

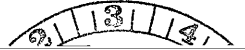
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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
JUN - 5 2003  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

EDDIE MITCHELL TASBY, et al.

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**MEMORANDUM OPINION AND ORDER**

Before the Court are Defendants' Motion for Hearing, filed January 9, 2003; Plaintiffs' Supplemental Proposed Findings of Fact and Conclusions of Law, Defendants' Post-Trial Proposed Findings of Fact, Defendants' Post-Trial Proposed Conclusions of Law, Plaintiffs' Responses to the Court's Questions at Conclusion of Hearing, and Defendants' Response to Court's Post-Trial Questions, all filed April 25, 2003; and related pleadings.<sup>1</sup>

On March 24, 2003 and April 7, 10, 2003, the Court held an evidentiary hearing on the

Motion for Hearing and to Dismiss, filed January 9, 2003, by Defendant Dallas Independent

and Latinos joined the case – all seeking the development of a meaningful and comprehensive desegregation plan for DISD.<sup>3</sup> *Tasby v. Estes*, 342 F.Supp. 945 (N.D. Tex. 1971). At the time Plaintiff Tasby filed his suit, DISD was the eighth largest school system in the nation with 180,000 students and a predominantly Anglo student body. However, most of the DISD schools were still one-race schools, *i.e.*, comprised of at least 90% Anglo or 90% minority students. *Tasby*, 869 F.Supp. 454.

The *Tasby* case was originally assigned to Judge W. M. Taylor, Jr., and he presided over the litigation until he withdrew in 1981. Upon Judge Taylor's withdrawal, the case was assigned

1998 *Teachers v. Public Employees' Union*, 711 F.2d 940, 956 (5th Cir. 1983), 10 1096

the Court directed the opening of three Learning Centers in West Dallas. *Teachers v. District 620*

DISD students. As is the case with many other urban districts (e.g., Houston and Detroit) the racial/ethnic composition of the DISD student population has been transformed over the last 30 years: minority populations are now dominant in terms of numbers. (Moses, V. 1 at 80-81). The percentage of African American students is approximately the same as in 1970 when the percentage of African American students was 22% then 22% today. (Moses V. 1 at 102) The percentages of Latino and Anglo

were filed: 22% then 22% today. (Moses V. 1 at 102) The percentages of Latino and Anglo

improving facilities all over the city to receive some more definite information and so

schools are to be built (Moses V 1 at 00)

In terms of his staff, Dr. Moses has given substantial responsibility to highly qualified and professional administrators from minority communities. For example, Dr. Carol Francois,



English as a Second Language programs in grades PK-12 (Covenants, No. 9; Defs.' Ex. 33); and maintaining a program of facility construction, addition, renovation, repair and maintenance, administered without regard to race, ethnicity, national origin, gender, or religion of the students

The Court relies on these Covenants as a sign of the good faith of the Board that it will continue the progress it has made in terms of developing and maintaining a unitary system in which all children receive equal and quality education. The Court notes that Dr. Moses and all

of the Trustees who testified about the Covenants stated that the current Board supports them.

and intends to work toward their implementation. ( Moses, V.1 at 103-107; Zornes, V. 10 at 106-09; Anchia, V. 8A at 7-9; May, V. 8A at 39-40; Price, V. 8A at 68; Brashear, V. 8A at 73-



systems with "all delinquent" *Disc. II* at 201. The Supreme Court ordered that

*See Dowell*, 498 U.S. 237 (1991); *Freeman v. Pitts*, 503 U.S. 467 (1992); *Jenkins*, 515 U.S. 70 (1995). In all three cases the Supreme Court stressed the importance of local control and the transitory nature of judicial supervision. *Dowell*, 498 U.S. at 247; *Freeman*, 503 U.S. at 489-90;

In the 1991 *Dowell* opinion, a case involving dissolution of a desegregation plan in

student achievement levels, and whether they are appropriately taken into account by District

Courts in determining whether to release school districts from judicial control *Jenkins* affirms

Further, the Circuit warns that because retained court supervision of school districts

restricts state government, principles of federalism require that federal courts "draw the limits which they impose on the state no more tightly than the limits of the Constitution." *Flax* 915

F.2d at 159 quoting *Overton*, 834 F.2d at 1177.

Two principles regarding the determination of when a school district should be released from Court supervision emerge strongly from the foregoing authorities:

(1) The District Court's focus in determining whether to release a school district from its jurisdiction and from remedial desegregation orders should be on the constitutional violations of the district and the extent to which the district has eliminated the original *de jure*

Almost ten years has passed since this Court declared the DISD unitary. The District

now seeks a declaration that it has "substantially complied" with all of the Court's orders. If the Court finds that the DISD has so complied, the case should be dismissed. Plaintiffs urge that while the DISD is in substantial compliance with many aspects of the Court's Orders, the District has not substantially complied in several areas and dismissal at this time would be

premature.

It is fair to say that the DISD has made enormous progress in providing equal educational opportunities to all students. The parties at this time disagree as to whether these efforts are

Order that are not specifically addressed in *Green*.<sup>7</sup> Those matters are also discussed here.

*A. Stipulated Matters*

Before the March 2002 hearing in this case, the parties jointly entered into a stipulation

relative to the DISD's compliance with the Judgment and 1994 Order. Specifically, the parties have stipulated that the DISD is in substantial compliance in the areas of (1) student assignment and attendance zones; (2) majority to minority transfers; (3) curriculum transfers; (4) transfers

Court commends the District on its continued efforts in this area.

Extra-curricular activities were also not addressed by the parties. In the 1994 Order, the

Court held that the District's failure to address the issue of

in the area of extracurricular activities.<sup>8</sup> The Court has been presented with no evidence to alter

that opinion.

Other issues of the 1994 Order that were neither stipulated nor contested relate to the School Board. At issue at the time of the 1994 Order were (1) the racial harmony/disharmony of

The Board has also come a long way on the issue of commitment of future School Boards  
to desegregation programs. The 1994 Order relied upon a representation from the then Board



Establishing West Dallas Centers

Originally there were three Learning Centers in Dallas, D.D. 10, 11, and 12.

involvement effective student centered peer academic activities that...

[Redacted]

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Plaintiffs presented evidence at the hearing that there are a few areas of concern with respect to the Learning Centers. The Implementation Plan provides guidelines for the selection of professional staff to work at the Learning Centers. (Defs.' Ex. 190, 191 at 211). The Implementation Plan suggests that teachers should have a "minimum of three years of experience with urban, diverse student populations" and that teacher absences during the current

Ex. 190). The Court's External Monitor, Ms. Sandra Malone, testified that since 1997 there has been an increase in the number of teachers hired who do not meet these requirements. (Malone, Vol. 9 at 162). In the years following adoption of the Implementation Plan, the District introduced

Centers. The Learning Centers are a valuable tool in the District's efforts to increase minority

achievement, and their programs appear to be particularly effective. Dr. Messer testified that the

[REDACTED]

Language Enrichment Program (“MLEP”), the District has made great strides in the multi-language arena. To comply with the Court’s Orders, the District has initiated some unique multi-language programs. (Gutierrez, V. 5 at 224-5). The MLEP has “grown tremendously” in the last two years to meet this increased demand on District resources. (Gutierrez, V. 5 at 218). Ms. Gutierrez has developed an MLEP Program Handbook (“Handbook”) that comprehensively describes the MLEP program. (Defs.’ Ex. 82). Dr. George Gonzales, an expert witness for Defendants, testified that the Handbook is “exceptional” and that he has never seen another document that was as “complete” or “well done” as the Handbook. (Gonzales, V. 4 at 120)

*i. Elementary Programs.* The District’s MLEP program at the elementary level can be broken down into a few principal components (Gutierrez, V. 5 at 223-225; Defs.’ Ex. 82 at 6-16):

(1) **Alternative Modified Bilingual Education Program (“AMBEP”)**.

The AMBEP provides instruction primarily in Spanish but provides some instruction in English. (Defs.’ Ex. 82 at 6). Spanish-speaking LEP students at the Pre-Kindergarten (“Pre-K”) through third-grade level are placed into this program. (Gutierrez, V. 5 at 223-224). At the third-grade level they are transitioned into an ESL program. *Id.*

(2) **ESL.** In ESL, the instruction is provided in English with a focus on second-language acquisition methods. (Defs.’ Ex. 82 at 7). Some Spanish speaking students at the Pre-

DISD has two principal programs: ESL and the English Language Institute ("ELI"). (Defs.' Ex. 82 at 20-23). The ESL program at the secondary levels is similar to the program at the elementary levels. The ELI is a program for all secondary school LEP students who have been in the country for less than a year and who score at a beginning level on an oral language

education. First, Plaintiffs argue that students spend too much time in MLEP programs; the exit-levels are unsatisfactory. Second, Plaintiffs point to evidence that LEP students participate in

and Pre-AP programs. In 2000-01, only 0.7% of elementary LEP students and 0.8% of secondary LEP students were enrolled in Magnet schools. (Pls.' Ex. 5B at 31; Pls.' Ex. 5C at 30). Plaintiffs assert that TAG numbers are also relatively low: 8% of LEP elementary students were enrolled in TAG, with 5% of middle school LEP students participating in TAG programs in 2000-01. (Pls.' Ex. 5B at 31; Pls.' Ex. 5C at 30). LEP enrollment in TAG has grown since

2001. In fact, the Court heard testimony that there is some concern that LEP students are over-represented in TAG programs today. The TEA recommends that 10% of TAG program participants be LEP students, and the DISD percentage of LEP students in TAG this school year is 12.5%. (Oliphant, V. 5 at 199). The District is also developing a Spanish-language TAG

203-04. Plaintiffs also point out that less than 10% of LEP students participated in Pre-AP or



3. **Early Childhood Education**

There is substantial evidence, and the parties agree, that the early years of a child's education are extremely important in terms of performance over a student's academic career. In keeping with the importance of early childhood education, the Judgment established an Early Childhood Education ("ECE") program to maximize benefits to young children (now considered Pre-K through Third-grade). The Judgment required a comprehensive program of instruction in all areas based upon the developmental needs of young children and the District's curriculum. See Judgment at 19. The approach was to be diagnostic-prescriptive, meaning that educators would determine the needs of the student and then develop an approach that would meet those needs. *Id.* The Judgment also sets out specific

programs which utilize the same curriculum. (Cox V. 4 at 97) The DISD also is part of the

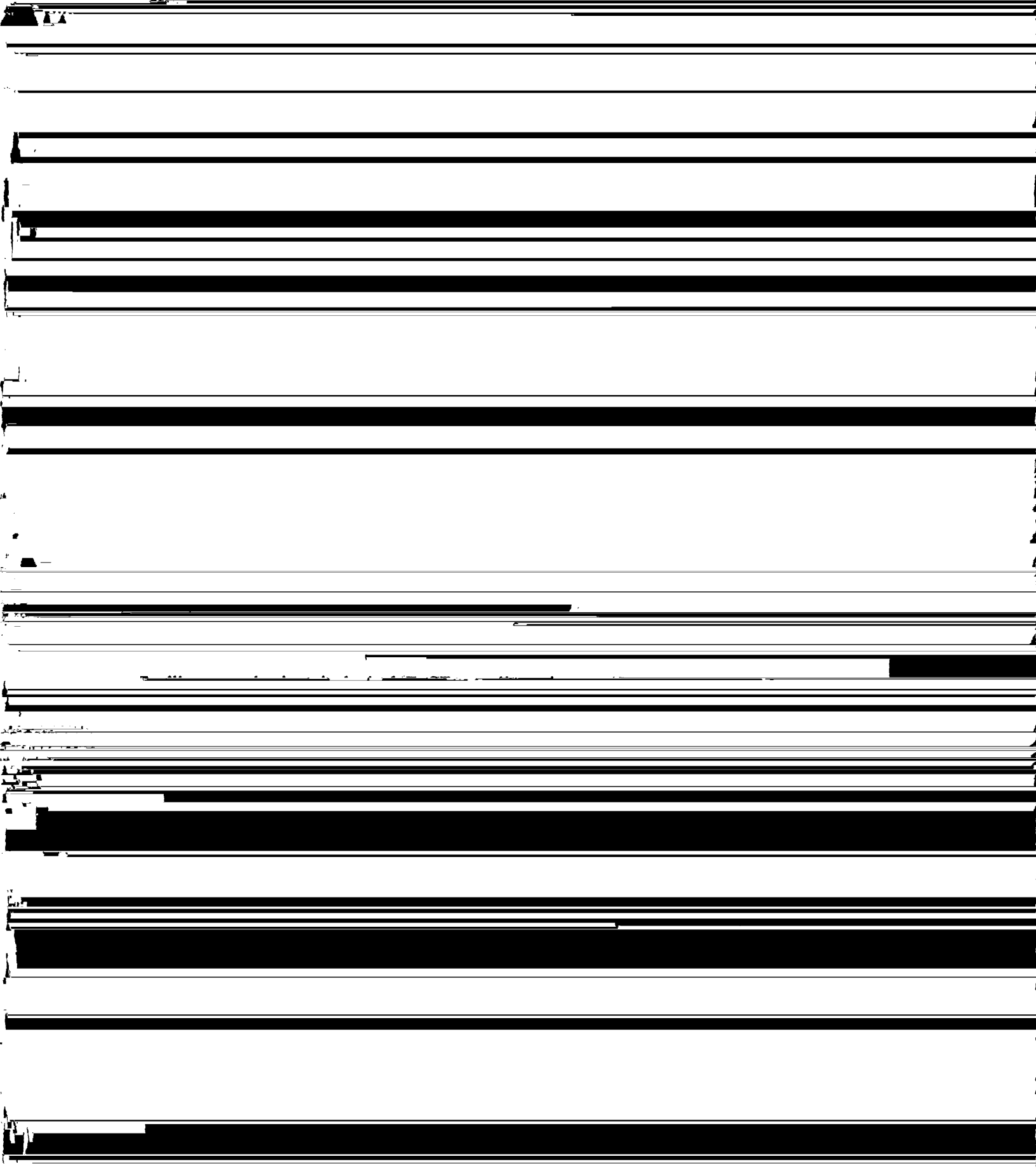
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childhood teachers. (Steerman, V. 6 at 98). The Campus Facilitators are also full-time instructors who receive limited extra compensation for their work as Facilitators. 16 There are

five ECE specialists, lead Reading teachers and lead Math teachers, as well as lead teachers in other subjects, all of whom provide services for the District's elementary campuses. (Steerman

separately. Under the current ECE program, school principals have primary responsibility for

anything that happens in their school including ECE's. ... ECE's



Plaintiffs are also concerned that the newly-redeveloped ECE program has not been in place for a sufficient period of time for the Court to find that the District is in substantial compliance with this portion of the Court's Orders. In 1997, the Court directed a special audit to

That audit did not find evidence of any ECE program in the District. (Malone, V. 9 at 143). The new ECE program was developed in 2000-01 and in 2001-02 the External Auditor began to see

#### 4. Magnet Schools

career, vocational, and other specialty programs. *See Tasby*, 520 F.Supp. at 745. This Court has endorsed Magnet schools since the 1976 Judgment. *See Tasby*, 412 F.Supp. at 1205; *Tasby*, 520

F.Supp. at 747; 1994 Order at 464. Section V of the Judgment contains detailed directives to the DISD regarding the operation of Magnet schools; these were supplemented by the 1994 Order. *See Judgment* at 17-19; 1994 Order at 464-466. The DISD Magnet program is made up

scores than non-Magnet students on the Stanford 9. (Bartz, V. 3 at 93-4).

c. **Academic Programming:** The District has implemented a vertical curriculum alignment, where certain middle schools “feed” students into Magnet secondary programs.

(Part V 2 at 87) This vertical alignment allows for continuity in curriculum between middle school and high school for students with specialized interests. Recently, the District voluntarily placed coordinators in each Vanguard and Academy school-in-school program. These Magnet coordinators dedicate all of their time to working with the Magnet. (Part V 2 at 92-3)

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coordinators dedicate all of their time to working with the Magnet. (Part V 2 at 92-3)

receiving the external report, the District performed its own evaluation to determine which portions of the external evaluation to implement. (Def.' Ex. 240, 240 A). The District

with the vast majority of the recommendations made in the Magnet Study. *Id.*

f. **Areas of Concern:** Plaintiffs' principal concern regarding the Magnet program centers around the recent Magnet Study and the subsequent internal evaluation. Plaintiffs state that "many of those recommendations... [including] those agreed to by the Administration will take up to three (3) years or more for their implementation." (Pls.' Second Supplemental Proposed Findings of Fact at 7). Plaintiffs argue that the effectiveness of Magnet programs cannot be determined until all of the changes suggested by the Magnet Study and agreed to by the DISD have been fully implemented. *Id.* The Court disagrees. The Judgment requires that the District "review the effectiveness of all magnet programs" and "determine and implement appropriate changes...to ensure that all magnet schools are effective as educational programs and as desegregation tools." Judgment at 15. The District has reviewed the effectiveness of the Magnets and determined appropriate changes. While implementation of these recently-



in these programs. Each of these programs provides advanced academic courses.

a. **Advanced Placement:** AP classes are academically challenging courses taken by students preparing for college. The AP curriculum used by the District is based on a national

curriculum provided by the College Board. (Oliphant, V. 5 at 174). DISD's participation in this program is impressive. The DISD offers AP courses in 10 areas to prepare for 25 AP courses.

students in 2002. (Defs.' Ex. 106 at 3; Oliphant V. 5 at 184-5). The AP Incentive Program is available in 15 high schools. The District's per capita passing rate of its AP students with scores of 3 or above on Math, Science, and English AP exams surpasses both statewide and national averages by an almost 2 to 1 margin. (Defs.' Ex. 106 at 4).

Plaintiffs have expressed concern that minority representation in the District's AP and

District. In 2002-03, African American students made up 38.1% of the District's high school students, and 37.94% of the AP population. Anglo students made up 8.6% of the total

parents receive that information, so that they have the choice of opting into these classes.

(*Oliphant v. S* at 208-9) The Court finds no evidence that AP courses are utilized by the

District as a tool for classroom segregation.

to them, and that limiting AP enrollment to ensure proportional representation by each racial



At the recent hearing, the parties presented testimony about achievement generally, and the achievement gap in particular.

The threshold issue is whether consideration of an achievement gap is relevant to the question of dismissal. As early as 1986, the Court stressed to the parties that achievement disparities between minority and majority students were only relevant to the extent they were related to prior unconstitutional segregation. *Tasby*, 630 F. Supp. at 600 (1986); *see also Tasby v. Wright*, 713 F.2d 90, 96 (5th Cir. 1983). To the extent that a current achievement gap can be linked to the prior [redacted] segregation system, it must be eliminated to the extent possible.

*Bd. of Educ. of Oklahoma City Pub. Schools v. Dowell*, 498 U.S. 237, 249-50 (1991). To the extent the achievement gap is caused by other factors it is outside the reach of the Court's authority. *Missouri v. Jenkins*, 515 U.S. 70, 102 (1995). "Insistence upon academic goals unrelated to the effects of legal segregation [redacted] . . . ."

students from 45.8% to 85.1% (net 20.2% gain) and African American students from 27.0% to

82.8% (net 45.6% gain). (Defs.' Ex. 34 at 32).

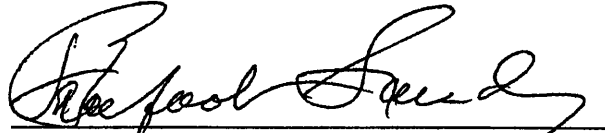
The achievement gap has also narrowed considerably in the last nine years. In 1994, there was a 20.8 % difference in the pass rates of Anglo and Latino students on the reading portion of the TAAS and a 28.5% gap between Anglo and African American students. (Defs.' Ex. 34 at 31). Today the gap is 12.4% between Anglo and Latino students and 11% between

School District has accomplished much. Although in past years it has seemed that the School

Judgment will be entered in accordance with this Opinion. The Court will confer with counsel about the date of entry of the Judgment.

SO ORDERED.

DATED: June 5, 2003.



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BAREFOOT SANDERS, SENIOR JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

