Exhortations Are Great, But Not Nearly Enough

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The New Jersey Law Journal editorial board should be commended for its recent editorial, "Civil Rights, Equality Must Be Ongoing Pursuits" (Oct. 27, 2014). Recognizing the 50th anniversary of the federal Civil Rights Act and the 60th anniversary of the first U.S. Supreme Court decision in Brown v. Board of Education, it exhorted us—and especially "our leaders, in all levels and branches of government"—"to vigilantly and continuously advance those goals [of civil rights and equality for all Americans]."

We have made considerable progress on these fronts by some benchmarks, but the editorial reminds us we have hardly reached the post-racial era some proclaim. By other benchmarks we have made discouragingly little progress and even have slid backwards. The editorial accurately reports that "minority unemployment and poverty are intractable and increasing," and "residential and educational segregation have returned to an extent worse than before the mid-1960s throughout the country, not only in the former Confederate South."

Actually, data show the northeast, far west and industrialized Midwest are the country's most segregated areas. New Jersey is, and has been for years, among the worst, even though we have the nation's strongest state constitutional mandates requiring equality of educational opportunity and racial balance in the schools "wherever feasible."

Nor are those mandates new. The racial balance mandates date back to the mid-1960s and before. In 1965, New Jersey's Supreme Court decided in Booker v. Plainfield Board of Education that our state constitution made de facto as well as de jure school segregation unconstitutional. In 1971, in Jenkins v. Township of Morris School District and Board of Education, the court decided the commissioner of education could order school district consolidation to satisfy the state's educational equality and racial balance requirements. In both respects, New Jersey law went substantially beyond federal law.

But that was then, this is now. In the interim, the state Supreme Court tackled—with unprecedented vigor, courage and staying power—equalizing funding for hundreds of thousands of students in poor urban districts, and assuring such funding actually was used to equalize educational opportunities. But neither Robinson v. Cahill in the 1970s, nor Abbott v. Burke since the 1980s, sought to undo New Jersey's extreme educational segregation. Instead, they assured that enormous amounts of state educational aid flowed to school districts with
mostly poor black and brown students who almost never encounter a white student. It's not that there aren't white students nearby; often they're just on the other side of a school district border.

Isolating poor "minority" students in their own districts doesn't bode well for educational success, especially when "success" is largely determined by standardized test scores. We know with certainty that the strongest predictor of such scores, on average, is the test taker's socioeconomic status. Of course, many individual students outperform the average, that's the essence of an average, and the average can change over time.

The word "minority" is in quotes above because New Jersey's most recent pupil enrollment data—for 2013-14—demonstrate that, for the first time, white students are in the minority, at 49 percent. If we think isolating poor black and brown students in their own struggling school districts won't profoundly affect our state, we'd better think again—and quickly.

The educational and social problems caused by New Jersey's extreme and long-standing educational segregation, and the startling incompatibility of it with the state's racial balance mandate, has been widely noted. Deborah Poritz, former Chief Justice of the New Jersey Supreme Court, wrote in an opinion 10 years ago that: "We have paid lip service to the idea of diversity in our schools, but in the real world we have not succeeded."

Isn't that a problem with the NJLJ editorial? It exhorts our political leaders to act, but it does not offer "a prescription or a cure." Isn't that paying lip service to diversity, but providing no plan for success in the real world? Without enabling large numbers of students to cross school district lines, or changing those lines to make districts larger and more internally diverse, there is no real prospect of meeting the constitutional mandate of racially balanced schools or, for that matter, the constitutional mandate of assuring students equal opportunity for a "thorough and efficient" education.

So what can we do? We can find the will to bite a large, old and politically explosive bullet and address, finally, our state's unique love affair with localism regardless of its costs. These include not only our extraordinarily segregated schools and communities, and our undersized and inefficient districts and municipalities, but also our extraordinarily high local property taxes.

There are many ways to proceed, drawing on nearby, even local, best practices models. They include:

- Making more focused use of New Jersey's increasingly popular interdistrict public school choice program;

- Following the lead of our neighbor Connecticut, by creating powerful cross-district magnet schools, such as the ones in Hartford, Bridgeport, New Haven and Waterbury, to attract suburban students to the cities;

- Replicating the 41-year-old and very successful Morris School District, an amalgam of the Morristown and Morris Township districts resulting from the Jenkins case, to foster regionalization of individual districts;

- Following the lead of our neighbor Pennsylvania, and many other states, by launching a statewide regionalization program to dramatically reduce the number of school districts (an idea recommended by a series of blue-ribbon commissions ever since at least 1969); and
• Utilizing a system of county school districts, hardly a wild out-of-the-box option since Maryland, which recently eclipsed Massachusetts as the nation's highest-achieving state in some rankings, has long had county districts as do many other states. In New Jersey, recently, county vocational districts have been able to use their county-wide catchment areas to create many of the state's highest-flying magnet high schools.

Whichever we choose, an informed citizenry and engaged educational advocacy community must pressure state and local officials to do the right thing—to give primacy in public decision making to strong and long-standing constitutional commitments, common decency and morality, and enlightened self-interest. •