community School-Toledo Summit Academy	I	104	350,588.00	350,063.00	290,188.00	Transformation
<b>Dayton Summit Academy</b>	Dayton Summit Academy	I	52	300,773.00	227,771.00	196,094.00	Transformation
<b>Middle School-Columbus Summit Academy</b>	Middle School-Columbus Summit Academy	I	87	237,092.00	190,123.00	254,605.00	Transformation
<b>Middle School-Lorain Summit Academy-Lorain</b>	Middle School-Lorain Summit Academy-Lorain	I	76	425,559.00	282,505.00	312,327.50	Transformation
<b>Summit Academy-Youngstown</b>	Summit Academy-Youngstown	I	193	311,721.00	326,146.00	292,844.43	Transformation
<b>TPS</b>	Glenwood Elementary School	I	222	1,564,235.29	1,146,955.05	1,112,707.78	Transformation
<b>TPS</b>	Robinson Middle School	I	201	1,480,073.35	1,108,335.14	996,418.65	Turnaround
<b>TPS</b>	(Jesup W) Scott High School	II	544	1,148,771.90	1,035,662.63	928,489.13	Transformation

<u>District Name</u>	<u>Building Name</u>	<u>Tier</u>	<u>Total Enrollment</u>	<u>FY 12 Budget</u>	<u>FY 13 Final Budget</u>	<u>FY 14 Budget Amount</u>	<u>Intervention Model</u>
<b>TPS</b>	Pickett Elementary School	I	238	1,525,242.18	1,105,278.75	1,085,278.75	Transformation
<b>Tomorrow Center</b>	Tomorrow Center	I		789,357.00	458,120.00	456,438.00	Transformation
<b>V L T Academy</b>	V L T Academy	I	802	1,583,652.00	607,659.00	392,352.00	Transformation
<b>Virtual Community School of Ohio</b>	Virtual Community School of Ohio	I	1,145	996,500.00	968,500.00	920,988.80	Transformation
<b>Virtual School-house, Inc.</b>	Virtual School-house, Inc.*	I	396	264,869.40	239,827.00	Hold	Transformation
<b>YCS</b>	Chaney High School	II	390	1,850,000.00	1,159,688.10	800,000.00	Turnaround

Key. \* = SIG funding not renewed after initial funding year. APS = Akron Public Schools. CBA = Columbus Bilingual Academy. CCS = Columbus City Schools. CCSD = Canton City School District. CMSD = Cleveland Municipal School District. CPS = Cincinnati Public Schools. DPS = Dayton Public Schools. ECCS = East Cleveland City Schools. EECHSD = East End Community Heritage School District. GLS = Green Local Schools. LCSD = Lorain City School District. LGA = Lion of Judah Academy School District. MCS = Mansfield City Schools. MEA = Mansfield Elective Academy. MGSD = Mount Gilead School District. NR = Not Rated. OVA = Ohio Virtual Academy. RRCSD = Roming Road Community School District. SLSD = Southern Local School District. TPS = Toledo Public Schools. YCS = Youngstown City Schools.

**Source:** Ohio Department of Education, 2014

**TABLE 3**  
Ohio State Report Card (SY 2011-2012, SY 2012-2013)

Building Name	Achievements	
	Performance Index (SY 2011-2012, SY 2012-2013)	Rating (SY 2011-2012, SY 2012-2013)
Hays/Porter	80.6/63.1	B/D
Rothenberg Prep	79.0 /65.7	C/D
South Avondale	91.1/71.6	A/C
William H Taft	73.8/55.2	C/D
Virtual	74.4/62.1	D/D
Woodward Career Technical	77.5/62.1	D/D
Collinwood	72.3/57.6	D/D
East Technical	61.2/55.4	F/D
Franklin D. Roosevelt	63.0/51.7	F/D
Glenville	71.9/54.5	D/D
John F Kennedy	68.6/57.1	F/D
Lincoln-West	70.4/58.3	D/D
Luis Munoz Marin	58.3/47.6	F/F
Martin Luther King Jr	NR/NR	NR/NR
Mary B Martin	62.4/50.0	F/D
Patrick Henry	62.9/44.1	F/F
Stokes Academy	61.2/48.4	F/F
Woodland Hills	NR/NR	NR/NR
Columbus Global Academy	68.5/56.1	F/D
Champion	65.7/57.0	F/D
Linden-McKinley	67.1/56.5	F/D
Southmoor	75.5/NR	C/NR
Weinland	66.6/57.3	F/D
West	80.4/57.7	C/D
Alum Crest	66.6/50.7	C/D
Keifer Center	54.2/54.2	F/D
Progressive Academy	75.760.1	D/D
Bellefaire	NR/53.2	NR/D
Scholarts Preparatory & Care	NR/NR	NR/NR
Crittenton Community School	NR/49.3	NR/F
Belmont	81.7/63.7	C/D
Dunbar	79.4/64.6	D/D
Meadowdale HS	65.4/61.9	F/D
East	69.7/61.0	F/D
Odyssey	NR/NR	NR/NR
Hoop	NR/NR	NR/NR
Cox	NR/68.9	NR/D
McKinley	92.2/NR	A/C
Shawnee	101.5/NR	A/NR
Trimble	NR/NR	NR/NR
Trimble	NR/NR	NR/NR
Buchtel High School	80.4/63.6	C/D
Bridges Learning Center	70.1/56.7	D/D
Akron Opportunity Center	66.7/50.5	C/D
Canton City Digital Academy	80.3/67.6	C/D
Western Hills Engineering High School	69.5/43.3	F/F
James N. Gamble Montessori High School	96.2/77.8	A/C
Paul Revere Elementary School	61.7/48.9	F/F
Marion-Sterling Elementary School	NR/52.3	NR/D
Mary M Bethune	63.7/51.2	F/D



Building Name	Achievements	
	Performance Index (SY 2011-2012, SY 2012-2013)	Rating (SY 2011-2012, SY 2012-2013)
School of One	NR/58.9	NR/D
Columbus Bilingual Academy	NR/71.3	NR/C
Heyl Avenue Elementary School	68.5/NR	D/NR
Fairwood Alternative Elementary School	63.6/52.9	C/D
South High School	73.0/59.2	D/D
Lincoln Park Elementary School	71.3/66.8	C/D
Westwood PreK-8 School	58.1/49.0	F/F
Fairview PreK-8 School	63.0/48.3	F/F
E.J. Brown Prek-8 School	60.9/50.0	F/D
Thurgood Marshall High School	78.8/67.5	D/D
Shaw High School	82.2/66.9	C/D
East End Comm Heritage School	NR/42.9	NR/F
Green High School	104.8/NR	A/NR
Lion of Judah Academy	NR/NR	NR/NR
Academic Enrichment Academy	66.1/64.5	F/D
Mansfield Integrated Learning Center(Alternative School)	68.5/46.5	F/F
Mansfield Elective Academy	NR/48.2	NR/F
Ohio Virtual Academy	NR/73.0	NR/C
Roming Road Community School	NR/50.1	NR/D
Southern Local Jr/Sr High School	94.9/81.8	C/B
Summit Academy Columbus	NR/52.6	NR/D
Summit Academy Community School- Toledo	NR/52.0	NR/D
Summit Academy Dayton	NR/55.8	NR/D
Summit Academy Middle School- Columbus	NR/53.7	NR/D
Summit Academy Middle School- Lorain	NR/56.2	NR/D
Summit Academy- Lorain	NR/63.9	NR/D
Summit Academy- Youngstown	NR/49.5	NR/D
Glenwood Elementary School	63.5/58.6	F/D
Robinson Middle School	NR/NR	NR/NR
(Jesup W) Scott High School	70.8/57.4	D/D
Pickett Elementary School	58.5/56.7	F/D
Tomorrow Center	NR/NR	NR/NR
V L T Academy	NR/55.4	NR/D
Virtual Community School of Ohio	NR/66.9	NR/D
Virtual Schoolhouse, Inc.	NR/42.0	NR/F
Chaney High School	NR/74.1	NR/C

Key. NR = Not Rated.

**Source:** State of Ohio School Report Cards,  
available at <http://reportcard.education.ohio.gov/Pages/default.aspx>.