

## Applying Precedents Activity—Answer Key

**Comparison case:** *Regents of the University of California v. Bakke* (1978)

**Precedent case:** *Brown v. Board of Education of Topeka* (1954)

**What you need to know before you begin:** When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally “let the decision stand”) requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

**How it’s done:** In this exercise, you will analyze a precedent and compare it to *Brown v. Board of Education of Topeka*. You have been provided with information about the two cases: **1)** the background, facts, issue, and constitutional provisions/statutes/precedents of the comparison case (*Regents of the University of California v. Bakke*) and **2)** a full summary of a precedent case (*Brown v. Board of Education of Topeka*).

After reading about the cases, you will look for evidence that *Regents of the University of California v. Bakke* is analogous (similar) to the precedent case and evidence that the cases are distinguishable (different) from each other. After considering both possibilities, you must decide whether the precedent is analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedent.

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1. Using factual and legal similarities, show how *Regents of the University of California v. Bakke* is **analogous** (similar) to the precedent case (*Brown v. Board of Education of Topeka*):

Student answers will vary, but may include:

- both cases deal with students and educational institutions.
- both Brown and Bakke challenged the school’s/university’s policy as unconstitutional based on the 14<sup>th</sup> Amendment’s Equal Protection Clause.
- both Brown and Bakke were denied admission to schools they wished to attend.

2. Show how *Regents of the University of California v. Bakke* is **distinguished** (different) from the precedent case (*Brown v. Board of Education of Topeka*) by pointing out factual and legal differences: Student answers will vary, but may include:
- The University of California is a post-secondary medical school, whereas Brown's school was a public elementary school.
  - Public schools do not base admission on application and merit, whereas universities do.
  - Brown was assigned to the school she would have to attend by the school board, whereas Bakke was able to choose from any institution that would grant him admission.
  - The Board of Education of Topeka's policy was based on segregation, whereas the University of California's policy was based on a desire for diversity in the student body.
3. We found that *Regents of the University of California v. Bakke* is \_\_\_\_\_ (**analogous to or distinguished from**) the precedent case (*Brown v. Board of Education of Topeka*) because (choose the most convincing similarities or differences from questions 1 and 2): Student answers will vary but should draw upon answers to #1 and #2.
4. Based on the application of the precedent, how should *Regents of the University of California v. Bakke* be decided?
- \_\_\_\_\_ Decision for Regents of the University of California  
\_\_\_\_\_ Decision for Bakke
- Student answers will vary but should be based on their answer to #3. In a 8-1 decision, the Court ruled in favor of Bakke.

After students complete the Applying Precedents Activity, consider sharing the [complete case summary of Regents of California v. Bakke](#) or the [decision summary and key excerpts from the opinion](#).

## Comparison Case: *Regents of the University of California v. Bakke* (1978)

**Argued:** October 12, 1977

**Decided:** June 26, 1978

### Background

Following the Supreme Court's decision in *Brown v. Board of Education*, public schools were required to stop discriminating on the basis of race. Although the decision in *Brown* did not specifically apply to universities and colleges, the rationale behind it—ensuring that racial minorities had access to a quality education—applied to publicly funded institutions of higher education as well.

In order to increase diversity, many public (i.e., state) universities adopted **affirmative action** programs. These programs were intended to counteract the negative effects that discrimination has had throughout history. In many cases, affirmative action programs provided an advantage to racial minorities through the creation of quotas, targeted recruitment programs, and additional race-based considerations, among other things.

Affirmative action programs, particularly those that relied on quotas or specific race-based distinctions, quickly became controversial. Opponents argued that they were unconstitutional because they were “reverse discrimination” and violated the idea that an individual's race should not be considered under any circumstances. The courts began to struggle with these issues, and it was inevitable that the Supreme Court would have to confront them.

### Facts

In the early 1970s, the University of California Davis School of Medicine (UC Davis)<sup>1</sup> adopted an affirmative action program. Their program created a dual admissions system to increase the number of students admitted who were racial minorities or who were economically or educationally “disadvantaged.” Under the regular admissions procedure, a screening process was used to evaluate candidates. Candidates whose overall undergraduate grade point averages (GPAs) fell below 2.5 on a scale of 4.0 were automatically rejected. The admissions committee then selected some of the remaining candidates for interviews. Following an interview, the admissions committee rated candidates who passed the screening process on a scale of 1 to 100. The rating considered the interviewer's evaluation, the candidate's overall and science grade point averages, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data.

On the UC Davis application, candidates could indicate that they were members of a “minority” group. Candidates could also choose to be considered economically or educationally

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<sup>1</sup> The terms “minority” and “disadvantaged” were used by the University of California in 1978.

“disadvantaged.” The applications of those who selected one of these options were sent to the special admissions committee, which used different criteria than the requirements for candidates who did not identify as a “minority” or “disadvantaged.” These applicants did not have to meet the grade point average cut off used in the regular program, nor were they compared to the candidates in the regular admissions program. Of the 100 spots in the medical school’s class, 16 spaces were reserved for this program.

In 1973, Allan Bakke, a 33-year-old White person, applied to 12 medical schools, including UC Davis. Bakke had a strong academic record and earned a high score on the MCAT. After his interview at UC Davis, he was described as a well-qualified and desirable applicant and was recommended for admission. He soon learned that he was rejected from UC Davis.

Following his rejection, Bakke complained to a UC Davis admissions counselor, who encouraged him to reapply. In 1974, Bakke did so but was rejected again. He then filed suit against UC Davis in California state court, arguing that the admissions program was unconstitutional and violated the Civil Rights Act of 1964. In November 1974, the judge agreed that the program was unconstitutional and ordered UC Davis to ignore race when considering applications.

Both Bakke and UC Davis appealed this decision—the school because it believed the special admissions program was constitutional, and Bakke because he believed that the judge should have ordered him to be admitted immediately. The case went directly to the California Supreme Court. That court ordered UC Davis to provide evidence showing that Bakke would have been rejected under an admissions program that did not consider race. When it failed to show that, the court ordered the school to admit Bakke.

Following this order, UC Davis asked the U.S. Supreme Court to review the case and to **stay**, or postpone, Bakke’s admission while it did so. The Court agreed.

### **Issue**

Does UC Davis’ affirmative action policy violate the 14<sup>th</sup> Amendment’s Equal Protection Clause and Title VI of the Civil Rights Act of 1964?

### **Constitutional Provisions, Federal Statutes, and Supreme Court Precedents**

#### **– 14<sup>th</sup> Amendment to the U.S. Constitution**

“No State shall...deny to any person within its jurisdiction the equal protection of the laws.”

This is known as the **Equal Protection Clause**, and it is commonly used to guarantee that individuals are treated equally by states regardless of their race, gender, religion, or nationality.

– Title VI of the Civil Rights Act of 1964

**“§2000d Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin**

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

This section is commonly applied to all universities and colleges, including private ones, as most receive significant federal funding through direct grants or student financial aid.

– *Brown v. Board of Education (Brown I)* (1954)

In a unanimous decision, the Supreme Court ruled that racial segregation in public schools (K–12) violated the 14<sup>th</sup> Amendment’s Equal Protection Clause. The justices found that access to a good education was “a right which must be made available to all on equal terms.” The justices argued that separating children solely on the basis of race created a feeling of inferiority in the “hearts and minds” of African American children. Segregating children in public education thus created and perpetuated the idea that Black children held a lower status in the community than White children, even if their separate educational facilities were substantially equal in “tangible” factors.

## **Precedent Case: *Brown v. Board of Education of Topeka* (1954)**

**Argued:** December 9–11, 1952

**Reargued:** December 7–9, 1953

**Decided:** May 17, 1954

### **Background**

In 1868, the 14<sup>th</sup> Amendment to the U.S. Constitution was ratified in the wake of the Civil War. It says that states must give people equal protection of the laws and empowered Congress to pass laws to enforce the provisions of the Amendment. Although Congress attempted to outlaw racial segregation in places like hotels and theaters with the Civil Rights Act of 1875, the U.S. Supreme Court ruled that law unconstitutional because it regulated private conduct. A few years later, the Supreme Court affirmed the legality of segregation in public facilities in the 1896 *Plessy v. Ferguson* decision. There, the justices said that as long as segregated facilities were of equal quality, segregation did not violate the U.S. Constitution. This concept was known as “separate but equal” and provided the legal foundation for Jim Crow segregation. In *Plessy*, the Supreme Court said that segregation was a matter of social equality, not legal equality; therefore, the justice system could not interfere. “If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane.”

By the 1950s, many public facilities had been segregated by race for decades, including many schools across the country. This case is about whether such racial segregation violates the Equal Protection Clause of the 14<sup>th</sup> Amendment.

### **Facts**

In the early 1950s, Linda Brown was a young African American student in Topeka, Kansas. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-Black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for White children only.

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for Black and White students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools.

The Browns felt that the decision of the Board violated the Constitution. They and a group of parents of students denied permission to White-only schools sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the 14<sup>th</sup> Amendment.

The federal district court decided that segregation in public education had a detrimental (harmful) effect upon Black children, but the court denied that there was any violation of Brown's rights because of the "separate but equal" doctrine established in *Plessy*. The court said that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns asked the U.S. Supreme Court to review that decision, and it agreed to do so. The Court combined the Brown's case with similar cases from South Carolina, Virginia, and Delaware.

### **Issue**

Does segregation of public schools by race violate the Equal Protection Clause of the 14<sup>th</sup> Amendment?

### **Constitutional Amendment and Supreme Court Precedents**

- **14<sup>th</sup> Amendment to the U.S. Constitution**

"No State shall...deny to any person within its jurisdiction the equal protection of the laws."

- *Plessy v. Ferguson* (1896)

A Louisiana law required railroad companies to provide equal but separate facilities for White and Black passengers. A mixed-race customer named Homer Plessy rode in the Whites-only car and was arrested. Plessy argued that the Louisiana law violated the 14<sup>th</sup> Amendment by treating Black passengers as inferior to White passengers. The Supreme Court declared that segregation was legal as long as facilities provided to each race were equal. The justices reasoned that the legal separation of the races did not automatically imply that African Americans were inferior, and that legislation and court rulings could not overcome social prejudices. Justice Harlan wrote a strong dissent, arguing that segregation violated the Constitution because it permitted and enforced inequality among people of different races.

- *Sweatt v. Painter* (1950)

Herman Sweatt was rejected from the University of Texas School of Law because he was African American. He sued school officials alleging a violation of the 14<sup>th</sup> Amendment. The Supreme Court examined the educational opportunities at the University of Texas School of Law and the Texas State University for Negroes' new law school and determined that the facilities, curricula, faculty, and other tangible factors were not equal. Therefore, they ruled that Sweatt's rights had been violated. In addition to the more straightforward criteria the justices examined at the two schools, they reasoned that other factors, such as the reputation of the faculty and influence of the alumni, could not be equalized.

**Arguments for Brown (petitioner)**

- The 14<sup>th</sup> Amendment's Equal Protection Clause promises equal protection of the laws. That means that states cannot treat people differently based on their race without an extremely good reason. There is not a good reason to keep Black children and White children from attending the same schools.
- Racial segregation in public schools reduces the benefits of education to Black children, solely based on their race. Schools for Black children are often inadequate and have less money and other resources than schools for White children.
- Even if states were ordered by courts to “equalize” their segregated schools, the problems would not go away. State-sponsored segregation creates and reinforces feelings of superiority among White students and inferiority among Black students. Segregation places a badge of inferiority on the Black students, perpetuates a system of separation beyond school, and gives unequal benefits to White students as a result of their informal contacts with one another. It undermines Black students' motivation to seek educational opportunities and damages identity formation.
- At least two of the high schools in Topeka, Kansas, were already desegregated with no negative effects. The policy should be consistent in all of Topeka's public primary and secondary schools.
- Segregation is morally wrong.

**Arguments for Board of Education of Topeka (respondent)**

- The 14<sup>th</sup> Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need. This could include providing an educational environment in which they are most comfortable learning. White students are probably more comfortable learning with other White students; Black students are probably more comfortable learning with other Black students. These students do not have to attend the same schools to be treated equally under the law; they must simply be given an equal environment for learning.
- In Topeka, unlike in *Sweatt v. Painter*, the schools for Black and White students have similar, equal facilities.
- The United States has a federal system of government that leaves educational decision-making to state and local legislatures. States and local school boards should make decisions about the best environments for school-aged children.
- Housing and schooling have become interdependent. Segregated housing has led to and reinforced segregated schools. Students might need to travel far away from their local school to attend an integrated school. This places a heavy burden on local government to deal with the changes.

**Decision**

The Supreme Court ruled for Linda Brown and the other students; the decision was unanimous. Chief Justice Earl Warren delivered the opinion of the Court, ruling that segregation in public schools violates the 14<sup>th</sup> Amendment's Equal Protection Clause.

The Court noted that public education was central to American life. Calling it “the very foundation of good citizenship,” they acknowledged that public education was not only necessary to prepare children for their future professions and to enable them to actively participate in the democratic process, but that it was also “a principal instrument in awakening the child to cultural values” present in their communities. The justices found it very unlikely that a child would be able to succeed in life without a good education. Access to such an education was thus “a right which must be made available to all on equal terms.”

The justices then compared the facilities that the Board of Education of Topeka provided for the education of Black children against those provided for White children. Ruling that they were substantially equal in “tangible factors” that could be measured easily (such as “buildings, curricula, and qualifications and salaries of teachers”), they concluded that the Court must instead examine the more subtle, intangible effect of segregation on the system of public education. The justices then said that separating children solely on the basis of race created a feeling of inferiority in the “hearts and minds” of African American children. Segregating children in public education created and perpetuated the idea that Black children held a lower status in the community than White children, even if their separate educational facilities were substantially equal in “tangible” factors. This deprived Black children of some of the benefits they would receive in an integrated school. The opinion said, “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.” Separate educational facilities are inherently unequal. This ruling was a clear departure from the reasoning in *Plessy v. Ferguson*, and, in many ways, it echoed aspects of Justice Harlan’s dissent in that earlier case.

**Impact**

*Brown v. Board of Education of Topeka* was a single decision signed by all nine Justices. The Court acknowledged the importance and potential controversy of this decision, so they acted uniformly to try to lessen dissent in society. The decision that ordered the desegregation of public schools was praised by many Americans who supported the civil rights movement.

One year after the decision, the Court addressed the implementation of its decision in a case known as *Brown v. Board of Education of Topeka II*. Chief Justice Warren once again wrote an opinion for the unanimous Court. The Court acknowledged that desegregating public schools would take place in various ways, depending on the unique problems faced by individual school districts. After charging local school authorities with the responsibility for solving these problems, the Court instructed federal trial courts to oversee the process and determine whether local authorities were desegregating schools in good faith, mandating that desegregation take place with “with all deliberate speed.”

That language proved unfortunate, as it gave the Southern states an incentive to delay compliance with the Court's mandate.

Many White people fought the implementation of the decision. In Little Rock, Arkansas, the school board agreed to desegregate its schools. But when nine African American students tried to enter Little Rock Central High School, those who still supported segregation, along with the Arkansas National Guard, physically blocked the African American students from entering the school. President Eisenhower quickly deployed the U.S. Army to enforce the integration decision by providing an armed escort to the African American students.

Resistance to integration led to further litigation. In *Griffin v. County School Board of Prince Edward County* (1964), the Court stated that “[t]he time for mere ‘deliberate speed’ has run out, and that phrase can no longer justify denying . . . school children their constitutional rights.”

Today all segregation by law (*de jure* segregation) in public education is unconstitutional. However, many schools are still largely made up of students from a single racial or ethnic group because enrollment is assigned based on neighborhoods. This is called *de facto* segregation because it occurs in practice without a law mandating it.

Additional information about *Brown v. Board of Education of Topeka*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.