ACADEMIC TRACKING: SURVIVAL OF THE FITTEST

BY

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DISSERTATION

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The purpose of this study is to explore the social, cultural, political, academic, and legal implications of academic tracking as it affects Chicana/o student populations. First, I will provide a trajectory of the historical racialization of Chicana/os and then demonstrate how and why these effects connect to the Chicana/o experiences with educational practices, specifically academic tracking in the k-12 system. Thereafter, I will conduct a content analysis of eight legal cases and proceedings regarding student integration and exclusion. This analysis will then be juxtaposed with narratives from a case study of Chicana/o student experiences with academic tracking in a Chicago Public School. The leading research question for this study will be: Is academic tracking discriminatory? Overall, through the use of a case study, content analysis, and counter narratives, the significance of this study is to explore whether academic tracking is a form of racialization violating student rights. Furthermore, this study will propose alternative approaches and responses to create ethical, democratic, and humanizing educational experiences, policies, and practices.

Keywords: academic tracking, Chicana/o, education
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CHAPTER DESCRIPTIONS

CHAPTER 1: Racialization of Chicana/os

This chapter focuses on defining racialization and providing a history on how Mexican Americans have been racialized through various institutions within the United States. The areas covered include territorial conquest, identity politics, economic exploitation, and historical misrepresentation. The overall goal of this chapter is to demonstrate how in accordance to socio-political and economically-driven agendas, Mexicans evolved from being an ethnic group to a race by the systematic mechanisms, identity constructions, and material conditioning of the U. S. institutions, ultimately becoming victims of racialization. Lastly, this chapter will demonstrate how these dynamics have surfaced in urban cities with a growing Mexican population such as Chicago.

CHAPTER 2: Politics of Tracking

This chapter provides a historical outline of the influences and goals which formulated academic tracking within U.S. context. This chapter presents a review of the academic, political, social, and cultural implications of academic tracking, as well as points of contention. Thereafter, I delve into the conceptual frameworks which maintain academic tracking and its components, such as meritocracy, hegemony, as well as its political, economic, and legal motivations. Lastly and ultimately, the objective of this chapter is to demonstrate how the material conditions Chicana/os have been subjected to function as mechanisms supporting the racialization of students in relation to academic tracking in general and more specifically in Chicago.

CHAPTER 3: Methods of Inquiry

This chapter will provide background into the selected methodological frameworks and why I believe they are the best-fit for this kind of study. This section will also identify the significance is conducting a qualitative and content analysis for the problem posed. In addition, I will provide the research design, research questions, as well as contextual background to the site selection.

CHAPTER 4: Cross-Examination

This chapter will provide background to the constitutional rights, limitations, and rulings regarding ability grouping or tracking, and education in general. A selection of eight landmark cases will be analyzed to gather a summative compilation of court rationales and rulings. Overall, this chapter will present the results from the content analysis of the court cases, as well as the findings from the counter narratives from the case study.

CHAPTER 5: Testimonios from Chicago Students

Guided by qualitative methodology, this chapter incorporates student narratives to challenge, support, and/or validate the impact of academic tracking for Chicana/o students. Focus is placed on documenting the perceptions, treatment, and impact in relation to tracking
placements of Chicana/o students in Chicago public schools. Overall, this chapter engages with the academic, social, and psychological dynamics students must confront.

CHAPTER 6: Analysis

Using results collected from the legal cases, statistical data, as well as literature on academic tracking, this chapter will analyze whether academic tracking is a form of discrimination. This chapter will engage with understanding and crystallizing whether academic tracking can be considered a racializing process of resegregation. Lastly, this chapter will give insight to the responsibility and limitation of the court regarding educational equity.

CHAPTER 7: Conclusion

This chapter will offer insights on the accountability of the educational and law system for its students, families, and communities. In addition, this section will present the implications of this research for curriculum, pedagogy, and school funding, among other education policies and practices. With that, this chapter will also provide alternatives and recommendations to the current structures and policies with the hopes of enacting an equitable, democratic, and just educational system for all students.
CHAPTER 1

RACIALIZATION OF CHICANA/OS

Chicana, Mexicana, Mexicana-Amercicana, Latina, Hispana...Who am I, What am I...
Why am I?
In order to know where to go, we must first know where we came from
Our stories and experiences shape us
I grew up in a predominantly Mexican community in Chicago
Never felt the need to define my identity
I was what I was
Didn’t have to prove myself
Didn’t have to defend myself
All I knew was that I was Mexican

Why am I?
When I was in grammar school my family and I would vacation to Mexico twice a year
I never understood why my parents had left such a peaceful place
We would usually visit during the commemoration to the Virgen del Rosario
The parades, food, music, fireworks, rides, and family..
Las Fiestas de Noviembre...that was Mexico

One summer as we drove to Mexico
When presenting our identifications to Mexican Customs
I recall my father filling out a document and under occupation writing-in ‘Bracero’
It was the first time I had seen that word
I was confused
I asked him what that was and he simply said a worker
And that his father had been a Bracero
And he too was a Bracero
When we arrived in Jalisco I asked my grandfather the same question
We sat in the porch and I listened attentively
Chicana/o history 101
It was then when I first learned about how Mexico lost its land
My grandfather expressed his frustration with the US and Mexico relations
He described how the US was a powerful country
And whatever the US wanted or needed, the US attained

In the game of hide-and seek, it found me
It was not until college that I ran into Chicana/o history 101 again
My grasp of Civil Rights was Black and White
I felt as if I’d been in a dark room for hours and stepped into the sunlight
There was so much, it was overpowering
When our history is taken away, along with it goes our reason, our purpose, our inspiration
“It’s in the past, let it go”
    It is not.
    I will not.

I found a motivation through my frustration
    And wondered if knowing the untold history of Chicana/os in the US made a difference
I questioned had my cousins and friends known all the suffering and sacrifice of families before us
    Would our lives be different?
I questioned if more attention was given and demands were made would institutions be different
    Would generational, language, housing, economic, political, and educational differences within my family be better understood?
Had they met Chicana/o history 101 would they too feel the need for change?
    With time I realized, barriers were in place for regulation and oppression
    Our histories were hidden to divert and mystify
    Desensitized, dehumanized
    We were merely pawns in someone else’s history

Why me?
Through my exploration of history I began unveiling the patterns, strategies, and processes
    Growing up in two cultures
    The influences of two nations
    The tensions and obstacles, too many

I’ve struggled to maintain grounded with my family values
    Survival in one culture, meant sacrifice of the other
Recognizing the temptations and illusions of meritocracy
    Feeling guilty of my privilege
    Of the opportunities to learn, travel, work,
    To know me and be me
    To select my path and not be pushed into one
Yet also aware that dynamics had to change
    No more neoliberal indoctrination
Instead, applying my privilege towards liberation

Conscientious of my history, being thankful of those who came before me, I must do my part and make things better for those who come after me
    Why me?
    Why not me?
Introduction

The United States’ policies and practices have transpired and influenced the discrimination, criminalization, and marginalization of Mexicans, Mexican-Americans, and/or Chicanos¹, a group which shares a unique history with the United States. The constant and historical processes of racialization have focused an attack of Mexican heritage, customs, language, history, ownership, and rights, which have affected their ethnic identity, but most importantly have created political and economic instability, as well as obstructed their educational opportunities. It is imperative to comprehend more fully how Mexicans became a race, and victims of racism, as a result of conquest of land and identity, labor exploitation, and political marginalization. Moreover, these forms of institutionalized racism have been reproduced (Bourdieu, 1973; Bowles & Gintis, 1976), thus regenerating inequalities in a variety of forms, including the educational system (Flores-Gonzalez, 2002). Furthermore, inaccurate representation of Mexican identity and inequitable treatment has had drastic consequences, not only for Chicano/a² students in the United States, but for society as a whole.

As the Mexican culture and history have been shaped, mutilated, rejected, and neglected, Chicano/a students in the U.S. educational system do not have, what poet Adrienne Rich refers to as “mirrors,” from which they are able to see their identities reflected in the curriculum (Rosaldo, 1989) or informal educational settings (as cited in Hamann, 2006, p. 265). Rather they are

¹ Throughout this document terminology referring to Mexican descendants, culture, and history will be adjusted according to its specific time and location. It is important to explicate that when referring to individuals residing in politically-recognized Mexican land, they will be referred to as Mexican. In addition, Mexican, as well as Hispanic and Latina/o, will also be used if the primary source has used this terminology. When relating to Mexican descendants after the Chicana/o Civil Rights Movement, Chicana/o will be used. Nonetheless, it is important to highlight that participants and literary sources may not necessarily identify or recognize the Chicana/o identity. Although I do not intend on imposing my own terminology, Chicana/o is the term with which I identify politically, socially, and culturally, therefore when referencing to the focus population of this study in current times, Chicana/o will be the term used.
² In spite of numerous labels, the author selects the term to Chicana/o as the most appropriate identification term given its political, social, cultural, and symbolic significance.
provided with windows into the dominant others’ identities, or fractured mirrors in which their identities are shattered and ‘disfigured.’ Their schooling experiences are, therefore, shaped by historical events, as well as enduring and current policies and practices. Hence, in order to better understand their schooling experience, it is first and foremost necessary to understand the historical predicaments that led to that experience. Once one is able to correlate the historical events with students’ schooling, the structural impositions and barriers that are shaped by and shape the culture can become more evident.

In order to demonstrate how the intersections and remnants of the historical marginalizations of Chicana/os through different institutions continues to impact and operate in present-day processes, a case study on academic tracking is incorporated in the latter portion of this study. By documenting participant testimonies and interpreting the impact of educational practices, this research will serve to place accountability onto educational, political, and legal structures. In addition, this study is valuable because it challenges the cultural deficit models and places the burden of proof on the school system. Moreover, this study contributes to the literature of Chicago Public Schools, academic tracking, and Chicana/o students. As means to elucidate the impact of academic tracking, Chicana/os have been selected as the focus due to not only their significance in numbers, but also due to the institutional educational neglect that has devastated countless students and families. Nonetheless, with the growing Chicana/o population across the United States, it is only rational to focus on what the education institutions are doing and not doing to serve the needs of its students. Students are constantly criminalized vis-à-vis crime statistics and demonized through low test scores and drop-out rates. In the end, students are made responsible for their ‘shortcomings,’ but what about the accountability of the system? In a country where one is innocent until proven guilty, should students not also possess the same
level of innocence? Instead of making claims based on biased (mis)information, students and families ought to be provided the opportunity and right to defend and express their histories, experiences, and identities as well as to demonstrate how the system has failed them and not the other way around.

**Racism and Racialization**

Fundamental to this study is the very basic, yet complex task of teasing out the frameworks that drive my interest in this research. However demanding, such a multifaceted task shall be done critically, thoroughly, and without essentializing the very notions which I find valuable. To provide a constructive analytical perspective, it is important to first and foremost diffuse the concepts which guide this study. I do not intend to provide a historical context on how the terms race, racism, and racialization developed, but I do nonetheless intend to demonstrate why I have decided to use these concepts in my work.

The conundrum of race has perplexed scholars, scientists, and politicians, among many other groups. For example, during the 1930’s U.S. institutions, with the support of wealthy funders, participated in the sterilization of what they deemed ‘unfit’ groups based on a classification system or racial order (Black, 2004). Commonly known as the Eugenics Project, the basis for such actions were rooted in the belief that certain groups were inferior based on their phenotype, genetic composition, or origin. With the intent to ‘purify’ or cleanse the racial composition, ‘unfit’ groups were targeted and sterilized to prevent them from reproducing. Although useful to understanding how the notion of race was ingrained scientifically early on, the biological conceptualization of race is not one which I find constructive to my framework.
Racial classifications, influenced by ulterior schemas, impact an individual’s agency and prospects as they can become prey to the external strategic control and (mis)guidance of their identity and reality. Scholars (Delgado, 2004; Takaki, 2000) argue that race is a social construct with enduring and real social, political, and cultural consequences. Race classification can change or be changed by location, situation (Rodriguez, 2000) and/or by “political and social agendas of particular times” (Omi, 2000, p. 74). Individuals and groups do not always have control over how or why they are classified, and often race is used interchangeably with ethnicity and nationality. On the other hand, the work of Miles (1982) provides a criticism for the conceptual use of ‘race’ and ‘race relations,’ contending that they had no scientific basis, and ought to be discarded as analytical tools (Barot & Bird, 2001). Moreover, race has been described as “an ideology that has served well to successfully obscure and disguise class interests behind the smokescreen of multiculturalism, diversity, difference, and more recently, whiteness” (Darder & Torres, 2004, p. 1). In spite of the ambiguity of the term race, when institutionalized, racism does however provide a valuable layer for understanding the rationale and motives behind structural, institutional, and cultural processes enacted.

Racial classification is a multifaceted phenomenon with a plethora of influences, motives, and factors which directly impact self and imposed identities. Racism “is not merely an attitude or set of beliefs; it also expresses itself in the practices, institutions, and structures that a sense of deep differences justifies and validates” (Fredrickson, 2002, p. 6). When prejudicial notions and/or perceptions of a group based on race are given power vis-à-vis long-standing systematic policies and practices, the conditions and actions for racism, blatant and subtle, are generated (Omi & Winant, 1986; 1994; Tatum, 2000). Fredrickson (2002) defines racism as grounded within difference and power; he explains that difference “provides a motive or rationale for using
our power advantage to treat the ethnoracial Other in ways that we would regard as cruel if applied to members of our own group” (p. 9). It is through this process of systematic differential treatment, discrimination, and historical exclusion of a particular race that institutional racism (Carmichael & Hamilton, 1967) takes place; when actions are race-neutral or unintended towards a specific race, yet still affect only certain groups, it is described as structural racism (Pincus, 1999). As a result, there are variances of actions, ranging from discriminatory practices such as “government-sanctioned segregation, colonial subjugation, exclusion, forced deportation (or ethnic cleansing), and enslavement” as well as genocide (Fredrickson, p. 9). It is important to distinguish and understand these terms and their dynamics in order to comprehend how these acts of racism have been enacted upon Mexicans and their descendants at various points throughout history.

For the theoretical and practical contribution of the relationship between race and racism, it is imperative that we recognize that there are different forms and extensions of racism. Darder and Torres (2004) push for a dismissal of the traditional and limiting understanding of race and instead seek a space where “analysis is anchored in the centrality of ‘race’ as an ideology and racism as a powerful, structuring, hegemonic force in the world today” (p. 2). Similarly, Miles (1982) argued that “it was not ‘race’ but the ideology of racism that was the most important factor for explaining and understanding the effects of racism in society,” and moreover saw racism “as an element of bourgeois class ideology” (Barot and Bird, 2001, p. 609-610). Balibar and Wallerstein (1991) identity two forms of racism, one with the purpose of excluding and exterminating a target group, and the other referred to as “inferiorization,” which denies equal rights and access, simultaneously leading groups into menial positions (Darder and Torres,
First, racism is not the result of individual pathology; instead, it is an ideological set of practices and discourses embedded in the project of modernity and capitalistic expansion. Second, racism is linked to racialization, a process by which populations are categorized and ranked on the basis of phenotypical traits or cultural signifiers. Economic and political power is implicated because of its explicit (or implicit) purpose of legitimating the exploitation or exclusion of racialized groups. And third, there is no one generic form, but rather multiple, diverse, and historically specific racisms that may vary in intensity, but constitute part of parcel of the larger phenomenon (Goldberg 1993; Castles 1996) (as quoted in Darder and Torres, p. 13).

Racism and the impact of capitalism cannot be understood through a single-event. There are processes which have been enacted through numerous and ‘creative’ manifestations on targeted groups throughout an expansive time frame—I refer to this as the processes of racialization. In Barot and Bird (2001), they explain Focault’s description of racialization as “forms of power/knowledge relationship which focus on the body and the process of subjugation” (p. 608). On the other hand, for Winant (1994) “racialization is the process of constructing racial identities and meanings” (Barot & Bird, p. 608). Moreover, in Racism (1989), Miles extends on “racial categorization as a process of racialization” (p. 610). Furthermore, Darder and Torres (2004) point out that “the shift from “race” to racialization highlights and emphasizes the constant process of social construction and reconstruction of the “Other” (through a process of signification and representation) and the Self (through racialization from within)” (p. 62). Nonetheless, as Darder and Torres assert, regardless of the notions employed to define race or
racism, “all forms of oppression are ultimately linked to the exploitation and domination of both natural resources and human populations” (p. 23).

With that in mind, Darder and Torres inquire, “How can we arrive at a more precise and specific concept with which to analyze both the historical and contemporary social realities and material conditions of racialized inequalities?” (p. 3). In response, given the literature on race and racism and despite their significance and impact in understanding past and present conditions, to fully comprehend and acknowledge rudimentary influences, a discussion and analysis of class and capitalism must be incorporated to fill in the gaps racism is unable to precisely and tangibly rationalize. Not to say that race cannot stand alone, but why divorce it from class when attempting to historicize a process of exclusion in which elements of racism and class inequalities are mutually and interdependently embedded? In academia there appears to be a tension between the use or value in race and class; however, I believe that to truly reveal how Chicanas/os, among other groups, have been impacted by capitalism, it is nonetheless commonsensical to employ and critically entangle both doctrines. Therefore, to fully capture the various manifestations of racism and racialization, it is vital to operate within a framework that implicates “demographic shifts, changing capitalistic class relations, and global socioeconomic dislocations” (Darder and Torres, p. 3).

The processes and impacts of racialization are imperceptible without contextualizing its connection to political and economic motives. Darder and Torres (2004) draw on the work of James Baldwin (1988), as well as Lee, Mountain, and Koenig (2001) to explain that race is deeply connected with political economy. They contend that for a productive discussion we need to move beyond theorizing race as a social construct or in terms of race relations. By no means do they urge for the elimination of race, but rather question its maximum utility as a frame of
analysis due to its complexity, intangibility, and inconsistency. Instead, they encourage an analysis that includes racial ideology but with an extension and focus of the “actions and beliefs of the powerful, who retain the myth in order to protect their own political-economic self-interests” (p. 12). Racism functions within a hegemony rooted in class domination, however, Darder and Torres insist that “it is the material domination and exploitation of populations, in the interest of perpetuating a deeply entrenched capitalistic system of world dominion, which serves as the impetus for the construction of social formations of inequality” (p. 17). Racism, class, and capitalism are connected; the impact of racism is understood within the context of power. Race and racial ideologies alone cannot construct material inequalities, however, it is vis-à-vis institutional control aligned with capitalistic interests enacted amid racialized ideologies that power, resources, and wealth is preserved and restricted.

As such, in order to strengthen the link between capitalistic-driven policies and racialized motives and actions, a class analysis is fundamental. I do not find it effective to contest the supremacy of race analysis over class or vice versa; I believe that class and racism work, hand in hand, to generate exclusionary practices. To provide a comprehensive history and framework of the systematic processes enacted upon Chicana/os, I cannot forge one without the other, as I argue Chicana/os to be a racialized class, as well as, subjects of a class-based racializing process. In accordance to socio-political and economically-driven agendas, Mexicans evolved from being an ethnic group to a race by the systematic mechanisms, identity constructions, and material conditioning of the U. S. institutions, ultimately becoming victims of racialization. Much of the literature on Chicana/o history tends to illustrate “culture and culture-conflict models of focusing on race and nationality as the bases for social relations,” (Gonzalez and Fernandez, 2003, p. 1). However the following section will include selected events, policies, and discourses as means to
provide a sociopolitical and economic context of the continual conquest, exploitation, and exclusion of Chicana/os in the United States post-1848.

**Historical Racialization of Chicana/os**

**Territorial Conquest**

Although the United States and Latin American countries share a historical relationship, it has been one characterized through imperialistic influences (Smith, 1996; Schoultz, 1998; Bulmer-Thomas & Dunkerley, 1999) of a dominant power against subordinate ones (Suarez-Orozco and Páez, 2002). Scholars (Smith, 1998; Suarez-Orozco & Páez, 2002) argue that the United States acquired Latin American land via “military confrontation, and a series of annexations, appropriations, and purchases” based on sentiments ‘driven’ through “pseudoscientific racism and cultural arrogance (laced with a good dose of Puritan zeal), along with a voracious appetite for Latin American land and other resources” (Suarez-Orozco and Páez, p. 16). Territorial expansions have been specially difficult for Mexicans, who “without taking a step Mexicans residing north of the Rio Grande found themselves living in a different country” (p. 17).

Deeply rooted in racism and influenced by capitalistic and imperialistic ambitions, U.S. institutions have racialized Mexicans legally, socially, culturally, economically, and politically. Over time, U.S. institutions have been able to maintain control of Mexicans through processes of racialization which included territorial conquest, legal proceedings, governmental classifications, and labor exploitation, among others. One can posit that the pivotal turning point for Mexicans came about as early as 1848 with the invasion and pilfering of Mexican land, the culture, and its people. Contrary to popular discourse, Mexicans did not cross the border, but the border crossed
them (Acuña, 1996); and individuals living north of the Rio Grande, now in another country, became “foreigners in their native land” (Takaki, 2000, p. 69). As the land represented a sacred connection, the displacement not only signified territorial loss, but also an identity and spiritual loss.

_Tratado de Guadalupe Hidalgo, 1848_  
** Artículo I  
**

Habrá paz firme y universal entre la República mexicana y los Estados Unidos de América, y entre sus respectivos países, territorios, ciudades, villas y pueblos, sin excepción de lugares o personas.

** Artículo IX  
**

Los mexicanos…serán incorporados en la Unión de los Estados Unidos…al goce de todos los derechos de ciudadanos de los Estados Unidos conforme a los principios de la constitución, y entretanto serán mantenidos y protegidos en el goce de su libertad y propiedad, y asegurados en el libre ejercicio de su religión sin restricción alguna.

_Treaty of Guadalupe Hidalgo, 1848_  
** Article I  
**

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people without exception of places or persons.

** Article IX  
**

Mexicans…shall be incorporated into the Union of the United States…to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and shall secured in the free exercise of their religion without restriction.

The Treaty of Guadalupe Hidalgo, consisting of “twenty-three articles and a secret clause,” “legalized” the annexation of thousands of acres and Mexicans and brought to an end the Mexican-American War (Gutiérrez 1995; Tenorio 1999), resulting in the enduring impact of being classified as a race and the subsequent racism and racialization it produced. Although the treaty did not comply with the required number of signatures to be valid, the alleged illegal
enactment promised full citizenship to Mexicans residing on the annexed land (Tenorio, Menchaca, & Montejano, 1999). While indigenous and darker Mexicans experienced greater racism, there were Mexicans that were privileged due to their skin tone (Oboler, 1995) and economic status. Other scholars (Relethford et al., 1983; Arce, Murguia, and Frisbie, 1987; Telles and Murguia, 1990) concur that “Mexican-Americans at the bottom are noticeably darker than those at the top” (Limón, 1994, p. 101). ‘Non-white’ and indigenous Mexicans were completely excluded from opportunity for citizenship, thus becoming legally discriminated vis-à-vis a process of sanctioned racialization as compared to privileged ‘white-looking’ Mexicans (Tenorio, Menchaca, & Montejano, 1999).

Besides the ascribed value to cultural and racialized markers, differential treatment, rights, and access were also contingent on socioeconomic status. Since Anglos were not familiar with territory, language, or agricultural background, they sought out politically and economically affluent Mexicans to ease transition, as well as to assist with legal and constitutional developments, such as the drafting of the California Constitution (Acuña, 1971). Limón (1994) offered a critique of class indicating that structured inequalities were sustained not only by the Anglo control, but additionally with the consent of, and benefit to, upper and upper-middle class Mexicans.

Economic alternatives were limited and many individuals and families were displaced due to the inability to garner an income from their land in combination with the loss of homes and territory. Mexican laborers were replaced with Chinese immigrants and Blacks, thus influencing some Mexicans to migrate to Mexico, while others settled for illicit activities as bandidos (Acuña, 1971). To some bandidos represented a heroic symbol challenging U.S. authority, whereas others viewed them as a threat and outlaws. Paredes (1958) explains that this
fueled the criminalization of Mexican men, as the Texas Rangers\(^3\) began to pursue *bandidos*, but “often killed Mexicans who had nothing to do with the criminals they were after” (Acuña, p. 107). The sentiments towards *bandidos* can be best represented with an excerpt from the *San Francisco Chronicle* written by George Beers:

> The native Californians, especially the lower classes, never took kindly to the stars and stripes. Their youth were taught from the very cradle to look upon the American government as that of a foreign nation. This feeling was greatly intensified by the rough, brutal conduct of the worse class of American settler, who never missed an opportunity to openly exhibit their contempt for the native Californian or Mexican population-designating them as “D—d Greasers,” and treating them like dogs. Add to this the fact that these helpless people were cheated out of their lands and possessions by every subterfuge-in many instances their property being actually wrestled from them by force..we can understand clearly some of the causes which have given to Joaquin, Vasquez, and others of their stripe, the power to call around them at anytime all the followers they required, and which secured to them aid and comfort from Mexican settlers everywhere (Acuña, 1971, p. 108).

The Treaty of Guadalupe Hidalgo granted citizenship and the freedom to pursue life, liberty, and happiness; however, the promises have been unmet and quite different. Who are the ‘real’ *bandidos* in this story? The annexation of the land marked a pivotal point in the lives of Mexicans on both sides of the geopolitical border and those experiences were distinctive to location, socioeconomic status, as well as social, cultural, and economic capital. The Treaty of Guadalupe Hidalgo presented a transition from a Mexican culture, economy, and government to

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\(^3\) The Texas Rangers “were viewed as heroes who brought law and order to the land, or instruments of a reign and terror, depending largely on whether the viewer was Mexicano or Anglo” (Acuña, 1971, p. 107).
the official occupation of an empire. In its genuine manifestation, the zeal of capitalism and the
denial of full incorporation of Mexicans into the U.S. system viewed the purchase as merely a
territorial acquisition, and its inhabitants as simple objects that came along to further the
purposes of modernization.

Identity Politics

“It is important to strike down the notion that institutions such as the academy and the
ejurisprudence system are fair and treat everyone equally. The notion that the United
States is (or strives to be) a “color-blind” society must be demythicized” (Acuna, 1998, p. ix)

At first glance it may appear that my analysis of the changes in sociopolitical
constructions may contribute to a traditional approach of explaining race and social relations. It
is important to reiterate that the hegemony of racism was applied and carried out by institutional
power, resulting in the control of the political and economic prospects of Chicana/os. We cannot
ignore that Chicana/os experienced distinct treatment amongst others, but also within the
Mexican ethnic group as well, based on ascribed notions of race and the conditions of class.
There were different mechanisms limiting the full incorporation of Chicana/os into the U.S.
system of capitalism. In having the power to define and classify, rooted and resulting in racism
with economic and political interests at hand, ultimately the state obtained further control over its
subjects. The power of the U.S. legal system, institutions, and agencies to homogenize and
classify was not in vain, and not without major repercussions as a subordinate group was
restricted the choice, mobility, access and rights of Chicana/os through the application of
political and economic interests.
As a result of the annexation, U.S. institutions and leaders subjugated the Mexican ethnicity to the U.S. racial classification system. Acuña (1971) described this as the process of the ‘name game’ or an identity crisis for Mexicans; in Texas referred to as “Tex-Mexs, Latin Americans, Spanish Americans”, while in New Mexico and Colorado “Mexicanos call themselves Spanish Americans or Hispanos” (p. 4). Even though Mexican American was also used mainly by middle-class activists, and Mexicanos throughout Arizona and New Mexico, Acuña explains that due to unresolved tensions and issues about nationhood, attachment, and affiliation, they were widely-contested terms.

The 1896 case of *Plessy vs. Ferguson*, although typically interpreted through a Black/White paradigm, also impacted Chicanos (Donato, Menchaca, & Valencia, 1991) in the U.S. (Valencia, 1991). Valencia et al. note that Chicanos were often treated as ‘colored’ due to their complexity and cultural markers. Unless Chicanos looked ‘white,’ those that appeared to have indigenous roots, as well as darker-skinned, were restricted from voting (California State Constitution, 1849, article 11, section 1; Menchaca, 1990; Padilla, 1979), serving in office, living in certain neighborhoods, attending white schools, interacting with whites, and even applying for citizenship (Valencia, 1991).

Besides being considered ‘colored,’ Chicanos have also been legally recognized as white, as the 1947 *Mendez v. Westminster* case demonstrates. Setting the precedent for *Brown v. Board of Education*, several Orange County parents organized and filed suit against the local school system for discriminating their children by not allowing them to attend Westminster Elementary, an ‘all white school’ on the basis of being Mexican. More specifically, the Mendez children, residing in a predominantly white area of Orange County, were denied admission to the public school based on their English deficiency, phenotype, and surname and, instead, were referred to
a ‘Mexican school’. The plaintiffs filed suit on behalf of 5,000 students against four school districts claiming, “separate was not equal in K-12 public schools because such segregation violated their rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution” (Valencia, 2008, p. 24). Valencia (2008) incorporates Wollenberg’s (1974) description to understand the defendant’s rationale:

“Ogle claimed that the districts were not segregating children on the arbitrary basis of race or nationality, but for the reasonable purpose of providing special instruction to students not fluent in English and not familiar with American values and customs. Finally he pointed that in the case of Plessy v. Ferguson (1896), the Supreme Court had allowed states to segregate races, providing that the separate facilities for each were equal” (p. 326; quoted in Valencia, p. 25).

In preparation the plaintiff’s lawyer compiled interviews, testimonies, school reports, and expert witnesses, to demonstrate the psychological, social, cultural, and cognitive effects of segregation. The truly instrumental aspect of this litigation approach, as highlighted by Valencia (2008), was the use of social scientists as expert witnesses to validate that segregation extended the process of assimilation, increased interracial tension, limited English language exposure, as well as influenced an internalization of inferiority. In February 1946, the court declared segregated schooling in California unconstitutional, stating:

The school boards and administrative authorities have by their segregation policies and practices transgressed applicable law and constitutional safeguards and limitations and thus have invaded personal rights which every public school pupil has to the Equal Protection provision of the Fourteenth Amendment to obtain the means of education …A
paramount requisite in the American system of public education. It must be open to all children of unified school association regardless of lineage.4

Although the plaintiffs won the case, the end of *dejure* segregation in California signified that in order to ‘be’ equal they were no longer distinct; thus, identified and legally classified Mexicans as white and no longer recognizing Mexicans as an ethnic group in the U.S but rather a racial class (García, 2009).

Besides the cultural loss, the severity of being classified as ‘White’ is better understood through the case *Hernández v. Texas* (1952), which unveiled the discriminatory practices of jury selection. The case involved Pete Hernández, an individual who was assaulted and robbed; Mr. Hernández shot and killed the perpetrator arguing that it was done in self-defense, however the jury declared him guilty. In 1954 the case was re-opened with the rationale that given the historical relationship and the continual animosity towards Chicana/os, the failure to provide a representative jury resulted in an unfair trial. Chief Justice Warren asserted that in a span of twenty-five years and 6,000 jurors in Jackson County, Texas, not one was Mexican American (García, 2009). The case was overturned by the Supreme Court declaring discrimination of Mexican Americans took place through exclusionary jury selection, as well as by failing to uphold legal rights of those convicted. The legal and political outcomes of this case highlighted the ‘in-between’ status of Mexican Americans.

On one hand, Mexican Americans were legally considered White, yet did not garner the privileges and rights. On the other hand, they were ‘of color,’ but not black, and therefore unable to seek defense under the Equal Protection clause. The first argument in restricting Mexican Americans from serving as jurors was rooted in notions of inferiority, claiming they were not qualified due to linguistic, cultural, and cognitive inabilities. The second argument shifted to a

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color-blind discourse, claiming that Mexican Americans were White, and therefore an entire White jury would be legally fair. Overall, two fundamental legal rights were violated, that of representation of jurors that could identify or understand them and judgment by peers. Nonetheless, it is important to distinguish “de facto exclusion had made class, color, gender, educational and political ties qualifiers for acceptance…this meant that only those with money, education and political connections could participate” (García, 2009, p. 6). Besides challenging the denial of civic rights and a fair legal process, the broader and principal value of this case was that the ruling resulted in the extension of Equal Protection Clause under the Fourteenth Amendment to all groups.

The intentions and processes for assimilation took place in a range of forms. On one hand, there were abundant messages with the purpose of imposing an identity and culture. On the other hand, there were also efforts from within the Chicana/o group, with varied motives, focused on shaping a culture and identity. Whereas many believed Chicana/os were a people that should not be incorporated into the U.S. system and culture, there were others who insisted on annihilating them as a cultural group. The push towards assimilation is best reflected through Senator Lewis Cass declaration in which he explained that in order to move forward as ‘community’ groups must reject their ethnic affiliation and “identify [themselves] with ours” (Gutierrez, 2006, p. 17). As a result of political rationale in combination with the discourse and treatment of Chicana/os, segments of the population internalized certain identity constructions.

In 1929 a group of middle-class Mexican-Americans founded the League of United Latin American Citizens with the aim to improve the status and treatment towards Mexican-Americans. There are varied accounts of the objectives of LULAC, some scholars (Acuña, 1971; Haney-López, 1997) indicate that this organization was influential in indoctrinating a message of
assimilation and cultural pride but in that process “for them, it was important economically and socially not to be associated with lower classes” (Acuña, p. 114). On the other hand, LULAC sought to challenge discrimination against Mexican-Americans using assimilation as a strategy (Haney-López, 1997), upholding cultural values and history and establishing Mexican-Americans as a group, yet claiming whiteness as means to demand equity and rights. Despite the class and race-based criticism towards its organizational philosophy, it was LULAC lawyers who litigated in *Mendez v. Westminster* (1947) and *Hernandez v. Texas* (1954) and who essentially combated segregation while gaining the legal ‘integration’ of Mexican-Americans (Haney-López, 1998).

During the 1960’s the government, particularly the U.S Census, along with a council of ‘Hispanic representatives’ and agencies produced the term *Hispanic* to refer to Spanish-speaking people of Latin American and Spanish descent (Oboler, 1995; Omi, 2000). In order to challenge this government imposed term and include non-Spanish speakers, as well as contest its connection to ‘whiteness,’ *Latino* was introduced as well as incorporated into the U.S. Census (Foley, 1998; Guzman, 2001). According to Acuña (1971), in the “rhetoric of Blacks,” Mexican Americans also claimed the term “Brown” and/or “Bronce.” There was opposition to the use of this term; some refused to acknowledge the existence of “brown people” and instead identified as White or Caucasian. In California, the terms of identification changed from Mexican American, to Mexican, Mexican Americans, and Americans of Mexican descent, while activists groups preferred Chicano (Acuña, 1971). During the Civil Rights Era, as a means to resist institutionally imposed categorizations, Mexican descendants sought out for an alternative and empowering term, and in that they identified with Chicana/o, to elucidate and reclaim their cultural, political, and social history and struggles. Originally, Chicano was a negative term associated with
chicanery; however, it was appropriated and transformed into a positive term while connecting to the poor and maintaining a commitment to the community ( Acuña, 1974).

In order to fully grasp the political and economic experiences and limitations of Chicana/os, it is nonetheless essential to acknowledge that embedded in the processes of marginalization, criminalization, and racialization, the politicizing of identity has been instrumental. Race has been institutionalized through the courts, government agencies, as well as other state policies. As a result, the established racial identity determines the conceptualization of and treatment towards Chicana/os, which warrants urgent attention. The oversimplification of identity influences outsiders, as well as ‘insiders,’ to essentialize the racialized group as one large community. In turn, this also places pressure on Chicana/os to be in agreement and function as one and consequently reducing them to a homogenous group, thus obscuring the politics of racism and class. Regardless of whether affiliations are imposed or self-selected, to identify as one group may be strategic, empowering, while other times it may be discriminatory, conversely the overarching issues of political and economic inequity can be veiled in the process.

**Economic Exploitation**

Chicana/os were specifically recruited by U.S. institutions and corporations for economic, agricultural, and labor purposes. The territorial loss of property for Chicana/os impacted their ability to enter the system of capitalism, and eventually the number of Chicana/os in the Southwest region decreased significantly. However, by the 1880’s,c with the lynching and displacement of Chinese due to ethnic tensions and immigration policies, as well as the “massive economic transformations of the Southwest,” the U.S. specifically recruited Mexicans for cheap labor in the railroad, mine and farming industries (Gonzalez and Fernandez, 2003, p. 13; Acuña,
The following excerpt from Acuña suggests Chicana/o laborers were essentially subjected to machine-like existences, merely objects in premeditated intentions:

While Mexican labor helped make agri-business a million dollar industry, the Mexicano rarely became part of the society he served. His colonias shielded him, and he was seen only during the daylight hours, working in the fields, the railroad yards, or in the mines. He was there, but at the same time he was not. His colonia allowed him to retain his differences, but for the most part he remained powerless with respect to the majority society (p. 22).

Due to corporate interests, upon their entry into the economic system, there were predetermined, labor-specific functions for Mexicans, which ultimately restricted their economic and political assets (Gonzalez and Fernandez, 2003). Corporate interests were enhanced by the state’s power to enact policy programs for the recruitment and removal of workers. It is important to point out that there were differences in the types of labor; while a majority was temporary or seasonal, dependent on the location, field, and/or time, Mexicans were also employed in permanent positions. As a result of these employment variations, there were simultaneously distinctive income, gender, educational, settlement, and housing patterns throughout Chicana/o families and communities (Gonzalez and Fernandez, 2003).

While the U.S. Government and its institutions managed the domestic use of Mexicans, they simultaneously played an instrumental role in shaping the economy in Mexico. It is important to highlight how U.S. political and economic interests and its practices in Mexico produced further barriers for the Mexican country and its people. Under the regime of “Porfirio Diaz, “using governmental threat of military intervention, large U.S. capital interests invested
heavily in the construction of railroads in Mexico\textsuperscript{5},” and soon enough acquired “massive investments in mining, especially copper, cattle farming, and cotton production” (p. 31).

Consequently, U.S. institutions had control not only over segments of Mexican economy\textsuperscript{6}, but also the prospects of its people. As a consequence, the conditions for migratory patterns not only resulted from U.S. guest worker programs, but essentially were deeply connected to the U.S. economic and political ties with Mexican elites and officials. Furthermore, the power of the U.S. over and in Mexico was trivial in determining its economic, political, and even military outcomes, such as the Mexican Revolution in 1910.

With U.S. participation in World War I (1914-1918), the demand for Mexican workers increased even more, to the point that labor recruiters would illegally contract and smuggle them into the U.S. (Acuña, 1971). During this shift into industrialization, Mexicans began to work in meat packaging, steel plants, and other machinery fields. Thus, industrialization influenced their relocation from country areas to the city. With the economic boom and the demand for Mexicans, the population grew from 700,541 to 1,422,533 during the 1920’s (p. 112). In response to the influx of Mexicans, as was previously done with the Chinese and Japanese, the U.S. passed the Immigration Quota Acts of 1921 and 1924 to regulate migration. To counter the intimidation generated by immigration, Mexicans “withdrew” and developed their owned communities with support groups, associations, and social clubs.

During the late 1920’s cantaloupe harvesters in the Imperial Valley of California demanded higher pay for their work. In the protocol for compensation, owners would pay the

\textsuperscript{5} In the process towards modernity, railroads were instrumental in providing access and transportation to resources such as tools, machinery, agricultural goods, coffee, copper, and other raw materials (Gonzalez & Fernandez, 2003, p. 37).

\textsuperscript{6} It is estimated that by 1910 the U.S. had control of over half of Mexico’s national wealth; industries ranging from “near complete control of railroads, oil, agriculture, and mining and had a large share of financial structure in telegraphs, telephones, and urban transportation” (p. 37)
contractor and then they would transfer the money to workers. However, in the process many contractors would not provide the entire amount to workers, and some even “skipped with the money” (p. 114). Through the support of the newly established Confederacion de Uniones Obreras Mexicanos (CUOM), workers requested materials for work, as well as better and direct pay, and in 1928 they declared a strike. Within a brief time, the U.S. Immigration Department “closed down the union’s offices, arresting and deporting many of its members” (p. 114).

During the Great Depression (1929-mid 1930’s) emerged what Anglos referred to as “The Mexican Problem” (p. 120) With the economic crisis and employment shortages, Mexicans who were recruited for labor found themselves claiming welfare. Anglos did not want to support Mexicans, which they perceived as foreigners; consequently to reduce taxes and save money officials targeted Mexicans. The government developed a Repatriation ‘incentive,’ which would pay the amount of $6,000 to relocate back to Mexico, much less than welfare support, however failure to relocate would result in welfare termination (Acuña, 1971). Little is known about the absolute number of repatriates, but estimates point to over 500,000 deportations (Bell, 2000). In Los Angeles alone there were 16,228, though the Midwest is believed to have had the largest numbers (Acuña, 1971).

Scholars such as Balderrama and Rodriguez (1995) argue that ‘repatriation’ is not the accurate term to use, given that an estimated 60% of individuals involuntarily removed were U.S. born citizens (Johnson, 2005). There were some who believed that the mass ‘repatriation’ was strategically pinned with the ongoing economic crisis, and moreover specifically against Mexicans because “no other ethnic groups were being hassled or repatriated” (Balderrama & Rodriguez, 1995, p. 2). Consequently, the deportation of Mexicans presented further economic,
cultural, and family changes due to separations and relocation. During a congressional hearing in 2003, José Lopez, born in Detroit in 1926 and deported in 1931, testified:

In Mexico, . . . I was only able to attend school . . . for a few months, because my father needed me to work in the sugar cane fields to help earn money. . . . [M]y oldest two siblings were able to go to school for a short time, but were teased by the other children because they did not speak Spanish very well (p. 6).

For those who were able to prove their citizenship and stayed or returned back to the U.S., the wounds of repatriation were not easily healed. The level of fear, paranoia, and pain plagued their daily lives through constant visual, verbal, direct and indirect messages. Johnson (2005) provides insight to the long-term impact of Repatriation through his description of Senator Escutía’s testimony:

My grandfather, she said, would never go to the corner grocery store without his passport. She would say “what do you need that for?” “Mija (a term of endearment that literally translated from Spanish means ‘my daughter’), I am just an Indian from Chiapas and they will deport me if they stop me and I don’t have my papers.” Senator Escutía’s grandfather, fearful of what was occurring in California with the passage of the anti-immigrant initiative known as Proposition 187, later naturalized and became a citizen. But even as a citizen, he put his passport in his top pocket before leaving the house. As she told the next part of the story, Senator Escutia stood with tears in her eyes in front of the committee and a room full of spectators. “And when he died,” she concluded, “I buried him with his passport in his top pocket.” Senator Escutia then left the room, leaving it clear to all the powerful impact that the repatriation had on her and her family (p. 8).
Besides the economic, cultural, and emotional afflictions the repatriation program caused, there were constitutional and human rights violations in question. In the process of detaining and deporting U.S. citizens without Due Process and Equal Protection, the 4th, 5th, and 14th Amendments of the U.S. constitution were violated (p. 9). However, as Balderrama and Rodriguez (1995) point out, “In an atmosphere of pressing emergency, little if any time was spent on determining whether the methods infringed upon the rights of citizens” (p. 5).

Moreover, Johnson (2005) highlights that local and state institutional control of deportation processes defied federal jurisdiction over immigration. To the contrary, there were others like George Clements, Los Angeles’ Chamber of Commerce manager, who in response to messages like “Employ no Mexican while a white man is unemployed,” proclaimed in a memo “It is a question of pigment, not a question of citizenship or right” (Koch, 2006, p. 1).

Issues of pigment, citizenship statuses, and rights have nonetheless played an important factor in the treatment of Chicana/os. During the 1930’s in Texas the compensation system permitted gender and race-based wages, by which Mexicans were paid less than ‘whites’ and women less than that (Vargas, 1997, p. 566). In addition, the working conditions in most farms, sweatshops, and factories were not adequate. Emma Tenayuca organized labor movements, letter writing campaigns, participated in demonstrations, and strikes to challenge Texas’ racial caste system demanding equality in the workplace for women and Mexicans (Vargas, 1997). She participated in strikes against Fink Cigar Company, National Recovery Administrations, but her most prominent participation was the organization of the 1938 Strike against the Southern Pecan Company. Beyond her contribution through activism, being a member of the Texas Communist Party, Tenayuca promoted a link between the struggle of working-class Mexican Americans and Anglos; through her message she advocated for bilingual schools, end of Jim Crow segregation,
end of dual-wages, and property rights (Vargas, 1997). Needless to say, not only was Tenayuca not supported by the party, but as a result of her political views, she was shunned by community members, religious leaders, and city officials for her affiliation (Vargas, 1997).

Despite the treatment towards Chicana/os, they underwent the Revolving Door experience, recruited by the government through guest worker initiatives like the Bracero program and once there was no longer a necessity for their labor, deported through programs such as “Operation Wetback” (Hondagneu, 1997). During World War II (WWII) the U.S. experienced a shortage of workers and the government decided to contract and ‘import’ workers from Mexico. Effective in August of 1942, the Bracero Program consisted of an agreement for temporary labor with a guaranteed wage, as well set working and living conditions (Acuña, 1971). By 1944, 62,170 “unemployed and underemployed Mexicans,” many poor campesinos, were brought into the U.S., that number rose to 445,197 by 1956 (Acuña, p. 128; Hernández, 2006, p. 425). Originally set to conclude at the end of the war, by employer demand, as well as the notion that “Mexicans were more suited for stoop labor because they were built closer to the ground,” as a California Senator expressed, the program was however extended until 1964 (Acuña, 1971, p. 128). In spite of political and economic disputes, in its span of 1942-1964 over 2 million legal temporary workers were imported to the U.S., while there were countless non-contracted and ‘illegal’ workers present as well (Hernández, 2006).

Nevertheless, within that timeframe attitudes against Mexicans grew as many felt they were taking up the jobs of ‘domestic’ workers. Similar to post-annexation time, the momentary recruitment of minority groups for labor and agricultural purposes “came to be seen as unwanted ‘foreign’ competition” and faced beatings, intimidation tactics, and some were even killed (Gutiérrez, 1995, p.19). From 1950 to 1954, Senator McCarthy initiated the persecution of
suspected Communists, influencing attitudes of distrust, and eventually implementing the McCarran-Walter Act to “tighten controls over aliens and immigrants” (Acuña, 1971, p. 127.) In 1952 the passage of the Immigration and Nationality Act, declared the importing or harboring of immigrants a felony; officials entered barrios and colonias to apprehend individuals that could not prove their residency (Acuña, 1971).

While the government legally contracted workers from Mexico, they simultaneously deported them through Operation Wetback. The term wetback originated from the Spanish word mojado and it referred to Mexicans that swam across the Rio Grande to enter the U.S. (Acuña, 1971). In 1954, the operation was sanctioned by the government and enforced with immigration authorities; ‘illegals’ were captured and deported back to Mexico. As soon as “Special Mobile Force Operation” would enter, word would spread about their presence in the community or place or work, and many residents would provide refuge. However, the constant surveillance of communities, farms, and random check-points, alongside differential legal statuses brought about tension not only towards but also within Mexicans. “The economic issues affecting Anglo-Mexican social relations shifted from conflicting systems of production to class relations within the same system” (Gonzalez and Fernandez, 2003, p. 14). For instance, undocumented workers were blamed for lower wages, poor working conditions, and were seen used as ‘strikebreakers’ (Acuña, 1971; Hernández, 2006). Reports indicate that in 1953 875,000 individuals had been deported, and by 1954 that number increased to 1,035,282 (Acuña, 1971). The U.S. Border patrol reported over 1,300,000 deported, though, there are contentions about the accuracy of numbers reported, some claiming them to be exaggerated, while others underreported. (Hernández, 2006).
The Bracero Program came to an end with the immeasurable efforts of Dolores Huerta, Cesar Chavez, and the United Farmers Workers of America. During the 1960’s there were many forms of activism and movements along social, cultural, political, and economic lines, such as the Civil Rights Movement, War on Poverty, Raza Unida Party, as well as against U.S. participation in the Vietnam War. This was an instrumental period for Mexican-Americans: Reies Tijerina led the Reconquista, reclaiming of old Mexico, Rodolfo “Corky” Gonzales founded and promoted “Chicano liberation and nationalism,” and Cesar Chavez and Dolores Huerta organized a national movement towards fair pay and safe working conditions. Initially, the Delano grape strike began due to the differential wages, while Mexican Americans were paid $1.10, and Filipinos $1.25, those under the Bracero Program received $1.40 (Griswold del Castillo and Garcia, 1995). They were able to attract national attention to the issue through a series of national marches, boycotts, and most ultimately hunger strikes. Overall, given the political and economic turmoil, groups from different backgrounds created coalitions in the fight against oppression and for social justice. Table 1. demonstrates that in spite of the many strives, Chicana/os continue to predominate specific segments of labor.
Besides labor purposes, Chicana/os have also served for military objectives, and as with employment initiatives, regardless of their class, race, ethnicity or citizenship status. In WWI, for example, it is estimated that around 375,000 to 500,000 served in the military. Acuña notes that due to economic inequalities, many Chicanos enlisted; homes in the barrios would display, some more than one, blue stars representing a member in the service, with time they were replaced with yellow stars to represent members had been killed (Acuña, 1971; Acuña, 1988). “They

<table>
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<tr>
<th>Occupation</th>
<th>Non-Hispanic %</th>
<th>Mexican %</th>
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<tr>
<td>Healthcare</td>
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*Figure 1. Occupations for Chicana/os*
*Source 2000 US Census, PUMS, Sample Population*
wore the uniform of the Armed Forces of the United States, and for perhaps the first time in their lives, they were considered Americans” (Acuña, 1971, p. 120). After serving in the war, individuals returned with new skills that expanded their opportunities. Chicanos were recipients of seventeen Medals of Honor, while many others lost their lives. Yet, exposure and participation of fighting for a country and the rights of other people and not being able to do so in their own country generated a feeling of powerlessness and disappointment (Garcia, 1996). Chicano soldiers who survived and returned to the U.S. confronted the reality of segregation, realizing that in spite of risking their lives while serving the U.S. and even receiving seventeen Medals of Honor, and having become casualties, “Mexican American soldiers were being refused service in restaurants, even while in uniform” (Balderrama & Rodriguez, 1995, p. 286). Regardless of their bravery or sacrifice, Chicana/os continued to experience second-class citizenship, to the extent that a cemetery in Texas “had a fence separating Mexicans from the white burial area” (Balderrama & Rodriguez, p. 286). Furthermore, although the G.I. bill granted access to loan, housing, and educational opportunities, Chicana/os still faced housing, employment, and bank discrimination.

Reports indicate Latinos have been involved in twenty-eight U.S. military conflicts dating back to the American Revolution (1775-1782) and into the current Operation Iraqi Freedom, and within that time-frame over thirty-nine soldiers have been awarded the Medal of Honor (Rochin and Fernandez, 2005). The Department of Defense indicates that out of 4,365 casualties from the Iraqi War, 463 are Latino or Hispanic (Lealand and Oboroceanu, 2010). The U.S. Census reports “civilian veterans” as a total of 2,6403,703 while 12.1% or 612,519 are

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7 Military reports do not narrow down by ethnic category, they limit to basic racial classifications. It is important to note however that data from the wars pre-dates the term Latino.
Mexican (U.S. Census Bureau, 2000). Countless numbers of Chicanas/Chicanos have served in the military, while many have lost their lives. Moreover, with the strong presence of military recruiters in schools and marginalized neighborhoods, these numbers will continue to increase. Acuña argues, “The military is not targeting students in the lower halves of their classes...it targets those who would normally be eligible for a college education but, because of economic disadvantages, find the illusions pressed by the military attractive” (Acuña, 2004, p. 417). Regardless of student performance, a focus must be placed on enrollment numbers and recruitment policies and practices. Due to economic crisis in combination with the compensatory promises, the historical and continual exploitation of Chicanas/Chicanos vis-à-vis military and employment institutions presents a dire urgency.

**Building an Empire**

As the *Bracero Program* and *Operation Wetback* were being simultaneously enacted, the U.S. continued to control and invest enormous amounts money into the Mexican economy and industries. By the 1940’s “Nacional Financiera”, Mexico’s institution charged with financial and developmental oversight, as well as investment in infrastructural projects, maintained a large portion of its loans from U.S. banks (Gonzalez and Fernandez, 2003). Reports indicate that between 1942 and 1959 over $900 million (Cline, 1963) had been invested to infrastructure, while one third of the funds available (Higgins, 1968) derived from foreign loans (Gonzalez and Fernandez, 2003). “This allowed U.S. capital to maximize its leverage over decision making while minimizing risks: U.S. financial institutions were in the driver’s seat of the economic

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8 An accurate number is difficult to obtain as data by ethnicity is not reported by all military units, some classifications may have changed over time, and records have are missing.

9 Banks included Chase Manhattan Bank, U.S. Export-Import, Bank of America, and World Bank (Gonzalez and Fernandez, p.50)
policies of Nacional Financiera,” thus being extremely influential in the economic, demographic, political structure of Mexico and its migration patterns (Gonzalez and Fernandez, p. 50). The U.S. Government and its corporations constructed an ‘agri-business economy’ in the U.S. and Mexico, while being dependent on cheap labor from Mexico, therefore “the economic dislocation caused by U.S. capital—not an amorphous “global” capital” was an undeniable force in the massive northward migration (Gonzalez and Fernandez, p.51).

In 1967, Mexico entered an agreement with the U.S. known as the Border Industrialization Program, also referred to as the Maquiladora Program, with the aim of transforming and industrializing the area along the border of U.S. and Mexico. As a whole, it was intended to alleviate some of the unemployment in Mexico, while also decreasing the need to migrate into the U.S. However, the cycle of cheap labor, poor working conditions, and overall poverty were transferred to northern Mexico, as masses of unemployed inundated the areas (Gonzalez and Fernandez, 2004). Most importantly, the Maquiladora Program created an economic dependency on U.S. corporations and government. By 1975, the national Mexican debt reached $11 billion dollars, influencing the government to enter into yet more series of economic ‘bail-outs’ and agreements.

The North American Free Trade Agreement (NAFTA) was signed in 1994 allowing U.S. enterprises to relocate to Mexican territory to provide employment opportunities while increasing profits due to ‘free trade.’ This meant that U.S. corporations had almost complete control over the production, trade, and employment processes. Given Mexico’s cheap wages there was a considerable incentive to invest and relocate. In addition, the agreement guaranteed the power to initiate a guard against non-investor exports and imports, thus creating an economic alliance. Even before NAFTA went into effect, the Mexican government began dismantling
many industries through privatization, downsizing, and employment layoffs; needless to say, the Carlos Salinas administration supported the corporate investments. “Throughout the entire humiliating process not a peep was heard from the Salinas government...“free trade” meant that Mexico would be completely open to U.S. goods, but U.S. producers were safely guarded against Mexico’s products” (p. 55). In 1995 Zedillo took over the presidency, and confronted a major devaluation of the national currency, which resulted in a bailout from the U.S. government guaranteeing oil sale profits and granting U.S. banks full rights and control. Although 250 companies had relocated along the border, within two months unemployment rates reached over 600,000 and by mid 1995, 11 million people, 30% of labor force, were unemployed (Gonzalez and Fernandez, 2004).

Scholars (Gonzalez and Fernandez, 2003) argue that the economic domination over Mexico was fundamental in the formation of the Chicano national minority, U.S. history, and most notably of the U.S. neocolonial empire. As a consequence of its transnational power in the U.S. and Mexico policies and economic interest directly induced not only the displacement, conditioning, and migration of Mexicans, but also that of Chicana/os in the U.S. Besides the drastic impact of NAFTA in ‘Mexican territory,’ it also generated a decline in living standards both in the U.S. and abroad. Scholars (Lugo, 2004; Gonzalez, 2000; Parenti, 1995) argue that due to NAFTA, nearly 800,000 jobs ‘disappeared’ as companies have relocated abroad, many to Mexico, while the quality of life and working conditions of workers in the region have lowered (Darder and Torres, 2004). In order to address current and future implications, it is imperative to comprehend and connect the extent of U.S power and control in the early years of U.S.–Mexico relations to the continual and pervasive manifestations. As Gonzalez and Fernandez (2003) exclaim:
One hundred years of U.S. empire building has produced what three hundred years of Spanish rule could not accomplish: the complete inability of the Mexican nation to produce enough to feed its own people…Mexican migration to the United States lies within the immigrant’s subjectivity (p. 57).

**Historical Misrepresentation**

Government ideologies and practices have also been an influential factor in constructing racialized misrepresentation, thus controlling the development and perception of Chicana/os. In 1959 there was a study conducted in Mexico city by anthropologist Oscar Lewis, exploring the relationship of urban poverty and the behavior, patterns, and conditions of five Mexican families. The pathologizing of the underclass, which resulted from this study, depicted families as socializing and perpetual agents of their class condition.

Poverty becomes a dynamic factor which affects participation in the larger national culture and creates a subculture of its own. One can speak of the culture of the poor for it has its own modalities and distinctive social and psychological consequences for its members. It seems to me that the culture of poverty cuts across regional, rural-urban, and even national boundaries (Lewis, 1959, p. 2).

The “culture of poverty” (Lewis, 1959) notion demonstrates groups as maladaptive due to their culture and the belief that they possess intrinsic lethargic characteristics is reflected throughout government initiatives. For example, during the annexation of northern Mexico, John C. Calhoun expressed that the problem with assimilating Mexicans was that they were “impure races, not [even] as good as the Cherokees or Choctaws” (Gutierrez, 1995, p. 17). Calhoun continued by arguing, “Can we incorporate a people so dissimilar to us in every respect-so little qualified for free and popular government-without certain destruction to our political institutions?” (p.17). Based on the notion of culture of poverty, the racialization of communities takes place, and it
essentially ignores the reality of the embedded socialization and institutionalization of racism. Due to the presence of culturally deficit perspectives embedded within political spheres, the power of racism is enacted by the ability to formulate policies and establish an understanding of a particulate group according to those notions. In that process the dominant group has the power to not only control the prospects of the racialized group, but also construct explanations of their status.

Racialized based on the notion of “culture of poverty” (Lewis, 1966), Chicana/os have been depicted as culturally deficient, which has, thus, influenced the discourse framing their educational status. Scholars (Hess & D’Amato, 1996) suggest that there are family factors such as single-parent homes (Mulkey, Crain, & Harrington, 1992; Rumberger, 1995), parenting styles (Rumberger et al., 1990), and socio-economic status (Jordan, Lara, & McPartland, 1996; Romo & Falbo, 1996, Rumberger & Thomas, 2000; Zsembik & Llanes, 1996) which limit parental supervision (Astone & MacLanahan, 1991) while placing economic and family responsibilities on children (Velez & Saenz, 2001). Additionally, parent involvement is often conceptualized through Eurocentric models and expectations, thus, de-valuing the cultural and social capital, as well as the cultural practices, of Latino parents (Olivos, 2006).

On the other hand, others argue that students do not ‘perform’ well because they correlate being educated with ‘acting white’ and that students opt to reject the schooling system and its practices (Felice, 1981; Fine, 1991; Fordham, 1988; Fordham & Ogbu, 1986; MacLeod, 1987; McLaren, 1994; Richardson & Gerlach, 1980; Willis, 1977) because they do not perceive it as a viable method of mobility (Valenzuela, 1999; Velez & Saenz, 2001). Moreover, Ronda and Valencia (1994) caution that performance has been explained by connecting it to students’ lack of motivation and low aspirations, thus implying that those who do not ‘succeed’ in the
educational system are “deficient, deviant, and inadequate” (Velez & Saenz, p. 447). Furthermore, performance has been directly associated with ‘academic aptitude,’ (Fernandez, Paulsen & Hirano, 1989), insinuating that students do not have the cognitive ability to ‘understand’ and ‘appreciate’ school and are more likely to not succeed in school and even drop out (Velez & Saenz, 2001).

To the contrary, research (Azmitia, 2002) demonstrates that Chicana/o parents hold high educational values and expectations, in spite of hegemonic structured barriers (Olivos, 2006) that may limit and exclude students and parents from formal education. Parents have developed methods of negotiation that allow them to use their culture as a strategy to ‘educate’ their children. For example, parents’ influences and high expectations are exemplified through the “path of life” (Azmitia, 2002). This concept consists of the expectation that since parents have made sacrifices for a better family life, as a sign of respeto, children ought to contribute to family through moral development that is closely tied to education, as well as by engaging in activities that will promote familismo and follow a ‘good path’ to meet the expected goals. Thus, culture becomes a determining factor, which helps parents strategize and develop educational expectations, and not a deterrent as policy-makers and educators suggest. Moreover, biculturalism, a method of functioning simultaneously in the primary and the dominant mainstream cultures, is central to Latino families in educational contexts (Olivos, 2006).

Despite numerous studies that demonstrate deficit thinking, scholars (Boykin, 1983; Diaz et al. 1986; Flores, 1982; Flores et al., 1991; Sue & Padilla, 1986; Trueba, 1989; Walker, 1987) have challenged the ethnocentricity and fallacy in these theories. Others (Au & Mason, 1983; Heath, 1983; Mehan, 1992; Philips, 1972) have resisted this ‘knowledge’ which blames the individual, the family, and the culture, and instead have provided room for analysis of the
“schooling process” (Velez & Saenz, 2001). Nonetheless, these models, too, appear to resemble inferences to deficiency, as they suggest for programs with ‘special’ instruction, thus implying that subordinated children are ‘unteachable’ with the same models of mainstream children. In essence, political discourse and policies have shaped and have been shaped by societal misrepresentations of the Chicana/o family, its values, and practices. In exposing the influence of cultural deficit perspectives in schooling practices and policies, a greater awareness of how this institutional neglect has been perpetuated systematically, through deeply embedded notions of racism, is made visible.

Researchers and scholars are also contributors to the process of ‘knowledge production,’ and must be conscientious of this process. It is vital that researchers recognize their responsibility because they can create a power imbalance within and thus perpetuate a misreading of Chicana/os throughout their fieldwork, reports, and other forms of academic writing. For example, in building the theory on post modernity, Limón explains how new generations have developed a loss of self-esteem and ethnic identity (Saragoza, 1990), in addition to an erasure of history, language, and family values (Williams, 1990), which has also resulted in destructive behavior (Saragoza, 1990), violence and a “collapsed meaning of life” (West, 1990) among Mexican youth (Limón, 1994). Although he does attribute some of the changes to the impact of mainstream culture, inefficient schooling, and ‘persistent poverty, overall, nonetheless, there is a ‘psychologizing’ of consequences which blames the individual. Limón fails to articulate how the conditions Mexican youth find themselves in are a result of the conditioning, of the impact of structural and continued exclusion, exploitation, and denigration. Once again, Limón’s discussion, like many other scholars, of how class is conditioned due to its
relation to race and racism seems to obscure the larger structural forces that impact the lives of Mexican youth.

**Mexicans in Chicago**

There is limited research on the migration of Mexicans to areas of the Midwest, especially Chicago, and the existing literature, as scholars point out (Pitt & Vargas, 2003), does not fully capture the influences to migrate, the process of establishing communities in Chicago, or their responses to urban life. Moreover, Pitt and Vegas highlight that although there are some works that shed light onto the history of Mexicans in Chicago, it either focuses specifically in selected regions or is mostly reflective of the era after World War II (WWII). Nonetheless, this too is a signal of the process of ‘survival,’ for Mexicans. As they developed network systems, they also created ethnic enclaves by remaining in close proximity to each other.

As a result of the racializing practices taking place in the new U.S. territory of Texas, Mexicans who were at a disadvantage found it necessary to migrate North for greater opportunities (Pitt and Vargas, 2003). In their journey along the newly established railroad trajectory, they were introduced to Chicago, a growing industrial city. Mexicans began to reach out to other friends and relatives in the South and inform them of the employment opportunities in Chicago, while developing network and support systems. Companies specifically recruited Mexicans over Blacks and Europeans for labor, especially after WWI shortages.

In the post-WWI era, Mexicans transitioned from agricultural workers to factory workers as a result of industrialization and expansionism. After putting Texas on the map as an agricultural leader, enduring and resisting Texas racism, racial intolerance, and economic inequities, Mexicans fled from the area, some heading to Mexico while others to the North.
Scholars argue that the initial factor influencing Mexican migration to the North was resulting from corporate recruitment visits to the South (Pitt and Vargas, 2003). Steel mills and railroad factories were ‘welcoming’ towards Mexicans, as they were willing to endure long of work hours, minimal to no days off, and low wages. On the other hand, in relation to labor conditions in the South, Mexicans noted that there was greater respect and less supervision in the North.

Not only were Mexicans specifically targeted because of their ‘race,’ but because labor agents recognized that they maintained ties with relatives and friends, even at a distance, so they were strategically encouraged by labor agents to write letters to other Mexicans in the South as a method of recruitment (Pitt and Vargas, 2003). Additionally, Mexicans who had resided in the area and were bilingual were distinctively sought out as well to work on trains recruiting other Mexicans, by using the Spanish language as a method of engagement. In turn, bicultural Mexicans were then racialized as Mexican-Americans. There was a large influx of Mexicans and by the summer of 1927, there were over 80,000 in the Midwest, not only from the South, but also mostly from Mexico’s ‘central-western’ (Gamio 1930 [1971]; Jones 1928 [1971]; Taylor 1932; and see Año Nuevo Kerr 1976; Rosales 1978; Weber 1982) states like Jalisco, Michoacán, Zacatecas, and Guanajuato (De Genova, 2005). Nonetheless, in addition to labor purposes, Mexicans were used during strikes and as soon as things improved they were fired and displaced.

Besides economic and labor exploitation, as forms of racialization, Chicago Mexicans were also criminalized. One form of criminalization included deportation, by the end of the 1930’s the Mexican population in Chicago had dropped to 16,000 due to thousands of deportations (De Genova, 2005). With the creation of the Bracero Program, the population rose again with an estimated 15,000 returning or ‘migrating’ Mexicans. Then from 1960 to 1990 the Chicana/o population grew from 55,600 to 352,560, and by 2000, the Census demonstrated 1.1
million Mexicans in the metro area with 625,000 in the city (De Genova, 2005). It is important to note that over half of the Chicana/o population in Chicago is foreign-born.

Rosales (1999) points out that the criminalization of Mexicans, resulted in the creation of advocacy and civil rights groups (De Genova, 2005). Different than groups in the South, groups in Chicago encouraged an anti-assimilationist agenda, which was influential in the creation of numerous associations. In spite of the regional variances in origin, Chicago Chicana/os have been “incorporated into a racial order, where they are ‘re-racialized’ as ‘Mexicans’” (De Genova, 2005, p. 4). In being identified as Mexicans, they are directly and indirectly ‘re-racialized’ as non-American and non-assimilable (Arredondo, 2008), within the Black/White paradigm. Through this non-American propaganda framing of Chicana/os, issues of illegality, immigration, economic turmoil, unemployment, crime, among others, have been strategically associated with the presence of ‘Mexicans.’

Beyond geographic boundaries that have allowed political institutions to determine the ‘legality’ of individuals and their classification as immigrants, natives, and aliens, Chicana/os in Chicago experienced other forms of racialization. Tied to issues of citizenship, criminalization, and legality, the killings and arrests of Chicana/os were disproportionately larger in relation to other populations (De Genova, 2005). Mexican descendants in the South were able to reclaim their identity and culture through the creation of the Chicana/o term, consciousness, and movement. However, due to Chicago’s location, Mexican descendants living in the area were not as associated with the Chicana/o identity. Nonetheless, De Genova concludes that there are three ways in which Mexicans become Chicana/o which include: ‘crossing’ the border, being a child of Mexicans raised in the U.S., or political identification.
On the other hand, scholars (Arredondo, 2008) have argued that Mexicans were racialized as a result of the tensions between Americanization and *Mexicanidad*. During the early 20th century, Mexicans making sense of their experiences and identity were confronted with contradictory messages encouraging assimilation and the “melting pot” notion, alongside segregationist attitudes and practices, which nonetheless, were strongly rooted in color-blind ideologies. As a result, Arredondo argues that Mexicans linked “whiteness” with belonging and thus, struggled amongst other ethnic groups in Chicago to claim their space and identity in a racial hierarchy.

From 1916-1939, as Mexicans arrived in Chicago, they settled in Near West Side, Packingtown/Back-of-the-Yards, and South Chicago. According to the literature documenting Mexican settlement patterns in Chicago, Mexicans co-existed and interacted with and alongside other ethnic groups and were not strictly isolated to ethnic enclaves. They specifically drew strong ties with Italians, as they shared common barriers, experiences, and migratory patterns, and even accepted them as part of their ‘community’. In spite of ethnic coalitions, European immigrants moved up the established ethnic-racial order and assimilated, while Mexicans were racialized by Chicago’s infrastructure. The Chicago neighborhood and community layout systematically segregated groups along class and ethno-racial lines. Commonly known as the *Chicago Grid System*, a group of architects and business leaders, the *Chicago 21*, strategically designated communal areas for specific groups, while limiting their access to other neighborhoods (Patillo, 2008, p. 30). Nonetheless, Mexicans responded to segregation as a venue to challenge *de-Mexicanization* (Arredondo, 2008) and promote their culture, experiences, and history to new generations of Mexicans.
Despite the variances in economic exploitation, criminalization, citizenship, and location, dynamics in Chicago are produced and reproduced by its connection to Mexico. Based on this system of classification, rooted in xenophobic and racist ideology and propelled through structural power and class privilege, Chicago Chicana/os have experienced differential treatment, discrimination, and racialization. The macro-level racializing policies and practices have had drastic, enduring, and diverse impacts on the micro-level for Chicana/os, regardless of the geographic, political, social or spatial boundaries.

**Land and Property Rights**

As scholars point out (Squires et al, 1989), racial inequalities are exacerbated due to the class formation, regeneration, and preservation. Chicago, often described as the most segregated city in the U.S., is composed of seventy-seven community areas and over 100 neighborhoods (Squires et al., 1987). Most importantly, the city remains segregated beyond ethno-racial lines, hosting a contradiction of wealth and poverty (Wyly & Hammel, 2000). These socio-political boundaries were established in the early 20th century, in response to industrialization and migration from the South (Patillo, 2008). Although over time, neighborhood spaces have changed and shifted, nonetheless there have been policies and practices enacted to restrict access to and ‘removal’ from certain neighborhoods. The Federal Housing Administration (FHA) and the Federal Home Loan Bank Board (FHLBB), for instance, played an important role in the systematic control of housing, mortgages, financing, and loans. With the purpose of fueling the economy and increasing home ownership, the federal government offered to underwrite mortgages. The FHA selectively restricted investments and loans towards certain neighborhoods and groups of people based on demographic compositions of the area, as well as racial background of the applicant.
The FHA, FHLBB, along with another committee, were responsible for developing a map of U.S. cities, including Chicago, designating areas by color in order to demonstrate the level of investment. Areas with a high concentration of minorities were coded and outlined in red, meaning a high-risk investment. Banks and real-estate companies referred to these maps not only for lending practices, but also to establish property value. Thus, this practice of redlining became a sanctioned method of limiting investment into certain neighborhoods, as well as excluding non-Whites from gaining economic capital.

Besides redlining, ‘urban renewal’ constitutes another process of racialization that has impacted housing access and patterns. Commonly known as white flight, estimates show that from 1940-1960, 401,000 whites as well as industries moved from the city to the suburbs. As a result, the Chicago Land Commission was founded in 1947 with the purpose to “supervise slum clearance and urban ‘removal,’” (Acuña, 2004, p. 297). By the 1960’s over 800 houses and 200 business were torn down to make room for the University of Illinois at Chicago, thus causing “disruption to the dominant social order” as the area was transformed “contributing greatly to the centralization of commercial and political power” (p. 297). Meanwhile, poverty, unemployment, congestion, and gang activity rose as a result of displacing Mexicans\textsuperscript{10}, Italians, African-Americans, and Greeks due to the failure to rebuild affordable housing.

In a critical analysis of ‘reinvestment’ rhetoric and its practices, the process of gentrification becomes a structural, cultural, and communal threat. Valle and Torres (2000), argue spatial fragmentation, the process of shifting to cheaper labor and materials, as well as the increase and accessibility to international markets in Los Angeles has produced a surplus of labor. Moreover, they urge that given the dependency on Latino workers, there are sites of

\begin{footnote}
\textsuperscript{10} As a result, Chicana/os moved westward to the areas of Pilsen and La Villita; within 1960 to 1980, Chicana/os population in this area increased from 7,000 to 83,000 and by 2000 the population reached 105, 000 (De Genova, 2005).
\end{footnote}
resistance and opportunities to strategize economically and politically. Patillo (2008), for example, demonstrates the effects and benefits of gentrification as middle-and-upper class individuals are recruited back into the community. Patillo presents gentrification as a form of community investment, which restructures community membership and essentially economic composition; in this process community is created and ‘improved’ due to the increase in social, cultural, and economic capital—and all as a result of gentrification. On the other hand, gentrification creates a struggle within the community as the ‘black bourgeoisie’ attempt to change the behavior, ideologies, and activities of the ‘truly disadvantaged,’ as the older residents, often from low-income, resist and challenge their impositions. Moreover, this process of gentrification has an impact on the community cohesion; as resources are redistributed and depopulation takes place, a segmented labor market is created, and essentially ‘divides’ identities, which prevents the formation of a cohesive, safe, and trusting community. Although community investment takes place, there are specific groups that are affected and one is able to see the results of capitalism, institutionalized racism and globalization.

In the process of gentrification policies and practices are altered continuously to further constrict and limit access to resources and housing opportunities. Wilson (2008) describes the urban renewal program as an initiative under the Federal Housing Act of 1949, directed to “eradicate slums, and therefore was seemingly unracial,” but neither was it intended to compensate for the displacement of previous public housing residents. The Act established a lower income range, thus increasing the number of ineligible residents. As a result, families were evicted and public housing was restricted for a limited segment of the economically disadvantaged.
Similarly, Klinenberg (2002) demonstrates how capitalism, community decline, and ghettoization intersect as a result of institutionalized racism, deindustrialization and globalization. Under the framework of ghettoization, another form of racialization, it implies that there are areas with high concentrations of ethnic or low-class enclaves which are typically perceived as dangerous, crime-ridden neighborhoods with culturally deficit community members. Rooted in the work of Durkheim and Mauss, Klineberg argues that in certain neighborhoods, social dynamics such as poverty, crime, isolation, and de-investment are functions of structural impositions organized into the system. This means that certain events and catastrophes can be conditioned to reach an extreme level due to the “socially engineered inequalities and differences” (Klineberg, 2000, p. 22).

Maps and policies of the city of Chicago document how the infrastructural landscape has intentionally segregated communities in terms of race and class. As a result, low-income areas and/or racialized enclaves are often overlooked by political reform and social programs. Meanwhile, Chicago leaders seek to have a globalized city, while deindustrialization of racialized neighborhoods takes places, which generates depopulation, middle-class flight, and unemployment. As a result, abandoned spaces and people must seek alternative methods of surviving, thus as a matter of functionalism, crime and drugs become prevalent. In this manner the community is shaped by these structural impositions and its members lose not only resources and opportunities, but a sense of community is also lost as trust and safety are threatened.

Sampson (1999) demonstrates that there are factors which can result in the ‘transformation’ of communities. He argues that neighborhoods and communities have historically and systematically transformed as a result of “race-linked economic inequality” (Sampson, 1999, p. 252). Consequently, increasing the existence of “crime, social disorder,
public incivilities, and poor child health” (p. 252). Similarly, scholars (Danziger and Weinberg, 1986; Harvey 1989; Jencks and Peterson, 1991, Katz, 1989, Massey and Denton, 1993; Maxwell, 1988, Wilson, 1987) have argued that the community is collective and familiar, extending that the social position of community members is a bi-product of the structural impositions of economy and politics (Stoutland, 1997). Sampson (1999) points out that it is not that racialized groups do not have the desire to progress, but rather that “distribution of resources and power,” in some cases lack of, is the central problem (p. 254). Nonetheless Stoutland (1997) explains that there are also scholars (Gilder, 1981; Mead, 1986; Murray, 1986) who believe that communities are crime-ridden due to the lethargic characteristics of its members.

With the scarcity of resources and opportunities community members can be conditioned to respond in competitive and individualistic manners. Brodsky (1996) defines psychological sense of community (PSOC) drawing on the work of McMillan & Chavis (1986) through the presence of four factors. First factor is membership, which translates to personal investment, belonging, or support. The second factor is influence, meaning the mutual interaction by which an individual influences the community and is also influenced by the community. Relatively similar to the second factor, yet more difficult to see represented in certain communities is the third factor of integration and fulfillment of mutual needs, in which shared values are met. The fourth factor is shared emotional connection, which translates to a common history, experiences, and/or bond. Overall, the PSOC of a community varies depending on crime and violence, lack of privacy, trash, ecology and lack of social order, among other factors.

Chicago, a global city, characterized by an imbalanced economy in which there is a concentration of power and wealth, results in co-existing contradictions of wealth and poverty. One of the embodiments of globalization results in gentrification, as the poor are exploited and
marginalized through exclusionary practices vis-à-vis race, ethnicity, gender, and class. This act of cultural racism, because it attacks particular groups, is justified within and outside of the community by claiming that investment in the community will increase taxes, investment, and resources that will regenerate the economy in the community. Scarcity and affordable housing becomes the largest problem for already marginalized populations, which directly forces them to be on the constant move, thus movement becomes a “fabric of their lives” (Perez, 2004, p. 133).

**Conclusion**

Chicana/os continue to experience exclusionary practices through cultural, economic, labor, and territorial conquest and exploitation (Tenorio, Menchaca, & Montejano, 1999; Suarez-Orozco & Paéz, 2002). Currently, one of the modern forms of territorial racialization takes place through housing and property provisions and limitations. Scholars (Fine, 1991; Massey & Denon, 1993) have argued that there is a systematic cycle of poverty which takes place as Chicanos have been positioned into low-income wages, which then determines the location and type of housing they are able to acquire (Velez & Saenz, 2001). As a result, this determines the resources and opportunities available to them; specifically, quality of schools and schooling. Furthermore, Critical Race theorists and legal scholars (Ladson-Billings & Tate IV, 1995) have demonstrated that racism is a determinant factor for inequality and that property determines social position. Thus, schooling experiences and opportunities are directly tied to property, and the education students receive determines their occupational prospects.

Students’ opportunities are systematically limited as a result of housing and community factors, while educational institutions themselves re-generate differential treatment and exclusionary practices. Yet, there is limited analysis of the existing relationship between society
and schools (Aronowitz & Giroux, 1985), which are not only a condition but also a result of the oppressive and contradictory schooling processes (Darder, 1991). The long-term effects have been drastic and enduring, and new generations are still impacted and influenced by dominant ideologies alongside recurring systematically oppressive policies and practices.

This chapter has provided thorough accounts of the historical, political, economic, and cultural contexts by which a process of racialization has affected certain margins of the population. In the next chapter, focus will be placed on deconstructing academic tracking, as well as detailing its implications for students, in general and Chicana/os specifically. Being able to extend the discussion of institutional exclusion and differential treatment from citizenship and land rights, to economic and military policies, and then connecting it to the field of education allows for a complete comprehension of the full cycle and impact of racialization. Where education ought to represent a venue to challenge, counterbalance, and equalize past consequences, the reality for some cannot be left in the past, as it is reflective in our present and unfortunately, unless measures are addressed properly and urgently, also in our future.
CHAPTER 2

POLITICS OF TRACKING

I remember the day I received the phone call, notifying me that after being wait-listed for months I was accepted to the high school of my dreams. Completely overfilled with joy, I urged my mom to take me to get my admissions packet and more information as the first day of classes was right around the corner. Taking one step at a time, I walked through the hallway making my way to the counselor’s office; once inside, she greeted me and asked for my report card and standardized test scores to arrange my schedule. Not having standardized test scores, she glimpsed over my grades and told me that although I had graduated valedictorian from my elementary school, there were no strong indicators of my performance and that I would be placed in regular classes. Neither my mom nor I realized the grave injustice that took place that day, as it does every day to countless numbers of students across the United States…being (mis)tracked in a system of standards, biases, and misconceptions. How and why?

It is imperative to explore the intent and implications academic tracking has for historically marginalized groups. Chicana/os, for example, share a history of displacement and exploitation, and educational institutions have continued to reinforce such dynamics through its policies and practices. Academic tracking, more specifically, I argue, has produced and enhanced the processes of racialization which have targeted certain ethnic groups, such as Chicana/os. Moreover, academic tracking is a process of racialization because it has generated unequal and inequitable schooling experiences and outcomes for Chicana/o students and families. In spite of
the numerous opponents of academic tracking, there are mechanisms in place which maintain and justify support for its continued use.

This document will provide a historical outline of the influences and goals which formulated academic tracking within a U.S. context. Then, a review of the academic, political, social, and cultural implications of academic tracking, as well as points of contention will be presented. Thereafter, I will delve into the conceptual frameworks which maintain academic tracking and its components, such as meritocracy, hegemony, as well as its political, economic, and legal motivations. Lastly and ultimately, the objective of this chapter is to demonstrate how the material conditions Chicana/os have been subjected to function as mechanisms supporting the racialization of students.

**Academic Tracking**

In the era of high-stakes testing and accountability, policy makers and educators alike have relied evermore on ‘scientifically-sound’ practices. One of those long-standing conventional methods of increasing the efficiency and productivity of instruction and curriculum has been academic tracking. Academic tracking refers to the process of grouping students according to their achievement and ability (Oakes, 2005; Wells & Serna, 1996), which then determines the courses, levels, curricula, and sometimes even schools (Darder, 1991) they are assigned. Overall, academic tracking is implemented by educators with the rationale of providing a structured and well-intentioned (Oakes, 2005) schooling experience; however, the multifaceted and unexpected consequences cannot be ignored.

In the late 19th century, the Committee of Ten was created by the National Education Association with the purpose to make recommendations for school curriculum and post-secondary admissions criteria. Charles Eliot, chair of the committee, was influential in
recommending non-differentiated curricula for areas of study—classical, Latin-scientific, modern languages, and English. Most notably, all areas were geared towards college preparation and were admissible for college requirements. Overall, the idea was to prepare all students for college regardless of prospects. In identifying the role of schools, there were others, such as G. Stanley Hall, who believed differentiated education was important for the best-interest of the student, as well as for the functionality of society, and such needs could be met by taking individual traits and demographics into consideration. Thus, Hall believed that not all groups were deemed fit for college and instead needed to be trained and civilized.

During the early 20th century, due to changes in the demographic landscape of the United States, educators and policy-makers implemented the tracking system as means to indoctrinate students into the ‘American’ lifestyle, value-system, beliefs, and practices (Donelan, Neal, & Jones, 1994). From civics, to employment training, and even hygiene (Ravitch, 1985), educational institutions became a tool to socialize students into their ‘positions’ (as cited in Donelan, Neal, & Jones, 1994). Schools were sought as centers for “social efficiency” (Calhoun, 1969), in which courses and curricula were aligned with social functions (Donelan, Neal, & Jones, 1994). Scholars (George, 1988) explain that in its foundation, ability grouping had the objectives to increase academic performance, teacher instruction, and students’ character (Donelan, Neal, & Jones, 1994). Loveless (1999) argues that academic tracking has been shaped by institutional, organizational, political, and technical forces. Over the years, guided by discourse on sociopolitical needs (Kulik, 1992), functionalism and globalization (Dolenan, Neal, & Jones, 1994), academic tracking developed additional support as a rational schooling practice.

Trends for academic tracking have been largely influenced by sociopolitical agendas and interests. As aforementioned, the first wave of tracking began with the objectives of
incorporating students into the U.S. social and cultural fabric. A stronger focus on economy and labor was highlighted in the *Cardinal Principles Report* (1918), which outlined the implementation of a program with practical needs geared at preparing children of immigrants for “needed work skills” and “studies with direct utility in the job market” (Donlean, Neal, & Jones, 1994, p. 380). A new wave began during WWI with the sorting of recruits according to ability, which was found to be a practice generating better learning outcomes (Donlean, Neal, & Jones, 1994). With the Sputnik Program in the 1940’s, another wave was introduced regarding the global competitiveness of the U.S.; debates grew about the usefulness and access of particular curriculum.

Meanwhile, drawing on the philosophy of Dewey, educators warned about the impact of ability grouping on classroom environment, as well as student self-concept, leadership, and learning outcomes. However, during the Cold War in the 1950’s, schools were identified as central to the international advancement of the U.S., and a stronger emphasis was placed on science and academics. As a result, reports were produced indicating that students in upper-ability levels benefited greatly when placed in a rigorous and enriched curriculum. In 1954, *Brown v. Board of Education*, was instrumental in demonstrating separate and unequal schooling produced educational disadvantages, as well as emotional and psychological impact for African-Americans. More specifically, in regard to academic tracking, the case exposed the underrepresentation of African-American students in upper-ability levels.

A common theme has been productivity and economic efficiency, and academic tracking has often been shaped by the goals of utility and maximizing resources. Access to certain curricula, academic levels, pedagogy and resources are impacted by framing educational issues in terms of financial matters and limitations. To avoid ‘wasting’ time and resources on students
who needed more assistance, ability grouping provided the justification to separate and differentiate instruction. Educational institutions were viewed by many as the ends to meet the needs of the society’s industries, and in 1917, the Smith-Hughes Act was passed resulting in the creation of vocational education (Oakes, 2005). The establishment of vocational education provided schools with the flexibility to specialize in certain areas as a school schools, as well as within, thus implementing different focused tracks for specific students.

In general, high schools implement three tracks (Kubitshek & Hallinan, 1998), academic, general, and vocational. However, there may be additional designations based on the school; some may include military, discipline, special education, and bilingual education, among others. During the 1920’s there were eight standard high school tracks including “classical, arts, engineering, academic, normal, commercial, business, commercial secretarial, and general” (Wheelock, 1994, p. 6). Depending on the school, these tracks can be designated according to performance on standardized exams and/or student self-selection, as well as previous curricula (Donelan, Neal, & Jones, 1994). In addition, academic placement is also determined based on teacher and counselor recommendations (Oakes, 2005). In some schools academic placement is assigned for a student’s entire curriculum, in other instances however, a student’s curricula can reflect different levels across subjects (Oakes, 2005). Within these general tracks, further division can take place depending on additional tracking methods for levels, the size of the school, as well as the number of students and funding.

There is, however, heavy reliance on standardized tests as a guiding factor for academic placement. A study conducted by Findley and Brian (1970) exploring tracking practices across United States schools found overwhelmingly that 83% of schools districts arranged students based on IQ tests and achievement (Oakes, 2005). Kulick (1992) explains that the use of
cognitive testing, demonstrating groups learned better when provided materials according to their aptitude, was introduced during WWI during recruitment efforts (Donelan, Neal, & Jones, 1994). Oakes has continuously questioned the appropriate use of testing and scores for academic placement due to the variances and inconsistencies of content, score reliability, fairness of tests, and cultural-biases. Moreover, Persell (1977) highlights that standardized tests have “resulted in the misclassification and mislabeling of thousands of minority students with the apparent additional consequences of undereducation, lower teacher expectations, diminished self-esteem, and increased rates of drop-outs” (Persell, 1981, p. 20).

Besides standardized test scores, other factors used to determine academic placement also include teacher and counselor recommendations. A study conducted in 1963 (Cicourel & Kitsuse) found that non-academic traits are also incorporated in teacher and counselor recommendation practices; such factors included student appearance, language, behavior, dress, and potential (Oakes, 2005). On one hand, teachers have the direct power to determine curriculum and/or placement without student consultation, however, there are other instances in which student and/or parents are influenced per teacher and counselor guidance. Although students often times have the choice to self-select, it is imperative to clarify that these decisions are in part made with the aid of a teacher and/or counselor. Thus this brings into question the issues of subjectivity, reliability, accuracy, validity and fairness, especially since minimal is known about encompassed factors within recommendations (Oakes, 2005).

Tracking is rooted in the philosophy that if students are surrounded by peers with similar academic proficiencies and capacities, they learn better. Given its long-standing history, it has become an institutionalized tradition with minimal criticism (Oakes, 2005). A report conducted by the National Association of Secondary School Principals found that 82% of schools
implement ability grouping while 72% of administrators support its use (Wheelock, 2004). There are several reasons that educators and policy makers continue to support academic tracking as an appropriate method of placement and instruction. According to Oakes (2005), it is believed that ability grouping allows for students with similar academic profiles to learn better. For instance, it places better conditions for high-performing students, because they are continuously and rigorously challenged without interruption. Additionally, high-performing students are less likely to become bored or held back. Likewise, it is argued that low-performing students develop a healthier sense of self by not being in academically competitive settings. Moreover, it is believed that it is a more efficient and convenient method of teaching which allows teachers to “accommodate individual differences in homogenous groups” (Oakes, 2005, p. 7). Furthermore, it is believed that the tracking process is genuinely reflective of students’ merits.

Skeptics of tracking, such as Wells and Serna (1996), argue that students can be misplaced into groups, thus resulting in an impact on student behavior, motivation, and achievement (Ballantine, 2001). As Oakes (2005) points out, it is not just simply the immediate or short-term problems of grouping and misplacement, but rather, and most importantly, the long-term and life impacting-effects that are the most alarming. Other critics of academic tracking have questioned its constitutionality, some even arguing tracking to be a modern form of segregation (Oakes, 2005). Over the last decades there have been numerous opponents to the re-segregationist policy of academic tracking, but there has been limited support from policy makers, educators, and researchers in order to compel an intensive re-evaluation, let alone reform of the academic tracking process.
Implications

Social and Cultural

There is evidence demonstrating that in spite of the acclaimed benefits of academic tracking, the process of separating students into ability groups has an impact on interpersonal relationships, student and teacher interactions, as well as self-consciousness. Research (Kubitshek & Hallinan, 1998) demonstrates that students’ preference of friends is shaped by the markers of status and ‘hierarchy’ indicated by academic tracks. Those labeled as ‘brighter’ develop “inflated self-concepts” due to their academic placement, while students and teachers stigmatize and predispose students in average and low-tracks (Oakes, 2005).

Research (Clark, 1965; Rosenthal & Jacobson, 1968; Rist, 1977; Glasgow, 1980) indicates teachers’ expectations play an important role in classroom culture (Darder, 1991). More specifically, research demonstrates that students who were perceived positively as being “bright, motivated, and articulate children fulfill the prophecy of success” (Darder, 1991, p. 17). On the other hand, students who were perceived as “slow, dull, and unmotivated...reproduce the behavior and attitudes that support negative student teacher expectations” (Darder, 1991, p. 17). For bicultural students these dynamics become more prevalent due to “the genesis of teacher expectations,” (Persell, 1977) which are influenced by preconceived notions and constructions (Darder, 1991, p. 17). Teacher expectations are formulated along several dimensions; first by their understandings of sociopolitical, racial, economic, and class structures, then by pedagogical frameworks, followed by their own experiences coupled with student expectations (Darder, 1991). Fundamentally, bicultural students are continuously disadvantaged as teachers and the methods of academic placement, evaluation, and instruction tend to be biased against them. For example, Rosenbaum (1976) explains that teacher bias is clearly demonstrated through the
amount of attention and preparation that goes into lesson planning (cited in Darder, 1991).

Moreover, teachers provide a sustained interaction and encouraging environment for students in the high-tracks (Ryan, 1981), while displaying less attention towards students in the low tracks (Ryan, 1976) and focusing on issues of class organization and discipline (cited in Darder, 1991).

The process of making friends or the kinds of students one decides to surround themselves with are a subconscious reflection of their own identity; in selecting the ‘group’ of friends they are also recognizing their ‘position’ in society (Ballantine, 2001). Moreover, these “programs and policies that discipline, regulate and control also teach students their ‘place’ in a race and class hierarchy” (Bartlett & Lutz, 1998; as cited in Lipman, 2003 p. 65). Furthermore, the ethical values being instilled through education tracks, military programs, ‘career exploration’ programs, are that of personal responsibility, individualism, hard work, regulation, assessment, system of rewards, and control (Lipman, 2003). Consequently, tracking becomes a form of “class reproduction” (Carsaro, 1994) and the dynamics have the potential of diminishing students’ aspirations and motivations (Ballantine, 2001; Oakes, 2005).

Institutionalized criterion established through academic tracking not only influences decision-makers’ methodological approach towards curriculum, instruction, and assessment, but also places enduring impositions for student success. Kerchkoff’s (1976) allocation model suggests that ‘structural limitations and selection criteria’ are most influential in the attainment process. Although not rejecting the socializing agents, greater focus is placed on “societal forces which identify, select, process, classify, and assign individuals based on externally imposed criteria” (Kerchkoff, 1976, p. 369). Kerchkoff points out that it is important to examine the role and influences decision-makers have in constructing students’ “aspirations, performances, and attainments”—that attainment cannot be fully measured individually or interpersonally (as done
through socialization), but by incorporating the structural dynamics and limitations. For example, teachers have developed certain expectations of students based on their track and background (race, class, etc.), influencing treatment towards students, as well as the information and guidance provided, thus ultimately affecting student performance and opportunities (p. 374). Findings (Wilbur & Brookover, 1996) suggest that raising standards and setting high expectations does not necessarily motivate students to perform better, rather the schools’ achievement level is directly influenced by student expectations (Ballatine, 2001). If students have low expectations for themselves due to internalized esteem issues or experience external “labeling,” this has an effect on school achievement. This is particularly important when considering differential treatment and “labeling” that takes place in the school system towards students with learning disabilities or in ‘remedial’ courses, as well as English as a Second Language (ESL), and other linguistic, cognitive or behavioral accommodations. Moreover, while pressuring students to meet standards, alongside the biased policies and practices, there is additional psychological distress placed on students.

By claiming that tracking levels are representative of students’ achievements and abilities (Oakes, 2005; Wells & Serna, 1996) it oversimplifies the structural and personal bias that exists throughout the process. Scholars (Alwin and Otto, 1977; Cicourel & Kitsuse, 1963) argue that students in the same track have similar aspirations and achievements while other academics (Garmoran & Mare, 1989) posit that “placement also is typically related to socioeconomic status and various other background characteristics,” as well as, being indicators of a “broader range of shared norms and values” (as cited in Kubitshek & Hallinan, 1998, p. 6). Moreover, scholars (Wilbur & Brookover, 1996) have been able to draw connections between student “self-concept
of academic ability” and “academic performance,” suggesting that schools’ achievement level is
directly influenced by student internalized expectations (Ballentine, 2001, p. 205).

**Academic**

Discourse and rhetoric surrounding the rationale behind tracking places a strong
emphasis on academic benefits, in addition to its commitment towards student success,
regardless of track level. Oakes (2005) argues that there is substantial evidence demonstrating
that there is no direct correlation or relationship between ability grouping and better learning,
regardless of the group. To the contrary, studies have shown that few high-performing students
learn better when in homogenous ability groups (Oakes, 2005). Wells (1996) cautions that if
wrongly tracked, students have the likelihood to fall further behind or become bored (Ballantine,
2001). Although there are some studies demonstrating that brighter students learn better in
homogenous groups, nonetheless the majority of research concludes “no group of students has
been found to benefit consistently from being in a homogenous group” (Oakes, 2005, p. 7).
Moreover, there are numerous studies over the last sixty years, signaling that tracking has greater
academic disadvantages than benefits. The National Educational Longitudinal Study (Bradock &
Slavin, 1988) followed two groups of students from 8th to 10th grade, and end result indicated
that students in heterogeneous groups not only performed better than students in homogeneous
groups, but were also more likely to be in college preparatory classes (Wheelock, 1994).
Furthermore, contrary to the assumption that academic tracking prevents unconstructive
behavior, studies also demonstrate academic tracking dynamics contribute to behavioral issues
and academic consequences.
Within the classroom, track levels determine the access to and kind of information and knowledge students are exposed to. For example, Kubitshek and Hallinan (1996) argue that students are “exposed to a somewhat different set of materials, concepts, and expectations,” which further distinguish students amongst tracks (p. 3). Additionally, in average and low-tracks, students’ opportunities to “engage in stimulating learning activities,” as well as in interpersonal relationships with teachers and peers are lower in relation to students in high-tracks with access to “higher-status knowledge” (Oakes, 2005, p. xi). Kibitishek and Hallinan (1996) advise about the formal and informal practices that are at play, indicating that teachers tend to give higher grades to high-track students, while high-track classes provide extra credits towards grade point averages.

Outside of the classroom, it has been found that students in lower-tracks are less likely to be involved in extra-curricular activities (Oakes, 2005; Schaefer et al., 1972) and more likely to engage in vandalism (Tygart, 1988) and misconduct. As students are grouped according to status, there is a general set of norms established within the placement level; this structure increases the interaction “among youth without prosocial attitudes” (Tygart, 1998, p. 109). Overall, Schaefer (1972) argues, tracking is directly related to levels of heightened delinquency due to socializing agents, and according to Tygert (1998), it is the highest predictor of vandalism as tracking provides the conditions for vandalism to take place.

Scholars (Oakes, 2005, Wheelock 1993) challenge the notion that students benefit from ability-grouping, arguing that tracking is guided by “preconceptions based on race and social class and providing them with different and unequal access” (Oakes, 2005, p. xi). Research findings demonstrate that there is an overrepresentation of racialized students in low-track classes within schools and throughout specific geographic areas. A study conducted by Crosby
and Owen (1993) demonstrates that students in the top socioeconomic status quartile have a 53% probability of being in top academic track, while for those at the bottom socioeconomic status quartile the probability drops to 19% (Donelan, Neal, & Jones, 1994). Similarly, students in the top socioeconomic status quartile have a 10% chance of being designated to vocational curriculum while students in the bottom quartile have 30% probability.

Oakes (2005) explains that since students of color are “more likely to attend racially segregated schools where lower-level classes predominate,” they are disproportionately tracked (p. xi). Research demonstrates that schools with over half Latino or African-American students have 12% math and science courses, while schools with over half White students have 34% math and science courses (Wheelock, 1994). Even in schools with similar demographic compositions of White, Latino and Asian students, Oakes (1993) found that “White students were 70% more likely than Latinos, and Asians twice as much more likely as Latinos, to be placed in accelerated courses” (cited in Wheelock, 1994, p. 9). Thus, these dynamics create gaps in achievement, graduation rates, and continuing on to higher-learning institutions (Oakes, 2005), generating severe social, cultural, and political consequences for students, communities, as well as society.

**Political**

Besides the social, cultural, and academic repercussions of tracking, it is an exclusionary practice that continues to regenerate and restructure already existing racial and class inequalities. Trends demonstrate specific regions and students are more vulnerable to the damages of tracking, thus, replicating the existing racial and class inequalities and further contributing to a cyclical mechanism which maintains and stimulates power, privilege, and poverty (Oakes, 2005). It is imperative and urgent to explore the political dynamics, influences, and the effects tracking has on students, communities, and society.
Wilson (1991) stresses that areas of high poverty or “ghettos,” typically populated by minorities, are reproductions of social class, power, and privilege which generate the disproportionate distribution of resources and capital. Patterns of behavior that ‘violate’ societal norms (Gans, 1990) are immediately attributed to the “area residents” instead of exploring the conditions that have influenced certain behavior or choices (Wilson, 1991, p. 753). Consequently, educators, policy reformers, community members and other students are quick to assume or argue that students not meeting standards or ‘proficient’ levels do not have the cognitive ability to do so as a result of a culturally intrinsic ‘malfunction’ or deficiency. On the contrary, schools located in areas characterized by high-poverty rates have limited educational resources, positive role models, higher crime rates and unemployment levels which have direct effects on students’ education and life chances (Wilson, 1991).

Students in these areas of high-poverty rates often struggle attempting to find the balance and purpose of schooling, responsibilities, and life. Scholars (Carter & Segura, 1979; Ogbu & Matute-Bianchi, 1986) suggest that students drop out because of, “economic, social, and educational barriers instituted and perpetuated by the dominant group in society in an attempt to maintain the status quo” (as cited in Losey, 1995, p. 283). Giroux (1983) argues that students react to the dominant structure by removing themselves from it, which results in the initial intention of the dominant. Although it is important to consider individual-level factors and experiences, nonetheless, liberal discourse can ‘distract’ from the principal causes of inequity (Rypan, 1976), thus “[absolving] schools from responsibility” (Darder, 1991, p. 10).
Systematic Legitimation

Law

Even though Brown v. Board of Ed was the landmark case to eliminate the policies and practices of deliberately separating students according to race, similar manifestations have been revived through educational policies. The court ruling declared “separate but equal” unconstitutional, claiming that even if facilities were equal the educational opportunities were not indeed the same (Donelan, Neal, & Jones, 1994). Using this foundational verdict, a similar argument can be formulated to challenge the constitutionality of academic tracking. Rather than promoting student success, tracking is a systematic “barrier to academic advancement” which is rooted in misconstrued notions of equality and equity (p. 376). Critics of tracking (Braddock & Slavin, 1993; Cohen, 1993; Conforti, 1992; Gamoran, 1992a, 1992b; George, 1993; Oakes, 1985; Slavin & Braddock, 1993; Wheelock, 1993; Wheelock & Hawley, 1993) recognize the severe immediate and long-term effects of separating students based on standardized tests and biased preconceptions (Donela, Neal, & Jones, 1994).

Oakes (1985) adamantly cautions, de-tracking is not simply combining groups of students, but most importantly consists of “[increasing] the quality of education for all students” (as cited in Donelan, Neal, & Jones, 1994, p. 378). Scholars (Braddock & Dawkins, 1993; Richardson & Evans, 1992; Wheelock, 1992) insist focus must be placed on issues of “inequitable human and financial resources, inferior facilities and materials, and an overemphasis on discipline and punishment” (Donelan, Neal, & Jones, 1994, p. 382). “The sorting of students into groups of “haves” and “have-nots” contradicts the American educational credo that schools are democratic communities of learners whose purpose is to offer equal educational opportunities for all (Wheelock, 1993). In spite of the research demonstrating the
effects of academic tracking, legal courts have rationalized the use of methodological measures to separate students for instruction purposes.

In the discussion of law, it is pertinent to understand the impact of color-blind ideology, as well as white privilege. Color-blind law supports the beliefs that through responsibility and merit people should be able to succeed and overcome past injustices; while discounting a history of social, political, and economic oppression and conditioning, and also promoting ‘remedies’ that disregard race, racism, and racialization, because it is convenient, less complicated, and equal under law. Tenants of color-blind constitutionalism are intent, symmetry, and accountability (Bell, 2000). In seeking equal protection, one must prove that there is group-based, intentional discrimination in process. However, within that framework of color-blind constitutionalism, “race-based classifications [are] reviewed under the same symmetrical standard of strict judicial scrutiny, regardless of whether the classification proceeds from a pernicious or a benign government motivation” (Bell, p. 137). Additionally, only those that engaged in the process of discrimination should be held accountable. Moreover, under this paradigm remedies and/or solutions should not inconvenience or interrupt the lives and practices of innocent people. Despite that “the economic benefits and social statuses enjoyed by those innocent whites are the product of a social system built on a racial subordination” (Bell, p. 150).

Bell directs us to Powell’s (1997) argument on color-blindness, where a modern rhetoric with “conventional understandings of race emerges to maintain the status quo” (Bell, p. 12). In addition, Lawrence (1995) explains that overt forms of discrimination are replaced with subtle manifestations motivated through white privilege. Essentially in requiring evidence of purposeful intent to discriminate “antidiscrimination law renders the multitude of manifestations of unconscious racism beyond legal redress” (Bell, p. 139). As a result, disparate impact claims are
difficult to prove and more importantly racializing processes and effects are permitted to continue. Bell admonitions, “By prohibiting the intentional consideration of race, color-blind constitutionalism achieves its goal of excavating from governmental decision making a root cause of racial inequality” (p. 138). Moreover, efforts to link discriminatory actions with effects are often refuted and dismissed on the grounds of mere correlation and not clear causation. Thus, neutralizing the discussion of race justifies the existence of a color-blind society and ultimately functions to inexplicitly perpetuate white privilege.

Whiteness has been another concept that refers to a system that guarantees and protects certain benefit and privileges afforded based on ascribed values and features. Access to this system of customs is exclusive, and essentially in “becoming white” one has greater control, power, and rights. As Harris (1993) points out, although not always explicit or consistent, the American law system applies white privilege to legal arguments, frameworks, and judgments. The act of expecting privileged treatment and thus receiving it, protected by law, transforms whiteness to a property right. According the Jeremy Bentham (1978), this property right entitles its beneficiaries to advantages, and when operating under a legal system, the expectation of rights becomes “actual legal property” (Harris, 1993, p. 84). However, depending on groups involved, property is a construct which can be redefined and selectively applied. Those not deemed “white” are excluded from access to and benefits from such rights. Thus, economic conditions can be determined by property rights and the advantages that result from that possession; when treating certain groups as objects and property, in essence they are dominated, subordinated, and racialized. Overall, it is specifically the application of whiteness under law that provides insights to differential treatment and interpretation of rights for particular groups.
Nonetheless, it is important to keep in mind Bell’s argument that due to interest-convergence, particular rulings, laws, and outcomes may be decided based on self-interest.

**Meritocracy**

Unequal conditions and opportunities are often ignored due to dominant ideologies, which justify dichotomies and mask privilege. In *Culture and Power in the Classroom*, Darder (1991) discusses meritocracy as a widely-accepted practice rooted in an ideology which contends that the combination of an individual’s talents and effort should result in rewards or advancement. In educational settings, merit is measured in terms of performance, grades, and intelligence. Students, parents, and educators are socialized to believe that success depends on individual achievement and effort, and that external factors have no role. Additionally, to compensate for student merit, a system of rewards is also institutionalized through grades, tracks, rankings, and other ‘positions’. In essence, meritocracy and the process of rewarding those who deserve it because they have ‘emulated’ instilled values, establishes and reinforces a hierarchal structure (Bowles & Gintes, 1976) while normalizing privilege and oppression (Darder, 1991).

Meritocracy does not only legitimize unequal conditions and opportunities, but also cultivates an ambiance of entitlement. As McLaren (1998) argued, schools are not meritocratic institutions because students are disproportionately rewarded, and White students are privileged due to economic and social status advantage (Darder, 1991). Moreover, meritocracy serves as a mechanism to preserve access to resources and entitlement while also justifying and legitimizing the position of the ruling class in the process of replenishing and preserving economic dominance. Hence, Darder argues that meritocracy privileges and rewards individuals for their
‘achieved-status’ while blaming ‘underachieving’ students for their lack of performance, effort, and motivation.

**De-Tracking.** The ideology of meritocracy has been legitimized through strategic justification and rationale that obscures exclusionary practices and policies. Meritocracy is ‘socially constructed’ and justified through the education system vis-à-vis socialization (Goldthorpe, 1996). Students, educators, and policy-makers are indoctrinated to believe that with the combination of individual “intelligence and effort” results in upward mobility and/or a form of reward. Given this belief, the middle-class has excluded the working-class from access and opportunity towards education and upward mobility. For example, privatization of education, as tracking, is a systematic method of limiting educational access for racialized students while conserving the resources for the ‘affluent’ (Halsey et al, 1997).

This affinity to preserve and limit resources has been documented in studies exploring the challenges of de-tracking. Wells & Serna (1996) found that elite, middle-class parents oppose de-tracking because they perceive it can lead to a loss of class and cultural capital. They justified their children’s achievement and demand a ‘deserving’ education, one which they argue they are entitled to, primarily due to tax-based school funding. Elite parents argue that if their children are detracked, courses will underserve them and schools will no longer be selective, if all students are allowed access to competitive courses. Consequently, elite parents demanding a ‘deserving’ education resist changing the structure of the tracking system in order to protect, maintain, and regenerate their status. Furthermore, Lareau (1987) concluded that parents maintain control of the school through regular involvement and as a consequence place pressure on school by ‘threatening’ to remove their own children from school if de-tracking takes place. Schools
comply to avoid losing students, changing school culture, and damaging its ‘reputation’ and its academic achievement.

In attempting to understand how elites justify, understand, and practice their entitlement, it is important to profoundly explore and analyze ‘institutional mechanisms’ utilized in order to protect and maintain the status quo. Research (Wells & Serna, 1996) demonstrates that elite parents employ four mechanisms to place pressure on schools and the community in order to resist detracking. First, elite parents threaten to leave the school, thus changing the cultural and economic capital of the school. Second, coercing ‘institutional elites’ to oppose detracking by framing it in terms of professional ‘success and security.’ In turn, ‘institutional elites’ support the dominant ideology due to a sense of responsibility to serve the elite group. Third, “buy-in of the non-quite elite,” which maintains the non-quite elite group active and subjugated while they support tracking even if it affects their own children. The last mechanism is ‘detracking bribes,’ a negotiating process in which schools offer quality teachers and programs to appeal and recruit ‘elite’ families and students to detracked schools.

Overall, researchers demonstrate four major findings. First, elite parents are more concerned with status or ‘labels’ than the content of the classes. Second, when educators ‘discovered’ subjectivity and inequality of the track structure (disproving merit) parents “felt privilege was threatened” (p. 728). Third, students are tracked according to parents’ privilege rather than ability. Lastly, several administrators who supported detracking efforts have lost their positions. The combination of cultural, economic, and symbolic capital allowed elite parents to have influence and power to resist detracking.
Political Economy

Closely aligned with meritocracy, academic tracking finds many supporters in affluent business leaders because it serves as mechanism to fulfill the profit-seeking interest of corporations. These motivations sometimes masked and at other times quite blatant push for a solution to a depleting economy vis-à-vis educational institutions. With that, a doctrine for standards, performance, and productivity is encouraged for schooling practices and policies. “Business leaders clamor for free-market solutions to educational problems, alleging that these solutions can improve education at no additional cost” (Darder and Torres, 2004, p. 79). Besides instilling capitalistic values, business leaders have fervently promoted the takeover of education by private corporations.

With the influence of a capitalistic system of standards, schools are responsible for demonstrating success through tangible markers of accountability. Standardized test scores, for instance, are often used for school funding, promotion of students, administrator and teacher pay and bonuses (McNeil, 2000), as well as admission into programs, classes, and schools (Darder and Torres, 2004). In After Race: Racism After Multiculturalism, Darder and Torres (2004) argue that,

The exceedingly prescriptive nature of these practices leaves little doubt that state testing and test-driven curriculum are directly or indirectly linked to an academically limiting and subordination system of social control—one that successfully sustains the reproduction of class formation in both public schools and the larger society (p.81).

The business of standardized testing generates an overwhelming amount of profit, through a Ford Foundation Report, Toch (1991), found that within a year over 130,000,000 million tests were administered generating yearly expenses of $500 million dollars (Darder and Tores, 2004). Not
only are there instrumental costs to schools, but most impacting are the consequences that high-stakes test have on student outcomes.

Standardized testing is one of the most relied tools to practice the sorting of students across and within schools. A wealth of literature demonstrates the inconsistency and cultural bias of standardized tests, especially on marginalized communities. Bowles and Gintis (1976) contend:

The educational system legitimates economic inequality by providing an open, objective, and ostensibly meritocratic mechanism for assigning individuals to unequal economic positions. Through the construction of testing instruments as value-free scientific tools, considered to produce objective, measurable and quantifiable data, predefined skills and knowledge have been given priority at the expense of the cultural knowledge and experience of students from economically disenfranchised communities (p. 103; cited in Darder and Torres, p. 88)

Given the content and structure of these exams benefiting particular groups, standardized tests reinforce meritocracy, work ethic, and performance-based values, which ultimately justify the need for a differentiated academic structure.

**Hegemony**

Freire’s philosophy and practice serve as a framework to understand how hegemonic culture can permeate, inform and control educational policy and theory. In order to understand how dominant values are perpetuated systematically vis-à-vis the educational institutions, it is nonetheless imperative to track the sources and its intended purposes. There are a set of expectations, standards, and ideologies which are utilized to rationalize mechanisms perpetuating the systematic preservation and regeneration of power and privilege (Freire, 1973).

Ideology alone does not maintain a dominant structure, therefore it is essential to include Giroux’s (1981) concept of an “institutionalized hegemony,” as it goes beyond a class
reproduction argument to also incorporate “how individuals and groups in concrete relationships negotiate, resist, or accept” ideologies (p. 22). Giroux, like Freire, posits that there are imposed roles and behaviors which participants follow due to their consciousness. Although there is a hidden curriculum\(^{11}\) veiled through classroom content and selection, school organization, school relationships, and staff attitudes, nonetheless, the discourse and practices participants engage in are also influenced by their own position consciousness. By linking ideology and consciousness with force and consent, one is able to understand how hegemony, in Gramscian terms, functions to maintain a dominant and oppressive social order. Hegemony therefore is as a process in which the ruling class not only instills an ideology, but also exercises control over groups through strategic use of institutions, such as the media and schools, with the intent to “establish its view of the world as all inclusive and universal” (p. 23).

The theory and practice of capitalism is characterized by the values of competition, ‘free-market,’ efficiency, and profit. It is these values which are found as guiding principles within the dominant culture, thus, this manner of framing the world and rationalizing conditions is what constitutes the dominant hegemony. The values, attitudes, and practices of the dominant groups are what comprise the hegemonic structure, which, as Freire points out, mystifies the realities of the world and the minds of people (Freire, 1997). According to Freire (1997), one of the instruments applied by the dominant to maintain hegemonic control is to claim that conditions exist because there cannot be another way. Freire (1998) refuses to succumb to fatalism, claiming that there is a notion of inevitableness influenced and perpetuated by neoliberalism, which is rooted in an “ideology that humiliates and denies our humanity” (p. 27). As a result,

\(^{11}\) Giroux and Aronowitz describe the hidden curriculum as hidden motivations (Giroux, 1983), reflective through an “adherence to a positivist culture educational perspective, with its emphasis on consensus, social conformity, and stability that permits the perpetuation of the dominant” while privileging dominant values and bodies of knowledge (Darder, 1991, p. 20).
restricting ideas and approaches which present a threat to the hegemony can be justified by claiming it lacks logic. Moreover, “human interests are abandoned whenever they threaten the values of the market” (p. 93). In all, the dominant group has the structural, ideological, and cultural power to systematically construct, implement, rationalize, justify and maintain an oppressive hegemony rooted in capitalism and neoliberalism.

**Functions.** Aligned with the interest of the dominant, institutions are organized to function to their benefit, encoding dominant ideologies and practices. “As the dominant social class, they must preserve at all costs the social “order” in which they are dominant. They cannot permit any basic changes which would affect their control over decision-making” (Freire, 1974, p. 11). The dominant are tactful in their efforts to maintain power (Freire, 1992), ignore ethics and humanity (Freire, 1997), and miseducate. The distortion of truth through the media, for example, is one of the powerful and devastating ways in which the hegemonic structure garners strength (Freire, 1998). Accordingly, the concentration of its management limits the amount and types of information which we are exposed to, leading to a fabricated (un) reality.

Primarily, there are operating myths imposed by the oppressors which are deposited onto other oppressors and the oppressed to maintain trust and legitimacy of the system and its functions (Freire, 1973). Myths, such as, equality, meritocracy, and freedom, serve to mask the realities of class reproduction while instilling faith in the system. Through a combined set of “well-organized propaganda and slogans,” these myths are rarely questioned (Freire, 1973, p. 136). The oppressor does not challenge the validity of these myths because, not only do they impose them, but most importantly, they benefit from them. The oppressed, however, may hold different experiences; their “perception of themselves as oppressed is impaired by the submersion in the reality of oppression” (p. 30). Through this process, the oppressed internalize
not only a distorted image of reality and themselves, but are also following a “prescribed behavior” (p. 31). On the other hand, however, the oppressed, accepting the myths and ideologies of the dominant, can “become alienated ‘beings for another’ of the false ‘being for himself’…” (p. 160) and are unconsciously working for and with the hegemonic structure. These conditions and the conditioning make it difficult for the oppressed and the oppressor to break away from the system, thus remaining in fear, silence, and/or unconscious.

Drawing on Freire’s theory of cultural action, there are three main strategies that are utilized to maintain an oppressive system: manipulation, cultural invasion, and conquest. Through manipulation, oppressed are numb to surroundings, complacent, and distracted while believing that the system can favor them if they follow the inculcated values and methods of success (Freire, 1973). Likewise, cultural invasion is reflected when the invaded culture (oppressed), “[begins] to respond to the values, the standards, and the goals of the invaders,” thus “curbing their expression” due to the imposed worldview (p. 150). Through a system of rewards, partial promotion, and division, conquest serves as a mechanism to instill competition and preserve a system that favors the elite while it exploits the insecurity of the oppressed. All these strategies combined cause, perpetuate, and produce domination of the ruling class or elite.

Impact. The extent of hegemonic power domesticates, tames, dehumanizes, and overall erodes our sense of being, becoming, and transforming. Living in and with this hegemony, is a dehumanizing experience as it asks of us to shed away certain elements of our humanity. In education policy, for instance, pragmatic and neoliberals claim efforts to be in the best interest of society and individuals, however this push and focus on the practical formulates an assumption of what is valued and necessary, as well as, it consequently neglects other areas altogether (Freire, 1997). “Thus, education in the service of domination cannot cause critical and dialectic
thinking; rather it stimulates naive thinking about the world” (p. 44). Freire explains we have been trained to understand the world and ourselves in simplistic terms, without connection or profound understanding of the causes of certain conditions and practices. Freire contends that the “power of alienating domestication” is so efficiently embedded and responsible for the “bureaucratizing of the mind” (Freire, 1998, p. 111). By and large, in being encouraged to learn in practical forms and only of the practical, there is an absence, and because one is not complete, one cannot make meaning of the patterns, reasons, processes, or outcomes.

Consequently, if an individual is able to recognize different issues, those issues and relationships will be framed within the practical vindications which they have been socialized to trust. Essentially, because their understanding of issues is compartmentalized, their approach to addressing situation(s) will also be naïve and narrow-minded. “Its [hegemonic] power to obfuscate reality undeniably serves the interest of the dominant class,” thus maintaining the status quo (Freire, 2005, p. 10). As a result of hegemonic programming, deliberately and non-deliberately, the truth remains concealed, and in turn, “it makes us myopic and prevents us from seeing reality clearly” (p. 10).

Freire questions the presence of immorality in the dominant system, explaining that socio-politically and divinely-reasoned arguments of class order and destiny are used to justify the degradation of humans. In demonstrating the pervasiveness and impact of a dehumanizing hegemonic structure, Freire highlights that one of the conditions is self-blame for their oppressed situation. The system is organized in such a way that accountability is placed upon the individual while reinforcing the power of the system (Freire, 1998). In regards to ‘formal’ education, Freire notes that the teacher is a participant in the act of intervention, which involves “the reproduction of the dominant ideology and its unmasking” (p. 91). As such, he proclaims that it is important to
recognize that this hegemonic power and structure is not unconscious and ‘blindly’ acting, but that there is an intentional malice (p. 92). In essence, the organized power relations and institutions are exempted from fault as the hegemonic structure and belief system, as well as the oppressed, blames the oppressed.

We have been trained to follow and believe certain dominant ideologies, behavior, and pragmatic discourses lead to our socializing to “adapt to the facts of reality” (Freire, 1992, p. 1). Socialized by dominant ideologies that blame the individual, we at times find ourselves reluctant to recognize one’s social class, and in the act of identifying we consequently fault ourselves. This phenomenon speaks to how deep such ideology is internalized, that although we may be conscious of the socio-political causes of our conditions, we still however blame ourselves. Moreover, through this socialization, we are programmed to fall into fatalism and devoid dreaming, which strengthens the hegemonic values and practices. As a consequence of being immersed and bombarded with hegemonic values and practices, the oppressed become the oppressor; in accepting ideologies and engaging in dominant practices, they, too, can develop a sense and behavior of superiority. Ultimately, they rationalize their acquired status as a meritocratic achievement to which they can hold others accountable. In spite of the hegemonic efforts to break and control the spirit, minds, bodies, and consciousness of the oppressed and the oppressor, the essence of our humanity, however eroded and damaged, persists.

**Education.** This oppressive structure exemplifies the long-standing dynamics which have influenced educational policy and theory. From educator-student, educator-parent, school-community relationships, the scope of these forces pervades and extends beyond school and community boundaries. At the very essence of education and schools is the concept of class, which illuminates the “relations over the distribution of power and the ownership of capital”
(Giroux, 1981, p. 14). Giroux contends that in contextualizing schools, while also taking into account student and institutional agency, the class-power constructed relationships amongst school, family the workplace are exposed. However, in order to recognize how class is reproduced and (re)structured by schools, it is important to consider schools in relation to socio-economic institutions alongside their motivations.

Guided by assimilation and universality, hegemonic values are accepted and utilized to rationalize and justify policies and practices. As institutions and people are expected to function in respect to such imposed values, they are also measured by and through methods and agents that not only reflect, but also reify those values. With that being said, school content is determined by its functional value, programs and classes are developed and organized according to competition and performance, student, parents, and teachers respond according to the established relationships, and success in schools is measured in terms of productivity. Not only are the means serving a hegemonic structure, but the methods of evaluation are also functioning in accordance to those interests. The ruling class exercises control over educational policy and practices while determining how they will be managed, evaluated, by whom, and by what terms. As Aronowitz highlights, the ruling class, “appropriates servants of intellectuals and other cultural workers, who have the creativity and skills to organize and run cultural apparatuses” (Giroux, 1981, p. 24). Even in such cases where methods and processes are undeniably questionable, “the power of the dominant ideology is always domesticating, and when we are touched and deformed by it we become ambiguous and indecisive” (Freire, 2005, p. 11). Overall, the very nature and influence of capitalism is symbolized, inculcated, and manifested throughout educational theory, policy, and practice.
**Academic Tracking.** With that in mind, the discussion of academic tracking can be presented in relation to the hegemonic and capitalistic dynamics that influence it and it influences. A long-standing method in formal schooling, academic tracking, separates students according to performance and achievement; the basic groups are academic, general and vocational (Kubitshek & Hallinan, 1998; Oakes, 2005; Wells & Serna, 1996; Wheelock 1993). Giroux (1981) argues, “class-specific forms of tracking, sorting, and selection mechanisms in schools can be traced back to the political and economic structures that govern them” (p. 14). Schools then reproduce segmented experiences and opportunities through the processes of evaluating performance, designating curriculum, and determining academic tracks of students. Schools establish a hierarchy that shapes the social, political, economic, identities and relationships of participants. Nonetheless, it is important to distinguish that schools reproduce instilled values and practices, and although they are accountable, they however respond to a higher authority. In sum, interpersonal relationships within the school are influenced by school culture, school practices and policies are maintained by the state, and the state acts with an intentional interest, while justifying rationale through the imposed cultural practices and values.

There is a gap in education as students are being narrowly directed into pre-designed segments of society, it is not coincidental but intentional—it aligns with the power, attitude, and values of the hegemonic system (Freire, 1992). In the process of dividing specific sectors of the population into pre-designed positions, “the narrow training that the dominant class so eagerly offers workers, a training that merely reproduces the working class as such” is widely-accepted (p. 114). Rooted in neoliberalism and capitalism, the training and transferring of mediocre survival skills for specific populations responds to the needs, values, and interests of the market. Thus, we are asked to succumb to fatalism and accept that the order and positions of students,
schools, and communities are inevitable, merit-based, and pragmatically justified. In dividing students along performance and standards, while offering a restricted education, a greater division is built by disconnecting them from the social, cultural, political, humility and humanity.

The very forms of curriculum designation and evaluation function according to imposed standards—standardized exams, knowledge, behavior, and attitudes. As Freire (1998) points out, “the freedom that moves us, that makes us take risks, is being subjugated to a process of standardization of formulas, models against which we are evaluated” (p. 111). “Schools..operate upon view of the world, or ideology, clearly governed by an instrumentally technocratic rationality that glorifies a logic and method based on the natural sciences” (Darder and Torres, 2004, p. 91). The ruling class, here being affluent policy-makers, educators, and other stakeholders, have authority and control over what is taught, how it is instructed, whom evaluates, as well as, according to what terms and means. Through the absolutizing of ignorance (Freire, 1973), the oppressor “[develops] a deep doubt in the abilities of others and [considers] them incompetent” (p. 129). Discourse of closing the achievement gap according to imposed standards, which benefit and are aligned with privileged, alongside measuring ability according to ruling class competence, imposed values, and specialized knowledge demonstrates such dynamics.

Academic tracking has and continues to be seen as the rational way of designating curriculum and evaluating performance due to its support and assumed validity (Donelan, Neal, & Jones, 1994). The myths of equality, meritocracy, and freedom serve to present the educational system as a linear institution in which its participants are responsible for the outcomes. However, policy-makers act in response to global and corporate interests when invading, manipulating, and conquering (Freire, 1973) educational policy and practices.

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Nonetheless, as systematic oppression is masked, participants are socialized to believe in the system, its programs, designations, content, processes, messages, images, and methods of evaluation.

It is imperative that we take a closer look at how the hegemonic values and practices are perpetuating a capitalistic and dehumanizing culture within and throughout schools. As students spend most of their day at school combined with the misrepresentations of reality in the media, the impact of the dominant value system can truly represent a threat. In concert with Giroux’s argument of personal agency, the oppressed respond according to imposed myths and “prescribed behavior” (Freire, 1973), which is dependent on their perception and consciousness (Giroux, 1981), regardless of whether it is distorted. Despite of the limitations of educational institutions, we must recognize that they are reproducing class systems with individuals socialized to believe, accept and practice merited superiority, internalized oppression, unconscious participation, as well as being unethical and inhuman.

Freire (1998) points out that “If education is not the key to social transformation, neither is it simply meant to reproduce the dominant ideology” (p. 110). The institutionalization of hegemonic (Giroux, 1981) beliefs, attitudes, values, and practices distort reality and maintain control. The power relations that are being reproduced in response to standards and hierarchal constructions, based on a system of rewards and sanctions, limit our humanity, hopes, and dreams. Given the implications of institutionalized hegemony, prescribed behavior, and the socialization process, present for pre-determined communities, groups, and individuals, cultural and structural transformation is essential for collective change.
Untracking

In spite of the challenges in detracking, there are examples demonstrating the change and impact when classrooms are untracked. In Crossing the Tracks: How ‘Untracking’ Can Save Schools, Anne Wheelock (1993) highlights how greater access for all can be reached when those conditions are created through mixed-ability groupings, a change in curriculum, pedagogy, instruction, assessment, as well as the incorporation of a supportive culture. At the core of these changes, lies a shift in the paradigm of expectations and notions about particular students, groups, and education in general. Additionally, Wheelock notes that changes cannot be standardized and must be accommodated to the specific context of students and schools. Despite contextual differences, Wheelock emphasizes that it is particularly significant to recognize and focus on the following:

- Releasing intelligence rather than quantifying it
- Nurturing effort rather than defining ability
- Building strengths rather than sorting according to weaknesses
- Developing dispositions and skills necessary for lifelong learning across all areas of knowledge rather than imparting particular information in a given subject area
- Balancing concepts with meaningful content
- Building on students’ aspirations rather than circumscribing their dreams
- Recognizing students as members of a learning community rather than products of an assembly line (p. 7).

In Alternatives to Tracking and Ability Grouping Wheelock (1994) provides a set of guidelines to untracked schools. Wheelock explains that it is important to understand that all students can and should be equally exposed to a variety of content, skills, knowledge, and college preparation. In regard to instruction, it is productive to incorporate techniques and curricula for a range of learning styles. In addition, it is vital to value student persistence over ability, incorporate flexible ‘in-class groupings,’ as well as to allot extra help to students within regular class. School and class environment can be enhanced by providing a supportive and all-
inclusive academic and social climate. Lastly, in regard to evaluation processes, “assessments are multifaceted, performance-based, and criterion-referenced” (Wheelock, 1994, p. 3). Overall, Wheelock proposes conditions within schools to enhance the educational experiences and opportunities of all students.

**Impact on Chicana/os**

Scholars (Darder, 1991, 1997, 2002; Freire & Macedo, 1987; Ladson-Billings, 1994) argue that it is imperative to develop critical capacities and self-consciousness in order to empower students with the necessary conditions to not only survive their environment, but most importantly challenge and transform it. Chicana/o students are caught in a paradoxical world of standards, measurements, advancement, individualism, culture, race, gender, and class, which can generate ‘fractured’ identities and disproportionate knowledge. As one student notes, “I see Mexicanos who follow the program so they can go to college, get rich, move out of the barrio, and never return to give back to their gente (people). Is that what this is all about?” (Valenzuela, 1999, p. 257). These divided identities, experiences, and opportunities, can damage relationships and limit collective efforts. Rather than to be cognizant of their social position, and maintain a strong connection to their cultural values, expectations, and traditions, the U.S. school system, in general, subtracts not only from the individual, but fundamentally from the Chicano/a culture and potential.

Chicana/os continue to be excluded from pursuing a life of “liberty and justice”, as students are being systematically (re)directed into narrow paths, and even *pushed-out* all together. A combination of deficit thinking, alongside the embedded economic and cultural restrictions, as well as various forms of racialization, present the conditions to limit Chicana/o
students’ opportunities while tracking them into pre-determined positions. Barbara Flores (1982, 1993) demonstrates how ‘these’ children have been labeled as “mentally retarded, linguistically handicapped, culturally and linguistically deprived, and semilingual” as well as referred to with the new ‘euphemism’ of “at-risk” (Bartolomé, 2003, p. 415). Ironically, as tracking continues in schools across the United States, the greatest stakeholders have the least autonomy in their educational experiences and prospects. With growing discourse on globalization and competency alongside the narrow efforts to de-track, in addition to the limited research on the social, economic, political, cultural, and individual implications of academic tracking on Chicana/os, one is left to question: education for whom and for what purpose?

First and foremost, US government and education curriculum supports the foundational myth that ignores the history behind the Mexican experience and inception in the US. Scholars (Suarez-Orozco, 2002) challenge the ‘immigrant myth’ by presenting the ‘oldest Americans’ as those who “did not come to the United States” but rather the “United States came to them,” however minimal attention is given to this factual event (p. 4). Evidence of how history is omitted and (mis)represented is better understood by exploring educational institutions and their components. From the early education curriculum to that of higher education, there is little if any exposure to the many inhabitants of the United States, it focuses primarily on a Euro-centric curriculum. By not including Mexican history in school settings, it discounts any of their historical contributions and existence. This furthers the dominant viewpoints of history and generates insecurity of Mexican students aiming to make meaning of history and essentially, themselves.

Besides exclusion through curriculum and other educational practices, in 1973 the U.S. Commission on Civil Rights completed a report regarding differential treatment of Mexican
American students which found that teachers did not praise, encourage, or acknowledge their ideas as done with Anglo students (Losey, 1995, p. 297). In turn, “students failed to benefit from positive teacher attention in equal proportions to Anglo students” (p. 297). “The report noted that the lack of a relevant curriculum, relevant textbooks, and other materials” as well as teacher inability to incorporate the experiences of Chicano children” encouraged alienation and detachment from schools (p. 298). Chicano students in a Houston high school noted that, “there were few teachers that were genuinely concerned about where you were going from their classes, what you were going to do in the future” (Valenzuela, 1999, p. 59).

**Tracking**

Given the extensive use of standardized tests as well as teacher and counselor recommendations to identify student academic placement, alongside the impartiality of these methods, academic tracking becomes a mechanism to carry-out a process of racialization, and its effects and outcomes, which specifically damage certain populations, are perceived as ‘normal’ dynamics. Through an institutional tracking system specifically designed to control students’ possibilities and abilities, historical racialized occupations and opportunities are recreated within the educational system. Students are placed onto a certain path early on due to tracking practices, often being unable to break away from this overarching form of control over their bodies, identities, and culture. Moreover, scholars (Ozga, 2000; McNeil, 2002; Morrow & Torres, 2000) argue that through emphasis on standards and testing to meet the needs of a global market, education does not prepare nor encourage the self-development of students to assess and participate in the democratic process (Lipman, 2003). Overall, it is vital to comprehend that there is a connection with testing, sorting, and push-out mechanisms which are “systematically
implicated in the reproduction of racialized economic inequality and injustice” (Darder and Torres, 2004, p. 94).

An overwhelming amount of literature focuses on framing low-performance, drop-outs, and delinquent behavior as a cultural deficit. Scholars (Anyon, 1988; Bloom, 1991; Diaz, Moll & Mehan, 1986; Oakes, 1986) have found teachers structure bias in their classroom through preferential treatment of students based on language, skin color, class, and ethnicity. In addition, the ethical values being instilled through education tracks, military and ‘career exploration’ programs, are that of personal responsibility, individualism, hard work, regulation, assessment, system of rewards, and control (Lipman, 2003). Moreover, these “programs and policies that discipline, regulate and control also teach students their ‘place’ in a race and class hierarchy” (Bartlett & Lutz, 1998; qtd. in Lipman, 2003, p. 65). Furthermore, “poor and working-class students are schooled into subordination, socialized to accept, accommodate and comply…even when that knowledge is diametrically opposed to their experience and well-being” (Darder and Torres, 2004, p. 91). Fundamentally, social promotion, entitlement, freedom and choice are normalized as institutional accountability is absolved and students are racialized as “underachieving” (Darder and Torres, 2004).

Academic tracking functions by privileging a selective and limited number of students at the expense of a much larger group, which Darder (1991) points out, is mainly comprised of bicultural students. Research (Knowles and Pruitt, 1969; Suarez, 1978) demonstrates that due to teacher bias, inadequate testing, and lack of knowledge regarding bicultural students, when compared to Anglo students bicultural students are often overrepresented in low-tracks (Darder, 1991). Persell (1977) explains that the overrepresentation is connected to the already institutionalized “racial and economic homogeneity in the classrooms,” which determines the
content and experiences, and ultimately the underachievement of bicultural students (Darder, 1991, p. 16). Persell (1977) extends that the differentiated exposures influence not only achievement, but also student attitudes and self-concepts, thus institutionalizing and justifying student and teacher expectations and practices beyond the classroom (cited in Darder, 1991).

Student experiences provide insight to the exclusionary practices of academic tracking in education. For example, a graduate of a Chicago High School says, “If you weren’t IB, Honors, or had a certain GPA, the school either didn’t care about helping you go to college or they tried to get you to join the military” (Higher Learning, 2002; qtd. in Lipman, 2003, p. 41). Other students’ opportunities are tracked as a result of standardized tests and measurements; similar to Olivia, a Chicago high-school student who failed a standardized test, students blame themselves:

“It does not..test my knowledge, because I’m getting all these honors classes and A.P….it does not say who I am or what is my strength, it just doesn’t say anything about me…It’s just a stupid number that they put on your forehead..It’s injustice..It’s a stupid way to decide whether a student should pass or stay” (Lipman, 2003, p. 114)

A combination of deficit thinking, alongside the embedded structural, cultural, and individual forms of racialization, provide the conditions to limit students’ opportunities and to track them into pre-determined positions. Whether it be through the use of testing, recommendations, or ‘self-selection’, overall academic tracking has drastic consequences for students in marginalized communities and schools. In High Stakes Education: Inequality, Globalization, and Urban School Reform, Lipman (2003) quotes from the report, Tracking in Chicago Public Schools, which argues “African American students and Latino/a students are under-represented in the “college prep track” and over-represented in the “military prep track” and the “prison prep track” (p. 1).
Although academic tracking policies and practices range by structure and implementation, in the process of separating students along performance statuses, Chicana/o students experience differentiated schooling outcomes. Besides socialized hierarchies, curricular distinctions, and differential treatment, there are other dynamics that also emerge. Often times, students are not conscious of why they must confront certain experiences. Additionally, academic tracking illustrates the educational experiences of Chicana/o students as a subtractive schooling process which enhances the processes of exclusion, silence, and marginalization.

**Subtractive schooling**

Spring (1997) argues that often educational policy ‘battles’ are primarily reflective of ideologies, attitudes, and behaviors that surround cultural values. As a mechanism to assimilate, educational policy ‘subtracts’ (Valenzuela, 1999) students’ experiences, history, identity, culture, and potential. The schooling process attacks students’ native language by “de-ethnicizing” them through practices such as tracking through English as a Second Language (ESL), in which students are singled out and excluded. Valenzuela posits that it is not that students do not want to learn, but rather the process in which it is done dehumanizes students because “they oppose a schooling process that disrespects them” (p.5).

Numerous scholars (Anzaldua, 1987; Flores & Yudicé, 1990; Darder, Torres, & Gutierrez, 1997; Gonzalez; 1997) have demonstrated how language, for example, is an extremely important component of the Latino culture, because it is deeply connected to identity construction and development. Gloria Anzaldúa (1987) argues that the Spanish language has been “violently attacked by the dominant culture” and created the notion of “linguistic terrorism,” in which individuals are discouraged from using their native language because of fear
of repercussions at school, work, and public spaces. Alejandro, eight grader in a Chicago Catholic school, sees this first hand in the classroom and shares it with Carger (1996), “She [teacher] made a kid cry today, Chris, A boy!...I don’t think it’s right to make fun of somebody ‘cause he doesn’t know English. That’s what she does sometimes” (p. 42). Likewise, Garcia Bedolla (2005) acknowledges that there is such a stigma attached to language that it becomes a tense and sensitive issue, thus influencing shame for knowing and not knowing the language. Furthermore, the U.S. culture has emphasized the need to learn the English language but most importantly to renounce any other language in order to become ‘American’ (Garcia-Bedolla, 2005). Anzaldúa (1987) underlines the implications of “linguistic terrorism” and how the loss of a language affects the development of ethnic self-concept through the negative internalization influenced by the dominant culture.

Although the Spanish language is a distinguishable and cultural marker of the Mexican heritage, there are government initiatives that have pushed for English-only laws which discriminate and marginalize Chicana/o students. Language is not only a way of communication but becomes a form of symbolism and a commodity. Anzaldúa (1987) points out that “we need language with which we communicate with ourselves, a secret language. For some of us language is a homeland closer than the Southwest,” (p. 2948). Anzaldúa continues by proclaiming that “if you want to hurt me, talk badly about my language. Ethnic identity is twin skin to linguistic identity- I am my language. Until I can take pride in my language, I cannot take pride in myself,” (p. 2952). Language helps to reinforce the cultural position and can be a defensive form of empowerment and protection of what it represents for the culture. Language can be adapted to the individual and used as a form of rebellion (Anzaldúa, 1987).
The inability of Mexicans students to speak Spanish in the classroom is seen as a detachment from their own culture or assimilation. For example, Raquel, a Chicago High School student says, “We have trouble learning the language, but we need to learn mathematics, everything and plus, trying not to forget our language..I don’t think is fair” (Lipman, 2003, p. 114). By prohibiting or restricting the use of Spanish language, it translates to an attempt to deconstruct and disenfranchise an individuals’ sense of identity as it can no longer “confirm nor deny the life histories and experiences of the people who use it” (Macedo, 1994, p. 131; cited in Limpan, 2003, p. 119).

**Culture of Silence**

Drawing from the work of Weis and Fine (1993), Davidson (1997) argues that student behaviors or patterns must be explored alongside the systematic forces and structures that influence and condition “silencing”. Davidson argues poststructuralist literature places focus on “the ideology students bring to school” yet fails to include student identity (Davidson, 1997, p. 18). The ability to speak is appropriated for and by those is power, thus their discourse, rhetoric, and rationales are normalized. Due to their position of power, the knowledge they construct and reproduce is legitimized. Similarly, in regard to student tracking levels, behaviors, identities, and discourses are given a value which serve to legitimize the superiority of certain students.

There is an environment full of hostility between those who do not speak Spanish and those who do. “We oppress each other trying to out[speak] each other” and to distort the Spanish language results in “anglicisms or pochismos,” which refers to the Spanish language when reconstructed in accordance to the Anglo surroundings (Anzaldua, 1987, p. 56). Speaking Spanish can be considered a self-conscious community criteria, and to legally attack an ethnic
language prevents its use and publicly denounces its validity and importance as an ethnic
‘marker.’ Additionally, tension in school districts develops among administrators, parents, and
students when budget must include programs to assist Spanish-speaking students (Ratnesar,
1997). During a school board meeting a fight broke out after a parents Lorraine Holmes and
Evan Moss expressed, "If they want to learn Spanish, they should go to Mexico," and, "The
school district is spending an awful lot of money on bilingual education when it could be used to
educate all children" (p. 52).

**Push-out**

Scholars have pointed out that students violate school policy as a mechanism to ‘resist’ or
confront (Valenzuela, 1999) the cultural practices, through strategies ranging from cutting class
(Fernandez & Velez, 1989; Rumberger, Ghatak, & Poulos, 1990) to school suspensions (Velez,
1989), resulting in school drop-out or push-out (Velez & Saenz, 2001). Push-out would be the
most appropriate term to use as disciplinary measures for Latino students seem to be much
higher, as suspension (Bowditch, 1993) becomes a ‘tactic’ to deal with students and not deal with
them any longer (Velez & Saenz, 2001). Others (Kaplan, Peck, and Kaplan, 1995) have signaled
student ‘behavioral problems’ as a manner to express their dissatisfaction with the educational
system; in rejecting education, their self-esteem is heightened (Velez & Saenz, 2001). “This was
the first time I really saw how the school didn’t care for me or any of us. If I learned or I didn’t
learn, so what? I remember feeling very depressed about that. Then I got angry,” says a
sophomore from Houston who participated in a walk-out (Valenzuela, 1991, p. 51). Moreover,
Ogbu (1987) presents that ‘involuntary minorities,’ those who had no control over their
‘incorporation’ to the U.S. due to imperialistic practices, are more likely to ‘act-out’ or reject mainstream attempts for ‘indoctrination’ (Velez & Saenz, 2001).

**Resegregation**

Scholars (Menchaca & Valencia, 1990; Orum, 1986; Orfield, 1988) argue Chicano students are often isolated from other racial groups, and such dynamics are tied to political and economic experiences (Valencia, 1991). According to Gilbert Gonzalez (1990) the segregation of Mexican students dates as far as 1892, when students were denied enrollment in Corpus Christi and were instead sent to a separate building for Mexican students (Donato, Menchaca, and Valencia, 1991). Gonzalez (1990) adds that by 1920, 85% of Southwest school districts segregated students through separate classrooms or schools. In 1971, the US Commission on Civil Rights reported that Chicana/o students were by and large isolated from White students, explaining that one out of two students were in predominantly Chicana/o schools.

In 1923, Felipe Vela filed a complaint against the Charlotte Independent School District for segregated schooling. The school district had one school for white children and another for Mexican children. Felipe Vela’s adoptive daughter was denied admission to the American school on the grounds of her race. Vela argued that the child’s race was unknown and appealed the decision to the school board. The board demonstrated that school designations were based on instructional reasons and not necessarily determined by their ancestry. Moreover, the court ruled that the district did not engage in unlawful segregation because placement was based on late enrollment, sporadic attendance, and language accommodations, and therefore the methods of classification were not unconstitutional (San Miguel, 1997). Just like segregated schooling, legal disputes on academic tracking have faced challenges in demonstrating the intent to discriminate.
Even with the ‘dismantling’ of de jure segregation through *Brown v. Board of Education* in 1954, de facto segregation grew increasingly for Chicana/o students. A study by Orfield (1988) conducted over a sixteen-year period across all regions of the U.S. demonstrates that Latino students attending predominantly minority schools increased by 35% from 1968 to 1984 (Donato, Menchaca, and Valencia, 1991). Latina/os are the most segregated minority group, by race and poverty, with growing linguistic segregation as well (Frankenberg, Lee, & Orfield, 2003). According to Gonzalez (1990) segregated schooling generated an inferior education due to limited resources, poorer infrastructure, and lower teacher pay (Donato, Menchaca, and Valencia, 1991). Simultaneously, limits in funding and resources have an impact on curriculum, graduation rates, and post-secondary opportunities for Chicana/o students. Overall, “Chicano schools tend to be schools characterized by low funding, high dropout rates, low achievement test scores, a disproportionately high percentage of low-income students, and few college preparatory courses” (p. 32).

In 1994, one out of every three Latinos attended “ethnically segregated schools,” which were not only segregated by ethnicity, but were also notorious for having an overrepresentation of “poorly prepared students” (Orfield, 1998; qtd in Valencia, p. 7). “Apartheid schools,” described as schools that are “virtually non-white” and are characterized by poverty, limited resources, and concentrations of health and social problems have increased in response to desegregation (Frankenberg, Lee, & Orfield, 2003). On the other hand, literature (Alvarez, 1988; Gonzalez, 1985; Menchaca and Valecia, 1990; San Miguel, 1986, 1987) demonstrates that the segregation of students is related to social, economic, as well as demographic changes dating back to the 1900’s. Scholars (Menchaca & Valencia, 1990) explain that although it is complex to clearly tie the connections and consequences of the past, nonetheless Chicana/o students
“continue to experience the deleterious impact of the separate but equal policies passed by previous generations” (cited in Valencia, 1991, p. 9). Data demonstrates that 1/9 of Latino students “attend schools where 99-100% of the population is composed of minority students” (Frankenberg, Lee, & Orfield, 2003, p. 5).

It is undeniable that the segregation of particular groups of communities takes place along socioeconomic lines. Carter (1970) argues that the perpetuation of a caste system is enhanced through academic tracking as low-income students, most often in low-tracks, are primarily prepared to enter the same low-income societal positions as their parents (Darder, 1991). Given that many of the schools Chicano students attend are underfunded (Valencia, 1990), this poses a great urgency to re-evaluate school financing. Research (Fairchild, 1994) demonstrates that the per-pupil expenditures decreases for Chicana/o students as their percentages increased, while demonstrating the contrary for White students across school districts (Valencia, 1991). In 1972, the US Commission on Civil Rights brought attention to the connection between financial and educational inequalities:

The Texas school finance system results in discrimination against Mexican-American school children. Predominantly Mexican American districts are less wealthy in terms of property values than Anglo districts and the average income of Chicanos is below that of Anglos. These circumstances existing, the State of Texas has devised an educational finance system by which the amount spent on the schooling of students is a function of district and personal wealth. The end result is that the poor and those receiving inferior education continue to receive inferior education (p. 28; cited in Valencia, p. 10).

Such disparities are not unique to Texas and unequal schooling has continuously garnered strength due to the support of legal courts. Nonetheless, devoid of the discussion are the factors and processes of racialization which generated income, housing, and wealth disparity in the first place.
Chicago and Education

Scholars (Frankenberg, Lee, & Orfield, 2003; Hauser, Simmons, & Pager, 2000; NCES, 2000) demonstrate that among all groups, Latinos have the highest drop-out rates, with Mexicans having the highest rate for this population (Chapa & Valencia, 1993) drop-out rates (found in Velez & Saenz, 2003). A national research found that out of 100 Chicana/o students, only 44% graduate from high school and amongst those only 7% graduate with a college degree (Yosso, 2006). This conveys an alarming phenomenon deserving urgency to explore the factors that are diminishing the opportunities for Chicana/o students to traverse academically. What happens to the 56% who do not finish the P-12 system and is this in any form related to the dynamics of academic tracking?

There are numerous reasons why it is important to conduct research on Chicana/os from Chicago. There is limited literature on Chicana/os students in the Midwest, and specifically, research about Chicago needs to be expanded. Given the strategic segregation of groups along class and ethnic lines throughout Chicago neighborhoods, it is vital to investigate how class formation has impacted educational institutions and resources. According to the US Census, there are over 31 million Mexicans in the US, with 3,470,726 in the Midwest, 1,602,403 in Illinois, and 1,485,000 in Chicago (US Census, 2010). With less than 50% of Chicana/o students graduating from high school and the Chicana/o population in Chicago reaching almost 1.5 million, it is crucial to explore the educational experiences of students in efforts to contribute towards policy reforms and to ensure students are 'truly' prepared and supported as they traverse academically, politically, and socially.

It is imperative to recognize that the future of the U.S., as well as globalization and marketization, will be placed upon the shoulders of Latinos, once again, as ‘baby boomers’ are
decreasing and the Latino population continues to grow, with Chicana/os being the largest ethnic group (Guzman, 2001; Takaki, 2000; Velez & Saenz, 2001). Due to globalization and neoliberal policies, a growing emphasis has been placed on standards and testing (Ozga, 2000; McNeil, 2002; Morrow & Torres, 2000) and it is imperative to examine how these methods of tracking impact student identities and opportunities (Velez & Saenz, 2001). Moreover, it is especially significant to demonstrate the connection between schooling practices and policies in relation to class privilege and oppression. Researchers (Chapa & Valencia, 1993) have demonstrated that the educational system is not properly training students for the workforce (Velez & Saenz, 2001). Additionally, given the research, alongside student experiences, one can argue that a segmented system has been created vis-à-vis academic tracking. These dynamics have significant implications for the progress of Chicana/o students, as well as the future of society.

Global city

The white flight of the 1950’s marked a downward trend of disinvestment, deindustrialization, urban neglect, reduction in social programs (Rury & Mirel, 1997), and increased poverty in cities, like Chicago, across the U.S. (Lipman, 2003). By the 1990’s the processes of reinvestment began to surface shaped by the political, social, and economic interests. The investment in some areas and neglect in others generated a globalized city (Sassen, 1998; Valle and Torres, 2000), one characterized by wide contradictions of poverty and wealth (Lipman, 2003). Within these contradictions, ‘tiers’ of high-income professionals excelled in the city while low-income workers were marginalized even further. Thus, low-income workers contribute to the economic fabric of globalization through their labor, but are unable to fully
participate not only in particular segments of the economic class, but also in the political sector (Valle and Torres, 2000).

This economic restructuring began with the Richard J. Daley’s administration (Rast, 1999) and his relationship with banking, corporate, and real estate interest (Lipman, 2003; Lipman, 2011). From 1955 until 1983, financial and political leaders from these areas decreased investment in smaller manufacturers and “low to medium-income residential areas and replaced them with corporate headquarters, business services, and expensive residential developments” (Lipman, 2003, p. 27). In addition, according to Rast (1999) competition was eliminated and resources were diverted “to corporate center development through zoning ordinances, tax policies, publicly financed infrastructure improvements, federal Urban Development Action Grants, and financial incentives” (p. 27). Scholars (Rast, 1999; Squires et al., 1987) argue that this resulted in corporate, real estate, and banking subsidies, thus influencing the unemployment and disinvestment in working-class areas. Furthermore, with the objective of transforming Chicago into a global city, the Chicago 21 Plan (1973), formulated by city’s top political and economic leaders, outlined a set of goals to continue investment primarily within the center of the city.

As a result of globalization, a market attracting high-paid workers was constructed through investment towards real estate development and services in downtown areas and global centers. With this, massive displacement took place as homes of working-class and low-income families, as well as factories were replaced with luxury living areas and spaces. Contingent to gentrification purposes, Richard M. Daley instituted the Tax Increment Financing zones\textsuperscript{12} (TIF)

\textsuperscript{12} According to Lipman, (2003), when an area is identified in need of development, or as a TIF zone, residents can be forced to sell.
as a mechanism to not only identify areas in need of development\textsuperscript{13}, but most importantly justify the reallocation of public service funding towards development projects instead (Lipman, 2003). In the process of gentrification, school programs and curricula have also been reshaped to lure affluent families into transitioning neighborhoods. At the same time, signs of the influence of globalization in schools can be seen by an increase in competition, focus on math and science, as well as ‘basic skills’. Thus, schools have been set to function to directly meet the needs of globalization through segmented educational tracks (Lipman, 2003, Lipman, 2011).

Market-driven values have not only been instilled through the schooling culture, but the business structure has also permeated school administration. After the Chicago Public School system declared bankruptcy in 1979, the Chicago School Finance Authority was created for oversight. As a result, many employments, curricula, and programs were reduced, while others are completely cut (p. 34). In 1987 the U.S. Secretary of Education declared the Chicago Public school system as the “worse in the nation,” while business leaders complained students were not properly trained (Lipman, 2003, p. 2). This led to the Chicago School Reform Law (1988) granting greater community control to communities through the implementation of elected Local School Councils (LSC’s) and an appointed Interim School Board. In 1995, the Illinois legislature granted mayoral takeover of education, thus “Daley [installed] a corporatist regime focused on high stakes tests, standards, accountability, and centralized regulation of teachers and schools” (p. 2). As a result, LSC’s were dissolved and replaced with a Board of Trustees and a Chief of Staff (CEO) appointed by the mayor.

Guided by neoliberal frameworks, decentralization and school-based management (Ball, 1994) were implemented alongside ‘free-market’ trends (Saltman, 2000; Whitty et al., 1998)

\textsuperscript{13} Rast (1999) points out that there are a total of forty-nine wards; in 1990’s forty-two wards received $19.4 million while seven wards received $1.5 million funds for redevelopment.
such as privatization, and corporate involvement, and school choice (Lipman, 2003). Through mayoral power, Daley appointed Gery Chico as his chief of staff to lead Board of Trustees and Paul Vallas, his budget director, as CEO. Chico and Vallas implemented a corporate management approach directed by high stakes testing, standards, and remediation (Lipman, 2003). Schools not performing to standards were initially warned, then placed on probation, and eventually reconstituted (taken over) if they failed to demonstrate improvement. In addition, bilingual education was limited to three years, students not passing standardized tests were relocated to remedial schools, differentiated schools and programs were created, and by 1997 “it established academic standards and curriculum frameworks to standardize the knowledge and skills to be taught in each grade” (p. 36). CPS was highly praised for its performance turnaround, becoming a model for standard-driven practices nationwide; in 2001 Chico and Vallas resigned, Duncan and Scott were appointed, and No Child Left Behind was signed by President George W. Bush.

Conclusion

Lipman adamantly argues that “Chicago has superimposed new forms of educational tracking on an already tracked system. This differentiated system illustrates the strategic relationship between new forms of educational tracking and the production of a stratified labor force for a new economy” (Lipman, 2003 p. 172). Tracking and its racializing impact is not only observable through different academic levels within schools, but trends in major urban centers demonstrate a broader tracking system across the nation’s schools. Schools are structured along a hierarchy of programs and courses; at the very top are schools which offer selective programs
like PLUS\textsuperscript{14}, the next level includes college prep programs, and at the very bottom is vocational education (Lipman, 2003). For example, the majority of Chicago Public Schools are ranked at the bottom and offer few advanced courses. Selective programs serve as an “incentive for professional and middle-class families to live in the city, especially in large areas of budding gentrification” (Lipman, 2003 p. 56). When the racializing dynamics of academic tracking within public schools are projected at a larger scale, it results in a large influx of “good” students in schools that offer magnet and specialty programs meanwhile military schools continue to be on the rise in low-income communities (Lipman, 2003).

Moreover, the sociopolitical and economic conditions of Chicago alongside the interests of its leaders are determinant factors in the racializing processes which are enacted on selected communities in this region and similarly in cities across the country. Given the history of Chicago and its influence, as well as the desire for market-driven approaches for educational policy, it becomes a highly contested region. As a consequence of the racializing process enacted through tracking of students, the divided identities, experiences, and lack of opportunities can damage relationships, negatively impact academic achievement, and limit collective working. “It nurtures in student groups the kind of distinct and distorted identities that sabotage communication and preclude bridge-building” (Valenzuela, 1991, p. 31). Despite changing demographics and its destructive impact on the lives of Mexican students, academic tracking continues to be fiercely defended by its proponents. Hence, it is precisely the combination of social, political, cultural, and economic factors discussed in the body of this study that permits conditions of racialized inequalities to persist in the lives of Mexican students and their communities in the U.S.

\textsuperscript{14}Pauline Lipman (2003) categorizes magnet schools, International Baccalaureate, College Prep, Technology Academies, gifted and academically advanced centers as PLUS schools.
CHAPTER 3

METHODS OF INQUIRY

As I share my story about coming to grasps with the reality of a system that has not always been favorable to all, I also recognize that although I have a major responsibility I alone cannot rectify past wrongs. However, what I can do is at least make an effort to expose the histories and experiences of racialization, as well as challenge the status quo. Being privileged enough to navigate the educational system, my commitment and responsibility is to expand similar opportunities onto others and put to practice the many lessons, values, knowledge and rights that have been bestowed onto me. In the process of learning about educational issues, theories, and trends, I have been drawn to the contradictions, unmet demands, and neglected rights found in the U.S. education system. In spite of the many civic strides that have taken place, there is still room for improvement regarding school culture, curriculum, instruction, as well as its practices and policies.

There is an overwhelming amount of research exploring the dynamics of educational policies and practices in school environments. Within that research I am interested in furthering the literature which draws on qualitative methodology. The areas of assessment and evaluation in education demonstrate a focus on quantitative measures to understand student performance. However, there exists a continual interest in providing a broader, more personal, as well as detailed account of the multifaceted dynamics—many of which cannot be determined with numerical indicators alone. The objectives of this study are to provide a greater insight into the experiences of Chicana/o students in relation to academic tracking. Drawing on qualitative methodology this study incorporates the voices of students and will serve to validate and/or challenge rationale for academic tracking.
Qualitative methods of inquiry, such as ethnography, have the power to illustrate and expose structural, institutional, and cultural issues from the individual level. Through observations, field notes, and interviews, researchers gain access to the ‘everyday’ stories and lives that are impacted by structural dynamics. In doing so, qualitative research can help policy-makers, educators, and community-leaders understand the structural changes that need to take place in order to provide resources, adequate environments, supportive structures, quality facilities, community outlets, and high-quality educators, among other educational necessities. Through the method of story-telling, policy-makers may potentially become engaged and connect with individuals. Additionally, they can comprehend the situation and reflect on their role as well as critically assess a systematic alternative to address the issues based on the stories. In essence, qualitative studies demonstrate a much broader picture of the individual, institutional and cultural levels, exposing factors that cannot be easily quantified or measured.

I find great value in this area of methodology because it allows for greater flexibility to observe and identify the various factors that are embedded in regard to the implications of academic tracking. As the literature has demonstrated, the methods of selection, placement, and evaluation for academic levels are not completely reliable and valid. These levels and the content within those levels vary greatly from classroom, grades, subject, school, districts, and states. Similarly, the way academic tracking plays out within those spaces differs as well. Just as there exists support for the tradition of academic tracking, there are also opponents to its continuation. With that being said, scholars (Donelan, Neal, and Jones, 1994; Lipman, 2003; Oakes, 2005) have fervently argued that academic tracking takes on a very influential effect in environments predisposed to histories of racism and socioeconomic inequalities.
Narratives serve as a mechanism to identify how academic tracking enacts particular behaviors, ideologies, and policies. The experiences of students, parents, and teachers provide an element of evaluation and assessment of the dynamics of academic tracking. When linked to the academic, legal, social, and cultural reasons justifying academic tracking, the realities exposed illustrate a separate and unequal education. My interest in furthering the literature on academic tracking through a qualitative approach is very much influenced by the need to provide a space for ‘other’ voices to be heard. In addition, in order to formulate an argument challenging the current structure and culture of education, it is essential to present narratives as evidence of the implications of academic tracking. Moreover, I am committed to contributing a social justice project with the potential of envisioning a practical, ethical, moral, political and legal change.

Frameworks

The nature of qualitative methodology allows for the synthesis of a variety of techniques and approaches. This study represents an interdisciplinary approach, including analysis of historical documentation, policies, laws, narratives and other textual content. However, the central and linking methodology is grounded within qualitative research. Given the social, cultural, political, legal complexities intertwined in the arena of academic tracking, I intend to incorporate numerous tools, such as narratives, interviews, observations, texts, and dialogue as means to create a holistic background for a qualitative study. Moreover, given that a standard formula for following qualitative methodology does not necessarily exist, I have applied a combination of methods which I believe will be useful in unveiling the multifaceted layers involved.

A majority of my research and personal interest lie in the framework of Critical Race Theory (CRT). According to Solórzano (1997) CRT can be used to challenge the dominant
notions, ideologies, and structures, while also presenting the interconnectedness with class, gender, and language (Morfin, Perez, Parker & Arrona, 2006; Yosso, 2006). CRT exposes self-interest and bias in the political and cultural system, which has become obscured with claims of race-neutral and equal opportunity structures, policy, and propaganda. As scholars (Chapa & Millard, 2004) have demonstrated, there are tensions and contradictions that exist not only throughout and around Chicana/o families, but also within.

In order to be able to fully document the intricacies of Chicana/o students and families, this particular method of storytelling becomes an empowering form of social justice (Solorzano, 1997) which acknowledges the experiences, songs, poetry, histories, and traditions of racial minorities, whilst legitimizing their identities and struggles (Yosso, 2006). It is then through the conversations emerging from the interviews that one begins to comprehend the conundrum of race, racism, and racialization. Moreover, the specific use of testimonios draws on the work of Gloria Anzaldua (1997) and Dolores Garcia-Bernal (2002), not only as mechanism to challenge dominant histories, but to also offer an alternative form of knowledge production. Granted that the voices of underrepresented communities are often omitted and/or distorted, counterstories or testimonios shed light on oppression and how individuals respond (Morfin, Perez, Parker & Arrona, 2006; Villenas & Deyhle, (1999). Thus, in presenting the testaments of the subjugated, simultaneously the fallacy of the structures in place are exposed and an urgency is placed on changing those structures and cultures. With that being said, this study is foundational in not only legitimizing Chicana/o student experiences, but also incorporating a variety of analytical tools vital to the deconstruction of law, policy, history, and culture.

With all of this in mind, I believe it is productive and necessary to incorporate auto-
ethnography within this study. First, inserting myself as more than just a researcher is beneficial
because it bridges the connections from the history of Chicana/os, to how my own schooling experiences were shaped, and thus, influence my previous and current perspectives on education and life in general. Ultimately, it is those schooling experiences and knowledges which transmit me back to CPS to engage with students. It is specifically because of my exposure to the epistemological value of subjectivity that I appreciate and recognize the advantage of being an ‘insider’ to the cultural, structural, political, socio-economic dynamics. Despite my role as the author and researcher, this study includes our voices; I do not perceive myself as separate or distinct from the very students I interviewed. Indeed, I have had opportunities and privileges which have determined my current position and condition, nonetheless, it is our shared experiences and histories which connect us regardless of the generational differences. I do not intend to homogenize the Chicana/o student experience, as they do vary, but as a result of my own experiences and identification as a Chicana female in Chicago and CPS, I am genuinely connected to the lives of current CPS students.

I have engaged in the processes of meaning-making, knowledge production, and negotiation by having to co-exist in contradictory cultures. As a result of navigating the educational system while attempting to make sense of my position in relation to my family, peers, and surroundings, I have learned about systematic structuring and conditioning. Being a ‘product’ of CPS and emerging from an system engaging in exclusionary practices, and now becoming aware of the historical and continual forms of racialization, I struggle within it and against it. Taking into consideration the processes and practices which lead to my own conscientization (Freire, 1973), as well as the value in testimonios, this study embodies how I ultimately respond to these racializing dynamics. I respond by utilizing the knowledge of the ‘tools’ as a mechanism to produce and challenge dominant structures, values, methods, and
practices. In the process of negotiating cultures and seeking educational achievement and/or credentials, grounded in social justice, I have engaged in a “transformational resistance” (Solórzano and Delgado Bernal, 2001) as a source of motivation and strategy to challenge cultural deficit stereotypes and expectations surrounding Chicana/os, as well as systematic inequalities (Cammarota, 2004). Moreover, this document is in itself my own testimonio, which not only poses the problems, but also provides historical, theoretical, legal, narrative, and personal evidence to present a case for, us, Chicana/o students. Overall, I believe learning about Chicana/o history, as well as sharing our own stories in relation to that history is a matter of survival; the act challenges the status quo, demystifies ideologies and structures, and can essentially provoke a communal sense of responsibility for one another grounded in humanity.

In the first phase of this study I conducted an ethnographic case study in a Chicago Public High School. I decided to conduct in-depth, semi-structured interviews with participants with the purpose of gaining access to the ideological influences that determined their practices, as well as how they made meaning of themselves within those processes. In addition, I offered to conduct the interviews at their location of choice to ensure confidentiality and comfort. The use of narratives as a form of evaluating the impact of institutional practices not only legitimizes students’ histories, but also provides a deeper insight into the complexities of schools and society. Furthermore, I provided a resource handbook to participants and made myself available for guidance and/or information. Although I had a semi-structured interview protocol, as well as a topic of interest, in the coding phase I decided to do a thematic analysis of the salient issues that were introduced in interviews.

Drawing on the tenets and principles of CRT, in the second phase of this broader study, I utilized data collected from the interviews alongside content from legal courts on issues of
educational integration and exclusion. Court decisions are shaped by a series of factors and key players, often from legal, psychological, and political spheres. Yet, the voices from students, parents, and educators are limited throughout the process. In response to the void of vital stakeholders, I have designed a study that will incorporate the voices of students alongside landmark legal cases. In essence, this study serves to extend the literature on the impact of academic tracking through a qualitative approach. Moreover, it provides testaments from witnesses who are directly impacted by academic tracking on a daily basis. Overall, employing auto ethnography, interviews, narratives, as well as text and visual analysis provides an extension to the theoretical, epistemological, and practical literature of Chicana/o students in K-12 systems.

Given my commitment and passion for an equitable education, I believe it is important to build upon a research project that is liberating, dialogic, activist, ethical, counter-hegemonic, contextual, political, personal, and provocative. Drawing on Kaufman (2001), this ethnographic study intends to expose cultural practices, as well as reflect life and be experiential (Conquergood, 1982), while illustrating conditions evoking and engaging the reader into critical reflection and action (Madison, 2005; Saldana, 2005). Madison urges responsibility to represent and consciousness of representation, while encouraging reflection and engagement with positionality, informed by ethical, moral, philosophical and political values. Moreover, epistemological responsibility lies not only in ‘including’ another perspective, but liberating oneself and others from the confined rules and categories through a process of humanization (Ladson-Billings and Donnor, 2005), while demonstrating non-linear incompleteness and constant change (Denzin et. al, 2008, Ellis, 2009). Nonetheless, one must look for and represent the known that is unseen, self-reflect, and be critical, all while having a political purpose.

15 Although parents and teachers also participated in the interviews, the narratives included in this study focuses on the students’ voices. A forthcoming work will include the data collected from parents and teachers.
Overall, decolonizing ethnography seeks not only to ethically represent and incorporate excluded voices, but guided on ethics of humanity, commits the ethnographer and audience to extend beyond performance to challenge the status quo and move towards emancipatory action.

**Research Design**

Literature on academic tracking demonstrates that it has been traditionally supported not only by policy-makers, corporations, educators, and even students themselves, but it has also been justified and sanctioned by numerous legal courts. Although there is literature on the impact of academic tracking on already marginalized populations, it has been limited to discussions of Black and White students. In many ways the effects of academic tracking are shared by various groups, but it is important to disrupt the Black and White paradigm in means of legitimizing the experiences of other racialized populations, like Chicana/o students. Moreover, there is a pressing need to deconstruct the myths of equality, meritocracy, and color-blind policies and practices. Furthermore, in the process of connecting critical theory and practice, it is productive to refer and utilize the structures in place, such as law, to evocatively expose the contradictions of the system.

**Participants**

During the first phase of the research, the focus was placed on exploring the experiences of Chicago teachers, parents, and students from a south side Chicago Public High School. Recruitment methods included: attending school events, posting flyers in the school and surrounding public facilities, attending group meetings and classes, and distributing flyers to staff and students. Chicana/o students in the 9th and 10th grade were targeted, as well as parents.
of students attending the Chicago High School, to complete one-hour interviews. Other than being students or parents of students in the first or second year of high school, participants self-identified as Mexicana/o, Mexican-American, Chicana/o, Hispanic and or Latino from Mexican descent. In order to incorporate an administrative perspective, staff from the high school, regardless of ethnic background, were also specifically sought out to participate in the interviews. In total, 6 students, 3 staff and 2 parents completed an eighty-item interview. At the end of the interview, students and parents were provided with a resource guide including information for counseling, academic, social, and cultural organizations, agencies, and websites. In addition, participants were assured their involvement was voluntary and confidential, and additionally any dissemination would protect their identity and experiences. Being a Chicago native and a product of the Chicago Public School System, there is a personal investment and history which facilitated my access and mobility to conduct research of Chicana/os in Chicago.

A total of six students from different curriculum tracks participated in the interviews as well as three teachers. Mr. Roberts worked as a Math teacher at the school for over 20 years, Ms. Connor as a Social Studies teacher for over 30 years, and Mr. Hobbs worked for the Arts Department for almost 10 years. Raquel is a Sophomore student that is taking regular and honors classes, while her sister Isabel is a Freshmen taking regular classes. Juan and Marcela are both second-year students in the AVID\textsuperscript{16} program. Lastly, Cesar and Yadira are both first-year students under the International Baccalaureate (IB) program. In Chapter 5, I provide additional backgrounds on student participants, as well as their perspectives.

\textsuperscript{16} The AVID program is designed to provide students in the ‘middle’ academic level with a rigorous curriculum.
Research Questions

1. What are the implications of academic tracking, in general and specifically for Chicana/o students in Chicago?
2. How has academic tracking been maintained and legitimized?
3. How does legal discourse perpetuate and justify tracking and system of meritocracy?
4. Is education a basic right? When? And for whom?
5. Can academic tracking be defined as institutional discrimination?
6. Does academic tracking violate the 5th and 14th amendments?
7. What can courts, schools, and communities do to remedy and intervene?

This study will entail a two-fold process of addressing the aforementioned research questions. Guided by qualitative methodology, the first technique in collecting data will consist of analyzing the interviews which were conducted and transcribed in the Spring of 2009. The narratives will be used to interpret and assess the impact of academic tracking for Chicana/o students. The data collected from narratives, as well as demographic information, reports, and other documents will serve to explore how and why academic tracking has been maintained and legitimized.

The second methodological approach will consist of a content analysis of legal cases, proceedings, and discourse surrounding landmark cases on academic tracking and ability grouping throughout the United States. A search was be conducted though Lexis Legal Search Premier, U.S. Supreme Court records, as well as through local, district, and state courts to locate case documents and transcripts regarding selected court cases on ability grouping and/or academic tracking. In addition, an overview of the literature on academic tracking and resegregation was also useful in identifying relevant cases. First, I provide a brief summary of eight court cases, including constitutional violation at question, legal argument, verdict, and rationale. Then, I conduct a textual analysis of eight court cases to formulate an understanding on the legal rational justifying educational rights. Subsequently, to demonstrate the role of the
courts in interpreting the constitution, I conduct a comparison of legal arguments and findings. More specifically, this section serves to address the (in)consistency of courts in determining when and for whom education is deemed a basic right. Afterwards, in order to understand how and why academic tracking has been justified and perpetuated by meritocracy as well as other guiding systems, I identify the main arguments the courts have used to rationalize their rulings. Overall, to answer how academic tracking is framed and justified, I incorporate texts, narratives, legal cases and transcripts, court opinions, educational policy, interviews, reports and discourses.

I believe that in order to fully explore whether differential treatment and experiences are being structured through schooling practices, as well as legal proceedings, it is vital to juxtapose court rulings and rationale with evidence of the realities students must confront. Using results collected from the Chicago high school case study, statistical data, reports as well as research findings from the literature review on academic tracking and other documents, I will then apply racialization as a frame of analysis to determine if CPS is engaging in institutional discrimination. Additionally, I will also be able to provide a contrast of court rulings to establish whether verdicts and rationales differ based on plaintiffs’ backgrounds. Federal, state, and local statutes will be referenced in relation to the data collected to establish whether CPS is in compliance with guaranteed rights. Therefore, based on what courts have determined as protected rights, I will assess whether there is a constitutional violation under due process or equal protection. Lastly, drawing on the work and recommendations of scholars, judges, activists, individuals, groups, as well as my own personal insights, I will compile and offer a set of strategies that can be implemented to remedy and intervene, if needed.

Given the ambiguity of academic tracking across and within schools, there have been several attempts challenging the constitutionality of such schooling practices. Although academic

Guided by the work of Oakes (1985; 2005) and Donelan, Neal, & Jones (1994), I argue that academic tracking is a mechanism that disproportionately affects students from marginalized communities. Although schools *may not* be intentionally designating academic placement based on class, race, gender, language, citizenship, appearance, or other factors, however there are indicators demonstrating there are disparate impacts and effects for particular communities. As a result of these practices and policies, these racializing enactments point to larger constitutional concerns, such as the violation of the 14th Amendment’s Equal Protection Clause, as well as the Fifth Amendment’s due process rights. The methods and requirements which are used to designate academic tracks within and throughout schools have been and continue to be exclusionary and unequal. Scholars (Bowles & Gintes, 1976; Braddock & Dawkins, 1993; Braddock & Slavin, 1993; Cohen, 1993; Conforti, 1992; Darder, 1991; Donelan, Neal, & Jones, 1994; Gamoran, 1992a, 1992b; George, 1993; Giroux, 1981; Oakes, 1985, 2005; Slavin & Braddock, 1993; Richardson & Evans, 1992; Wheelock, 1992, 1993; Wheelock & Hawley, 1993) recognize the challenges and implications of academic tracking. The manner in which academic tracking is carried out within and throughout schools also varies according to
administration, curriculum, property taxes, school budgets, and expertise. Moreover, the methods of evaluating the effectiveness and progress of academic tracking and the tracks is also flawed as it relies on standardized tests, ascribed identities, biased misconceptions, and ulterior factors.

There have been extensive debates surrounding academic tracking which has emphasized and questioned de facto and de jure segregation. Policies have deliberately and intentionally assigned students to academic programs and schools based strictly on race, ethnicity, language, and/or performance, and/or residency zones—de jure. On the other hand, there are also policies and practices which unintentionally designate student based on those same factors—de facto. When there are certain requirements that students cannot meet due to their living, learning, or educational conditions, although not blatantly restricted, they are unintentionally excluded. Nonetheless, as the courts have ruled, any mechanism which creates the conditions or maintains segregation is inherently discriminatory.

It is imperative to evaluate and reconsider the purpose and outcomes of academic tracking due to the short and long-term impact on students, schools, and communities. This study will explore the discriminatory nature of academic tracking as questions have continuously risen regarding its embedded negligence and structured deprivation of an equal education. Just as the Brown v. Board (1954) case demonstrated the psychological impact on Black children, similar repercussions can formulate as a result of racially, economically, and academically segregated schools and classrooms. The impact of segregated schooling policies and practices can extend beyond the classroom, and it is critical to place discourse and reform of academic tracking at the forefront of educational law and public policy. Although education is not a fundamental or constitutional right per se, nonetheless, the government and its constituencies, at every level, are responsible for ensuring constitutional rights are not in any way, shape, or form ever jeopardized.
Chicago Public Schools

The Chicago Public School system serves as a prime case study due to the economic, political, and cultural characteristics of the city of Chicago. Among other various marginalized populations, many Chicana/os in Chicago share a history of displacement, segmented employment, gentrification, economic disparity, and segregation, among other racializing practices. As a result, these mechanisms of exclusion have conditioned and perpetuated a stratified system of education. In 1954, when separate and unequal schooling was ruled unconstitutional through *Brown v. Board of Education*, the Chicago Public School (CPS) system failed to integrate. In order to systematically avoid integration school boundaries were re-zoned, thus restricting African-American students from attending White schools (Black, Grimshaw, and Johnson, 2003). Although there were vacancies in White schools, Superintendent Willis placed 625 mobile classrooms (Lynch, 1999) referred to as “Willis wagons” in overcrowded schools (Grimshaw & May, 1988) of African-American neighborhoods (Black, Grimshaw, and Johnson, 2003).

In 1976, the Illinois Board of Education declared that CPS failed to prevent or remedy racial segregation in schools (Black, Grimshaw, and Johnson, 2003). The Chicago School Board was threatened that failure to comply would result in aid withholding. In response, the Citizens Advisory Council was formed in 1977 (Kustra, 1978) with the purpose of devising a desegregation plan (Black, Grimshaw, and Johnson, 2003). The plan submitted by the council never approved nor presented by Superintendent Hannon, and instead Hannon offered a five-year voluntary desegregation plan. In 1979, Patricia Roberts, Secretary of Health, Education, and Welfare referred the case to the Department of Justice to take legal action; Roberts informed the
Chicago School Board that civil rights officials had collected over 40 years of data (Williams, 1979) demonstrating no intent to integrate (Black, Grimshaw, and Johnson, 2003).

Under a consent decree, with the supervision of the Department of Justice in 1980, a desegregation plan was presented but not implemented until the Fall of 1983, which offered voluntary transfers and did not require student busing. In addition, selective-enrollment and magnet schools, both using race as a basis for admissions, were created as a method to integrate schools. In 2009, after almost three decades under a decree, Judge Kocoras stated, “The Board was dutiful in its commitment,” filed reports outlining desegregation actions, integrated faculty, operated under good faith (United States v. Board of Education of the City of Chicago, 2009, 80 C 5124, p.3). Ultimately, given the demographic changes in the district, the amended desegregation plan “was outdated and had outlived its usefulness,” and Judge Kocoras ordered the consent decree terminated and vacated (United States v. Board of Education of the City of Chicago, 2009, 80 C 5124, p.3).

Currently there are a total of 675 schools within the Chicago Public School system, including 482 elementary, 71 charter, and 122 high schools (CPS Office of Research, Evaluation, and Accountability). The Illinois State Board of Education indicates that the CPS system is composed of 86% students from low-income families. A total of 409,279 students are enrolled in CPS, with 24,370 students in Preschools, 29, 632 Kindergarten students, 239, 507 Elementary students, and 115,700 High School students. CPS school serve an estimated 57, 415 bilingual education students, 48,920 special education students, and 338, 418 students in low-income or poverty levels. Within those schools the racial demographics reported for students include: 45% African-American, 41% Latino, 9% White, 3.6% Asian/Pacific Islander and .2% Native America (See Chart 1). While the racial demographics for teachers are reported at 29.7% African-
American, 49.7% White, 16.1% Latino, 3.6% Asian/Pacific Islander, and .9% Native American (See Chart 2). Within the CPS system there are a variety of schools which range on location, demographics, funding, student enrollment, and theme/purpose; at the high school level for example, there are 11 types of schools (See Table 1).

**Student Racial Breakdown**

![Student Racial Breakdown](image)

*Figure 2: CPS Student Percentage Breakdown
Source: CPS Office of Evaluation, Research, and Accountability*
### Figure 4. Racial Breakdown by School Type

<table>
<thead>
<tr>
<th>High Schools</th>
<th>Name</th>
<th>Total</th>
<th>White</th>
<th>African-American</th>
<th>Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>No.</td>
<td>No.</td>
<td>No.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>41</td>
<td>General/Technical</td>
<td>55,239</td>
<td>4,742</td>
<td>8.6</td>
<td>23,849</td>
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<td>8</td>
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<td>9,956</td>
<td>188</td>
<td>1.9</td>
<td>6,842</td>
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<tr>
<td>5</td>
<td>High School Magnet</td>
<td>7,042</td>
<td>791</td>
<td>11.2</td>
<td>2,304</td>
</tr>
<tr>
<td>8</td>
<td>Selective Enrollment</td>
<td>11,191</td>
<td>2,933</td>
<td>26.2</td>
<td>3,470</td>
</tr>
<tr>
<td>15</td>
<td>Performance</td>
<td>6,553</td>
<td>193</td>
<td>2.9</td>
<td>4,602</td>
</tr>
<tr>
<td>6</td>
<td>Military Academy</td>
<td>2,269</td>
<td>99</td>
<td>4.4</td>
<td>1,074</td>
</tr>
<tr>
<td>7</td>
<td>Contract</td>
<td>1,267</td>
<td>43</td>
<td>3.4</td>
<td>1,110</td>
</tr>
<tr>
<td>11</td>
<td>Small Schools</td>
<td>3,783</td>
<td>107</td>
<td>2.8</td>
<td>3,158</td>
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<tr>
<td>8</td>
<td>Achievement Academy</td>
<td>1,535</td>
<td>24</td>
<td>1.6</td>
<td>1,230</td>
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<tr>
<td>8</td>
<td>Alternative School</td>
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<td>49</td>
<td>2.0</td>
<td>1,972</td>
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<tr>
<td>5</td>
<td>Special Education</td>
<td>955</td>
<td>112</td>
<td>11.7</td>
<td>470</td>
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<tr>
<td>29</td>
<td>High School Charter</td>
<td>15,665</td>
<td>597</td>
<td>3.8</td>
<td>9,053</td>
</tr>
<tr>
<td><strong>151</strong></td>
<td><strong>High School Totals</strong></td>
<td><strong>117,966</strong></td>
<td><strong>9,878</strong></td>
<td>9.1</td>
<td><strong>59,134</strong></td>
</tr>
</tbody>
</table>

*Source: FY 10 Race/Ethnic Survey, CPS Office of Research, Evaluation, and Accountability*
School Funding

Financing the 3rd largest school district in the U.S. derives from a variety of federal, state, local, and other sources (See Figure 5). The operating budget for 2009-2010 is $5.328 billion dollars, $2.283 billion from local sources, while $1.468 billion from state aid and $1.471 billion federal aid (CPS Office of Research, Evaluation, and Accountability). Based on per capital expenditures for the fiscal year 2008-2009, per pupil amount for 2009-2010 is $11, 536 dollars. The budget for 2011 is proposed at $6.6 billion dollars—similar to what corporations like Yahoo, Visa, and Mattel operate under (Citizens Guide, 2010). However, a report conducted by the CPS Office of Management and Budget indicates that “Illinois contributes less toward the overall cost of K–12 public education than almost any other state in the country” ranking 49th place among the U.S. (CPS Citizens Guide, 2010).

![General Operating Fund Revenues Last Five Years (in millions)](image)

*Figure 5. FY Budget 2010 Report, Source: CPS Office of Evaluation, Research and Accountability*

Much of the revenue, an estimated 40%, derives from local sources, such as local property taxes, personal property replacement taxes (PPRT), interest income, and rental income,
among other fees (Citizens Guide, 2010). General state aid (GSA) is determined by the state legislature through a variety of factors including, but not limited to, school enrollment, district need, and household income. Federal aid includes supplemental funding under Title 1, targeting the needs of low-income students. According to CPS’ Citizens Guide (2010), school funding is determined by student enrollment and student needs, such as limited English proficiency, disability, and poverty. Non-traditional schools, such as Charter and Contract schools, also receive funding; an amount is disbursed per student and it is used towards the entire school expenditures, which allows greater flexibility in internal budget allocation. Given the various factors that formulate the current funding structure, educational environments are deeply connected to politics, culture, and economy.

![Funding Diagram]

*Figure 6: CPS Proposed Budget 2011*
*Source: Understanding CPS Budget: Citizens Guide 2010*
High School Background

The case study was conducted at a predominantly Latina/o school in the Chicago Public School system. The high school is located in an area characterized by a predominant Latina/o and White population, followed by African-American and ‘Other’, as well as a low number of Asian-Americans. In terms of economic landscape, the community has majority of its population in Sales and Office Occupations, Production, Transportation and Material Moving Occupations, and Service Occupations (US Census Community Survey, 2000). The most common occupations are in manufacturing and education, health, and social services. The median annual household income of an estimated $40,000, while the median cost of homes is about $110,000. Over 25% of the individuals and families live below the poverty level. Educational attainment data further demonstrates about 20% of the population has less than a 9th grade education, 17% attended high school but did not graduate, 30% received a GED or diploma, 4% holds an Associate’s Degree, 6% holds a Bachelor’s Degree, 3% hold a graduate or professional degree, and almost 20% attended college but did not graduate. In addition, almost one third of the population is foreign-born and about one fifth is undocumented.

The 151 high schools within CPS have a current enrollment of 115,710 students, while 44,289 students are identified as Latina/o (CPS Website). Data from Chicago Public High Schools indicates that 18% of students are designated as Limited English Proficient, 14% Special Education, 81% are identified as low-income or poverty (CPS Office of Evaluation, Research, and Accountability, 2011). Within CPS there are 14 schools that offer the International Baccalaureate Diploma Programme, this high school being one of them. Students must apply to the program during 8th grade, take an entrance exam and participate in an interview for the selection process. The IB program consists of a ‘comprehensive’ curriculum designed to provide

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\(^{17}\) This is a term used to denote self-identification beyond the outlined U.S. Census categories.
students with more courses, as well as an opportunity to attain an internationally-recognized diploma (Office of Academic Enhancement). Besides IB, the school also offers Advanced Placement (AP), honors, regular, Education as a Second Language (ESL), and special education classes, as well as the Advancement Via Individual Determination (AVID) program. AVID targets students in the ‘academic middle’ and provides them with a rigorous curriculum varying from AP, honors, regular courses, as well as an AVID course designed for critical thinking, study and organizational skills (AVID online). The school offers AP courses and Honors courses in English, Social Science, Science, and Mathematics. Out of 20,990 students enrolled in AP courses, an estimated 7,681 or 36.5% are Latino/a (Advanced Placement 5-Year Summary). According to the CPS scorecard data (2008), while there was a predominant ‘Hispanic’ enrollment of students in the school, less than one tenth were enrolled in AP courses (CPS Office of Research, Evaluation, and Accountability).

In this chapter I outlined the rationales and influences guiding my methodological frameworks. I also provided contextual information to understand the history and urgency in focusing on the educational prospects of Chicana/o students in Chicago. Given the fast-growing numbers of Chicana/os alongside the meager educational opportunities and conditions, it is important to identify possible alternatives to the current system. There is great potential in qualitative work as it provides a story behind the demographic patterns and statistics. More specifically, qualitative work can highlight how historical implications and current conditions unravel at the individual level, and thus connect back to overarching values, factors, and enactments. The following chapter will provide an overview of the manner in which cases of educational equity have played out within the legal spectrum.
CHAPTER 4
CROSS-EXAMINATION

This chapter will provide background to the different interpretations courts have applied for cases regarding access to education. First, I will include a general overview of various legal areas that have been invoked for educational issues. Thereafter, a selection of eight cases will be reviewed to gather a summative compilation of court rationales and rulings. As a means to exhibit the contrast in legal cases, they were specifically selected and arranged into two sections, student integration and student exclusion. In the third component of this chapter, guided by qualitative methodology, student narratives from the Chicago High School case study will be inserted as testimonies to challenge, support, and/or validate the impact of academic tracking for Chicana/o students. Overall, this chapter will present the results from the content reviewed in the court cases, as well as the findings from the counter narratives from the case study.

Educational Law

Fundamentality

There has been much controversy over the issue of whether education is considered a fundamental right. Fundamental rights are defined as entitlements protected by the constitution and can also be interpreted as government entitlements that all people can access. Kern and David Alexander (2009) explain that fundamental rights are therefore human rights because they are “basic and essential to the life and dignity of each individual” (p. 40). They extend that although fundamental rights may not be absolute, and even limited, any restrictions placed on these rights by the government must demonstrate “that society at large is some way enhanced by the denial of an individual’s right” (p. 40). Moreover, fundamental rights “cannot be lightly
denied or sacrificed merely because the majority of society is inconvenienced or has preference or disposition to deny the right; a fundamental right can only be denied for a compelling reason” (p. 40).

There are two types of fundamental rights, liberty and dignity. Liberty rights refer to civil and political rights which allow “autonomy, freedom of self-control, to hold and keep private property, and to be free of government oppression” (p. 103). Alexander and Alexander explain that the right to liberty was a leading principle in the development of the Bill of Rights. In regard to the right of dignity, it is described as “the right to be respected by others, is usually thought to include personal security, work, and a means of earning a reasonable wage—an adequate standard of living, including shelter, food, clothing, healthcare, and of course education” (p. 103). Additionally, education has been described as fundamental right because through its services and impact, it can improve human and social conditions. For example, in 1944, President Franklin D. Roosevelt proposed the Economic Bill of Rights, in which he identified a good education as not only an entitlement, but also as a basis for human welfare the government was required to provide. Besides national proclamations, Article 26 of the United Nation’s Universal Declaration of Human Rights has also asserted everyone should have a right to education (p. 104). Basically, in order to have a worthy and fulfilling life there are certain rights one should have access to and we are accountable to one another; therefore, the government is integrated within that system of accountability. These social contracts based on moral and ethics were not clearly outlined in the Constitution, and as a result it is up to courts to determine their fundamentality.

Accordingly, the U.S. Supreme Court determined that education was not a fundamental right in the landmark case surrounding property taxes and school financing in Texas, San
Antonio Independent School District v. Rodriguez (1973). The court opinions explained that if education was declared a fundamental right it would result in “intractable economic, social, and even philosophical problems” and moreover not “worth paying the incremental cost” (p. 104). The plaintiff’s attorney, Arthur Gochman, argued that without education other rights, liberties, and freedoms could not be fully achieved. The issue over the fundamentality of education is vital because it determines not only the role of the government, but also whether due process applies to such entitlement.

The federal government may not necessarily delineate education as a right in the U.S. Constitution, however, state provisions may include, in variances, education as a requirement. In addition, some courts of law have adjudicated education is a fundamental right. In essence, education is a fundamental right if it is outlined in the constitution or if the equal protection clause is applied to prohibit discrimination. In cases where discrimination is being argued, “the plaintiffs must show that they are a protected class that is suffering from deprivation of a state benefit” (p. 40). Again, it is particularly important to make the distinction of whether society or the individual benefits from the deprivation in order to determine if there is a compelling reason for denial of rights. Overall, the fundamentality of education is established by the manner in which courts interpret constitutional provisions, as well as how parties involved pose their arguments.

**Due Process**

There are two types of due process, one being procedural due process and the other substantive due process. The main difference is that procedural refers to the constitutional process that must be offered to a person if life, liberty or property will be deprived; proper notice
is required, as well as an opportunity to a fair hearing. In circumstances where a person will be
deprived of fundamental rights, the state must not only have a “valid objective” for doing so, but
must also conduct such deprivation in a “reasonable manner” (p. 506). These applications are not
set in stone; substantive due process has been a highly contended matter by courts and legal
scholars. In particular, discussion centers on implicit versus explicit rights delineated in the
constitution.

While some argue for the extension of natural rights into areas such as moral, fairness,
equity, and the pursuit of happiness, others believe “there is no valid power of the courts to
enforce such a standard over the will of the people” (p. 507). Over time, however, courts have
incorporated an implicit judicial review, which examines laws and practices only if reasonably
linked to a constitutional provision. Most recently, courts have expanded their reviews to
consider “essential and fundamental rights even though the precise wording referring to those
rights is not specifically used in the Constitution” (p. 507). For instance, there isn’t an explicit
“right to privacy” in the constitution, but courts have upheld it as a fundamental and natural right
(p. 507).

In Meyer v. Nebraska (1923), the court provided a definition of liberty under substantive
due process:

“The established doctrine is that liberty may not be interfered with, under the guise of
protecting the public interest, by legislative action which is arbitrary or without
reasonable relation to some purpose of the competency of the State” (Alexander and

In regard to property interest the case Goss v. Lopez (1975) declared:

“Property interests…are not created by the Constitution. Rather they are created and their
dimensions are defined by existing rules or understandings that stem from an independent
source such as state laws-rules or understandings that secure certain benefits and that
support claims of entitlements to those benefits” (Alexander and Alexander, 2009, p.
508).
In addition to complying with federal standards, states are allowed to implement their own standards for curriculum. Generally, school boards and teachers are entrusted with the control over appropriate requirements and courts refrain from becoming involved unless measurements are unreasonable or discriminatory. This understanding was established under Board of Curators of University of Missouri v. Horowitz (1978), when the U.S. Supreme Court declared courts were not deemed fit to assess student performance (Alexander & Alexander, 2009). The court is therefore limited to determine whether there is evidence of discrimination and if due process is being applied.

Given the value and social benefits a degree can entitle, due process can be applied to forms of educational attainment, such as diplomas. Diplomas represent a special interest and therefore considered property interest, thus meeting due process criteria. However, graduation requirements, test measurements and content are considered subjective standards, and ultimately “substantive due process, property, and liberty interests do not apply” to subjective standards. The case Mathews v. Eldrige (1976) outlined that in instances where “(1) the nature of the private interest denied by the official action, (2) the risk of erroneous deprivation if appropriate procedures are not followed, and (3) the state’s interest in imposing the particular requirements deny the benefit,” then conditions for due process can be raised (Alexander and Alexander, 2009, p. 397).

In Hobson v. Hansen (1967), tests for academic tracking were declared unconstitutional. The premise for this ruling was based on the outcome of classroom demographics, which demonstrated separation according to race. Although schools officials argued that student placement was a result of test performance, court findings demonstrated that students of color
were overrepresented in lower and special education classes. Burden of proof was placed on the school to demonstrate a compelling interest in having such effects. Unable to demonstrate how the test results effectively separated students, school board was denied the further use of tests.

The case *Washington v. Davis* (1976), introduced a useful discussion on effects and intent in relation to reasonable and compelling interests. This case established an important precedent for Equal Protection, as it also required plaintiffs to prove the use of tests was an intent to discriminate in the first place. The central rationale was that “disparate results [are] not a violation of equal protection unless it could be shown that there was official intent to discriminate” (Alexander and Alexander, 2009, p. 398). Subsequent lower court cases extended the intent standard, with institutional intent, and instead of compelling interest, schools were required to prove reasonable disparate effects were based on “substantial nonracial objectives” (p. 398). Whereas, earlier cases relied on plaintiff’s providing evidence, this case was also critical because “institutional intent” shifted the burden of proof to the school district. In all, the understanding was:

Where the school board adopts policies that foreseeably further an illegitimate objective, and it cannot justify or adequately explain such policies in terms of legitimate educational objectives, one must presume that the school board would not have adopted such a policy but for an illegitimate purpose. Consistent with this perspective, “institutional segregative intent” may be said to exist where a school board adopts more, rather than a less segregative policy and cannot justify its choice in terms of legitimate educational objectives (Yale Law Journal, 1976, p. 317).

The case *Debra P. v. Turlington* (1979) brought to question the constitutionality of a test requirement under the equal protection and due process clauses. The court declared tests were a violation, but shortly in 1984, the case was remanded for additional evidence. Building an argument around test validity and reliability served as basis to place burden of proof on the state, and as a result, Florida’s Department of Education conducted surveys of teachers to determine if
curriculum content was presented prior to testing students. This case was instrumental to due process because what was once considered subjective (ie. test content and questions), was incorporated and reviewed to determine if curriculum matched test content. In addition, it established a distinction in presenting statistical measures and evidence for judicial review. The court explained that the test was constitutionally allowed if it was “instructionally valid,” because it would then serve state purposes and interests.

Plaintiffs argued that not all students had a fair opportunity of exposure and learning the material for the test, and therefore the test content was not aligned with educational exposure. The court ruled that preponderance of evidence demonstrated tests were constitutional, because teachers were not constitutionally mandated to have all students learn, and they also followed state standards to develop what they should teach. However, the case opened an unresolved discussion of the impact and remnants of past discrimination. Statistics demonstrated that an overwhelming amount of Black students failed the exam, yet the court explained the use of the ‘instructionally valid’ tests was not directly attributed to that failure. Instead, they claimed, the test would remedy effects of the past segregation because students were “afforded an adequate opportunity to learn the skills on the test” (Alexander and Alexander, 2009, p. 401). Nonetheless, findings from the 1979, trial demonstrate that “the most significant burden which accompanied black children into the integrated schools was the existence of years of inferior education” (p. 401).

**Disparate Impact**

In *Georgia State Conference of Branches of NAACP v. Georgia* (1985), plaintiffs claimed ability and achievement grouping violated the equal protection clause and the Civil
Rights Act of 1964, because it had *disparate impact* on Black students. In claiming *disparate impact*, plaintiffs had to demonstrate “by a preponderance of evidence that a racially neutral practice, such as achievement tests, have a racially disproportionate impact” in order to shift the burden of proof to the state (Alexander and Alexander, 2009, p. 353). The school district was able to provide “substantial legitimate justification for its action” that grouping practices did not violate Title VI because they had educational purpose. Title VI states:

NO person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (Section 601).

Nonetheless, the state demonstrated there was a compelling interest (educational purpose), and the court concluded that “disadvantaged children, including blacks, had made significant academic progress since the inception of the achievement grouping program” (Alexander and Alexander, 2009, p. 401).

For disparate treatment case, plaintiff must present evidence to shift burden of proof to defendant based on the argument that (1) they are a member of a protected class, (2) due to their status, state or agency action treated them differently because of their association to protected group/class, and (3) resulting treatment is form of discrimination (p. 924). For disparate impact, the argument does not claim *intent* to discriminate; a neutral policy or requirement which has an adverse effect on particular groups. The defendant must demonstrate that such actions are necessary because it is has a related purpose.

**Negligence**

There is an area in the constitution which deals with harmful effects that are unintended and not anticipated. Events covered include those which are not reasonably foreseen. In order to
measure the threatened harm in relation to the conduct, courts developed reasonableness test. Simply put, negligence is determined by the existence of an injury resulting from an unreasonable action. An unreasonable action is then further defined as that which occurs when a reasonable person, without intending harm, fails to take precautionary actions and exposes someone else to an “unreasonable risk of harm” (Osborne v. Montgomery, 1931). Elements of Negligence include (1) a duty to protect others; (2) a failure to exercise an appropriate standard of care; (3) the existence of casual connection between the act and the injury, called proximate or legal cause; and (4) an injury, damage or loss (Alexander and Alexander, 2009).

Nonetheless, courts have clarified that given the relationship between a teacher and student, a teacher may be liable, but negligence must be substantially harmful, continuous, and active. Similarly, under tort law, plaintiffs have sought relief based on educational malpractice, but little have actually succeeded. In B.M. v. State (1982) plaintiff argued that due to inaccurate testing practices, the student was misplaced in Educable Mentally Retarded (EMR) classes, which resulted in due process and equal protection violations. Plaintiff argued that under Montana law, the state had entitled a duty of care in making appropriate placements of students. In the final ruling, the court declared the state had breached its duty of reasonable care through misplacement and harming student’s progress.

**Deliberate Indifference**

The Civil Rights Act of 1871, Section 1983, addresses the conditions in which someone, who believes their constitutional rights have been violated, can seek relief for damages created by the state. Individual teachers, board members, administrators, as well as the school board can be liable under this act. The Act states:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The burden of proof lies on the plaintiff seeking compensation for damages. When employees act upon expected policy or custom, then the government or agency can be held liable. In addition, the government has to have an “underlying knowledge” that employees’ actions deny constitutional rights and deprive student(s), thus demonstrating deliberate indifference. The court has outlined a set of criteria to establish school or district liability:

1. that plaintiff possessed a constitutional right of which he was deprived, (2) the school district had a policy, custom, or practice that was drawn into question, (3) such a policy amounted to deliberate indifference to the plaintiff’s constitutional right; and (4) that such policy was the moving force behind the constitutional violation (Harry A. v. Duncan, 351 F. Supp. 2d 1060 (D. Mont., 2005) (Alexander and Alexander, 2009, p. 761)

When school officials disregard deprivation of constitutional rights with deliberate indifference, tort law can be applied. Under tort law, a breach of civil duty, such as care and protection of students’ rights, can result in a “state-created danger” (Alexander and Alexander, p. 761). Thus, a school district can be found liable for the damages incurred. There are four conditions to demonstrate “state-created danger”: (1) harm was “foreseeable and fairly direct” (2) culpable act “shocks the conscience” (3) special relationship exists between actor and plaintiff (ie. teacher or district with student) (4) danger was created by misuse of power (Alexander and Alexander, p. 761). Overall, to demonstrate that deliberate indifference of district or teacher resulted in a damage and constitutional violation, plaintiff must demonstrate there was an established relationship with the constitutional duty to “perform reasonably” and indifferent misuse of power resulted in damages, which could’ve been prevented.
Students with Disabilities

This area of legal policy has continually expanded and refined parent and student rights, as well as state accountability and requirements. It was not until 1971, that substantial consideration was given to students with disabilities with the case *Pennsylvania Ass’n for Retarded Children v. Common Wealth* (PARC), which ruled:

Free, public program of education and training appropriate to the child’s capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in regular public school class is preferable to placement in a special public school class [ie. a class for children with disabilities] and placement in a special public school class is preferable in any other type of program of education and training…[No] child who is mentally retarded or thought to be mentally retarded can be assigned initially (or reassigned) to either a regular or special status, or excluded from public education without prior recorded hearing before a special hearing officer. At that hearing, parents have the right to representation by counsel, to examine their child’s records, to compel the attendance of school officials who may have relevant information to offer, to cross-examine witnesses testifying on behalf of school officials and to introduce evidence of their own (*Pennsylvania Ass’n for Retarded Children v. Common Wealth*, 1971).

With the right of education for students with disabilities outlined, it opened the door for other families to come forward.

In *Mills v. Board of Education of District of Columbia* (1972), a group in D.C. filed suit against public school system for denying public services, failing to provide an alternative education, and excluding them from the school system all together. Plaintiffs explained that district code required parents to enroll their children in schools, and failure to comply resulted in a criminal offense; denying access to education, in effect, parents could face charges. Therefore, the Board of Education was required to provide such opportunity. Under the education rights afforded in PARC, due process and review was required before assigning students to a disability label, and most importantly education was recognized as a protected entitlement. “The defendant’s conduct here, denying plaintiffs and their class not just an equal publicly supported
education but all publicly supported education while providing such education to other children, is violative of the Due Process Clause” (Alexander and Alexander, p. 565). The court clarified that financial limitations did not justify the denial of entitlement rights and interests.

If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom (Alexander and Alexander, p. 566).

As a result, the case extended the ruling to include “(1) a free appropriate education, (2) an individualized education program (IEP), and (3) due process procedures” (Alexander and Alexander, p. 564). In addition to adequate services, the judgment included regulations on discipline, review process, integration in public school, hearing procedures, proper parent notification of classification with supporting evidence, as well as the opportunity to challenge school determination with own counsel and data. Specifically, this case was instrumental in re-envisioning the methods of placement, tools used, opportunity to cross-examine and have own representation, as well as the need to monitor status. Overall, determination of student placement was decided based solely on the information presented during the hearing process. Furthermore, this case was vital for educational rights because it required the district to “formulate general plans of compensatory education suitable to class members in order to overcome the present effects of prior educational deprivations” (Alexander and Alexander, p. 567).

Despite the attempts to increase the quality of services for students with disabilities, educational needs were still unmet, students continued to be improperly identified, and overall the educational experiences were not successful as they did not have full equality of opportunity. As a result, the federal government passed the Rehabilitation Act of 1973 and Education for all Handicapped Children Act (EAHCA) otherwise known as, Public Law 94-142. EAHCA
established further provisions for education for students with disabilities as well as better methodological practices grounded in research and training. In particular, the law proposed:

1. a free appropriate public education,
2. an individualized education program,
3. special education services,
4. related services,
5. due process procedures, and
6. the least restrictive environment (LRE) in which to learn.

In 1990, the policy was renamed Individual with Disabilities Education Act (IDEA), which changed the recognition of additional types of disabilities, as well as plans for helping student transition. By 1997, added amendments granted schools additional years to evaluate students, and in effect elongate the process of labeling. Education lawyer, Dixie Snow Huefner, claimed the decategorizing of disabilities would reduce stereotyping and stigmatization of students (Alexander and Alexander, p. 569). One of the main additions related to the disciplinary process; schools were required schools to provide participation in general curriculum, as well as individualized plan goals, and special services while students underwent review of behavior and placement. These guarantees during disciplinary procedures, better known as Free Appropriate Public Education (FAPE), nonetheless, only applied to students who were identified as having a disability before undergoing disciplinary sanction. Moreover, students eligible for FAPE under IDEA are entitled to such benefits even if they have dropped out of school. Besides procedural safeguards, drawing on negligence and reasonableness, FAPE also offers the right for extended school year services if it can be determined that regression could occur during school breaks.

Additional amendments were made in 2004, changing IDEA title once more to Individuals with Disabilities Education Improvement Act. However, it remained known commonly as IDEA. Primarily, provisions were updated to be aligned with regulations under No Child Left Behind (NCLB), such accountability measures, teacher certification, research-based interventions and evaluations, reliable methods of assessments, flexibility in federal expenditures
(ie. allocation towards private schooling if public not adequate), as well as having the ability to use 15% of federal funds for regular school programs towards earlier identification of students with disabilities. However, one of the areas which was not reviewed and has remained contested has been determining an ‘appropriate’ education and ‘least restrictive environment’. The Supreme Court has explained appropriate education should be left to the discretion of states and districts. Following the precedent set in *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982), the mere access to an education, regardless of its quality, fulfills the state responsibility in providing an ‘appropriate’ education—a benefit they would otherwise not receive. The Supreme Court stated:

> We therefore conclude that the ‘basic floor of opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide education benefit to the handicapped child (p. 3048).

Debate continues over the interpretation of an adequate and beneficial education. While some argue the state is required to provide a beneficial education, others reason the state should provide a meaningful benefit to the student and IEPs may not be sufficient. Given that, in *Rowley*, the court explained procedural guidelines must be followed in identifying the appropriate program for the student, as well as the providing an individualized plan developed by student’s teachers, school officials, parents, and counselors. In addition, the court clarified that the intent of the EAHCA was to provide equal access to an education and not necessarily to a maximum level. Overall, the court justified their decision by reasoning that it was not the responsibility of the court to impose educational standards and instead a beneficial education be left to the determination of states and districts.
Least Restrictive Environment

Another area which remains vague and contested is understanding what incorporates a least restrictive environment. Integrating students with disabilities into regular classes, otherwise known as mainstreaming, although not specifically required by IDEA, it has however been encouraged by many court decisions. According to Section 34 of the Education Title, part 300:

‘Regulation requires that the broadest opportunity should be afforded to the student on a continuum of alternative placements’ and that when ‘selecting the least-restrictive environment, consideration [must be] given to any potential harmful effect on the child’ (Alexander and Alexander, p. 593). Courts refer to the Daniel R.R. test to establish whether a least restrictive environment has been offered. First, courts identify if satisfactory education can be provided with supplemental services in a regular classroom. If it is not possible and special education must be done outside of the regular classroom, they also identify if substantial efforts have been to mainstream the student. On the other hand, in Ronker v. Walter (1983), the court explained mainstreaming, although potentially academically and socially beneficial for students, it may not be the most appropriate placement for all students. Thus noting, that a separate education does not necessarily mean it is costly or even better; if the same services can be provided within the regular classroom, it is a more appropriate placement. Ultimately, the most appropriate settings are those which provide the most benefits for the student. Overall, despite parent concerns and demands, student placement and appropriate educational methodology is deferred to professional educators and the district.

In regard to providing a least restrictive environment, the general interest is being able to structure an inclusive environment for the student. This indicates that the burden of proof is placed on the school district to give evidence of why the students with disabilities should not be in a regular classroom. Grounded in this expectation is the understanding that there is a social
benefit to being educated among peers. The court in *Oberti v. Clementon School Board District* (1993) explained:

>a determination that a child with disabilities might make greater academic progress in a segregated, special education class may not warrant excluding that child from a regular classroom environment….a child may benefit differently from education in the regular classroom than other students…In short, the fact that a child with disabilities will learn differently from his or her education within the regular classroom does not justify exclusion from that environment (Alexander and Alexander, p. 597).

Besides the direct benefit to students, having diversity in the classroom aligns with the “spirit of public education” (Alexander and Alexander, p. 594).

**Desegregation of Public Schools**

History shows groups have challenged the implications of de jure and de facto segregation in regard to education. Dating back to 1849, in *Roberts v. City of Boston*, Lawyer Sumner addressed the effects of separate schooling based on race. More specifically, he argued psychological impact and inferior schooling of children under segregation was essentially not equal and favored neither race. The court ruled for “separate but equal” schooling facilities, but after a state appeal, in 1855, Massachusetts banned school segregation. Similarly, in 1930, a group of Mexican parents in *Alvarez v. Lemon Grove* filed suit against the school board for also segregating their children to inferior facilities because they were Mexican. Drawing on the argument that Mexican students were citizens they merited equal treatment of whites under law. Ultimately, the result of these cases was the banning of segregation in schools is Massachusetts and California, accordingly.

However, it was not until *Brown v. Board of Education* (1954) that the federal court would take a stance on eradicating a sanctioned system of segregation. As a result, desegregation efforts were left to the state to determine, which continues to present legal, cultural, political, and
economic predicaments. Some states threatened to close down public schooling rather than integrate. For example, in response to Little Rock’s attempt to disregard the national ruling of Brown, the court responded explained constitutional rights and state duties could not be “ingeniously or ingenuously” evaded through (re)segregation schemes.

Consent decrees for desegregation cases bring up additional issues relating to housing, zoning, funding, rights, and jurisdictions, among others. In 1969, President Nixon distinguished de jure segregation was unconstitutional because it was enacted by law, but “de facto segregation results from residential housing patterns and does not violate the Constitution” (quoted in Alexander and Alexander, p. 1033). In tackling these issues, courts have explained that education boards “have no constitutional obligation to relieve racial imbalance that they do not cause or create” (p. 1034). Nonetheless, “If segregation is created by law or official act, then an affirmative duty to integrate the school is required” (p. 1034).

In Keyes v. School District No. 1, Denver (1973) for example, the school district did not have a history of de jure segregation, but plaintiffs filed suit arguing that a dual system operated in Denver due to policies from the school board, and thus creating a segregated school system. The school district was composed of 66% Anglo, 14% Black, and 20% Latino students. Since de jure segregation was inexistent, plaintiffs were required to demonstrate segregated schooling existed and that it was “maintained by intentional state action” (Alexander and Alexander, 2009, p. 1034). Plaintiffs were able to demonstrate that a section of the district “engaged in an unconstitutional policy of deliberate racial segregation,” although defendants argued that existence of segregation in one area of the district did not indicate that the entire school district was segregated (p. 1034). Drawing on Brown, the court clarified that plaintiffs were only
required to prove segregating schooling existed within the system, and not obliged to
demonstrate its existence in every single school.

Where plaintiffs prove that the school authorities have carried out a systematic program
of segregation affecting a substantial portion of the students, schools, teachers, and
facilities within the school system, it is only common sense to conclude that there exists a
predicate for a finding of the existence of a dual school system (Keyes v. School District
No. 1, Denver, 1973).

The court rationalized that attendance zones and structured practices resulted in the
concentration of Black students in certain schools, and conversely away from predominantly
white schools. Additionally, in building schools in certain locations, the district knowingly
affected the racial composition of students in that and surrounding schools. Moreover, school
infrastructure, student transfer policies, as well as staff and school placements, also presented
factors which furthered racial concentrations. Furthermore, the court determined that plaintiffs
provided evidence demonstrating inferior education did exist in the core of the city.

Common sense dictates the conclusion that racially inspired school board actions have an
impact beyond the particular schools that are subjects of those actions…proof of state-
imposed segregation in a substantial portion of the district will suffice to support a
finding by the trail court of the existence of a dual system (Alexander and Alexander,

Based on this presumption, alongside indicatives of structured segregation in one area, the
burden of proof shifted to the defendant to prove that other schools were not intentionally
segregated. Additionally, the District Court placed a consent decree requiring desegregation of
the whole district. The court ruled the defendant then had the opportunity to prove that the
alleged intentional segregation was contained and exclusive to that particular school or area.
The defendants appealed and the Court of Appeals ruled that the district was only responsible for
desegregating the areas with history of deliberate segregation, and not the schools in the core of
the city.
Remedies

Besides the shifting student and teachers, other desegregation plans have included “programs for early childhood intervention, curriculum development, reduction in pupil-teacher ratios, counseling and career guidance, remedial reading, and staff development” (Alexander and Alexander, 2009, p. 1052). Milliken II provided a set of guidelines in determining such plans:

1. Remedy should be commensurate with the nature and scope of the constitutional violation

2. The court decree’s should be remedial in nature, fashioned as nearly as possible “to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct

3. In formulating a decree, the courts “must take into account the interest of state and local authorities in managing their own affairs, consistent with the Constitution” (p. 1052).

Additionally, other courts have resorted to a change in funding and educational programs to remedy segregation. Courts, though, have declared it is unconstitutional the use of race to justify racial balancing. Diversity alone has not been identified as a compelling state interest, but “the only compelling reason to justify racial classifications was to remedy past discrimination” (Hopwood v. Texas, 1996). Courts have explained that when diversity is a compelling state interest, achievement plans cannot discriminate nor serve as devices to create racial balances. The Supreme Court has explained, “Race can only be used as one of many factors in a “narrowly tailored” policy to obtain diversity, but race cannot be the sole or determinative criterion for the admission of children to schools” (Alexander and Alexander, p.1058).

Examination of Legal Cases

In order to tackle the issues surrounding state and school role in relation to academic tracking, it is foremost imperative to explore governmental accountability towards education in
The following section includes eight cases depicting how courts have ruled in regard to educational access, differential treatment, and school policy in different states. Although it is often noted that the federal constitution does not specifically include the right to public education, the cases below exemplify instances where such rights have been extended influenced by concerns of the impact of differential treatment. It is important to note that some states do have provisions in their state constitutions detailing state mandated education requirements; however the language and specificity varies. It is important to note also that the use of these cases is primarily to demonstrate the focus afforded in relation to the academic, social, and psychological impact on the students and families involved.

The question is not whether education is a right, as noted before, according to the U.S. Constitution it is not explicitly defined as a right. The issue then becomes whether the current structures of the education system are discriminatory and racializing in respect to the processes of placement, instruction, funding, and most importantly its educational outcomes. These cases have been specifically selected to provide a comparison of court interpretations, as well as state regulations in regard to educational institutions. In general, cases were selected based on the plaintiffs’ background and arguments; specifically, plaintiffs seeking an integrated or inclusive learning environment were considered the first criterion for selection. Among the numerous cases, I found it productive to narrow down cases by the particular group of students involved in the case. Such groups included students with mental or physical disabilities and/or statuses, as well as association to economic or socio-political groups (as described and identified in the cases). Additionally, the time and context of each case was also taken into consideration, in order to 1.) demonstrate the development of differentiated, yet inclusive learning environments over time, 2.) exhibit the analogous discourse and arguments surrounding academic placements within
and among schools and lastly, 3.) provide insights on the limits and capacities of legal courts in regard to education.

**Student Integration**

*Ordway v. Hargraves (1971).* In 1971, 18 year old Fay Ordway filed suit against North Middlesex High School in Massachusetts due to differential treatment from school officials based on her status as a pregnant and unmarried student. Under Rule 821, the school’s policy stated:

> Whenever an unmarried girl enrolled in North Middlesex Regional High School shall be known to be pregnant, her membership in the school shall be immediately terminated *(Ordway v. Hargraves, 1971)*

Fay Ordway notified Mr. Harvgraves in January of 1971, that she would be due to deliver by June of that same year. In February Mr. Hargraves informed Fay Ordway to stop attending regular classes and provided a set of conditions to complete the academic year. Fay was only permitted on school premises to use resources at the end of the day, when regular school was no longer in session, but would be allowed to attend school events and seek free tutoring. In March Fay Ordway filed a complaint.

Several experts provided testimonies on behalf of plaintiff Fay Ordway. Physician F. Woodward Lewis “attending school are no worse for her than for a non-pregnant girl student” (p. 1157). Doctor Dorothy Jane Worth “testified that in her opinion exclusion of plaintiff will cause plaintiff mental anguish which will affect the course of her pregnancy” (p. 1157). Doctor and psychiatrist Mary Jane England “young girls in plaintiff’s position who are required to absent themselves from school become depressed,” which could affect the child (p. 1157). Additionally, pregnant students ought to remain connected with peers and “should not be treated
as having malady or disease” (p. 1157). Social worker Janice Montague testified unwed
pregnant students benefit from having the opportunity to select private or regular instruction. The
last witness from the Chairman of the Guidance Program at the Harvard Graduate School of
Education, Dr. Norman A. Sprinthall, explained that the education program outlined for the
student “was not educationally the equal of regular class attendance and participation” (p. 1157).

Judge Caffrey’s opinion:
It is clear, from the hearing, that no attempt is being made to stigmatize or punish
plaintiff by the school principal, or for that matter, by the school committees. It is equally
clear that were plaintiff married, she would be allowed to remain in class during regular
school hours despite her pregnancy…Mr. Hargraves could not state any educational
purpose to be served by excluding plaintiff from regular class hours, and he conceded
that plaintiff’s pregnant condition has not occasioned any disruptive incident nor has it
otherwise interfered with school activities…

In summary, no danger to petitioner’s physical or mental health resultant from her
attending classes during regular school hours has been shown; no likelihood that her
presence will cause any disruption or interference with school activities or pose a threat
of harm to others has been shown; and no valid education or other reason to justify her
segregation and to require her to receive a type of educational treatment which is not the
equal of that given to other in her class has been shown.

It would seem beyond argument that the right to receive a public school education is a
basic personal right or liberty. Consequently, the burden of justifying any school rule or
regulation limiting or terminating that right is on the school auth-

Extending on the ruling from First Circuit Court case Richards v. Thurston (1970), Judge Caffrey
explained that when rules and policies do not have “inherent and self-evident justification”, the
burden of proof lies on the defendant (p. 1158). Since the defendant, Mr. Hargraves, was unable
to demonstrate educational purpose for the exclusionary and separate treatment of Fay Ordway,
Judge Caffrey ordered the immediate reinstatement of the plaintiff into regular schooling.

In the Interest of G.H. v. North Dakota (1974). Student, referred as G.H., was born with
a severe handicap, attended the Cripple Children’s School in Jamestown, North Dakota.
Student’s parents were financially unable to pay the tuition, room, and board, among other expenses, so the Williams Welfare Board paid tuition costs; the Board set up a contract with the Williams County Board to forward payments to the school. In 1969, student’s parents moved to Minnesota and the district stopped forwarding the payments, even though the Welfare Board continued to make payments. In March of 1970, employee of the board requested a consultation for the custody and control of G.H. In May of 1970, the court found that G.H. was a “deprived child, that her parents were unable to provide for her, that the causes of her deprivation were not likely to be remedied” (In the Interest of G.H. v. North Dakota, 1974, p. 443). Additionally, the court explained that the Cripple Children’s Center was the most appropriate place for the student. Moreover, parents had not established residency, but if financially able to contribute to her tuition they would be required to pay a minimal amount. Furthermore, the court declared G.H. a ward of the state. The Welfare Board and the Williams County Board appealed the decision demanding further clarification on financial accountability of G.H.

Judge Vogel’s opinion demonstrated that the issue of financial liability was directly connected to whether education was a constitutional entitlement. The opinion offered highlights the contradictions found across states, as well as that between states and the federal government. Precisely because North Dakota’s constitution does guarantee education as a basic right, Judge Vogel’s opinion firmly established that although education was not a right mandated in the U.S. Constitution, as well as by other states, the state constitution would have to be referred for consideration. Judge Vogel pointed to Section 147 of North Dakota’s Constitution:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian
control. This legislative requirement shall be irrevocable without consent of the United States and the people of North Dakota.

Additionally, Judge Vogel highlighted that North Dakota’s Constitution guaranteed a “uniform system for free public schools throughout the state, beginning with the primary and extending through all grades up to and including the normal and collegiate course” (Constitution of North Dakota, Section 148). Most importantly, he affirmed that “[A]ll children in North Dakota have the right, under the State Constitution, to a public school education. Nothing in Rodriguez, supra, holds to the contrary” (p. 446). Moreover, he pointed to the case Robinson v. Cahill (1973) to demonstrate that despite the ruling in San Antonio School District v. Rodriguez (1973), there were other states, like New Jersey, which continued to hold education a right under its statutes. Judge Vogel’s opinion further explored the issues of equality and access:

Handicapped children are certainly entitled to no less than unhandicapped children under the explicit provisions of the Constitution. Whether those who have been unconstitutionally deprived of education in the past have a constitutionally based claim for compensatory educational effort, we leave for future determination...

For the present, we say only that failure to provide educational opportunity for handicapped children (except those, if any there are, who cannot benefit at all from it) is an unconstitutional violation of the foregoing constitutional provisions, as well as Section 11 of the North Dakota Constitution and Section 20 of the North Dakota Constitution, which provide that all laws of a general nature shall have a uniform operation and that no class of citizens shall be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

After reviewing the Rodriguez case, Judge Vogel described the contradiction in expecting states to meet educational needs and not completely deprive students, while federally exempted. He explained, “education has long been the primary responsibility of the States, and it is only natural that their constitutions should provide for a right to an education; while the Federal Constitution, as Rodriguez points out, is silent on the subject of education” (p. 446).
Thereafter, Judge Vogel’s opinion questioned the ruling in Rodriguez, pointing out that the state was not convincingly challenged on the ability to provide an adequate education with its “Minimum Foundation Program.” In connecting accountability, adequacy, and educational financing, Judge Vogel directed the court to rationale that funding undeniably determines educational resources:

The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth (San Antonio School District v. Rodriguez, 1975)

He further declared and concluded that:

While the Supreme Court of the United States, using the "traditional" equal-protection analysis, held that the Texas system of educational financing, which relied largely upon property taxes, we are confident that the same Court would have held that G.H.’s terrible handicaps were just the sort of "immutable characteristic determined solely by the accident of birth" to which the "inherently suspect" classification would be applied, and that depriving her of a meaningful educational opportunity would be just the sort of denial of equal protection which has been held unconstitutional in cases involving discrimination...

In Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the Supreme Court said, "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." When North Dakota undertakes to supply an education to all, and to require all to attend school, that right must be made available to all, including the handicapped, on equal terms...

We hold that G.H. is entitled to an equal educational opportunity under the Constitution of North Dakota, and that depriving her of that opportunity would be an unconstitutional denial of equal protection under the Federal and State Constitutions and of the Due Process and Privileges and Immunities Clauses of the North Dakota Constitution.

Leandro v. State of North Carolina; Board of Education (1997). In 1996, a group of parents and students filed suit against the state and board of education of North Carolina claiming that the funding system violated equal protection clause of the 14th Amendment of the U.S. Constitution, as well as state provisions. Plaintiffs argued that wealth disparity across
districts created unequal educational opportunities across the state, but especially for students in poor rural and urban districts. Plaintiffs explained that due to crime, poverty, unemployment, as well as health care and homelessness, district expenses were already exhausted. Plaintiffs’ complaint included inequalities in facilities, materials, programs, resources, students per classroom, and teachers. Additionally, they argued poor districts had vast need for special education, gifted programs, and ‘special English instruction,’ which added additional costs to an already limited fund. Moreover, plaintiffs presented data demonstrating differences in test performance in relation to district funding as a mean to urge for an increase in per pupil expenditure.

The Court of Appeals ruled that the North Carolina State Constitution did not guarantee an equal education, explaining that statutes guaranteed access to an education, without stipulations over content or quality. The Supreme Court, however, explained that the North Carolina Constitution of was explicit in its requirement that:

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right (Article 1, Section 15)…

In response to state accountability for a quality education, Chief Justice Mitchell stated:

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students…

The right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.

Additionally Chief Justice Mitchell pointed out that in Sneed v. Greensboro City Board of Education (1980) the court declared:

It is clear, then, that equal access to participation in our public school system is a fundamental right, guaranteed by our state constitution and protected by considerations of procedural due process (299 N.C. 609, 264 S.E.2d 106)
Chief Justice Mitchell explained that in the *Sneed* case the court declared enrollment fees unconstitutional because notice of waivers was not adequately provided for needy families. He added, the case dealt with limiting poor students’ access to equal systems of education, thus when taken contextually the Court of Appeals in *Leandro* misappropriated the argument. However, he challenged the Court of Appeals’ allegation that the constitution did not have stipulations over educational quality by directing the court to the *Board of Education v. Board of Commissioners of Granville County* (1917) case where the Supreme Court found:

[I]t is manifest that these constitutional provisions were intended to establish a system of public education adequate to the needs of a great and progressive people, affording school facilities of recognized and ever-increasing merit to all the children of the State, and to the full extent that our means could afford and intelligent direction accomplish.

Besides the Supreme Court, the General Assembly also offered insight to education rights in General Statutes:

(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner....

(b) To insure a quality education for every child in North Carolina, and to assure that the necessary resources are provided, it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study (North Carolina General Statutes, Chapter 115, Section C408).

Moreover, he stated an additional statute legally required local school boards to “provide adequate school systems within their respective local school administrative units, as directed by law” (North Carolina General Statutes, Chapter 115C, Section 47, Part 1). Furthermore, influenced by rulings in Kentucky’s case, *Rose v. Council for Better Education* (1989), and West Virginia’s case, *Pauley v. Kelly* (1979), Chief Justice Mitchell declared:
We conclude that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a "sound basic education" is one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

The court established a set of parameters to guide school educational standards. However, the issue regarding funding remained unsettled. Chief Judge Mitchell extended the discussion and referred to Britt v. State Board of Education (1987), in which the North Carolina Court of Appeals explained:

A county with greater financial resources will be able to supplement its programs to a greater degree than less wealthy counties, resulting in enhanced educational opportunity for its students.... [This] provision obviously preclude[s] the possibility that exactly equal educational opportunities can be offered throughout the State (288, 357 S.E.2d at 435-36)

He clarified that the intention of the constitution was to provide a sound basic education without financial stipulations. In increasing funding for certain districts, eventually they would provide better educational opportunities in comparison to other schools, and consequently, students in those other districts would be denied from an equal education. Additionally, he added that in declaring education a fundamental right, it could present drastic financial predicaments beyond the state of North Carolina. Moreover, the court argued that previous districts which had increased funding had not necessarily improved student performance. Furthermore, the court extended that scholars and educators had not derived conclusive records on the relationship between funding and quality of education. In regard to plaintiff’s use of test scores as evidence, Chief Justice Mitchell stated, “It must be recognized, however, that the value of standardized
tests is the subject of much debate. Therefore, they may not be treated as absolutely authoritative on this issue” (p. 260). Overall, Chief Justice Mitchell concurred with the Court of Appeals’ decision to dismiss the complaint of financial inequity for relief.

Besides differences in quality of education, plaintiffs argued that the authorization of differential funding contradicted the state’s requirement to guarantee a uniform educational system. The general statutes guaranteed “general and uniform system of free public schools” requiring “every student in the State equal access to a Basic Education Program,” as well as, holding the state accountable to “prevent the denial of equal educational…opportunity on the basis…of economic status…in the provision of services to any child” (North Carolina General Statutes, Part 115C, Sections 81;122; 408). Most importantly, plaintiffs explained that state was responsible for:

[assuring] that the necessary resources are provided…from State revenue sources [for] the instructional expenses for current operations of the public school system as defined in the standard course of study (North Carolina General Statutes, Part 115C, Section 408).

In all, plaintiffs argued that students were not provided with a sound basic education due to funding disparities. Essentially, plaintiffs argued that the constitution itself was contradictory in its educational requirements, that although the state was liable for instituting a uniform system, as well as providing funding, the state nonetheless simultaneously allowed for differential funding distribution. However, Chief Justice Mitchell argued that the constitution was not contradictory, and declared the argument fallible. Additionally, the court explained that although plaintiffs are not seeking funding changes, in their demand to increase the quality of schooling for poor urban districts, consequently they were urging a per pupil expenditure increase, and thus a change in the funding process. The court ruled in favor of providing a sound
basic education, but did not find the funding system in violation of the constitution. The court explained:

We recognize that judges are not experts in education and are not particularly able to identify in detail those curricula best designed to ensure that a child receives a sound basic education. However, it is the duty of this Court under the North Carolina Constitution to be the final authority in interpreting that constitution, and the definition we have given of a "sound basic education" is that which we conclude is the minimum constitutionally permissible (Leandro v. State, 1997, p. 259).

The case was remanded to the Court of Appeals for further review and legal oversight.

The dissenting opinion, provided by Justice Orr, addressed the issues of educational rights, funding, equality, and state accountability. His initial and overarching argument referenced the North Carolina Constitution:

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right (Article 1, Section 15).

Justice Orr further developed his rationale by clarifying that ultimately the state was constitutionally responsible for safeguarding a uniform and free public school system. He extended that such duties were not to be deferred to local municipalities nor avoided due to funding limitations. In regard to differential funding, he stated:

Local education funds are primarily generated through property taxes. If a county has a relatively low total assessed value of property, it has a barrier beyond which it cannot go in funding its educational system(s). Although these counties might impose a higher tax rate than their wealthier counterparts, their efforts cannot substitute for a lack of resources. The poorer counties simply cannot tax themselves to a level of educational quality that its tax base cannot supply. In those circumstances, the argument for local funding is a "cruel illusion" for those officials and citizens who are interested in a quality education for their children (Leandro v. State, 1997, p. 262).

More importantly, Justice Orr challenged the court’s perspective on education by diverting focus back to the essential basis of equality, extending that the framers of the Constitution of North Carolina removed separate schooling for white and ‘colored’ children from the 1877 Constitution and instead replaced it with “equal opportunities…for all students”
He further explained this action derived from the objective to propel educational potential of all students and added:

The Constitution, by its literal reading, means all students. It does not discriminate as to race, gender, handicap, economic status, or geography. Thus, students residing in a poorer district are still entitled to substantially equal educational opportunities as students in wealthier districts….

[T]he concept of equality is never absolute. When used in the context of human relations, the notion of equality must take [into] account the fact that no two people and no two situations are in all respects exactly alike. We use the word equality to express a range within which things can and should be similar…..

Therefore, the equality plaintiffs seek is not necessarily absolute and identical but, rather, is substantial equality. Although the concept of substantial equality is difficult to define, it is clear that a gross disparity in resources does not fall within its definition…..

In discussing equality of education by comparing the quality of resources, Judge Orr also questioned state’s position on education and its role in shaping educational conditions. His opinion clarified:

Can it be rationally argued that students from economically disadvantaged school districts with outdated texts, aging buildings, limited resources, and teachers at the lower end of the wage scale are receiving substantially equal educational opportunities with those students from well-financed school districts with state-of-the-art facilities? The answer is as obvious as is the constitutional mandate that there be "equal opportunities... for all students." (Article 2, Section 1).

Even our constitutional framers addressed this issue. They commented that the Constitution was designed to "level upwards, to every child, as far as the State can, an opportunity to develop to the fullest extent, all his intellectual gifts. So noble an effort, needs no vindication." (Journal of the Constitutional Convention of the State of North Carolina, 1868, p. 487)

Judge Orr additionally described that maintaining differential funding due to “geographic lines” challenged court ruling from Lane v. Stanly (1871), where referencing Article IX of the state constitution, the education system was declared a uniform system “not subject to the
caprice of localities, but every locality, yea every child, is to have the same advantage” (Lane v. Stanly, 1871). Moreover, Judge Orr highlighted:

[Otherwise,] [i]n some townships there would be no schools, in others inferior ones, and in others extravagant ones, to the oppression of the taxpayers. There would be no "uniformity" and but little usefulness, and the great aim of the government in giving all of its citizens a good education would be defeated.

The General Assembly still has the discretion to allocate this responsibility between the state and local governments. Yet it must be reemphasized that the inability or indifference of local governments to provide funds does not excuse the General Assembly from a duty specifically imposed on it by the Constitution (p. 264).

In his conclusion, Judge Orr directed the court to reflect on the historical challenges with the issues of class, race, and gender which have resulted in educational changes grounded on justice and equality. He described the process as a “long and arduous” one, but nonetheless disagreed with the decision of the court as he believed disparities in funding indeed resulted in disparities in opportunities (p. 265). Nonetheless, it was not until 2002 that a fourth and final order was finalized requiring the state of North Carolina to comply with the following provisions:

1. Each classroom was required to have a certified teacher with the ability to implement individualized and differentiated instruction and assessment.

2. Each school was required to have an experienced principal with the ability to provide an equal opportunity to a financially efficient sound basic education.

3. Each school was required to provide an instructional program meeting the needs of all students.

   Judge Manning was charged with the responsibility of overseeing state compliance of educational provisions. He conducted a series on hearings, school visits, and performance evaluations to determine the status of schools in North Carolina. In 2005, he filed a letter addressed to Superintendent Howard Lee in which he explained:
THE BOTTOM LINE IS: The constitutional right of every child to have the equal opportunity to obtain a sound basic education belongs to the child and not to the superintendent, principal, teacher, school board member or other administrators in the LEA.

The consistently low performing, priority high schools is not providing the children, who are required to attend that school regardless of where the children live, with constitutionally mandated competent certified, effective principals, competent certified, effective teachers and the resources to carry out an effective educational program. The children who have to attend such schools are being deprived of a basic constitutional right under the North Carolina Constitution ….

These children that are attending these low performing priority high schools, regardless of location, should not have to continue to be uneducated and unable to compete effectively with others in today’s complex and changing society and economy. There is no longer time to wait for change to come when the educators in charge aren’t effective... Reduced to essentials, superintendents and principals have run out of room and run out of time. The State is clearly and ultimately legally responsible for these high schools and other schools. The constitutional threshold has been spelled out and has been in existence since April 2002....

Not only are the children’s constitutional rights being deprived by ineffective principals, consider the economic impact that is direct and annual in a low performing high school. More than a quarter billion went into those schools in 2005 and the population of students unprepared to face the 21st century marketplace on graduation day was 45% or greater. We must also consider the long-term detriment. The detriment is immeasurable in terms of human costs, quality of life, lost opportunity, prison cells, and loss of productive wage-earning citizens in our State of North Carolina (p. 5).

Within that letter Judge Manning also set the conditions that schools not meeting 55% passing scores would not be allowed to reopen the following academic year, unless it was under a new management with a reform plan. Judge Manning explained the lack of progression in performance trickled from middle school to high school and urged “This is academic genocide and it must stop” (p. 10). He pointed out that high portions of the state and local budget were directed towards the education system, yet minimal to no improvements were evident. Moreover, he emphasized the need to focus on the children and concluded by stating:

I am sure that there will be great whining and wailing from the adults but never forget that the adults are the ones responsible for Halifax County Public Schools reaching this
situation of academic collapse in classroom instruction and the concurrent violation’s of those children’s right to the equal opportunity to obtain a sound basic education that occurring everyday in the Halifax County Public Schools (p. 10).

Besides the letter, Judge Manning’s report also included a set of recommendations based on his data collection. One of the provisions required state responsibility and rectification of “educational methods and practices that contribute to the failure to provide children with a constitutionally-conforming education” (p. 13). In regard to the funding structure, Judge Manning’s tenth provision granted each local school system adequate state funding “irrespective of their particular LEA, with at a minimum, the opportunity to obtain a sound basic education” (p. 13). Given economic and technological changes and needs, as well as the constitutional and basic rights of students, he justified:

The necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an education opportunity and experience that not only meet the constitutional mandates set forth in Leandro, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded a chance to become contributing, constructive members of society is paramount. Whether the State meets this challenge remains to be determined (p. 13).

Judge Manning argued investment on current resources and faculty failed to provide students a sound basic education, which was evident through performance data. Overall performance evaluations indicated that six out of every ten students were below math in 2008, and six out of every ten were unprepared for high school math. He did, however, point out discrepancy in standardized tests, as implementation of new tests resulted in drastic performance changes from one year to the next. Although financial costs of staff and resources could be identified, “The human cost to the children subjected to this non performing academic environment is non –measurable and non-quantifiable in terms of dollars” (p. 25).
status of the education system and its role in students’ lives, he urged for constitutional authority over the school system. He further explained:

The Court will entertain no excuses or whining by the adults in the educational establishment in Halifax County about how it’s the children’s fault, not theirs, for failing to provide the academic environment where children can obtain a sound basic education (p. 25).

Currently, the North Carolina’s education expenditures are over 11 billion dollars, which serve about 1.5 million students, 33% low-income, 8% English learners, and 46% underrepresented (NCES, 2009). During the 2006-2007 fiscal year, the state increased funding increased for low-income districts, as well as the overall education budget. Additionally, the state appropriated over 17 million dollars, from lottery revenue, towards a program targeting “at-risk” students. Opponents, such as Chairman Kirk, argued that in reallocating funds to “at-risk” students, simultaneously funds would be taken from the “best and brightest”. Others warned that ‘good’ students and families would resort to transferring into private schools. Although a highly contended decision, the court did rule that the state was responsible for offering a sound basic education. In all, Judge Manning submitted a comprehensive report in 2009, urging for a change of structure, oversight, control, funding, instruction, educators, administrators, as well as cultural notions and expectations of students. More specifically, he explained teachers played a critical role in compensating for broken families and communities, thus placing blame on the schools and not the environment.

**Corey H. et al. v. Board of Education of the City of Chicago (1992).** In 1992, a group of parents of students with disabilities filed suit against the City of Chicago Board of Education and the Illinois State Board of Education (ISBE) for failing to meet federal provisions under IDEA. Plaintiffs argued students with disabilities were placed in exclusionary learning conditions, and
had minimal interaction with other peers, curricula, and appropriate services and staff. Invoking the Least Restrictive Environment (LRE) provision under IDEA, plaintiffs sought relief to improve schooling conditions. In February 1993, Judge Leinenweber certified plaintiffs as a class, and a year later parties selected three experts to investigate school compliance with IDEA. The team of experts found that students with disabilities were 1.) “typically educated in overly restrictive placements,” 2.) student “placements were based mostly on the categories or severities of their disabilities, rather than their individual needs,” and 3.) CBE and the ISBE not only failed to oversee and implement a LRE, but also failed to train educators to provide such conditions (Corey H. et al. v. Board of Education of the City of Chicago, 1992, p. 903).

In 1998, the City of Chicago School Board reached a settlement with plaintiffs, agreeing to $24 million dollars in expenditures to prepare one third to one half of Chicago’s schools for LRE compliance within an eight year time span. Within that agreement, Chicago Public Schools were responsible for implementing an intervention program at every school called School-Based Problem Solving (SBPS), with the goal of meeting behavioral and academic needs. The program’s concept was grounded on the basis that all students can learn, and resources should be available to teachers and students to strengthen and connect curriculum with results. The program “utilizes curriculum-based assessment, behavior observation, functional analysis of behavior and student progress monitoring as tools in the process” (Chicago Public Schools website). Overall the goals of the program included:

- Assess student performance using classroom-based materials
- Establish and deliver the intervention in the classroom
- Translate effective teaching strategies into the regular instruction program
- Consult to guide the "fine tuning" of classroom strategies
- Involve teachers, parents, and key personnel in collaborative decision making (Chicago Public Schools Website, SBPS)
The ISBE, however, did not reach a settlement with plaintiffs and went to trial. During proceedings, the team of experts reasserted that ISBE disregarded its duties and failed to meet required mandates. Witnesses were able to undoubtedly demonstrate that Chicago schools “have been and continue to be saddled with archaic notions of educating children with disabilities in restrictive placements determined more by the categories of their disabilities than by their individual needs, in clear violation of the IDEA” (Corey H. et al. v. Board of Education of the City of Chicago, 1992, p. 904). In spite of this, the ISBE continued to “deny the undeniable and defend the undefendable,” through an unconvincing case (p. 904).

The court argued that based on IDEA provisions, the state is responsible for local compliance and implementation of IEP and LRE for students with disabilities. They further clarified, according to IDEA, a LRE consisting of removal from regular classrooms should only be done when options within a regular classroom have been exhausted and unsatisfactory. Local districts are responsible for placement, instruction, and other additional services, but the state must oversee local district implementation. Additionally, local districts are responsible for conducting annual reviews of placement and progression. The Chicago Board of Education, in alignment with Illinois laws, requires LRE placement be done after IEP has been developed. First, they detect indicators of potential disability, informal assessment through testing or case evaluation, then confirming whether disability is present and if eligible for special education. Based on the evaluation, a team of staff align the student’s characteristics to disability categories, however per IDEA, the IEP and LRE must be determined by student needs and not the applicable category.

The court explained IDEA included several procedural safeguards to insure the rights of student and parents. Under LRE provision, IDEA includes:
If the State uses a funding mechanism by which the State distributes funding on the basis of the type of setting in which a child is served ... the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements (IDEA, Statute 61, p. 111).

In addition, per IDEA provisions, parents or guardians have the right to child’s records and evaluations, opportunity to seek their own educational evaluation, as well as the right to file a complaint. If parent demands due process hearing at the local level and appeal to state, they can then continue and seek a hearing with the U.S. District court. There was no need to remand or advance to another court, given the data presented for the case the court found:

Beyond doubt that, despite the fact that the LRE mandate has been on the books since 1975, the Chicago public schools have languished in an atmosphere of separate and unequal education for children with emotional, mental and behavioral disabilities (Corey H. v Board of Education of the City of Chicago, 1998, p. 907).

Specific findings demonstrated that schools historically maintained a “categorical system of education” in which labels characterizing their disabilities determined the program and placement of the student. Moreover, due to the state’s funding formulas for LRE, there was a financial incentive to pull out and separate student with disabilities from regular classrooms. Overall, inhibiting funding formulas, inadequate training and certification of educators, limited resources and knowledge, as well as misconceptions and attitudes towards students with disabilities resulted in the CBE’s inability to comply with LRE.

By in large, Chicago schools were placing students by categories and labels, and not particular student needs. Consequently, students were removed from regular classrooms and placed in segregated settings. Data demonstrated that approximately 90% of students with mild cognitive disabilities could have remained in a regular classroom at least 50% of the time, but only 15 to 22% actually did (Corey H. v Chicago Board of Education, p. 908). Additionally, findings indicated that one half of Chicago schools were not in compliance with LRE mandate,
one third of schools implemented inadequate IEP’s, and knowledge of curriculum modification for students and collaboration with general and special educators was inefficient (p. 909).

The Programs Monitoring Report detailed that the Chicago Board of Education failed to properly train general educators and administrators to implement LRE. As a result, 90% of mentally handicapped, 96% of severe mentally handicapped, and 92% of students with autism were removed from regular classrooms and placed in full-time separate classrooms, buildings, or schools (Office of Special Education Programs, 1996). According to Dr. Udvari-Solmer’s testimony, 13% of students remained in regular classrooms without special education services offered, while 87% of students were pulled out from the classroom all together. In a national comparison using data from the Office of Special Education, Illinois ranked 47/50 in regular or resource setting education, separate classroom and facility special education, and 50/50 in cognitive or multiple disability education in regular or resource classroom. The City of Chicago, specifically, ranked even lower than the state of Illinois. Administrators explained that in addition to a lack of expertise, due to limited classroom space, categorical placement, and simply put, the long-standing placement practices, such outcomes were the result.

The court noted that although the ISBE was aware of non-compliance in some instances, they failed to correct such practices and allowed federal law to be broken. ISBE employee, Gail Lieberman, supervisor of the Department of Special Education until 1995, testified the ISBE was “in clear violation of its obligations under IDEA, performed no comprehensive monitoring of the City's compliance with the LRE mandate from 1989 to some time in 1994” (p. 910). The ISBE also failed to provide proper training of educators and administrators and although they coordinated a training program called “Project Choices,” services were only provided to schools that requested assistance. With that, Dr. Freagon emphasized the importance of proper training
of teachers and educators as essential in implementing appropriate LREs. However, the ISBE approved teacher certification by categorical labels, contrary to LRE, and consequently also limiting the instruction capabilities of special education teachers. The court explained that “antiquated certification categories have combined with inadequate training and teacher education in Illinois (geared to the certification categories) impermissibly to perpetuate categorical segregation of children with disabilities” (p. 910). Taken as a whole, the ISBE’s attitude and sense of responsibility influenced their deficient application, as the court described, “Perhaps the seemingly casual attitude taken by the State with respect to educating children with disabilities in the least restrictive environment explains the specific failures of the ISBE” (p. 912).

Defendants argued ISBE was not responsible for each individual case, or for the identification of special education services for English learner. In addition, ISBE argued the early intervention program for infants with disabilities was too vague to implement. ISBE also disputed the IDEA’s lack of guidance in implement and monitoring LRE for local districts. In spite of this, the court declared that although local districts were responsible for IEP and LRE, nonetheless the state, ISBE, was still responsible for ensuring such systematic evaluations and placements complied with IDEA and LRE requirements. ISBE continued to refer its responsibility to the Office of Special Education Programs but lacked statutory support in its justification. In accordance with IDEA, the court also pointed out that ISBE, in withholding funds to districts not in compliance was still responsible for providing services for students with disabilities. Defendants did not submit evidence of LRE monitoring, and representatives from the Department of Program Compliance and Special Education opted not to testify about Chicago’s program. ISBE employee, Ms. Lieberman, provided an insightful observation, noting that ISBE
board members displayed “personal discomfort at being around people with disabilities” (p. 917). In her deposition, she “advocated the adoption of a policy statement on inclusion” but the ISBE refused its incorporation. Nonetheless, the court clarified ISBE could not be held liable for refusing to adopt an inclusion policy or the attitudes of its leadership.

In February 1998, Judge Gettleman found ISBE in violation of five provisions under IDEA and urged ISBE to address the following areas. First, determine student placements based on individual needs or IEPs. Second, identify inadequate LRE’s and correct them. Third, provide appropriate training and knowledge for educators and administrators in LRE implementation. Fourth, ensure the certification of special education teachers aligns with LRE mandate. Lastly, ensure reimbursement funding formulas for students with disabilities align with LRE mandate. The court additionally demanded ISBE submit a “comprehensive compliance plan” detailing how each violation would be corrected, if collaboration with CBE would be included, and if a court monitor would be necessary. The court concluded by stating, “As the Supreme Court ordered in connection with racial integration, the State should act "with all deliberate speed" to correct the segregation that afflicts disabled children in Chicago (p. 918).

The court appointed a monitor for the case who was charged with the responsibility of identifying compliance benchmarks. In 1999, the court approved nine benchmarks, ensuring access to general curriculum, alternative assessments, intervention programs, integration opportunities, collaborative instruction, engagement with non-disabled peers, parental involvement, consultation services in general classroom. The court monitor also defined a general classroom as one not labeled as remedial and comprised of no more than 30% students with disabilities. In addition, the monitor established no school should have over 20% enrollment of students with disabilities by 2005.
Due to inability to comply with benchmarks the consent decree was extended to September 2012. The School-Based Problem Solving Program was terminated in September 2010, as it was regarded as no longer feasible. However, schools continue to correct LRE placements with the assistance of CPS, ISBE, and the Office of Special Education and Supports. Linked to the Chicago Public Schools website, the Office of Special Education and Supports has outlined a set of guidelines and points of consideration for educators and parents when working with student placements, which include:

- A student with a disability is not to be removed from education in the age/grade appropriate general education classroom solely because of needed modifications to the general education curriculum.
- A student with disabilities is never to be placed in a particular educational setting based upon the student’s disabling condition.
- A student with disabilities is never to be placed in a particular educational setting because of the available staff, space and/or services at the school (Office of Special Education and Supports website).

Additionally, the website outlines why it is important to also consider potential effects in implementing LRE, such as decreased access to integrated instruction and curriculum, limited social engagement, decrease in self-esteem, stigmatization, isolation, and “lack of opportunities for appropriate role models” (Office of Special Education and Services Website). Besides providing more detailed guidelines, ISBE is currently funding a study, using IEP evaluations, staff interviews, as well as classroom observations to determine whether selected schools are in compliance of court benchmarks.

**Student Exclusion**

*McNeal v. Tate County (1975).* The court ordered the desegregation of freedom of choice schools in the Tate County School system of Mississippi. In response, the district devised
a student assignment program in which schools were determined by residency zones. Elementary
and junior high schools determined classroom placement by “faculty predicted ability grouping,”
or teacher evaluation of students’ past or performance. First graders were designated to
classrooms based on whether they attended preschool. Although race was not being used to
designate class placements, but rather individual ability, this system still resulted in resegregation
within the schools and across classrooms. Plaintiffs sought relief to have desegregated and
racially balanced classrooms. Judge Clark explained:

Not only must the attendance zones in such urban areas initially be drawn with racial
neutrality, but also the parents of students in those zones retain the right to relocate their
residence and students in segregated schools must be granted the right to transfer to
schools in which their race is in the minority. On the other hand, segregation caused by
ability grouping is fixed. Notwithstanding the fact that tract assignments are made
without regard to race, children who have been the victims of educational discrimination
in the dual systems of the past may find themselves resegregated in any school in the
district solely because they still wear a badge of their old deprivation – underachievement
(McNeal v. Tate, 1975, p. 1019).

and Lemon v. Bossier Parish School Board (1971), to expand that a test for student placement
would not be permissible, even if it was reliable and valid, unless district was unitary for several
years. They also referred to Moses v. Washington School Board (1972), which ruled that even in
a desegregated system, ability grouping based on standardized test scores resulted in the
perpetuation of segregated classrooms, where Black students predominated lower sections and
“they were taught less and learned less” (McNeal v. Tate, 1975, p. 1020). However the court
stated:

The district court finds no breach of this postulate in Tate County because it concludes
that individual ability, not race, is the criterion for assignment (p. 1019).

Drawing from Borders v. Rippy (1975) and Stell v. Savannah-Chatham County Board of
Education (1964), the court argued that schools had constitutional right to use non-racial
methods for ability grouping. However, the court added that this was permitted only if it did not result in segregation. Moreover, “Ability grouping, like any other non-racial method of student assignment, is not constitutionally forbidden” (McNeal v. Tate, 1975, p. 1020). Judge Clark’s opinion explained:

   The district court was in error in assuming that its only alternative to approving ability grouping was to command racial balance in every classroom. If the school district cannot substantiate its present system, it may choose any racially neutral method of classroom assignment it considers educationally sound. That method should be approved by the district court unless its effect is racial segregation or is substantially adverse to the quality of education available to some of the district’s children (p. 1021).

Although the premise of the student assignment program was to desegregate, justifying ability grouping for a racial balance was not permitted. With that said, the court ordered the district to reevaluate its placement program, and also clarified that ability grouping was permitted if students’ achievement was not a result of prior methods and implications of segregation.

   Castañeda v. Pickard (1981). In a similar case, a group of Mexican-American parents and students filed suit against the Raymondville Independent School District (RISD) for violating the 14th amendment, Title VI of the Civil Rights Act, and Equal Educational Opportunities Act of 1974. At the time of the complaint, Raymondville’s population was 77% Mexican-American and 23% Anglo, while RISD was 85% Mexican-American and school demographics ranged from 80% to 100% Mexican-American (Castañeda v. Pickard, 1981, p. 992). Among Texas counties, per capita expenditure was found in lowest ten percent (Castañeda v. Pickard, 1981). Plaintiffs claimed the factors utilized in designating student placement (ie. grades, test scores, teacher evaluation and recommendation resulted in discrimination and segregation. Additionally, they argued RISD failed to implement an appropriate bilingual program, as well as hiring and promotion of Mexican-American staff18. The case was tried in

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18 For the consistency of this section I will focus on the area of ability grouping.
1979, the court ruled in favor of the defendants and declared there was no federal or statutory violation, but plaintiffs appealed in 1981.

Plaintiffs presented evidence demonstrating that demographics in schools were results of past segregation and challenged the districts process of ability grouping. The court explained that ability grouping was constitutional if methods of placement did not result in disproportionate impact or segregation. In addition, methods, such as testing could only be permitted if the district had been unitary for several years and ability had not been hindered by past or current segregation (United States v. Gadsden County, 1978; Morales v. Shannon, 1975; McNeal v. Tate County School District, 1975; Moses v. Washington Parish School Board, 1972; Lemon v. Bossier Parish School Board, 1971; Singleton v. Jackson Municipal Separate School District, 1969).

At the elementary and junior high school level, student placement was based on ability, ranging from low, to average, and high; methods of placement included test scores, grades, counselor recommendations and teacher evaluations. First through sixth graders are assigned to classes for their specific ability level through a “manual sorting system designed to assure that each classroom has a roughly equal number of girls and boys” (Castañeda v. Pickard, 1981, p. 996). Similarly, once grouped by ability, junior high students are assigned to classes by a computer. High school students are not assigned, but “with the assistance of their parents and school counselors, choose the subjects they wish to study… and are free to select an accelerated, average or slower class” (p. 966). Although Judge Randall cautioned on the use of ability grouping in a district with past discrimination, he established the court’s general sentiments towards ability grouping:

The merits of a program which places students in classrooms with others perceived to have similar abilities are hotly debated by educators; nevertheless, it is educators, rather
than courts, who are in a better position ultimately to resolve the question whether such a practice is, on the whole, more beneficial than detrimental to the students involved.

Thus, as a general rule, school systems are free to employ ability grouping, even when such a policy has a segregative effect, so long, of course, as such a practice is genuinely motivated by educational concerns and not discriminatory motives. (p. 996).

Additionally, directing the court to the rationale in Morales v. Shannon, Judge Manning explained that in a system undergoing desegregation ability grouping is allowed unless the practices demonstrate “abnormal or unusual” racial outcomes (p. 997).

The court highlighted that self-selection played an integral part in high school courses, and that technically ability grouping did not necessarily apply since students were selecting their courses. On the other hand, at the K-8 level, the court stated further investigations had to be conducted to find whether statistically there were a disproportionate number of students in lower tracks. In addition, the court argued that in order to demonstrate an unconstitutional use of ability grouping it would be necessary to prove historical discrimination.

A turning point for the argument on ability grouping did vary when the court recognized plaintiffs’ claim that a component of the student evaluation for placement relied on the students’ dominant language. If a student was Spanish dominant they were automatically placed in the ‘low’ track while English dominant speakers were placed in ‘high’ tracks. In addition, 1st to 3rd grade students with limited language proficiency were tested with English exams, thus student ability could not be accurately measured when language skills were limited and content knowledge in another language. The court deferred plaintiffs evidence on achievement results until the establishment of a new program, Judge Redding rationalized:

While under some circumstances it may be proper for a court to examine the achievement scores of students involved in a language remediation program in order to determine whether this group appears on the whole to attain parity of participation with other students, we do not think that such an inquiry is, as yet, appropriate with regard to RISD. (p. 1014).
Using the standard applied under *McNeal v. Tate* (1975), the court argued that language grouping was an ‘unobjectionable practice’ because the outcomes would be better educational opportunities or access to differentiated instruction (i.e., bilingual programs). However the court cautioned:

Language grouping is, therefore, an unobjectionable practice, even in a district with a past history of discrimination. However, a practice which actually groups children on the basis of their language ability and then identifies these groups not by a description of their language ability but with a general ability label is, we think, highly suspect. In a district with a past history of discrimination, such a practice clearly has the effect of perpetuating the stigma of inferiority originally imposed on Spanish speaking children by past practices of discrimination. Even in the absence of such a history, we think that if the district court finds that the RISD’s ability grouping practices operate to confuse measures of two different characteristics, i.e., language and intelligence, with the result that predominantly Spanish speaking children are inaccurately labeled as "low ability," the court should consider the extent to which such an irrational procedure may in and of itself be evidence of a discriminatory intent to stigmatize these children as inferior on the basis of their ethnic background (*Castañeda v. Pickard*, 1981, p. 998).

With that, the court ordered that tests would have to be incorporated reflective of students’ dominant language to demonstrate validity of assessment and placement in language program. In addition, the court ruled that the bilingual education program did not violate Title VI but did request district to implement a ‘legitimate’ and expert-recognized, sound, and effective bilingual program. On the other hand, the court declared insufficient evidence indicating history of discrimination to fully evaluate ability tracking and employment practices. Thus, the court concluded:

Specifically, on remand, the district court is to inquire into the history of the RISD in order to determine whether, in the past, the district discriminated against Mexican-Americans, and then to consider whether the effects of any such past discrimination have been fully erased. The answers to these questions should, as we have noted in this opinion, illuminate the proper framework for assessment of the merits of the plaintiffs’ claims that the ability grouping and employment practices of RISD are tainted by unlawful discrimination. If the court finds that the current record is lacking in evidence necessary to its determination of these questions, it may reopen the record and invite the parties to produce additional evidence (p. 1015).
Simmons v. Hooks (1994). In 1993, Loui-Lee Simons of Little Rock, Arkansas, filed suit against the Superintendent and the Board of Education of Augusta. Plaintiff claimed the school grouping and placement practices racially discriminated and segregated students, thus in violation of equal protection of the 14th amendment. The city’s population was composed of 47.8% Black and 52% White, while the Augusta School District had 56% Black students, 25% Black staff, and 71% of student population was identified as ‘free or reduced lunch.’ In 1970, the Augusta School District was desegregated and a three-tier ability grouping program was implemented (ie. high, middle, and low). Plaintiff’s data from 1986 to 1992 demonstrated that Black students comprised from 72.1% to 81.6% of the population in low ability groups. Students were placed in academic levels based on teacher and principal recommendation, test scores, and previous report card. Kindergarten students were placed based on standardized test scores or if they attended pre-kindergarten, but those students not ready for kindergarten were placed in a transitional classroom.

With a new school board, a new policy was implemented in 1994, but as presented by plaintiff:

Like the old policy, the new one continues to group kindergarten through third grade students homogeneously by class. The new policy actually represents no change from the old policy for these students. However, the new policy provides for heterogeneous grouping of grades kindergarten through three in two to three years (Simmons v. Hooks, 1994)

The Superintendent explained they continued with old policy practices to avoid disruption and confusion in completely discontinuing homogenous grouping, “and that the board elected to phase in heterogeneous grouping” (p. 1299). Superintendent Hooks and school Principal James testified it was more convenient, for teaching and learning, to have students with similar capacities together. Dr. Kent, defendant’s expert, testified that although educational benefits
were present for reading in ability groups, he “did not testify there [were] advantages to grouping entire classes of students on the basis of ability,” and moreover provided he opposed standardized testing (p. 1299). In regard to extracurricular activities and honors, Dr. Layton testified based on his review of yearbooks they were “shared by students of both races” (p. 1300). On the contrary Dr. Robert Slavin, expert for the plaintiffs provided that:

Ability grouping by class is not beneficial for any group and is harmful to the low group, as it stigmatizes those children, and would be particularly harmful to the low group if it were overwhelmingly black and the other groups were not...such grouping is slightly beneficial to the high group (p. 1300).

Dr. Slavin additionally stated that other researchers would not find Augusta’s current ability grouping beneficial. Although the modified Joplin Plan the Augusta district implemented for fourth to sixth grade was limited in research, he did point out that research available did not find it useful for student achievement. He offered Augusta should instead incorporate the Joplin Plan, which separates students on reading level and not grades for reading, but students are in mixed levels for all other areas. Moreover, in regard to standardized tests, “he stated that such standardized tests are suspected of having a serious cultural bias and that it is difficult to measure the ability of such young children” (p. 1300).

In regard to special education program, statistics demonstrated Black student enrollment from 1987 to 1993 at a range of 61% to 69%. In specific categories, 19 out of 21 Mentally Retarded (MR) students and 8 out of 18 Special Learning Disabled (SLD) students were Black. Dr. Diane Sydoriak, Associate Director of the Arkansas Department of Education and special education expert for defendants, alerted that ten out of thirteen of the categories had no students and Black students were overrepresented.
Based on 1987, enrollment numbers, the Arkansas Department of Education notified Superintendent Hooks in a letter dated 1988, that the standard deviation demonstrated minority students in special education surpassing not only school, but also city’s overall minority student population. Per state’s request, the district submitted a plan regarding the “referral, evaluation, and placement of minority students in special education,” and it was approved (p. 1300). The district’s evidence demonstrated an increase in minority enrollment in special education programs during the 1989-1990, school year, but demonstrated an 8.3 standard deviation thereafter.

In regard to Chapter 1 programs, statistics demonstrated Black students composed 68% of students. For Gifted and Talented programs, Black students composed the following percentages for each school year: 1988, 13%; 1989, 17%, 1990, 16%, 1991, 25%, and 1992, 30%. Admission into these programs was determined by teacher, parent, and student referrals and then selected by a committee. Director of programs, Mrs. Joy Bowen pointed out that more White students were referred, and even attempted to referrals by promoting programs to the Black community. Additionally, “the district added a non-linguistic test, the Raven, which [was] normed on black students”, as well teacher training to better recognize students (p. 1301).

The plaintiff, Lou-Ease Simmons had three children in the Augusta School District, Robert, Jason, and Lucille. Robert completed one month of Head Start before his mom removed him and was retained in kindergarten. He was hearing impaired and had been placed in special education programs in fourth grade for two periods a day. In 1991, while in eighth grade, his mother met with school representatives to remove him from special education but later removed the request, per Roberts’ wishes. Jason never participated in Head Start, was retained in kindergarten and placed in special education in second grade by recommendation of school
counselor and teacher, and approved by plaintiff. Ms. Devore, district special education supervisor, testified proper procedures were taking and despite not having poor grades, the work was modified to help him perform at his grade level. Jason’s daily special education program, in fourth grade, consisted of three periods while he returned to regular class for four hours. Lucille did not participate in Head Start either, had been placed in low grouping until she entered high school and then participated in math and language Chapter 1 programs.

The court explained no precedent had been set at that court level, but reference would be made to other similar cases. Nevertheless, based on McNeal v. Tate (1975) they pointed out that ability grouping was not unconstitutional. Additionally, ability grouping was permitted if not connected to past segregation or if it remedied past segregation. When the new grouping plan was implemented it was an act to dismantle the unitary or dual system in operation, but the court contended that the district was never legally declared unitary. Given this predicament, the court determined:

Because of the general uncertainty as to the legal definition of "unitary," and because the Court may reach a decision in this matter without a precise definition, the Court refuses to hold whether the Augusta School District has achieved unitary status (Simmons v. Hooks, 1994, p. 1302)

Therefore, since unitary status was never granted, the burden of proof could not be placed on the district and therefore the plaintiff had to demonstrate evidence of racial imbalance. Accordingly, plaintiff’s data demonstrated “clearly that the implementation of the plan resulted in a continuation of racial segregation by class in the low ability groups” (p. 1302).

Assuming that there was no intentional discrimination, the court’s responsibility was to determine whether the new policy of placement resulted in segregation of students. The court found that in lower groups there was an overrepresentation of Black students due to past discrimination before the implementation of grouping plan. Therefore, the court was responsible
to establish whether grouping plan resulted in better educational outcomes. Based on expert testimonies on ability grouping, the court declared the policy on grouping did not benefit students in kindergarten through third grade, and violated the 14th Amendment rights of Black children placed in low levels. On the other hand, given the limitations of evidence demonstrating effects, as well as the expert’s testament on benefits of reading groups, the court declared the plaintiffs had not proved the grouping plan for fourth through sixth grade was unconstitutional. In regard to special education placement, the court declared that “percentage of blacks [was] within an acceptable range” and that the district operated under federal and state regulation (p. 1303). Specifically for plaintiff, the court explained:

Robert and Jason Simmons, are not absolutely segregated from other students. The Augusta district appears to be following the federal and state regulations which require that these students’ needs be met within the least restrictive environment necessary… Even though proportionately more minorities are served in this program, the evidence shows that it is designed to help those students who are having difficulty achieving in specific academic areas and that these children are sometimes, but not always, pulled out of their classes for Chapter I instruction. Therefore, from the evidence available, the Court concludes that this program is designed to overcome the detrimental effects of past segregation and is therefore not violative of the constitutional rights of black children (p. 1304).

The court ruled that plaintiff failed to demonstrate that placement of students in special education or gifted programs were intentionally segregative, and therefore did not violate the constitution. The court concluded by stating:

The Court finds that the constitutional rights of the Simmons children were violated by the defendants' policy to group young children into classes according to ability. However, the Court also finds that the poor academic performance of these children was caused by factors extraneous to the ability grouping, including Robert's premature birth and hearing impairment and the fact that Mrs. Simmons did not read to her children or have them participate in Head Start. Even though plaintiff has failed to show actual damages as a result of the defendants' ability grouping practices, the Court finds that plaintiff is entitled to recover nominal damages….The Court therefore awards plaintiff nominal damages of three dollars, one dollar for each child (p. 1304).
Holton v. City of Thomasville (2005). In another related and more recent case, parents and representatives for African-American students filed suit against the City of Thomasville School District arguing that the continued perpetuation of segregated public schooling violated the 14th amendment (Holton v. City of Thomasville, 2005). In addition, they argued that the districted violated Title VI of the Civil Rights Act of 1964 by discriminating students from federally funded programs. Although Brown v. Board of Education (1954) established segregation as violation of the 14th Amendment’s equal protection clause, the Thomasville School District remained segregated until 1965; the district had two black and four white elementary schools, as well as one black and one white high school. The district operated under de jure segregation, and with the passage of the Civil Rights Act of 1965, a desegregation plan based on freedom of choice was implemented. Due to the continuation of all black schools, the district implemented another desegregation plan in 1970, and the following year schools were reorganized into four elementary schools, one middle school, and one high school.

In May of 1975, the Health, Education and Welfare Department (HEW) provided a letter to superintendent citing Adams v. Weinberger (1975), explaining that “The court defined a racially disproportionate school as one in which a `20 percent disproportion exists between the percentage of local minority pupils in the schools and the percentage in the entire school district” (Holton v. City of Thomasville, 2005, p.1332). The enrollment of white students in the district decreased, thus changing the demographic compositions within the schools. Besides a change in demographics, the district explained that free choice schools provided parents with opportunity to select school. Failure to return form to select school resulted in an automatic placement to the nearest school based on students’ address. Additionally, school choice priority was given to residents in surrounding area. However, to maintain racial balance in one particular school, white
students received priority over black students living in the area. The HWE determined a desegregation plan was no longer needed given compliance of Title VI in respect to placement, but advised for monitoring of schools.

In 1994, a task force was created to create a new process of designation. The task force devised a plan on the basis that “If space does not permit accommodation of all preferences, a priority system based on special education considerations, sibling placement, and residency, determines the assignment” (p. 1332). According to court statistics, there was a racial imbalance of school demographics. The district data demonstrated black students were underrepresented in high tracks and gifted programs, overrepresented in disciplinary actions and special education, as well as an underrepresentation of black faculty and staff. The district explained, and the court concurred, that the rise in black students across schools was a reflection of enrollment and demographic changes due to housing patterns and not district intentions. On the other hand, the court pointed out, the disproportionate numbers in some secondary schools were as a result of the placement and/or tracking system based on perceived ability grouping. The court explained:

“Regrettably, a disproportionate number of low income children (most of whom happen to be black) are placed in the lower ability groups. The Court finds that these placements are not being made due to the race of the student. Many of these low income students are simply perceived as not being prepared when they first arrive at school. Due to their impoverished environment, they do not receive the background and support that is often so critical for being ready to learn. Tragically, it appears that for many of these children, the "die is cast" as early as kindergarten. These children do not appear to be reevaluated (and thus potentially "re-tracked") during their progression through the system. The inevitable result therefore is that they remain on the "lower ability" track for the duration of their educational careers, absent parental intervention” (p. 1333).

In the omitted footnotes, the court further clarified it did not find student placements were “affected by the subtle racism of low expectations” and the district did not “manipulate the tracking system to track based on race,” therefore placement was absent from “intentional racial discrimination” (p. 1334). They additionally declared that evidence was limited and findings on
staff composition were not related to traceable proof of past discrimination. Moreover, in the areas of gifted classrooms composition, special education programs, as well as disciplinary actions, the court also found no evidence of past or current forms of discrimination. They explained access to gifted classes was determined based on state requirements and race did not play a factor; qualified students were not denied due to race. Similarly, the overrepresentation in special education program was in “reasonable compliance” of IDEA, state, and federal requirements. Lastly, the court declared student punishments did not differ based on race. In 2004, the court ruled in favor of the district claiming there was no existence of past or current intentional forms of segregation.

Plaintiff’s appealed court decision, claiming the district was not required to prove school racial imbalances were not influenced by school policy or other factors besides city demographics, as well as failing to demonstrate if district had “[eliminated] the vestiges of segregation to the extent practicable” (p. 1340). In response, the court referred to Freeman v. Pitts (1992), and the Keyes test (1973) claiming that housing disparity and demographic changes although unfortunate, were not unconstitutional, and moreover explaining that “resegregation is a product not of state action but of private choices” (p. 1345). Drawing on Green v. County School Board of New Kent (1968) and its six factors for unitary analysis, the court declared no intentional imbalance of black administrators, activities, transportation, facilities, resources, or discipline measures across the district based on treatment or restricted access—therefore meeting unitary status. Plaintiffs argued that school policies, such as zoning, differential resources, staff, infrastructure, transportation, and site location were factors in school demographics. The court explained plaintiff’s standard was applied “out of context,” because unlike the McNeal v. Tate (1975) case, Georgia did operate under legal segregation. Additionally, districts could claim
school demographics were connected to external factors and “beyond the scope of judicial authority,” the court clarified:

It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. To attempt such results would require ongoing and never-ending supervision by the courts of school districts simply because they were once de jure segregated. Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies (p. 1345).

The court added that after reviewing school and district enrollment alongside city demographics, changes in city demographics were the “substantial cause” for racial shifts in schools, and not past or current forms of intentional segregation. By citing Manning v. The School Board of Hillsboro County, Florida (2001), the court explained plaintiff was required to demonstrate that demographic changes were result of de jure segregation or other forms of discrimination, which was not accomplished. While, the district had carried its burden in demonstrating demographic changes, not tied to de jure segregation, to be one of the factors, it was not legally required to demonstrate it was the only factor.

Conversely, referring to McNeal v Tate (1975) and Georgia NAACP v Georgia School Board (1985), the court declared that ability grouping practices within confines of the constitution when "not based on the present results of past segregation or will remedy such results through better educational opportunities" (p. 1346). The court’s decision explained that although ability grouping was not found a violation of constitutional rights by Castañeda v. Pickard (1981), earlier courts (McNeal v. Tate, 1975; Georgia NAACP v. Georgia School Board, 1985; Quarles v. Oxford Separate School District, 1989) ruled ability grouping based on “such practices are permissible in spite of any segregative effect they may have if the assignment method ‘is not based on the present results of past segregation or will remedy such results through better educational opportunities” (p. 1347). In applying the McNeal standard:
The district court did not ask whether the District's ability-grouping practices satisfied our long-established requirement that the tracking policy either not be based on present results of past discrimination or be designed to remedy such results. Instead of determining whether the District's ability-grouping policy was based on present results of past segregation or whether it would remedy such results, the district court focused on whether the tracking practice was intentionally discriminatory (p. 1347).

The court erred by not establishing the presence of past or current discrimination to be able to justify its ability grouping system, claiming the court had a restricted ability to determine the educational outcomes (p. 1347). In regard to ability grouping the court ruled:

“We have explained numerous times that "only in circumstances when `a district court applies an incorrect legal standard which taints or infects its findings of facts, [do] such findings lose the insulation of Rule 52(a) and judgment based thereon cannot stand."" Jacksonville NAACP, 273 F.3d at 965 (quoting Manning, 244 F.3d at 940-41). On the issue of ability grouping, "the district judge's repeated use of the wrong legal standard sufficiently tainted or infected the findings of fact so as to strip those findings of the insulation normally accorded under Rule 52(a)." Manning, 244 F.3d at 943. We therefore remand for the district court to make new findings of fact, applying the correct legal standard” (p. 1355).

The court dismissed plaintiffs’ fourth appeal declaring the district did not intentionally discriminate and therefore did not violate equal protection of its students. The plaintiffs did point out the lack of evidence, as well as the concealment of testimonies from the case. One of the omitted testimonies explained:

District task force declined to replace the District's freedom-of-choice system of student assignment with attendance zones, at least in part because some members were concerned that such a change would prompt white students to leave the District and enroll in private schools, as well as the fact that one school administrator testified that she had reassigned white students based upon their parents "saying they didn't want their children in the mostly black classes."(p. 1353).

The court responded by stating

The evidence presented by both parties at trial was extensive and the record in this case is voluminous. The district court was not obliged to recite and analyze individually each and every piece of evidence presented by the parties (p. 1354).
Overall, plaintiffs argued district failed to provide substantial proof; and specifically for the complaint on discipline, provided two witnesses stating there was no difference in punishment of black and white students, but did not provide evidence to support the claim. From all the plaintiffs’ claims, the section on ability grouping was remanded because the standard of legal analysis was not correctly applied, but on all other claims ruled in favor of the district.

The case was presented again in 2007, under the correct legal application of the McNeal standard to determine whether ability grouping methods were not results of past discrimination or resulted in better opportunities. The court explained, “That the ability-grouping program has the effect of placing lower-income black students in lower tracks is, by itself, insufficient to show a constitutional violation” (p. 1263). Plaintiffs provided proof of instances of intentional segregation, as well as data demonstrating placements were determined by race and not ability. However, referring only to data on record, the court responded the program did not intentionally discriminate students, “that a student's lesser-perceived ability was mainly the result of that student's poverty and that such conditions were not the present results of past de jure segregation” (p. 1263). Additionally, based on teacher testimonies and expert witnesses pointing to the validity of standardized tests, as well as teacher recommendations, and past performance, the court argued, “That the placement of students correlates to their perceived abilities and that socio-economic status is a strong determinant of a student's academic ability” (p. 1263). Moreover, the court affirmed its previous ruling, explained the district’s burden was only to prove demographic changes were a substantial factor, and closed by stating:

The district court may examine the record as a whole and need not respond to every piece of conflicting evidence. Thus, because the district court's findings are entitled to substantial deference, we cannot say that the district court clearly erred (p. 1263).
Conclusion

This chapter has provided information regarding educational law and an overview of selected legal cases. I specifically included an overview of educational law to then provide a sense of how these standards were applied, as well as how precedents became influential in shaping future cases. It is important to judge the court rulings and rationales against the testimonies of students in order to identify discrepancies. The following chapter includes data collected from a case study conducted in a Chicago Public School with Chicana/o students.
CHAPTER 5

TESTIMONIOS FROM CHICAGO STUDENTS

In the cases reviewed in the previous chapter, as well as numerous others cases that I researched, I did not find one single case that included the testimony of students. Besides my methodological interest in incorporating student narratives to validate and challenge history and the legal system, I believe that it is necessary, productive, and reasonable to gather a sense of the implications of a policy directly from the individuals impacted by it. This chapter will focus on detailing the experiences and observations of case study participants. Although the interview data was extensive in length and depth, an emphasis is placed here on presenting that information that is pertinent to perceptions, treatment, and impact in relation to tracking placements of Chicana/o students in Chicago public schools.

The high school enrollment of CPS is approximately 115,710 students, while 44,289 of the students are identified as Latina/o (CPS Website). Data from Chicago Public High Schools indicates that 18% are designated as Limited English Proficient, 14% Special Education, 81% are identified as low-income or living in poverty (CPS Office of Evaluation, Research, and Accountability, 2010). The high school in which the case study was conducted offers ESL, AVID, Special Education, Regular, Honors, AP, and IB curriculum. Although the school is predominantly Latina/o, less than one tenth of the Latina/o population is enrolled in AP courses (CPS Office of Research, Evaluation, and Accountability). The following information will provide a greater sense of the case study participants and their experiences with educational practices and policies.
Raquel is a 15-year old, first-year student in the Honors curriculum, who also involved in two sports teams, a dance group, and a service organization. She lives in a household with both her parents and has one sister and two brothers. Her mom completed her high school education and dad has obtained his General Education Degree (GED). In terms of occupations, her father works at an ice factory, her mother at an envelope factory, one of his brothers is in the service and maintenance industry, and the other also works for a factory, while her other sister is in high school. In regard to ethnicity, Raquel identifies as Mexican because she was born in Mexico, like her parents. Raquel relates his largest source of inspiration are her parents and she intends to finish college to obtain a stable position in the medical field as means of proving a better future for her family while also increasing the representation of Mexicans in the field and proving that they too can attain ‘good levels.’

Isabel, Raquel’s younger sister, is a 14-year old, first-year student in Regular curriculum who is involved in a dance group, two sports teams, and JROTC. Isabel provided some background on her family and shared that her mother became pregnant at 15 and had to drop out of high school as a freshmen in Mexico. As a result, her father came to the U.S. to work and get his GED at a community college while her mother eventually ‘crossed the border’ to join him. She identifies as Mexican because she was born and raised in Mexico, her whole family is Mexican, and she eats Mexican food, as well as ‘acts Mexican’. She shared that leaving Mexico at the age of four was hard for her, but especially for her older sister who was placed in an English-only class and would get in trouble on a daily basis because she could not understand the teacher. She also explained that although she did not like school, due to her friends’ and family’s motivation and expectations she plans on attending college and would like to be a professional athlete or school teacher.
Juan was born in a suburb of Illinois and is a 15-year old, second-year student in the AVID program, who is involved in several sports teams and the Army’s Junior Reserve Officer Training Program (JROTC). He lives in a household with both parents, brothers, and sisters. His mother finished high school, but she was unsure about the educational attainment of her father. He shared her mother worked at the Sears Tower, but was unsure what type of occupation, while his father was a florist. In terms of goals, he explained her interest in being a movie director or marine biologist, but not having a clear decision. Ethnically, he identified as Mexican-American because as he explained, his mother was born in the U.S. while his father in Mexico.

Cesar is 15-year old, first year student in the IB program, who is involved in a music group and chess club, and plans on joining the psychology club. He lives with both parents whom have finished high school; his father is a mechanic while his mother is a ‘stay at home mom.’ Cesar’s parents only spoke Spanish at home, so when he entered school he did not speak English, but he eventually and quickly learned once in school. He explained that a high school diploma is no longer enough and would like to attain a master’s degree, study in London, and be an architect. Cesar shared that his greatest source of inspiration was his father, who continuously encourages him to have high aspirations. Although Cesar did not disclose the rationale behind his self-identification, he did share he identified as Mexican-American or Chicano.

Marcela is a 15-year old, second-year student in the AVID program and is also involved in two sports teams. She was born in California and lives with her mother and five younger brothers. She is not aware of the educational attainment nor occupations of her parents. She is unable to explain her rationale for her ethnic identification, but acknowledges she considers herself Mexican. Her greatest source of inspiration is her mother and she would like to attend college to become a lawyer. During the interview she reveals her frustration with the stereotypes
that Mexicans get pregnant or drop-out of school, and ultimately explains her educational goals are motivated by the need to prove to others Mexicans are not all the same.

Yadira is a 15-year old, first-year student in the IB program, who is not involved in any clubs or groups, but plans on joining the math team. She lives with both parents, her grandmother, as well as two younger sisters. Both of her parents completed high school and her mom cleans houses while her dad works at a food company. She identifies as Hispanic, because her parents were born in Mexico. Her greatest source of inspiration is her family, because, as she explains, they came to the U.S. for a better life. Her goal is to attend a college or university and become a pediatrician.

Findings

Placement

Looking back at the case study conducted in a Chicago Public High School with Chicana/o students, the following section will provide testimonies from students and teachers regarding experiences with academic tracking. An emphasis will be placed on understanding the social, academic, cultural, and psychological impact of such practices. The high school has the following placement levels: International Baccalaurate (IB), Advanced Placement (AP), Honors, Regular, Special Education, ESL, and AVID. It is important to point out that students recognized that their class schedules were directly dependant on the academic level they were assigned to, and in accordance to class academic achievement standards, to previous grades, ISAT scores, transcripts, as well as an application for the International Baccalauriate Program (IB), if applicable. However, as teachers explained, students could be re-assigned academic levels, without an explicit rubric or process, based on current class performance, as well as
teacher recommendation. Nonetheless, teachers shared that in spite of attempts to place students in the most-fitting academic level, students were at times incorrectly assigned.

Participants related about their understanding and experiences with the process of academic placement. Students and teachers discussed that once students were assigned to a specific track, IB, Honors, Regular, or AVID, counselors then provided them with their schedule. Guided by board requirements and based on their placement, this will then determine the level of classes they take along with electives. Students found the selection process and method of placement accurate and fair because they believe it demonstrated that students passed a specific test, attained certain grades, as well as their learning level. However, insights on specific examples to be discussed in the upcoming sections demonstrated otherwise.

**Misplacement**

Two teachers shared known instances where “they put kids in classes to fill classes..which is unfortunate,” sometimes because, “we need 30 kids in order to keep the class so we force 15 kids so that the teacher has a class”. One student shared feeling that she was currently misplaced in a class, and when asked if she could change her class she said, “I could talk to [counselor] and ask her to change me, but if there’s no room then I have to stay there”. With conversations with students, Mr. Hobbs has also heard students comment that they were in classes they did not select, even electives. Cesar added, within the first years, “we don’t get freedom, here’s your schedule follow it,” and then by senior year get two or three electives, which as some teachers believe, can be too late. On the other hand, Isabel was recommended for honors for the following year and she shared, “I turned it down because this year they gave me regulars, and they’re my level, they’re the level that I actually like, because that’s the level that
I’m in, and that’s the level that I should be in.” Explaining that she had difficulty in grammar school, she adds, “I feel that I’m actually doing good… if I were to get honors all of a sudden I feel like I would get lost really fast.” Although teachers say that academic placement in one class did not impact the level in another class, at times, teachers formulate their recommendations or evaluations based on student performance in other classes, in other words, other teachers’ evaluations. Overall, teachers stated that there is no specific or concrete rubric to follow to designate or evaluate student placement.

**Perceptions**

The students’ interpretation of academic placement levels and their understanding of why student were separated were comparable. Marcela and Raquel disclosed that they thought academic placement was good and that students should continue to be separated according to their effort and intelligence. Raquel said, “Smart people, they don’t belong with people that don’t make an effort” and students are separated because:

> Everybody’s at a different level, everybody has a different effort towards their work. You can’t just put somebody that tries harder than another person, like if they’re doing a project and one person doesn’t do anything and the other does..that’s not how it should be.

Similarly Yadira added, “Depends on how smart and dedicated you are.” Cesar believed students were in different academic levels because, “Some people need more help, while others can work alone.” Juan, on the other hand, thought students were separated because it was linked to their learning process. Nonetheless, Isabel shared an insight:

> If I was with everything, with IB and Honors people, it would be good at the same time because if you don’t get it, there will be people that can teach you…you know, how to…they teach you what you don’t know, they’ll be helpers.
Disadvantages

Students and teachers shared varying insights regarding their perspectives on the short-term and long-term academic disadvantages of academic tracking. Ms. Connor thought that it was important to be considerate of the ‘labels’ used in reference to the academic levels. Several respondents provided that students in the high-track can develop a superiority complex, while Mrs. Roberts cautioned that they can also become discouraged, if they don’t meet high standards. Similarly, Ms. Connor offered that if incorrectly placed at a high-level, students could become discouraged and even drop-out. On the other hand, Mr. Roberts suggested that “It is students that have been tracked into Regulars that have the highest drop-out rates.” Isabel described the impact of academic tracking on her and her friends. “People who don’t care about school they’re mostly in Regulars…Regular is really hard,” they cut and drop-out and “they try to suck you in with them.” Mrs. Roberts finds that Regular students are “tracked into an underachieving path…or locked into it,” because:

The regular students don’t have the benefit of being around students who are at this point academically superior to them and don’t get to observe and work with them in small groups, pick up on their habits and knowledge, and attitude towards education. If you’re usually just around people with the similar attitude therefore they’ll stay at the same level.

Another teacher commented on the dual system operating within the school:

I call it two [schools], either you’re in the Honors, AP, IB track, where you get the best teachers, more rigorous curriculum or you’re in the Regular [school], you don’t get those benefits.

In the end, she reasoned, the goal is to get as many students into the AP and Honors, because “the more you learn in this level the better it will be for you later.”

When asked if there were particular students in placed in certain placement levels, there were varying insights. In terms of race/ethnicity, Isabel claimed, “There’s no racism, not that
I’ve seen.” On the other hand, Mr. Roberts said that there were more Asian students taking high-placement courses. Additionally, other students observed that there were mostly Chicana/os in IB, Honors, and Regular courses. Nonetheless, Mr. Roberts and Ms. Conner suggested that the enrollment numbers in different levels were simply a reflection of the student population at the school. Furthermore, Cesar indicated:

I think it’s because of the community. If you see how the community is straight up.. the Mexicans on one side, African-Americans, and white is usually on the other…It’s not that the school is doing it, it’s just that the neighborhood are like this.

Treatment and Impact

Academic implications

Generally, most teachers, students, and parents agreed that all students have equal access to information and knowledge, education, and educational opportunities. While Ms. Connor, as well as others, believed that within the building it was equal yet outside of the building it depended on homes and school location. However, they were able to distinguish differential exposure in relation to academic placement. Students explained that students in Honors classes are exposed to more material at a faster pace, and sometimes opportunities for programs are limited based on Grade Point Average (GPA) or test scores. For instance, Cesar shared:

Yeah. Some teachers do give more homework or challenge more because of track. I think I’ll learn more…I’ll think back say all that reading really helped, that was great that I actually learned that during school while some students can’t, may not have had that experience.

In regard to whether education was equal for all students, Yadira described the following scene:

No, not really...because I have them in division and I talked to one Regular and she asked me ‘where are you in math in this subject?’…and I was like in this subject…and they’re a little bit back and we’re a little bit more ahead.

Similarly, on the subject of whether educational exposure was the same, Cesar said:
No, I don’t think so because we [IB] benefit more than them, and at a time I don’t think it’s fair…but they were given a chance to do this and I actually took hold of it.

When asked about the long-term impact of academic placements, Yadira expressed:

The IB will get in better colleges on how they were challenged, and Regulars the colleges and universities that are not that good…If you’re in IB you know you’re gonna have more opportunities in the future…and well like Regulars they will have, not equal enough, but they will have depending on how their grades and how they were educated

Moreover, Mr. Connor said IB students have special privileges and that students are not only “socially segregated, but also academically.” Cesar also echoed, explaining education and exposure is not equal because by the end of high school he would be exposed to traveling abroad as a result of IB, stating, “We benefit more than them, and at a time I don’t think it’s fair.”

Stereotypes

In regard to specific tracking placements, students offered various perspectives. For instance, Yadira stated, “Regulars are like students that are not that smart for IB,” while Raquel notes that they:

Just don’t try I guess, they have low self-esteem of themselves, they have other priorities than education, so it’s not that they’re stupid just that they have other priorities that they prefer.

On the other hand, Isabel said:

Regulars is not for dumb people, cuz they say if you’re Regular you’re dumb, NO…We’re learning the same thing, they’re teaching us to go to a certain goal and it’s like no difference, just that they give you [Honors] more work not harder stuff.”

Additionally, she points out that other designations like Special Education, are really important because there are “students that need more help and those students are gonna do better because of that”. In terms of Honors and AP, Raquel believed, “they make sure that they’re the best at what they do, doesn’t mean that they’re super smart, but they just try.” Similarly Juan
identified AP as “high standard classes,” suggesting that students have reached a certain academic level. Cesar and Yadira both mentioned that they selected to be in IB because they were informed they would have more opportunities and this would “open doors for the future,” especially higher education. However, Cesar pointed out, “Sometimes they see we’re in Honors and they think we’re like snobs, but it’s not true. My friends they just see us ok you’re in IB ok..don’t get too cocky or something.” Yet, Raquel says, “They [IB] get too much attention and it’s same thing as Honors, it’s just taking one more class.” Nonetheless, Isabel suggests, “[IB] should be really proud because that’s really smart and you have to be dedicated and into it because it’s a lot of work.”

Social

Although students and teachers often declared that there was no meaning attached to the academic categories and that all students were equal regardless of their placement, student and teacher observations of interactions and experiences disclose otherwise. In terms to student interaction, a majority of participants, students and teachers, shared that typically, IB students only interact with other IB students, and think they are ‘higher,’ while Regular and Honor students tend to socialize amongst themselves, and that English as a Second Language (ESL) students also tend to only interact within themselves. Mrs. Roberts describes lunchroom observations, explaining that “students gravitate with people that they can identify with the most,” and that there are tables according to nationality and/or ethnicity, as well as placement, specifically IB. On the other hand, there were students that did not observe a differential treatment due to academic placement, claiming to get along and respect one another. Likewise, in reference to student-teacher interaction, some participants did not observe differential
treatment, other than teachers expecting more from students in IB or Honors or being more attentive with Regulars, while one student mentioned:

It depends on the teacher. I have teachers that are….really they interact with anybody, IB, AP, but I guess there are teachers that stick to what they teach. If they’re teaching mostly IB, they mostly talk to IB students they don’t really try to talk to like regulars or special ed, but most teachers they just see everybody the same, they’re all at school and it doesn’t matter what they’re being taught.

Nonetheless, when asked if they had personally been treated differently because of their placement, some students recalled instances and comments attesting that they had, while others denied any differential treatment. Cesar acknowledged, “My teachers they do treat me differently, they expect more.” Additionally, another student shared:

I guess this year in geometry, my teacher thought we were regular class and we were going really slow and he was like ‘Oh my honors class took a test,’ and we’re like oh were honors and he said ‘Oh you are?? Oh let me check’. And afterwards we went really quick, and he was like ‘You guys were smart’.

Participant narratives provide examples of specific interactions between teachers and students, shedding light on the social and interpersonal differences structured by academic tracks. When asked if students interacted with each other regardless of track, during combined classes or other activities, an IB student shared:

Well for us…there’s two [combined] classes so we sit with the other class too..together still all the IB, with other friends, you say hi but you’re not really able to sit with them..I sit with people in other IB.

Similarly, Isabel’s comments resonated as she described the lunchroom scene as well as other interactions and observations in relation to placement level:

In the lunchroom they [IB] have their own table, you’re with your own friends. If you’re sitting down and you see someone sit down you don’t know, then that’s pretty weird..cuz you have your own table. IB people sit together cuz they know each other more now. Honors and Regular just hang out together..but lunchroom and afterschool activities they hang out..but more in the lunchroom…and then when you’re back in school you don’t see
them again..IB students are the ones that are more, they mostly hang out with their own friends, so they’re stuck with them….

IB is like amazing because WOW…if you have to be with the same people in all your classes..I don’t find that cool at all, in all four years of high school, that’s amazing WOW. I would not wanna be in IB, but if you really care about school like IB students then you wouldn’t care about being with the same people cuz you would care about getting your work done..so then I don’t think it’s bad at all.

As for Special Ed, I feel like people treat [them] like if it wasn’t nothing. There are students that say SPED should’ve never been invented but I think it should because students who need help should deserve a class as well to learn and that class is perfect to them….ESL they hang out with people who speak their language because it’s hard for them to speak English, to interact with the rest. They’re their own clicks, and Honors and Regulars, they form their own clicks.

Regular is really hard. It’s really hard because you have everybody that doesn’t take school seriously because Regular is for students that are still trying to figure out what they learned over here. Regular is pretty hard because you get students that don’t really care about school and they take you with them, they take your friends with them, and they drop out. In Honors that happens too, they drop out but in Honors it’s more like a social group. In Regular, it’s more tough because there’s a lot of kids who don’t care about school and they drop out and they try to suck you in with them so you can be with them and you won’t care about school…. those people are the ones that affect your life because they try to suck you in with them and they try to not make you do your work so I cannot affect my friends, that’s why I pick the right friends so I don’t have to worry about that.

On the other hand, Yadira shares her experience of differential treatment as an IB student:

Well yeah, I really don’t care..it’s all in my future, not theirs. They don’t have to pick it for me. Like when I’m in PE, they’re like…Regulars, they ask me how come I don’t see you in my classes…and I’m like well I’m in IB..and they’re like oh so you’re smarter..and I’m like well yeah, I consider myself smart. I don’t really care, some do, but it’s on me..not them.

Psychological

Mr. Hobbs expressed concerns in regards to how students are discouraged from developing critical-thinking skills and their opportunities narrowed, as a result of student limitations for class selection, and essentially the types of classes, and content, that are open for student choice. He explained that systematically certain subjects and areas, like the arts, have
been devalued, and that in not presenting that venue as an option, students’ possibilities are limited. Additionally, another teacher said, “If we expect them to make adult decisions then we ought to give them adult responsibilities and authority.” In regard to cash-incentives for students performance, Mr. Hobbs declared, “What’s wrong with people? What about intrinsically teaching them that they have to care about who they are and what they’re gonna do with themselves?”

Mr. Hobbs explained that students often allow others to mistreat them because of low self-esteem, and that they should be encouraged to care about themselves, expanding that self-esteem can be increased if students believe that they are smart and that they too can learn. Ms. Connor added, “You got to build kids self-esteem, you can’t put them down, give them something to believe.” Overall, teachers’ expressed concern regarding the impact of academic placement and tracking on student ability to think critically, creatively, and eclectically.

Accordingly, student narratives provided insights on identity impact and development due to placement level. For instance, in regard to IB students, the following comment was made:

IB people, they look, they think they’re higher than everybody, and that’s not how it should be. The IB they kinda separate from Regulars, they form their own lil’ clicks and..but like especially in like PED [Gym], some people make fun of them and I don’t think that’s fair cuz people make fun of them (Isabel).

Marcela also noted students were mocked or made fun of if they interacted with students in the Regular placement or in Special Education. She stated:

No sé, hay gente que cambian como son, como, están en IB se créen mas, que son más inteligentes, y si están con alguien que está en Regular o Educación Especial, [se] les hace más burla.

I don’t know, there are people that change how they are, like, they are in IB and they think they are better, that they are smarter, and if they are with someone who is in Regular or Special Education, they are made fun of.

Lastly, Isabel shared an additional frustration in dealing with the experiences and perceptions about her peers:
They [other students] tell me ‘Oh you’re in Regulars, you’re gonna be with all those
gangbangers and stuff…
It’s really hard to motivate friends or the friends that I have because they don’t care about
school…’we don’t care about school its boring’ and I’m like well you need school to get
somewhere, if you don’t do school where are you gonna get to?

Consequences

Students and teachers shared varying insights regarding their perspectives on the short-
term and long-term academic benefits of academic tracking. Students and teachers believed that
the current system of academic tracking was beneficial because it allowed students to learn at
their own level and with students with similar performance. They suggested that having high-
track classes gives students the opportunity to “Work with people who are like-minded, they
push you…everyone in the room is as smart as you are so they motivate you to maintain your
status that you earned” (Mrs. Roberts). In the short-term students in IB, AP, and Honors have the
best and most rigorous teachers and curriculum, more information compared to other classes, are
surrounded with students that are college-bound, and earn more points towards their GPA. In the
long-term, students in IB, AP, and Honors are at least for four years surrounded with students
that are college-bound focusing on GPA, ACT scores, sharing opportunities, and more
preparation for post-secondary opportunities and being accepted into ‘better’ schools. As Cesar,
in the IB track disclose, “I feel like I am treated differently, like I’ve been given something
more…like here’s your chance to do something in life, take a hold of it and don’t let go.”

Detracking

With a combined group, it is perceived that students will be at different paces and get
lost, “How can we help them if we can’t even help each other out?” said Cesar. Yadira finds that
academic placement was useful for the teacher, and Ms. Connor explains that the mentality is,
“I can’t take the time away from twenty-eight to explain to those two because now I bring the class of twenty-eight down…so they just get lost and that happens in every academic classroom.”

She clarifies, with a range of ‘high and low achieving students,’ teachers slow down instruction, then the “smarter kids become bored,” but if the teacher teaches in the ‘middle’ the ‘low achievers’ “get hurt and get intimidated, and they’re not answering in class because the smart kids are always right.” Nonetheless, Ms. Connor suggests that academic tracking is not efficient as it is, and it would be more beneficial by incorporating an additional level for students that need extra help, as well as adding more instructors or aides in the lower academic tracks.

There are mixed perspectives regarding the disadvantages and benefits of being in combined academic placement. Isabel and Mrs. Connor observe that because students have a stereotype about how regular students should be, they act like they don’t care about school even though they do. Mr. Connor adds that regular students can underestimate themselves and even when they achieve class standards they do not believe they’ve earned it. In addition, some students may do well in class but prefer not to make it public among their peers. Mrs. Roberts expands on the topic of exposure, explaining, “If you’re the slowest and everyone else is smarter, they pull you up,” yet he also adds:

If you’re the smartest and everyone is slower I believe they pull you down…if you remain in the same level you’re not pushed, you’re not motivated, not inspired, not encouraged.

Mr. Hobbs says that in his combined –level class, students interact and learn from each others’ talents and skills. He adds that he has numerous Special Education students who excel and have the potential of attaining scholarships due to their talent; “but would never think of going to college.” Isabel believes that a combined setting would be “even better because IB could teach
honors, honors can teach regulars, and regulars can teach special ed, that way they can all do better in school.”

Teachers cautioned that one of the disadvantages of academic tracking is being misplaced, which can have long-term disadvantages. Mr. Hobbs discussed that self-esteem issues can result in over time due to tracking, being factors for pregnancy, gangs, unemployment, among others. On the other hand, Mr. Connor believed that in the long-term, academic placement has no effect, because students will be in any occupation regardless of academic level. Nonetheless, Mr. Hobbs and Ms. Connor agree that school curriculum needs to be relevant and interconnected with other subjects, claiming, “This is not relevant to their lives, it is relevant to the school to get money to stay open.” Mr. Hobbs extended, “Experiential education, If we could only wrap our heads around that there wouldn’t be such a high drop-out rate, why do they want to come to school?...they hate it.” Overall, teachers declare the need to conduct more research and improvements of academic tracking, claiming that, “Everything is available here, but the way it is created right now…I think it’s a broken system.”

The narratives presented in this chapter are meant to introduce an alternative way of understanding policy consequences and educational outcomes. Additionally, it provides evidence on the lived experiences of Chicana/o students in relation to academic tracking. In the following chapter, I will generate an analysis and discussion connecting the narrative results with the legal and theoretical material, as well as their influences.
CHAPTER 6

TRIANGULATION

Using results collected from the case study, student narratives, as well as the legal cases, this chapter analyzes and discusses how systematic mechanisms such as, law, meritocracy, political economy, and hegemony function to maintain and legitimize educational access, policies, and practices, specifically academic tracking. Extending from legal frameworks of color-blind constitutionalism and whiteness as property, I compare how the selected cases on education vary in the legal interpretation and justification for student rights. Given the legal framework, as well as its guiding mechanisms, I engage with understanding and crystallizing whether academic tracking can be considered a racializing process of resegregation, and therefore a form of discrimination. Specifically, by deconstructing legal frameworks and offering the testimonios of Chicana/o students, they serve as evidence of whether academic tracking violates their rights. Furthermore, this chapter provides insight to the responsibility and limitations of the court regarding educational equity.

Systems of Legitimacy

Law

Color-blind constitutionalism is grounded on the notion that with meritocracy and responsibility alone past injustices can be overcome. It particularly ignores racialization and refuses to acknowledge it still exists. With that, the policies implemented to remedy results of past discrimination also avoid using race, racism, and racialization as references to improve conditions. The contradiction here is interesting, where the current policies and remedies strive for a non-discriminatory approach in the name of equality, nonetheless in application the outcomes are unequal. Vestiges of past discrimination are not gone and there are efforts to
maintain and protect the entitlements and privileges which have been accumulated over time. Within those efforts, whiteness as a property right also emerges and can be observed by the manner in which application and interpretation of rights vary by the involved parties. Nonetheless, as the following analysis will demonstrate, proving the claim of discrimination can be difficult and almost impossible for certain groups given the legal frameworks in operation.

In *Leandro v. State of North Carolina* (1997), for example, the reasons the court refused to change the funding structure concerned that it could drastically impact the entire country. Protecting the current structure was justified due to fear that it would interrupt its function and consequently also affect ‘accomplished’ students. In the dissenting opinion, Judge Manning offers an alternative way of looking at the impact of funding practices. He asked the court to reflect on historical struggles for justice and equality in relation to race, gender, and class. Judge Manning pushed the court to acknowledge that educational outcomes of students due to financing are an issue of race, class, and gender, thus breaking the color-blind paradigm.

Chairman Kirk argued reallocating funds to at-risk students would take away from brightest, hence implying that the brightest deserve such rights, but at-risk students are not as worthy. Additionally, the idea that it ‘takes away,’ further indicates that the brightest students hold a property right, while at-risk students do not. Moreover, one of the challenges to reallocating funds was the threat that ‘good’ students and families would flee to private schools and consequently disrupt the system. Again, this rhetoric and rationale supports the perpetuation of power and privilege for the dominant while denying equity for the oppressed.

In *McNeal v. Tate* (1975), as alternatives to zoning, the court states families have the right to relocate or transfer, however in reality, due to the effects of past discriminatory practices and policies, this is not an option for all parents. The right to own property, as well as its
benefits, is connected to the ability to choose relocation and that is dependent on whether a family can afford to move financially and socially—the costs of integrating are not open for all.

We can also observe how color-blind constitutionalism, particularly the tenant of intent, plays out in the approach taken by the court when justifying academic placements; even though they result in segregation, the court argues “individual ability, not race, is the criterion for assignment.” Requiring the condition of racial intent in placement program in order to validate the argument of discrimination is a limitation of color-blind constitutional as it does not acknowledge the various processes of racialization.

In *Castañeda v. Pickard* (1981) the court stated, “school systems are free to employ ability grouping, even when such a policy has a segregative effect, so long, of course, as such a practice is genuinely motivated by educational concerns and not discriminatory motives” (p. 996). In order to even make a claim of constitutional violation due to ability grouping, plaintiffs were required to first demonstrate historical discrimination took place. This is another example of how the color-blind constitutional requirement of intent is applied for validating a discriminatory practice. Given the condition to demonstrate with substantial proof that there is a clear intent to discriminate, as well as a history of discrimination, the plaintiff cannot prove the motives. Consequently, the court fails to acknowledge the manner in which racializing practices can be cultivated in subtle and unintentional forms. Moreover, this statement also highlights the justification of segregation when disguised as an educational effort; here it is important to be critical of particular purposes and motives behind educational practices and policies. With that in mind, it is important to point out that the court suggested that ability grouping based on language, which identified students by labels, could perpetuate inferiority and stigma of Mexican-American students, and furthermore be indicative of intentional discrimination,
regardless of past history. Nonetheless, the court did not impose any regulations and the district was responsible of determining its grouping practices because they believed not enough evidence was provided.

The superintendent and principal in Simmons v. Hooks (1994) justified academic tracking practices because it was more convenient for teaching and learning, as well as to avoid disruption. With expert testimony challenging the benefits and usefulness of standardized tests and homogenous grouping, the court declared that the rights of the plaintiff’s children were violated. However, according to the court, plaintiff failed to demonstrate damages and ruled recovery for each child of one dollar. Explaining that there was no clear cause, and therefore no proven damages, the court dismissed the complaint and violation by claiming lack of direct causation. Taking into consideration color-blind constitutionalism and whiteness as property, we can understand how the court, despite finding a violation, still continues to restrict the access to equitable interpretations of rights, violations, and remedies. Even though the plaintiff technically ‘won’ the case and was able to meet legal conditions, the court conveys its judgment and bias on the worth of black students’ lives by placing a value one dollar for the misplacement and historical oppression. Moreover, this exemplifies how the legal system serves to protect the status quo and restrict the rights of certain groups.

In Holton v. City of Thomasville (2005), the court explained the disproportionate number of students in lower academic levels was not a result of past or current discrimination because race was not a factor in assignments. Based on the color-blind constitutionalism, we see again how the court limits its interpretation of discrimination and legal violations by focusing on overt forms of exclusion. The court not only justified housing demographics as constitutional rights, but also the court also declared that such patterns were too complex to remedy, and
therefore beyond legal capacity. Besides the condition of proving intent, this case also
demonstrates how the condition for direct accountability and a clear-cut explanation places a
limitation on the legal analysis.

**Meritocracy**

The values afforded by meritocracy serve to rationalize a system of sanctions and
rewards. In that process, standards, tests, admissions criteria, academic placement, funding,
zoning, and even housing practices can be justified accordingly. Under this structure, the effort,
work, and loyalty of individuals entitles them to certain privileges and opportunities for
advancement. On the contrary, not complying with the dominant structure then warrants
sanctions and punishment. Moreover, focus is placed on individual ability and talent, thus
structural oppression is ignored and victimization is normalized.

In *McNeal v. Tate* (1975), for example, Judge Clark described resegregation due to
tracking as a system where students “still wear a badge of their old deprivation –
underachievement” as a result of this process. Although initially it seems the comment is
targeted to provide a comprehensive understanding of discrimination, however it reproduces the
rhetoric which blames students for their past and current status. Similarly, in *Castañeda v.
Pickard* (1981) the court and several administrators justified academic tracking practices by
rationalizing that ability determined student placement, thus being a representation of where
students stand academically. Additionally, in *Simmons v. Hooks* (1994), the court made its final
ruling by blaming the other and the children, but not the whole academic tracking system.
The court rationalized that besides grouping practices, the educational outcomes of the children
were not only a result of physical disabilities, but also blamed the parent for failing to read to the
children or enroll them in Head Start. Thus, student, as well as parent, ability and status is reflective of individual work ethic and value for education.

In Holton v. City of Thomasville (2005), the court explained that African-American students were disproportionately in lower placements as a result of their “impoverished environment,” lack of support and parental involvement, as well as “being perceived as not being prepared” (p. 1333). This exemplifies how the criteria and qualifications for advancement favor the dominant group and when those conditions are not achieved by certain groups, culpability is placed on the individual. The court explained placement in classes to be solely based on qualifications, standards, and conditions set per federal or state regulations. In addition, the discourse justifying the overrepresentation of students in particular levels focuses on intent-neutral housing patterns and demographics, and directs accountability, yet alone remedies, away from school systems. In this discussion housing patterns were rationalized by being inevitable and results of private choices, thus absent of intentional discrimination. Overall, this court fails to draw the connections between not only housing and school segregation, but also that student exclusion from educational levels and programs begins with the limited access to and benefits of early education programs as well as culturally-relevant and reliable standardized tests.

Political Economy

The value for standards, productivity, accountability and efficiency are instilled within the education system. Accordingly, the mechanisms have been implemented to justify and rationalize the act and need for sorting and selection. In general, the education system is utilized as a site for production which functions alongside the underlined motives and capitalism. Additionally, funding formulas are validated based on state and individual rights and
entitlements. Moreover, these combined influences maintain dominance and subordination, but are justified as normal practices responding to private and individual choices.

In *Leandro v. State of North Carolina* (1997) the court justified establishing parameters for a sound education explaining that students needed to be ready to compete in society and pursue post-secondary or vocational plans. Justification for a better education was encouraged based on the future function of students and not necessarily legal or righteous motivations. Additionally, this rhetoric reinforces and preserves the need for competition, as well as a hierarchal structure. In another perspective, Judge Manning explained the social and financial costs of not providing students with an adequate education, and expressed “The detriment is immeasurable in terms of human costs, quality of life, lost opportunity, prison cells, and loss of productive wage-earning citizens” (Judge Manning, Report, p. 5). Although, overall his effort was to increase funding for marginalized students, nonetheless, it is important to analyze the discourse. My initial reaction to this argument is that it can be a tactic to work within the interest and concern of the dominant framework; that investment in human capital can benefit the economy. In addition, it can also be a warning that refusing to pay for education now can result in escalated future costs.

In *Castañeda v. Pickard* (1981) one of the justifications used by the court for ability grouping practices was that the process of course and level selection was free and open for high school students. Guided by capitalistic values and norms, such as a free-market, the illusion of choice, self-regulation, and alternatives have been institutionalized to instill faith and legitimacy. Accordingly, the courts and districts validate the processes of sorting students through a heavy reliance of race-neutral tests and performance as scientific, rational, and convenient measurements of ability and status. Thus, educational outcomes are explained in relation to
standards, performance and accountability. In *Castañeda v. Pickard*, computerized assignments were also supported as an impartial tool for designation. Through these examples we can see how the values of a capitalistic and prearranged structure operate and are aligned to function in educational settings.

**Hegemony**

Taking into consideration “institutionalized hegemony” (Giroux, 1981), the legal system serves as an institution that reinforces the notions of equality and inclusivity. The dominant views, entitlements, and behaviors are maintained due to color-blind constitutionalism and white privilege, as well as, the manner in which subordinate conditions are rationalized. Essentially, the differential interpretations of the law strategically protect the dominant. Explanations, arguments, and enactments must fit within the framework in order to be accepted as valid, those which are not are characterized as incongruous, irrational, or unreasonable. For example, in order to have a case the plaintiff must establish that intent to discriminate exists; plaintiffs must operate within the constitutional interpretations of previous precedents, tests, and standards, as well as the current attitude of their particular court judges. In the end, the court has control over the evidence, weight of testimonies and research, statistical data, methods used for review, legal interpretations and applications. Challenges to the status quo represent a threat to the system of privilege, by having power over legal knowledge, discourse, and its outcomes, it allows for complete control over the consciousness of the parties involved, as well as how issues are conceptualized. Moreover, hegemonic ideologies, values, and practices perpetuate the myth of the legal system being a space for neutrality and equality. Furthermore, as the previous and
following examples demonstrate, the legal system serves to condition and conquer the prospects of particular communities by applying the law to its own discretion.

In *Leandro v. State of North Carolina* (1997), when plaintiffs highlighted the contradictions in the state constitution regarding uniformity and differential funding, the court did not clearly articulate or invalidate how that was not the case. Instead, the court asserted that based on the state constitution and other cases, differential funding was authorized, yet it failed to connect to how that structured inequality and thus contradicted state required uniformity. We can see how entitlement, manipulation of knowledge, and the selective application of the law plays out in the court where only the rules that protect the status quo are valid. Nonetheless, although this particular case established requirements for a sound education, including general curriculum, quality instruction, and efficient administrators, the court failed to determine how funded would be generated, let alone distributed. In hindsight, the application of the law is so cleverly played out that, although plaintiffs won the case, in reality they gained an unfunded mandate. Even dissenting opinion points out, an education will not be equitable given the funding scheme, it is an illusion. An example of the power behind the hegemonic discourse can be observed in understanding how many have bought into this belief and practice that perpetuates segregation in the name of equality. The courts have control over the rhetoric, knowledge, and the system, therefore those tools and values work hand-in-hand to support one another.

In *McNeal v. Tate* (1975), the court justifies the use of ability grouping by claiming it does not violate the constitution; to validate the practice the court refers to the hegemonic structure, which functions in the interest of the dominant, and its system of information. The ability to decide when it is appropriate to reference the constitution in educational matters is an
indication of how hegemony legitimizes particular practices--especially those that protect the status quo. We have seen how in arguments rooted in social justice that challenge violations of equal protection the court is adamant about the absence of federal protection in regard to education, but in this case it is convenient to assert that the practice is protected by the constitution.

Similarly, in Castañeda v. Pickard (1981) we can also observe the control over the language and definitions used to validate legal conditions. In order to establish unacceptable forms of academic tracking, the results must demonstrate “abnormal or unusual” racial outcomes. These are, nonetheless, very vague and subjective concepts that place unattainable and fluctuating prerequisites. In addition, the court explained that the ability grouping practice was fair because students were able and free to select their classes and ability range. Besides personal choice, particular grades and courses were automatically arranged by a computer program. In all, these reasons serve to validate trust in a system and practice that operates under democratic and rational principles and tools. Moreover, the court holds the power and choice of whether to provide clarify of its explanations, definitions, and proceedings.

**Paradox**

In the case of Ordway v. Hargraves (1971), for example, there was concern over the psychological, social, and academic impact exclusion from daily school routines could cause. In the student’s defense, psychologists and doctors testified about the stigma and depression that could result from being treated as if she had a disease and was consequently excluded. Additionally, Dr. Sprinthall highlighted that the outline program simply did not measure up to an equal form of education. The court opinion clearly laid out education as a basic and fundamental
right and demanded any school policy which placed a limitation on such rights ought to be justified by the defendant. Therefore, the court established education as a right, placed the burden of proof on the defendant, and also asserted the educational policy excluded and segregated the student. Consequently, the court placed a value not only on the student’s education, but also on the methods and practices within the education system. What was most significant from this case was that the court did not even question whether education was a constitutional right, it simply assumed that and builds its rationale upon that foundation.

The case *In the Interest of G.H. v. North Dakota* (1974) draws a concern for student’s deprivation of education and parents’ inability to afford the cost. The court acknowledges the federal constitution does not delineate educational rights, however, it builds its rationale based on the fact that other states do clearly protect the right to education. Additionally, Judge Vogel dismissed the need to establish whether there were constitutional precedents for deprivations, and accordingly pointed to statutes when reasoning that no group should have more privileges than another. Moreover, Judge Vogel criticized the indifferent and contradictory standing of the federal government, that although they required states to provide own individual statutes for its citizens to avoid deprivation, the federal government, nonetheless, failed to provide its own educational provisions for all people and states.

Judge Vogel also referred to *Brown v. Board of Education* (1954) to strengthen the case that equal education must be made available to all students and that being born with physical handicaps merits an “inherent suspect classification.” Therefore, depriving the student of equal protection and equal education would be considered discriminatory, according to Judge Vogel not only by the state but most interestingly, by *federal law*:

Depriving her of that opportunity would be an unconstitutional denial of equal protection under the Federal and State Constitutions and of the Due Process and Privileges and

The case of *Leandro v. State of North Carolina* (1997) demonstrates how the court extends its legislative powers to detail what a sound education should provide for students; it incorporates basic skills, subjects, and even civic goals. Essentially, the court discussed and institutionalized the importance of providing a quality education. I found it peculiar that the use of standardized tests as proof for needing to increase funding was rejected by the court on the grounds the unreliability of tests. However, standardized tests have enormous power in determining the placement of students and are legally justified in other cases. The main difference was the purpose behind using results, in one case to justify need for funding and better education, while in another to rationalize the separation of students, instruction, and content. On the other hand, this case recognized that a group should not be denied opportunity based on their economic status. The court appointed Judge Manning to conduct assessments of the educational status of schools throughout various districts to fully capture and make suggestions for an appropriate education. In the report he builds on the value of student lives and opportunities, tying back to the vision of the founders and therefore pushing for a broader and figurative interpretation of the constitution.

In *Corey H. v. City of Chicago Board of Education* (1992), the case builds over the concern for the culture created towards students with disabilities based on the labels and categories imposed on them. There is a differential take on student rights, as the court certifies students with disabilities as a protected class. The court indicated ISBE’s attitude towards the compliance of LRE, as well as treatment towards students with disabilities was that of indifference. In addition, the court referred to *Brown v. Board of Education* (1954), and ordered
the state to act deliberately in remedying the segregation of students with disabilities. Moreover, the court monitor established specific curricular, social, instructional, and structural requirements for integrated learning. Guiding practices and goals for working with students with disabilities were also established by the Office of Special Education and Services. Overall, this case focused on the rights of students with disabilities based on federal policy, IDEA, while drawing concerns about stigmatization, isolation, exclusion, as well as limited access to general curriculum and settings.

In the cases of student integration, we can observe how the testimonies of experts are valued and incorporated in understanding student impact to then formulate a court determination. On the contrary, in *McNeal v. Tate* (1975) and *Castañeda v. Pickard* (1991) the psychological, academic, and social impact of differential education and exclusion is absent from the court discussion. In addition, the experts used to support the case also make a difference; integration cases have been able to incorporate the opinions of psychologists and educators to formulate a holistic and comprehensive understanding of the dynamics. Conversely, for the cases of exclusion, testimonies are, for the most part, limited to principals, superintendent, and counselors working for the district in question. For instance, in *Castañeda v. Pickard* the judge justified the use of grouping practices explaining that educational issues should not be determined by the court, and instead to rely on educational and school expertise. However, we can see a different take based on previous integration cases, when the court strikes down schooling practices and policies affecting students with mental or physical handicaps, as well as pregnant students. In some cases the court has gone to the extent of detailing specific instructional, curricular, and environmental requirements, and overall provided guidelines and oversight mechanisms for schools, while at other times the court has deferred responsibility to educators.
Even when expert witnesses testified on the limited to non-existent benefits of ability grouping and its effects, such as in *Simmons v. Hooks* (1994) case, the court does not apply same value judgment to that information as it does towards rulings in other cases. Besides expert testimony, this case also provided statistical evidence of racial imbalance in classes, in addition to proof of past discrimination, yet the court only declared one type of ability grouping unconstitutional. In their rationale, given the limited research indicating benefits of homogenous grouping, tracking for lower grades perpetuated segregation but even though middle grades were almost completely homogenously taught, demographics were “within acceptable range” (p. 1302). Despite the similar practices of ability grouping and the comparable outcomes across grades, academic tracking was found in violation only for particular grades. It seems irrational that regardless of the same premise, the court accepted ability grouping as a beneficial educational outcome in one aspect, yet declared it violated 14th Amendment rights only for certain grades.

In *Holton v. City of Thomasville* (2005), after a fourth appeal, plaintiff challenged the partiality of the court by pointing out omitted information. Specifically, the court opted to exclude from the court procedures and discussion testaments from the district task-force demonstrating that zoning policies were not altered due to white parents threatening they would transfer to private schools. The precise reasoning was that parents did not want their children in “mostly black classes” (p. 1353). It is important to point out that all of these cases of exclusion in this content review indicated that the plaintiff failed to provide enough information, however this particular court argued, in its defense, that there was too much information. In their justification, the court also asserted their power by clarifying they were not obligated to incorporate or review all presented information. In regard to differential punishment, the court relied on testimony of
two witnesses to rule in favor of the defendant and did not request statistical data or evidence for 
support or to make a final judgment.

After the court declared racial imbalances alone was not a substantial indicator of 
discrimination, plaintiff provided data and other proof of clear examples where race and not 
ability determined placement. Nonetheless, the court refused to consider the evidence claiming 
only district data on record, “entitled to substantial deference,” would be considered. In all, the 
court rationalized that students’ ability as well as their socio-economic status, but not race, 
determined student placement. There appears to be a contradiction in this justification, because 
the court acknowledged the role of socio-economic status but attempted to distance it from how 
that is connected to racializing practices; it ignored the cultural bias of standardized testing and 
teacher recommendations, as well as the connection between racism and class.

Another general and distinctive contradiction is the dispute over education as a basic 
right. Districts and school systems are exempted from providing equitable educational resources 
and outcomes because education is not explicitly included in the federal constitution or not 
always clearly laid out within state provisions. The federal government and state courts have 
established education is within state jurisdiction and responsibility; yet in formulating legal 
argument for or against education, courts are allowed to build their case referring to precedents 
and rationales established by other states. Although this process may be representative of the 
legal protocol, there is selectivity and bias in how and what is incorporated. There is a double-
standard when student rights cannot be secured by invoking legal precedents and rationales 
established by other states and their courts which support educational rights. Ultimately, a 
selective use of standards which strengthen the case on behalf of the state and its agencies, rather 
than protecting all citizens is favored.
Discrimination

Using the frameworks of institutionalized discrimination and racialization, I will analyze if academic tracking can be considered a form of discrimination. Unlike the examined legal cases, this case for Chicana/o students focuses on understanding differential treatment and impact of academic tracking directly from the experiences and voices of students. Using their testimonies as evidence, alongside demographic and statistical data, I will apply the theoretical frameworks of racialization to determine if academic tracking is discriminatory.

The student population at the high school is predominantly Latina/o, but also has African-American, White, and Asian-American students (CPS Office of Research, Evaluation, and Accountability). From that population, a limited portion is designated as Limited English Proficient and Special Education, while an overwhelming majority are identified as low-income and living in poverty (School Segment Report, 2010). The school offers Honors and AP courses in the areas of English, Social Sciences, Science, and Mathematics. Despite the overrepresentation of Latina/o students, there is an narrow representation of Latina/o students in AP courses. On the other hand, students making up a minority enrollment make up almost half of the population in AP courses (AP High School Scorecard Data, 2009).

In general, the school is composed of predominantly Latina/o students from a low-income socio-economic status. It is alarming that not even one tenth of the Latina/o population has access to AP courses despite the predominance of Latina/o students in the school. Unable to fully capture the predicament of this imbalance through numbers alone, student narratives provide a much deeper insight to the dynamics at work. Below is a synopsis capturing the main issues students and teachers observed and experienced in relation to academic tracking methods of placement, instruction, curriculum, and additional outcomes.

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19 Specific school data has been concealed for the anonymity and protection of participants.
Facts

1. No consistent protocol or rubric for placement
2. Students have been misplaced in classes due to limited space, course quota, and other non-disclosed reasons
3. Students internalize labels and perceptions attached to placement levels
   a. High levels develop superiority complex
   b. Low levels develop inferiority complex
      i. Student in Regular promoted to honors refused to change because she was attached to regular label, became her identity
4. Stereotypes and stigmas are constructed in relation to label
   a. Self-esteem issues can develop
   b. Regular students perceived as dumb, gangbangers, low effort, ability and desire
   c. High track students perceived as distant and ‘snobs’
   d. Indifference towards special education students
5. Dual educational system operates within school
6. Exposure, expectations, and content is dependent on placement level
7. Students are academically and socially segregated
   a. Lunch and gym students don’t interact, remain in academic level grouping
   b. Mocked if inter-group interaction takes place
8. Students are treated differently based on placement level
   a. Some teachers only interact with assigned teaching group
   b. Observations of differential treatment and expectations from teachers
9. Neighborhoods are segregated
10. Students in higher levels more likely to be prepared for post-secondary opportunities
11. Not addressing self-esteem issues can lead to reproduction of societal and long-term problems
12. Limited course content and selection hinders critical thinking

The main question to address in this following section is whether academic tracking is a form of discrimination, given the aforementioned evidence. Drawing from the theoretical
foundations of racialization, it is critical to keep in mind that these processes enact, surface, and materialize in different forms. In one level, interpersonal or individual discrimination takes place among students and teachers. Students distinguish and arrange their behavior with and towards one another based on their placement. Due to the internalized and imposed stereotypes of each level, students mistreat and harm one another. During a developmental time where students are grasping notions, concepts, and understandings about their identities and their relation to their surroundings, students are confined to their labels and their development can be significantly impacted. Overall, it is important to recognize that racialization is a process that can begin when meanings are applied to constructions (Winant, 1994) and thereafter intensify when cultural and societal value and prospects are tied to those categories and ranks (Golberg, 1993; Castles, 1996).

Systematic differentiation where treatment of a particular group is defined by their association to that group is understood as institutionalized discrimination (Carmichael and Hamilton, 1967). The rules, policies, requirements and methods for tracking and advancement, although not intentionally and explicitly discriminatory, in effect restrict certain students from fully participating and benefiting from their education. Literature indicates students in the high-academic tracks develop inflated self-concepts (Oakes, 2005), and likewise most student and teacher narratives asserted that the IB students tend to exhibit a superiority complex as a result of their placement, others’ expectations, as well as teacher praise. On the other hand, students in the lower-tracks can develop stigmatized identities (Oakes, 2005) and that was also clear from the narratives. Student discussions often correlated regular students as having low intelligence, motivation, and care for education. In addition the words used to refer to describe or reinforce
the stereotype of regular students included dumb, stupid, slower ones, low achievers, student with low-self esteem, or simply regulars.

This is particularly important as students may develop internalized expectations because of their placement, as Wilbur and Brookover (1996) explain, a students’ self-concept impacts their academic performance. Although this may be beneficial for high-track students, academically, socially and culturally it can have some implications. Nevertheless, for students in regular, special education, ESL, and even honors, this may limit them to perform according to the standard image or stereotype of students in that particular placement.

Academic tracking *inadvertently* demonstrates students their place (Bartlett & Lutz, 1998; Ballantine, 2001) in society, while socializing them into hierarchal levels. Narratives indicate that students are involved in a classification system of high and low statuses of achievement based on their placement. Additionally, students are defined and even define themselves according to those placements with minimal inquiry. As results of research indicate, students are academically and socially segregated (Oakes, 2005), which has an impact on interpersonal relationships (Kubitshek & Hallinan, 1998) and interactions. Although teachers and students suggest that they socialize with students that they can identify with the most, nonetheless, they demonstrate that they do so according to tracks; thus, reflecting that student selection of friends is indeed influenced by markers of hierarchy.

Besides interpersonal discrimination, a form of racialization which denies access and rights, leading to subjugation of a group and understood as inferiorization (Ballibar and Weistein, 1991), is also taking place in the high school. Based on the varying amounts of access and exposure to courses, content, social engagements, expectations, as well as social and cultural capital differential prospects are created for the short-term and long-term. Students in regular,
ESL, and special education are “Othered,” by their peers and some teachers; students in regular curriculum are not provided with the same quality of education and regard as honors or IB students. As a result, there is a cycle of oppression that students in the lower academic tracks are locked into which not only shapes others’ perceptions, attitudes, and treatment towards them, but also determines their future capacities. Simultaneously, students in high tracks are also subjugated, but in a social and cultural aspect.

Subjugation based on power and knowledge operates within a process of racialization (Foucault; Barot and Bird, 2001). Just as the literature (Kibitshek and Hallinan, 1996) points out, students are exposed to different information, concepts, expectations, as well as ‘high-status’ knowledge and this was reflected by student and teacher narratives. Teachers and students explained that students in the low-tracks have less exposure and educational opportunities to engage in enriching curriculum, activities, interactions, as well as productive classroom dynamics. Narratives highlight that regular tracks consist of low-performing students, gangbangers, as well as students that do not show interest or care for education. Considering the arguments of ‘vandalism’ and academic tracking (Tygart, 1988), alongside student observations, the presence of students with minimal ‘prosocial’ attitudes can affect class dynamics, behavior and other students. Nonetheless, as teachers caution, another disadvantage of academic tracking is misplacing students, which, as scholars (Ballantine, 2001; Wells, 1996) and teachers signal, can have drastic short and long-term effects.

The operation of a dual system of schooling is another indicator of the segregated education students are receiving as a result of their academic placement, and most importantly symptomatic of institutionalized discrimination (Carmichael and Hamilton, 1967) where differential treatment is systematic. Some students will undoubtedly benefit tremendously from
the advantages of being in academically rigorous and encouraging environments, while another segment of the student population will be drastically hindered academically, socially, psychologically, and politically because of the persistent inferiorization (Ballibar and Weinstein, 1991) towards their presence as students and people. Nonetheless, these dynamics have been justified and normalized based on the power, need, and advantage of incorporating differential treatment. Thus, difference and power are strategically used and validated for racializing practices by the advantage of having power (Fredrickson, 2002).

These dynamics respond to intra-school experiences and are not bounded to this school. The impact of academic tracking policies at the macro-level multiply and can be immeasurable. CPS is composed of 675 schools with a total enrollment of 409,279 students. Of that student population, 86% are identified as low-income, 45% are African-American, 41% are Latina/o, 9% are White, 3.6% are Asian/Pacific Islander and .2% are Native American. It is important to note that 40% of Latino students in Illinois are in schools where the student population is 90-100% African-American and/or Black (Frankenberg, Lee, & Orfield, 2003, p. 52).

City-wide data for Chicago Public Schools demonstrates 12.4% of Latina/o students are enrolled in AP courses while they make up 41% of the total population (CPS Citywide AP School Enrollment Data, 2009). Counter that with CPS drop-out rates of Latina/o students at 40.7%, 34.2% for females and 46.9% for males (CPS 5 Year Cohort Drop Out Rates, 2010). In addition, from the aggregate CPS drop-out rates of 42.5%, 49% of students have disabilities, 38.5% are Limited English Proficient, and 39.6% are identified as low-income. A very limited percentage of Latina/o students are exposed to high level courses, while a large portion do not even graduate from high school. When we take into consideration the fact that an increasing amount of Latina/o students are attending racially and economically segregated schools and
juxtapose that with factors affecting educational quality and resources, such as housing, income, zoning, and school funding, Latina/o students continue to suffer from past and current forms of racialization. Ultimately, Chicana/os make up almost 1.5 million in Chicago and over 31 million in the U.S., failure to address educational inequities presents daunting implications for the sustainability of the U.S (US Census, 2010).

Looking at the data from *Racial Breakdown by School Type*, CPS has 11 different types of high schools which vary in location, demographics, funding, student enrollment, as well as theme or purpose. Given that there are a majority of underrepresented and low-income students in CPS, it is difficult to demonstrate a statistical correlation between the type of school in relation to student demographics. Nevertheless, it is important to highlight that the top three high schools Latina/o students attend are General/Technical, Magnet, and Military Academies. Although all schools may offer quality education, regardless of the label, it is important to distinguish that funding, resources, curriculum, and culture is largely dependent on the location and budget allocated for the school. Overall, out of 115 high schools, the majority of the schools are General with 41 and Charter with 29, while there are limited Career Academies (8), Magnet (5), and
Selective Enrollment (8). Academic structures, environment, culture, course offerings, qualified teachers, curriculum, content, and other resources are determined not only by the location, but also by the type of school. What this represents for Latina/o students across the CPS system is again a segregated system of education.

When we look at what academic tracking does within a school and take into consideration the capitalistic function of this policy to selectively train and arrange particular groups, and then combine that with the differentiated education structured across schools, the impact is grave. The aspects and outcomes of a differential schooling system have been normalized and accordingly the exclusion and discrimination of students institutionalized.

School admission requirements may not necessarily delineate race or socio-economic status, so the overt intent to discriminate may not be evident. However due to zoning, academic placement, types of schools, and enrollment requirements, such as standardized tests and teacher

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20 When consent decree was lifted for CPS Magnet High Schools were no longer allowed to use race as a factor in admissions for integration (CPS Website, 2010).
recommendations, these ‘neutral’ or normalized policies and practices result in unintended consequences for CPS students, in general, and Latina/o students specifically.

The institutionalized practices and policies, although not explicitly directed towards any particular group, result in differential and harmful effects for non-dominant groups (Pincus, 1999), which predominate CPS. The restriction of choice, mobility, actions, and rights render the academic, economic, social, and political opportunities of Latina/o students. The current conditions for Latina/o students are consequences of historical and consistent forms of racializations. The school system, being a primal site for socialization and information, operates in a manner where students are subjugated due to differential power and knowledge (Barot & Bird, 2001). Students are classified and characterized according to cultural signifiers of ‘success’ and accomplishment, yet minimal attention is given to the structural and institutionalized barriers that demarcate students. The present policies and practices deny students full access and rights, thus continuing to contribute to their inferiorization (Ballibar & Weinstein, 1991) by funneling them into menial positions in society.

A process of racialization where categories and ranks have a cultural significance and value (Golberg, 1993; Castles, 1996) functions hand in hand with goals of modernity and capitalism (Darder & Torres, 2004). Once students are out of high school, clear-cut distinctions will reach full fruition, their opportunities for post-secondary enrollment, skilled positions, and advancements will be defined by their educational conditioning. In essence, intra-school and inter-school academic tracking contributes to a racializing process that is directly linked to exploitation and domination (Darder & Torres, 2004) with the outcomes of perpetual oppression.

This chapter focused on incorporating a set of methodological and theoretical combinations to establish a response on the discriminatory nature and results of academic
tracking. I engaged in a process of triangulation\textsuperscript{21} (Denzin, 1974) where answers were gathered from three sources: legal cases or law, student \textit{testimonios}, and racialization frameworks. As the legal courts have demonstrated, there are multiple ways of conducting interpretation and analysis, hence it is vital to expand our standards and units of measurement to fully comprehend the numerous factors and dynamics at work. The following chapter will provide a conclusion on the implications, limitations, and alternatives for academic tracking.

\textsuperscript{21} Denzin outlines four types of triangulation: Data, investigative, theoretical, and methodological.
CHAPTER 7

CONCLUSION

Given the dominance of color-blind constitutionalism and white privilege dictating legal interpretations, judgments, and verdicts, the process of seeking remedies and protection of rights is quite elaborate and limiting. The structures and conditions in place, as well as the past courts and precedents have shaped a legal system that is inconsistent and impermeable. The last section sheds light onto the limits of the court when addressing issues of discrimination, but most importantly also offer insights onto what can be done to modify and strengthen educational institutions. To start, I provide a concluding discussion on shifting our frameworks on law, students, education, and rights. Thereafter, I declare why it is critical to address these issues for Chicana/os and the implications we must confront if our current condition does not change. Lastly, I offer alternative ways of addressing our concerns for education, as well as structural implementations and recommendations that can inspire a move towards an equitable system.

Shifting Paradigms

A plaintiff must demonstrate that education is a protected and fundamental right and therefore any hindrance on that right, a violation of the Equal Protection Clause. However, enumerated rights are not explicitly detailed in the U.S. Constitution, and accordingly it is up to legal courts to determine, with the evidence of the plaintiff, whether such right deems protection. Essentially, the court conducts a judicial review to determine whether the right can be considered a property interest and therefore fundamental. Conflicts arise when determining if the right represents a value in society for the individual, and whether the individual is provided with the same access, treatment, and procedure (due process) in attaining that interest. Deprivation takes place when proper procedures are not followed to ensure equal treatment and access. If
deprivation of the right is occurring, the court must then determine if exclusion is in interest of state or benefit of the individual. Therefore, the burden of proof shifts to the defendant and they must demonstrate the deprivation compels a state interest or meets a state objective.

Fundamental rights are entitlements protected by the U.S. Constitution; however, because the law privileges the dominant group and exhibitions of whiteness, marginalized groups confront greater challenges in demonstrating 1.) they have a right 2.) their rights are being violated, 3.) they are a protected class, and 4.) discrimination is a result of state action or inaction. Under strict scrutiny, plaintiffs must demonstrate intent to violate based on differential treatment. For academic tracking practices and policies it is difficult to demonstrate discrimination exists when there isn’t a specific policy explicitly singling out a race or class. In effect, students from low-income and racialized groups are inadvertently affected in greater numbers, color-blind jurisprudence stands in the way of achieving ‘justice’. The legal system, culture, attitude, and framework constricts, limits, and delegitimizes disproportionate impact arguments.

The conditions to establish discrimination trap plaintiffs into a gridlock, unable to hold a system accountable because de jure discrimination is in the past and de facto is not unconstitutional. In addition, requiring plaintiffs to demonstrate the accountable or responsible agents or institutions places a daunting task given the subtle mechanisms of racialization. Without the capacity to tangibly and legally demonstrate intent to discriminate, institutions and their agents are exempted from accountability and responsibility. In requiring plaintiffs to demonstrate direct causation and not correlation, the law essentially protects the state. Arguments about the ways to redress equality further reveal the bias and limits of our current legal system.
Courts have refrained from remedying educational issues that involve de facto segregation patterns connected to funding, housing, tracking, and zoning. In their defense, for instance, housing demographics are representative of private choices and not state actions. Courts claim they have no control, and matters are out of legal jurisdiction; expecting schools to remedy housing dynamics is viewed as irrational. The connections are not made and racializing policies and practices are normalized and dismissed as irrelevant and too complex. *United States v. Scotland Neck Board of Education* (1972) declared white flight was not an excuse to avoid desegregation; a similar argument can be made for an equitable education. In all, when private choices become public matters, and they impact and deprive communities from access to fulfilling their rights, it is the responsibility of the state to protect the rights of all people.

A challenge in dismantling academic tracking is that schools and the state can argue that there is an educational purpose and state interest. With the use of selective research they can justify it is a productive and beneficial practice. Combined with the meritocratic culture and reinforced by the legal courts, academic tracking seems like rational method. In regard to the educational yields of academic tracking, student *testimonios* indicate that in reality education is not equal for all students. Students in the IB, AP, and Honors track have greater exposure to materials, are taught at a faster pace, and high expectations are encouraged within and after leaving the classroom. On the contrary, students in Regular, Special Education, and ESL are at times placed in classes to meet quotas, taught basic functions and skills, and are not afforded with the short-term and long-term opportunities as students in higher tracks. Although the intentions behind academic tracking may be to organize an efficient instructional and learning method, the drastic and differential outcomes promote superiority for some while inferiority for others. Moreover, student *testimonios* indicate that student performance is influenced by the
culture, expectations, treatment, content, structure and internalization of their placement level. It is not merely an issue of educational inequality, but restricted access to options, choices, and a self-directed life. On one hand, academic tracking effects brings into question the rights of students under law, while on the other hand also challenging its validity and reliability as an educational practice and policy.

Is academic tracking pedagogically, socially, culturally, politically for the benefit of all groups? The answer is simply no. There is no literature that consistently demonstrates academic tracking benefits all students (Oakes, 2005). Similarly, this study demonstrates that there are varied understandings and outcomes for students depending on their placement level. Yet, the courts at times refuse to delve into the educational research asserting such matters are beyond legal competency and should be left to districts. On the other hand, without an educational expertise, in other cases courts formulate detailed plans, arguments, and rationales for students and school districts. Legal courts continue to uphold academic tracking provided that there is no direct intent to segregate, but then how and whom is made responsible when the decisions of the court and the actions of the state result in discrimination of students and communities? It is necessary to return to Brown v. Board of Education (1975) and bring to mind that any scheme to separate, intentionally or unconsciously, “ingeniously or ingenuously” is still segregation and therefore discriminatory.

This brings a broader issue that we must examine, the law itself operates in a discriminatory nature based on its selective interpretation of property rights, state interest, and discrimination. What we need is a new paradigm where educators and districts are held responsible for educational prospects of students. Applying rules for malpractice towards teachers, educators, counselors, administrators, and essentially school systems is vital. How can
rights of life, liberty, and justice be achieved without an education? An education, and most importantly a quality education, is preemptive and mutually interdependent of other rights and interests, one cannot fully enjoy explicit rights without fulfilling implicit rights.

First, I think it is vital that changes be made to how we perceive and treat students and their schooling experiences. Students from marginalized communities should not be considered instruments or tools to meet capitalistic objectives through subordinant mechanisms. In addition, student outcomes and benefits should come before any other goals. With that, we must revise obsolete methods of instruction and placement and the destructive effects they have for students and communities. Essentially, there needs to be an acknowledgement of the role of education and the responsibility schools have to serve as spaces with the purposes of liberation, empowerment, and transformation where students learn basic knowledge, learn about themselves and their surroundings, and are genuinely guided towards their calling. Overall, we must remember:

First, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life. Thus, education is the lifeline of both the individual and society. (*Serrano v. Priest*, 1971, p. 605)

In some cases diplomas, graduation requirements, and education in general have been defined as property interests and therefore student rights protected. *Debra P. v. Turlington* (1984), for example, brought to question the instructional validity of tests, as well as curriculum, instruction, and teaching profession itself. Special education cases incorporate essential arguments, rulings, and even provisions to support and protect the social and academic environment of students. Additionally, consideration is placed on the procedural methods of separation, as well as the educational, psychological, and social conditions and outcomes. Essentially, special education cases have established that although benefits may vary for
students, differential education should not justify exclusion and a least restrictive environment is the most beneficial for students (Oberti v. Clementon School Board District, 1992; Corey H. v. City of Chicago Board of Education, 1992).

One of the lessons we also need to consider comes from Brown v. Board of Education (1954), where prosecutors strategized and combined various cases from different states but common goals, opinions and with similar conditions and evidence. This case was instrumental in challenging the doctrine on equality, law, and education. Most importantly, this case shifted the focus to the psychological effects and the inferiority complexes that developed due to segregation. Given the findings of the testimonios alongside the interpretive limitations of the court for oppressed group, in making our declarations against academic tracking we must also focus on the culture it creates how it shapes identities. I strongly believe that the methods of placement and especially the outcomes of academic tracking result in differential treatment of particular communities, and thus a form of discrimination, and more specifically racialization of groups, such as Chicana/os. When there are inconsistent educational rights and responsibilities, depending on state, context, and plaintiffs’ backgrounds, and in one state I can be entitled to a sound basic education while in another state mere accessibility to any school is deemed appropriate, where does the federal law and oversight stand?

Secondly, we need to employ a new legal framework for dealing with educational concerns, where students are the center and their experiences determine whether differential treatment takes place. How different would each of the cases examined had been if rather than focusing on these legal conditions and previous rulings, the basic aim was to ensure schools were meeting student needs and the impact was assessed directly from students. We are past due of a democratic and holistic approach of understanding the impact of racializing school policies, such
as academic tracking. Some courts reveal a sense of understanding of how academic tracking, placement, zoning and funding schemes can regenerate socio-economic segregation. Yet, there continues to be a lack of willingness and interest, by states and the nation, to fully acknowledge and most importantly make a declarative statement and provision to suspend these practices.

The distortion of truth and tactful mantras has been a way for the dominant to strategically dominate and control aspects of the structure and subjugates (Freire, 1997; Freire, 1998). Particular rhetoric and discourse are strategically applied and used to impede any interruptions to the legal and hegemonic powers. Accordingly, if any potential threats and legal advancements are made it seems additional stipulations are abruptly imposed. It is my naïve, yet instinctual belief and observation that when it appears oppressed individuals and communities are learning how to play the ‘game,’ suddenly the rules are changed. I cannot help but compare this to child’s play, one moment a set of rules apply and if they begin to lose they apply another set of rules or void out certain rules.

A notion exists that the legal system is an equitable institution to seek justice, however, in reality it also masks and serves in the interest of the dominant structure. Attempts to redress past and current injustices are misconstrued as forms of reverse discrimination and racial preferences; civil rights issues are misinterpreted and conflated as discriminatory based on discursive and ideological applications of equality. In essence, color-blind constitutionalism and legal discourse has equated Jim Crow laws with affirmative action. Therefore, rhetoric of contradiction and tension is constructed that groups seek equality yet also want ‘special’ treatment. Thus, failing to see the motives, one subordinates and excludes while the other redresses and integrates (Bell, 2000). However, we would not have to use group-based remedies had racializing policies and
practices not been enacted in the first place. Color-blind constitutionalism has created gridlock for seeking remedies for discrimination by not allowing ‘race’ to be present when we are dealing with issues and consequences of race and racism. Moreover, such practices are supported and obscured in the name of equality.

Another aspect that needs to change is the attitude and behavior of indifference and entitlement towards issues of civil rights. Guided by white privilege and capitalistic values, courts and dominant communities argue that segregation will self-regulate, is inevitable, and remedies can take away from other groups. What we have seen from *Brown v. Board of Education* (1954) is that when the choice and plan to desegregate is left to the discretion of states and districts, there have been different results throughout the U.S. When affluent families fled from urban cities and triggered a major demographic, cultural, and economic change to schooling and housing patterns, it was characterized as inevitable and a private choice. There has been a denial to acknowledge that “tolerance of one leads to expansion of the other” (Bell, 2001, p. 182).

Additionally, suburbs cannot be exempt from desegregation, as these spaces have also contributed to the exclusion of underrepresented groups through housing markets, banking policies, and Section-8 restrictions (Bell, 2001). Moreover, attempts to desegregate, socially and economically, through inter-districts and funding formulas, have been described as an assault and theft to other communities. Furthermore, once desegregation orders are lifted due to ‘good faith’ and best efforts, it is almost impossible to re-open cases because housing and schooling patterns are seen as disconnected and unintentional. Essentially, we need to completely transform that doctrine and instead realize: 1.) current privileges and power structures are results of previous and enduring forms of oppression (Darder and Torres, 2004; Bell, 2001) 2.) aligned with
hegemonic powers and motives, institutions are set up to protect and entitle the dominant 
(Giroux, 1981; Bell, 2001), 3.) fatalism is influenced by neoliberal objectives (Freire, 1997; 
1998), and lastly 4.) remedies can be a mechanism to level and equalize power dynamics.

We must recognize racialization is alive and plaguing every aspect of society. Although, 
now perceived as normal patterns, we must also remember that there was a time when slavery, 
lynching, Jim Crow, concentration camps, and other forms of de jure discrimination were 
socially, culturally, and legally accepted. It took much examination of our ethical, moral, and 
eyes, even legal, spheres to move towards dismantling all these oppressive enactments. What we 
are dealing with now are remnants of that discrimination with convoluted and hybrid forms of 
insidious racializing processes.

**Accountability**

Despite knowing education determines life prospects, as well as the negative impact an 
oppressive form of education can have, and yet still continuing with racializing practices is in 
essence to act without care and deliberate indifference, and moreover indicative of state created 
danger and educational malpractice. There are numerous individual, structural, institutional and 
cultural factors and influences that have shaped and maneuvered the content and rationale in 
favor of academic tracking while ‘accusing’ students. The legal system refuses to be accountable 
to its constituents and hold districts accountable to their students and communities. Rhetoric on 
standards, performance, sanctions, and rewards continue to blame the individuals for structural 
impediments. Who should students hold accountable for fractured identities, deferred 
opportunities, and shattered dreams?

Where to students turn when the structures in place to supposedly protect them actually 
contribute to their inferiorization (Ballibar & Weinstein, 1991) by operating a ranking
mechanism with cultural values, implications, and motives with the means to subjugate, control, restrict, and dominate? The education and legal systems promote and benefit from pragmatism, through the use of standardized knowledge and methods of evaluation that render particular communities and their interests invisible or obsolete. The power to control the types of schools, curriculum, programs and resources is exerted for the goal of control, exploitation, and profit, and therefore a racializing practice.

If, indeed, schools are the venues for educating students, transferring knowledge, fostering beliefs, advancing students to the next levels, and are the ‘vehicles’ to prepare and give students direction, not only where are we going, but most importantly why are we going in those directions? Although there are numerous policies and practices impacting students, academic tracking, in particular, resembles the deliberate institutional effort to marginalize, exploit, and control identities, capital, rights and opportunities. Thus, students are (mis)directed disproportionately, within and throughout racialized schools, to follow a certain path due to limitations on class selection, curriculum, teachers, funding, activities, among other resources and options. Tracking becomes a mechanism to carry-out institutionalized discrimination, and the effects and outcomes of tracking, which specifically damage certain populations, are perceived as ‘normal’ dynamics. The genuine purpose of education is questionable because of the unequal distribution of educational opportunities, knowledge and information, as well as academic, cultural, and social exposure, which are all undeniably tied to class and power formations.

The dynamics and effects of racialization and institutionalized hegemony (Giroux, 1981) are quite intricate and elaborate, and have sustained support by socializing students, parents, teachers, and communities into ‘trusting’ that the education system and its methods are flawless
and virtuous. Yet, they have unknowingly consented with a system of oppression and (mis)education that in the end is not only a result of the conditions, but also the ‘conditioning’ (Gramsci; Freire, 1973). As narrative participants denied experiences of discrimination and even the existence and influence of race and/or ethnicity, this connotes that students, parents, and teachers alike have been deeply indoctrinated with notions of equality, meritocracy, opportunity, and self-reliance, to the point of no longer recognizing the dynamics linked to racism, class, power, and privilege that invades their communities, schools, and lives. Nonetheless, it is plausible that individuals have adopted this color-blind mentality as a self-defense mechanism to ignore discrimination and justify inequalities, especially their own; it is less demanding, complicated, and painful to blame the individual than the system, because in accepting the existence of structural barriers beyond our control, we also recognize our social position and power, or lack of it.

Overall, the function of academic tracking appears to be a hegemonic devise for subjugating students’ minds, rights, and opportunities (Giroux, 1981). It is convenient for those privileged by the status quo, as well as the tracking system, to limit and prevent individuals from achieving a critical consciousness. To do otherwise could represent a threat to their privilege and hierarchal status, as once students become critical to their social position and surroundings in relation to the world, they can become empowered to challenge and demand systematic changes. By becoming familiar and cognizant of oppression and engaging in changes, while the individual liberates themselves, they can consequently participate in liberating others as well. Nonetheless, it is important to accentuate that in order for structural changes to take place, there needs to be focus on reforming at the structural level and not concentrate strictly at the individual level. Yet, structural changes are unlikely, unless individuals are encouraged to develop the critical
consciousness to name their world and to work toward effective strategies for transforming schools and their communities (Darder 1991, 2002).

Students are placed in predetermined paths early on due to tracking practices, often being unable to break away from this overarching form of control over their bodies, identities, and culture with the objective and result of reproducing the working class (Freire, 1992). Given the importance of the education system as a viable method of social progress and the fostering of critical thought, it is imperative that communities, parents, educators, policy-makers, and students, engage in productive and inclusive interactions with the aim of developing enriching, relevant, and transformative methods of teaching and learning. Nonetheless, it is dire that before initiating reform, factors are properly identified, assessed, and conceptualized. Recognizing how class oppression has been systematically structured amongst neighborhoods and within schools is fundamental in addressing academic tracking, especially in Chicago. Furthermore, this discourse should move beyond perpetuating deficit-thinking and instead incorporate critical political language as a means to unveil meritocracy, privilege, and oppression.

It is specifically here where I believe the power of conscientization (Freire, 1973) and subjectivity lie. The mere fact that students were unable to name their own realities and recognize how racializing practices surround them is a consequence of their subordination. The differential educational experiences further exacerbate economic, political, cultural, and social disparities. In addition, students recognize the hierarchal structure, its values, and functions, such as grades and levels, as valid indicators of performance, intelligence, effort, and character. Essentially, what seems to be only an academic division also prevents them from knowing themselves and each other. For instance, most students shared that their sources of inspiration were based on the stories and experiences of their parents. Given the structure and effects of
academic tracking, students are discouraged from not only working, learning, and engaging with one another, but in essence from one another.

The act of annihilating Chicana/o history, formally and informally, from schooling experiences generates a distance, dissonance, and confusion for identity consciousness. Not only are students unable to connect with another, and fundamentally even themselves, but are also limited in constructing the linkages to the dynamics around them. They are restricted from understanding why they can only attend certain schools, why their school is predominantly low-income and Latina/o, or that there are high school students across the city with countless curricular options and professors as instructors. These practices go unquestioned, the organized structure and standards are reinforced, and students don’t become aware of who they are, where they are, and why they are.

Overall it is a dehumanizing and subtractive schooling process which reinforces meritocracy through institutionalized hegemony (Giroux, 1981) with the effect and power to control and legitimize class reproduction. Students perceive and treat each other based on the stereotypes and labels imposed alongside misconstrued notions of ability, learning, capacity, effort, merit, punishment and rewards. In effect, they identify with the labels and attached meanings rather than with their shared struggles, histories, and aspirations. Their rationalization operates within the framework provided, and the blinders are placed to not see beyond the box that has been constructed. The long-terms outcomes, besides unconsciously consenting to a system of meritocracy alongside not knowing their histories, can lead to the continued misconstrued understandings of racialization. With disregard to the historical and continuous forms of racialization, a self-blame or victimization is encouraged. In addition, the division between students can translate to a disconnected sense of identity and even from the community.
Moreover, as some advance in the educational system their notions of meritocracy and achievement can be reinforced. In the process of affirming certain power and knowledge while excluding options and choices from some, a competitive environment is created where their survival or advancement depends on the indoctrination into the institutionalized hegemony, its valued practices, and structures.

Frameworks and conditioning are symptomatic of the hegemony of power rooted in an ideology of racism and misguided by the notion of meritocracy and neoliberalism. The status of Chicana/os is linked to historical and perpetual material conditions they have been subjugated to in regard to territory, citizenship, identity politics, and economic exploitation. Given the employment, housing, and migratory factors they must confront, schools can be an avenue to level out past injustices. However, that has not been the case as capitalistic functions and influences continue to regulate their academic and educational prospects. With the Treaty of Guadalupe Hidalgo many Chicana/os were converted politically into pawns or objects that came along with the acquisition of the land. Current gentrification and removal projects follow that similar standpoint, and unless people can afford property ownership, they have no rights. Rather than continuing to serve as a mechanism for filling the ranks of the working sections, the conditioning of Chicana/os must be radically changed. Fundamentally, students and their communities should be afforded with the same rights, options, and choices for dictating their own paths and goals.

A humane interest must replace the economic and political self-interest that dictates the values over people and their opportunities. In order to fully experience liberty and dignity rights, individuals must be free from oppression and respected by others. Not until Chicana/os are no longer viewed and treated as objects to capitalistic means, can we truly say education is open and
accessible. Moreover, Chicana/o students, families, and educators must be direct participants and agents of their experiences and opportunities to be able to reach a democratic schooling process.

**Alternatives**

There have been legal cases where education has been identified as a protected and fundamental right. The different ‘classes’ or groups of students ranged from undocumented, students with disabilities, bilingual, special education, and pregnant—in one way or another there was an assumption that these students should not be a part of the traditional or regular school structure. Underlined in these discussions there were arguments of deficiency, in which “these” students are uneducable, unwilling, and unable to learn. Therefore, the state should not ‘waste’ taxpayer money on these students. However, over time, there have been tremendous strives for certain groups. As noted earlier, students with disabilities, for example, have federal and state provisions guaranteeing educational standards and regulations. Nonetheless, there exists much room for improvement for all students in the education system.

The laws outlining special education set a good model to understand the role and responsibility of state and federal statutes. Among the entitlements afforded to students with disabilities, FAPE, LRE, and integrated learning lie in the required structure. Supported by experts in the field, as well as legal education scholars, they distinguish that special education does not translate to exclusionary education. Although some students may require additional curriculum and developmental components, nonetheless it is in the best interest of students to be in integrated and diverse schooling environments. What courts have made clear in the cases analyzed is that any student with disabilities, as well as those who are undocumented and pregnant, should not be stigmatized, deprived of an education, experience a differential
treatment, be provided a less equitable education, and treated like they are inferior. Overall the purpose of litigation for students in these groups has been to demand adequate educational resources, which were afforded to other students.

Similarly, such an argument can be drawn with regard to students labeled in the process of academic tracking. Equality across schools does not mean that because there are major disparities from one region to the next or from one school or academic placement to another, then all schools should be equally mediocre?! What I am arguing is that we should strive for equitable schooling for all. What this entails is tackling the political, philosophical, cultural, and structural biases and misconceptions which value one group over another. At the core of this issue has and will continue to be how this ideal system can be financed. What we forget, though, is that legally such entitlements have been extended to particular groups in spite of such contentions.

Legal and educational scholars, as well as numerous courts have provided foundational arguments to demonstrate the ethical, moral, societal, cultural, and yes, even legal requirements of how and why education is a fundamental right. For example, when conducting research, to consciously deprive someone of a remedy and exposing them to adverse effects is regarded as unethical and unacceptable. Why can’t we make a similar reasoning for addressing our problems with educational policies and practices? Over the years, numerous scholars, lawyers, educators, students, and parents have outright attacked the school system because of how ability grouping and tracking practices are handled, but most importantly they have fervently cautioned about the effects they have on our students. Despite those efforts, however, schools continue to perpetuate an exclusionary educational practice. There is something inherently wrong with our educational and legal system when we refuse and are unwilling to acknowledge that we too have bought into
this system of privilege--where we think meritocracy functions equitably and academic tracking is a natural process of the survival of the fittest!

Who or what are we really protecting? Is it painful to admit that we benefit from ulterior factors which we may have not necessarily worked for? In attacking this system, this culture, we not only expose the fallacies within it, but consequently de-legitimize ourselves. Is that why courts, policy-makers, administrators, educators, scholars, researchers, and even students are so resistant to recognize discrimination, meritocracy, entitlements, and prejudices exist? Can we not argue that depriving someone of something that we know can be better and beneficial is an act of negligence and deliberate indifference?

The state and the federal government must step in to structurally guide and shift the ideological and systematic objectives for an equitable education. Integration alone cannot remedy a history of economic, social, and political racialization, but that does not exempt our schools or our nation from striving to provide our students with the best education possible in the meanwhile. Lessons can be learned from the school districts in Detroit and Little Rock where instead of desegregation decrees funding decrees were implemented. Ethnic origin, sexuality, gender, disabilities, and socio-economic class is not a choice, we can be born into those identities while for other areas it can be associated with dynamics and processes beyond our control.

**Implications**

Racism, power, and class have been liked to one another, although overt at times and subtle in others, the objectives and the results continue to perpetuate the racialization of Chicana/os. National statistics demonstrate that 74% of Latina/os attend schools that are segregated by race and poverty (Frankenberg, Lee, & Orfield, 2003). In addition, 86% of
Latina/o students attend intensely segregated schools\textsuperscript{22}, which have over 50\% low-income students (Frankenberg, Lee, & Orfield, 2003). One out of every two Latina/o students and one out of five White students attend poor or near poor schools (Frankenberg, Lee, & Orfield, 2003). It baffles me that there is so much indifference given our understanding of educational quality and its impact in light of these statistics. We cannot ignore that there is a cycle, institutions function in an interdependent manner to protect the status quo (See Figure 6 and Figure 7).

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{process_of_racialization.png}
\caption{Process of Racialization}
\end{figure}

\textsuperscript{22} Intensely segregated means school has 90-100\% underrepresented students.
Overall, the effects of racializing policies directed towards Chicana/os, like territorial conquest, legal control of their ‘identities’, as well as economic and military exploitation, parallel to nowadays housing provisions, academic labels, as well as academic placement levels and curricular programs. Academic tracking dynamics are a result of the racializing practices enacted onto the community, globally and locally, and schooling practices reflects those broader dynamics. Teachers and parents rely and presume that academic tracking is a legitimate method to accurately place students according to academic levels with minimal, to no scrutiny.

Exclusionary and discriminatory policies and practices from the past continue to inadvertently, yet systematically, affect Chicana/o students in the school systems today. Given the reproduction of racism, power, class, and privilege, what will happen to the future generations of Chicana/os? How and what will be the damaging effects of current racializing
policies for those who come after? If one takes into consideration the differential treatment, interactions, and opportunities within the classroom and transfers them into a broader context, the dynamics and effects are alarming.

As a result of academic tracking and having individuals conform and operate within hierarchal dictates, there are severe repercussions for Chicana/os. First, just as within schools, groups of students interact according to academic designations, in the long-run these tendencies reciprocate in communities, post-secondary institutions, organizations, and places of employment. Considering that individuals can develop a superiority-complex, or more specifically a notion of entitlement, they may continue to view themselves in an elevated position in relation to others within their families and other spheres. Similarly, individuals which have suffered from low self-esteem as a result of stigmas and labels, may also continue suffering from low self-esteem to the point of internalized oppression. The social interactions amongst Chicana/os can potentially be limited, resulting in a decrease of significant social and cultural opportunities.

Eventually, changes to the culture, landscapes, and schema of environments are impacted as a result of not being able to self-identify nor connect with others. I do not believe that there is an prevailing Chicana/o identity, because as historical events have demonstrated due to various factors there are variances throughout class, language, generation, citizenship, and gender, among other differences. Nevertheless, I believe the inability to know our own personal and collective histories can present serious political, cultural, economic, and social obstacles. For instance, long-term, individuals may detach themselves altogether from their background, language, culture, customs, values, and traditions. Moreover, as individuals’ sense of cultural identity are not strongly developed or encouraged, it is plausible that there can be less
commitment towards advocating for members of that same group. Furthermore, in order to develop a critical consciousness, there must be recognition of social position; if there is no cultural, ethnic, or racial acknowledgement and appreciation, the process can be ultimately hindered.

Ironically, the most severe consequences take place throughout the educational pipeline. The long-term effects of being academically misguided impact all other aspects of an individuals’ life, the social, cultural, political, and personal. Although being academically tracked onto the high-track and performing according to standards may not necessarily have long-term negative outcomes, misplaced onto the high-track can be discouraging, and individuals may remove themselves from the educational system all together. On the other hand, being tracked and/or misguided into the low-tracks can have drastic consequences, as individuals’ opportunities for higher education, employment, and other post-secondary opportunities are steered in disabling directions to leave them without opportunities altogether.

For areas like Chicago, characterized by growing numbers of Chicana/os, failure to address the educational inequities can further increase economic disparities and thus perpetuate housing and employment patterns, such as gentrification. As schools focus on meeting the needs of the market, training students for basic and vocational positions in industries, factories, and service occupations means that eventually a shortage in management and professional areas may develop. In addition, the numbers of students prepared and encouraged to go onto post-secondary institutions can be affected drastically. Moreover, we can also anticipate that the number of students alienated and pushed out from the educational system to also increase. This is especially troubling given that CPS is already predominantly low-income as well as Latina/o and African-American. Chicago will have to prepare for not only an educational crisis, but the city as
we know it may reach its peak as a globalized city if this racialization cycle continues uninterrupted. In the process, the Chicana/o community is made susceptible to unemployment, crime, lack of civic participation, competition of resources, and even health risks. As an institution, the education system will serve as a regulating vehicle to control the prospects of students and preserve the class structure. We must proceed with caution and conscious that failure to address these educational issues now will have immeasurable costs ahead. As Judge Manning warned, “The detriment is immeasurable in terms of human costs, quality of life, lost opportunity, prison cells, and loss of productive wage-earning citizens” either we pay now and invest in our schools and students or we pay later—but regardless in one way or another we will all be affected (Manning Report, 2009, p. 5).

While personal, social, cultural, and academic implications can result, they all consequently impact the political realm. For instance, as political movements are often rooted or fueled through cultural affiliations, the strength of these movements can be affected as a result of the personal, social, cultural, and academic paradigms that have been created as a result of academic tracking. In addition, in limiting individuals’ educational and employment opportunities, the likelihood of having more representatives throughout venues can be decreased. With that being said, the probabilities of having individuals representing and advocating for Chicana/o efforts from within and throughout institutions are also narrowed.

Chicana/o families are culturally known as having a strong sense of *familismo* and community, yet individuals have been socialized by U.S. society and public schools into a mythological system of equality, opportunity, effort, and most prominent individualism and meritocracy. While the tracking system privileges the few, and is deeply rooted in notions of meritocracy, the sense of community and affinity seem to be forgotten. Thus, as cultural, social,
and economic capital is preserved, and individuals socialized to compete with one another rather than engage in collective efforts, academic tracking is constructing an environment in which the mentality is the *survival of the fittest*.

**Recommendations**

There must be a reconsideration and appraisal of the current and long-standing methods of standardized tests and measurements. More specifically, standardized tests ought to be eliminated and instead replaced by holistic plans of identifying student strengths and areas of improvement. With that being said, a second recommendation is to introduce an alternative method of evaluation, one that considers the complexity of learning and which allows student to demonstrate knowledge through application. For example, oral presentations, artistic interpretations, re-creation of science experiments, and playwriting among other interactive knowledge-based activities would be comprehensive ways to demonstrate understanding. Not only would this method of evaluation challenge exclusionary standards, but it can also encourage student and teacher creativity. Additionally, another relevant recommendation would be to incorporate individualized learning plans as a mean to accommodate to students’ specific needs.

In order to implement these recommendations curriculum and instruction would also need to be re-examined. Essentially, education and certification programs would have to revamp teacher training, as well as methods of evaluating and instructing students. Teachers would have to be trained in innovative teaching and grading techniques, in addition to devising student-centered and individualized learning plans. With the introduction of individualized plans, curriculum content would also be adjusted to meet student needs and environments. Moreover, pedagogical changes would also be necessary because teachers would need to adapt and be
prepared to teach in different learning-levels simultaneously. Furthermore, with an increment of individualized, yet inclusive and cooperative, learning plans, academic tracking as it stands would also be eliminated.

In order to ensure methods of evaluation, the purpose of education, and pedagogy are fair and liberating, there must also be a reallocation of opportunities and capital. To guarantee equality of opportunity, equality of condition must exist; just as oppression and privilege is constructed and embedded within and throughout U.S. communities and public schools, it can also be deconstructed. Although it may be more difficult to remove divisions across ethnic lines, class (re)productions can be condensed, and even eliminated, by redistributing social, cultural, and economic capital. For instance, rearranging school funding (collection and redistribution) to no longer be dependant of property taxes could alleviate current educational limitations. Instead levying taxes from products, tourist attractions, casinos, but essentially wrapping our heads around the idea that it does not have to come directly from property or local funds. In reorganizing power relations, more, and essentially all, communities and schools could have greater access to resources, educational exposure and opportunities, such as a broader curriculum, qualified teachers, rigorous programs, and more funding among other resources.

Educational institutions should and can represent a space for creativity, motivation, and intrinsic learning. Duncan and Brooks-Gunn (1997) argue that, “children cannot learn well if they lack adequate housing, health care, nutrition, and safe and secure environments” (cited in Warren, p. 134). Policy can no longer be created from abstract places, policy makers must emerge themselves in the environment they are attempting to change, in order to gain a greater understanding. In addition, schools ought to represent a political institution which promotes all student success, as well as civic engagement, not that of being an obstacle by being a mechanism
of competition “for scarce advantages” or a method of socializing students into certain ideologies and roles (Lipman, 2003, p. 383). Moreover, urban school reform requires the creation of a legitimate relationship between the community and the institution of education in order to address inequalities.

In order to impel drastic changes to the educational system so that it becomes a space that fosters creativity, culture, identity, as well as political, social, economic awareness and engagement, there must be a greater interdependent relationship amongst the school, the community, and policy-makers. Mediratta & Fruchter (2003) argue that the presence and involvement of community and parents has the potential of establishing accountability on schools through demands and pressure for quality education (Cited in Warren, 2005, p. 135). Considering the political structure and culture of the government, officials must be accountable to their constituents for political support. Increasing awareness of the political system while fostering civic engagement can be beneficial to the community, as well as an accountability method, towards politicians and the educational system. Furthermore, an interdependent relationship can be a source of encouragement for children as they observe the efforts towards coalition building and political culture, which they can later emulate (Warren, p. 136).

Schools should provide the conditions for students from all backgrounds, experiences, and aptitudes to interact, share, and learn from each other, as well as ensuring that personnel is diverse and willing to develop innovative teaching styles (Donelan, Neal, and Jones, 1994). Donelan, Neal, and Jones (1994) urge that, “caring educators and parents cannot continue to ignore the stigma attached to children in lower tracks and the emotional and social pain tracking generates” (p. 384). Ultimately, there must be an initiative, a genuine commitment, to eliminate the ramifications of academic tracking altogether, and thus allowing the emancipation of
students, teachers, and communities from its obstructive dynamics—a commitment, entailing a social, cultural, and political revolution of the mind.

Thinking back to my experiences with academic tracking, although I was fortunate enough to be redirected into the ‘academic’ or high-track, my case is not the rule, but the exception. Would I be here today questioning and analyzing the politics of exclusion had it not been for teachers who invested their time to acknowledge my academic ‘competencies’? I could have been yet another child left behind, another statistic employed as evidence for the already overwhelming discourse on Latino drop-outs? What happened to my fellow peers as over our high school years the numbers of students advancing from one grade to the next continued to dwindle?

Being, now, cognizant of the long-existing process or racialization and the cultural, political, and social attack on Chicana/os vis-à-vis sanctioned institutions, it is my primary responsibility to make these dynamics visible while advocating for change and resistance. Nevertheless, doing so by also challenging the construction of the *Survival of the Fittest*, a milieu largely influenced and encouraged systematically through notions of meritocracy and individualism. With this in mind and through this process, my aim, *lucha*, and *sacrificio* is for, with, and through my *cultura Chicana*. On the quest to demand accountability after so many acts of educational terrorism, because, as I have over time become conscious of, the war for justice never ends as we must continue to fight in our land for recognition, genuine inclusion, respect, and our constitutional and natural rights and opportunities.
CHAPTER 8

WHEN EDELMIRA BECAME ‘PATTY’

No one said Grad School would be easy
No one said Grad School would be hard
First semester
The readings were done on time
Assignments turned in.

One evening, in my one bedroom apartment, I began to read the assigned book for my urban schooling class
Within reading the first pages I began to feel frustrated and angry with what I was reading
I read about histories of economic, territorial, and identity conquest
Then I came across the term ‘subtractive schooling’
I thought... “how can school subtract or take away?”
I knew first-hand the typical educational inequalities but...subtractive schooling?
I read on
“Divorce young people from their culture and community”
I continued to read
“It divests these youth of important social and cultural resources, leaving them progressively vulnerable to academic failure”
My ears felt hot
My heart pounding faster
My eyes got smaller...I felt a tear fall down my cheek..
I could suddenly explain so many of my school experiences
That little voice in the back of my mind grew louder, these experiences weren’t a coincidence...
They were intentional
My mind was plagued with questions with no answers
I covered my face to contain the sobs
I felt empty, guilty, lost
Unable to even speak or think with my own tongue
My history, my culture, my family, my language, ME...subtracted
Absent, erased and replaced
I closed my eyes holding in the tears..holding in my cry

RRRHHHINNG!
Students run through the halls
Lost in a daze I make my way to the front of the room
“Welcome, you must be our new friend” the teacher says
“Yes” I respond
Two more students wait in line behind me
Several conversations surround us
The teacher picks up a paper
“So how do you say your name?” she asks
“Edelmira” I respond
“Heydelmyruh”
“No, EeeDeelmiiiraa”
“Do you have a nickname or something?”
“Uhhmm..no”
“How about Eddie?”
“Eddie..hmm..well my middle name is Patricia.”
“Great! How about ‘Patty’?”
“My family sometimes calls me Paty.”
“So ‘Patty’?”
“Uhhmm...yeah, whatever is easier.”
Just like that it began...just like that..Edelmira, me, I, met subtractive schooling and became Patty

When? When? When?

“Mass of immigrants crossing the border”
When?
1848, Treaty of Guadalupe Hidalgo, annexation of Mexico and Mexicans
Stolen land, Identity theft, broken promises
Indigenous, Afro-Mexican, Spanish-Mexican, Asian-Mexican, Mexican, Mejicanos. All colonized
Lighter Mexican, granted facility. Dark Mexican, access denied.
Struggling to survive, to be accepted, in a search..lost and alien in their own land.
“We did not cross the border, the border crossed us”

“They take all the jobs, should go back where they came from”
When?
1940’s, Bracero Program, exploitation of Mexicans
War abroad, war at home
Import Mexicans to work the fields, to man the machines, to fight the war
War ends.
Export Mexicans.
“We are where we came from. We work and contribute. Would you do the job?”

“Mexican families don’t instill value for education”
When?
1946, Mendez vs. Westminster, Lemon Grove, first school de-segregation case
Living in a Black and white paradigm, where are we? Who are we?
Mexican child in classroom of more than 30 students, not enough books, no fieldtrips, no labs, not enough resources
Student opens book and sees no mirrors, just windows
“We have sacrificed in the name of education”

“Do you speak Mexican?”
When?
1960's, Chicano Movements
Unspoken heroes: Cesar Chavez, Dolores Huerta, Roberto Tijerina, Corky Gonzalez, Sal Castro
Women, men, children, all ages and ethnicities march, rally, assemble, petition, demand
Students walk out of classrooms, grab national attention, students get attacked by police
Activist groups infiltrated by government
“We can’t be placed in a box. Vary in identity, language, generation, status, and so on....”

No one said Grad School would be easy
No one said Grad School would be hard
Reading, writing, and learning is not hard
Becoming aware, accepting, and forgiving is
Learning the words to forces I knew well but could never name....
Assimilation, acculturation, indoctrination, discrimination
Moving beyond the clenching of the fist, the clenching of the heart to a place of resignation
Instead, my disagreement with HIStory fuels me to (re)write our stories.
Three letters at the end a name provide a megaphone, I continue to read, write, and learn to be heard

RIIIIINNNNG!
Teacher says “Patty, please make sure next time you stay within the margins”
“The margins? I wonder what she means.”
I return back to my desk, wondering what I’ve done wrong
Looking around, I approach the girl with the long black hair, her last name’s Ruiz..
“What are margins?” I ask
She simply responds, “Uh, those” as she points to the vertical lines on a paper
I return to my desk, do my work, talk with no one, waiting for the bell to ring

How many Edelmira’s transform and are transformed into ‘Patty’?
I am not just Mexican, I am Mexican-American, I am Chicana.
Dark hair, dark eyes, fair skin, 1st generation, ‘bilingual’, bicultural
My father’s a naturalized citizen and mother a resident, neither speak fluent English
They have 3 daughters
“Patricia, por favor hablales a tus hermanas en Ingles para que aprendan.” (Patricia, please talk to your sisters in English so they can learn)
“Me llego esta carta del banco, traducemela” (I received this letter from the bank, translate it for me)
“Ma, Como se dice en Español hmmm, cuando uno...hmmm?” (Hey Mom, How do you say in Spanish...hmm...when one...hmm?)
“No encuentro la palabra, Ma” (I can’t find the word, Mom.)
“Esta carta dice que puedes sacar un..hmmm..mortgage? No se como se traduce esa palabra.. para pagar la universidad” (This letter says you can take out a hmm... mortgage, not sure what’s the translation of that word... to pay for tuition)
“Y que es eso? Es un prestamo, o que?” (And what is that? Is it a loan or what?)
“Hmm..no estoy segura. Le puedo preguntar a mi amigo que sabe de finanzas” (Hmm..I’m not sure. I can ask my friend who knows about finance.)
“Ay Patricia, te digo.. Tantos años en la escuela, para que?!” (Oh Patricia, I tell ya.. All these years in school, for what?)

No one said Grad School would be hard
No one said Grad School would be easy
I do my work, waiting for the bell to ring
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APPENDIX A

FIGURES

1. Occupations of Chicana/o
2. CPS Percentage Breakdown
3. CPS Teacher Percentage Breakdown
4. Racial Breakdown by School Type
5. FY Budget Report 2010
6. Proposed Budget 2011
7. Types of High Schools in CPS
8. Process of Racialization
9. Educational Cycle