IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

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| SA'DA JOHNSON, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | Case. No. 00-1349 |
| | ) | |
| BOARD OF EDUCATION CHAMPAIGN COMMUNITY UNIT SCHOOL DISTRICT # 4, | ) | Judge Joe B. McDade |
| | ) | |
| | ) | Magistrate John Gorman |
| Defendant. | ) | |

**PLAINTIFFS' RESPONSE**
**TO DEFENDANT BOARD OF EDUCATION'S REPORT**
**TO COURT OF CONSENT DECREE TARGETS AND STEPS**

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Date: October 6, 2006

## I. INTRODUCTION

On July 31, 2006, this Court denied Defendant's motion for an extension of time to provide additional seat capacity in north Champaign. It also ordered the District to "explicitly identify and address its final targets and the procedural steps it intends to take to reach those targets for each of the eight areas of focus identified in the Third Monitoring Report" and to "explicitly address how the responsibilities for these targeted areas" will be assigned within the District. (July 31, 2006 Order, 4)

The District's Report simply does not comply with the Court's Order. It is effectively a narrative of activities, many pre-existing, with few explicit dates for interim steps or meaningful measures of accountability. Mostly, it simply regurgitates the broadly-stated goals contained in its Strategic Plan and the Consent Decree's Education Equity Implementation Plan. In addition, it fails to reflect the guidance provided by the Monitoring Team and insufficiently incorporates Plaintiffs' substantive recommendations to accelerate remedial progress and Consent Decree compliance.

Plaintiffs present an overview of their concerns below. Attached as Exhibit A, Plaintiffs also provide a restructured version of the District Report that incorporates some of Plaintiffs' proposed explicit interim steps and targets and identifies key disagreements between the parties.

Plaintiffs acknowledge the District's accomplishments in certain areas and note that there are many well-intentioned people doing good work at all levels within the District. Plaintiffs wish to continue working with the District to ensure meaningful, measurable progress toward Consent Decree objectives and goals. To that end, Plaintiffs encourage the District to reconsider its Report and present to the Court a modified document more responsive to the Court's Order before the October 19, 2006 hearing.

## II. SUPPLEMENTATION AND MEASUREMENT FOR COMPLIANCE

In any discussion of the Consent Decree it is important to recognize that it is not one single document. Rather, it consists of several documents that are dependent upon one another. Specifically, the Consent Decree incorporates the Controlled Choice Memorandum, the Educational Equity Memorandum, and the Office of Civil Rights Resolution, and the Education Equity Implementation Plan ("EEIP"). Additionally, the 1998 Peterkin/Lucey Audit is also attached to the Decree.

The purpose of the EEIP, which attempts to synthesize the Controlled Choice, Education Equity, and OCR Resolution, is to set forth a comprehensive framework for improving the District's educational programs and opportunities in order to 'close the achievement gap' between minority and non-minority students." Id. at i. As explicitly provided for in the EEIP, the flexible goals are both qualitative and quantitative. Id. at ii. Using the racial fairness guidelines of +/-15% of applicable system-wide (and building) racial compositions, the flexible goals are not quotas but rather allow the District "to grow toward achievement" of "the Plan's objectives by striving to meet the highest standards." Id. Also explicitly stated in the EEIP, the "intent of the Plan's [EEIP's] flexible goals and actions is for the District to make progress in each are each year, ultimately achieving the Plan's objectives." Id.

The Consent Decree specifically states the Implementation Plan "will be continually monitored and may be modified in the future as appropriate." 188 F.Supp. 944, 981. Thus, this Court's request for plans that provide accelerated steps in order to reach Consent Decree targets by 2009 is consistent with Consent Decree requirements. By the explicit terms of the Consent Decree, the District is also obligated to eliminate unwarranted disparities "to the greatest extent practicable."

188 F.Supp.2d at 984. See also Freeman v. Pitts, 503 U.S. 467, 492 (1992) ("eliminate vestiges to extent practicable"). Importantly, the Defendant has agreed to use its "best efforts" throughout the life of the Decree. See Pl.Br. filed 2/8/06. Thus, to meet its obligations, the District must achieve the *maximum* level of compliance with the framework of specific goals, objectives, and targets of the Decree. In addition to the express terms of the Consent Decree, this Court may employ its equity powers to enforce consent decrees through modification of such decrees. Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367, 378 (1992).

## III. SUMMARY OF PLAINTIFFS' CONCERNS REGARDING THE DISTRICT'S REPORT

The District has made good progress in some areas. One example is the increase in the number of African American certified staff in the District. The District hired its largest number of African American teachers ever in SY2006. (2006(3) QR, 381) The District's impressive progress in hiring and staffing, of course, is not accidental - it is grounded in a centralized approach, vigorously implemented at the campus level and is replete with specific steps, refined over the years. This approach, unfortunately, is not replicated in several areas of the District's report.

### A. District Misapprehends Compliance

The District's position that it has "me[t] its final target[s]" with respect to certain areas is contradicted by the explicit requirements of this case. (See Def.Br.8 and 15) While the District may be within racial fairness guidelines for some sub-areas of the eight areas identified in the Court's Order, it can in no way contend it has achieved the maximum level of compliance for the goals, objectives, and final targets at this date in the case, especially given the lack of overall progress towards eradicating unwarranted educational disparities. See Section II discussion, above.

Notably with respect to the District's articulation of final targets and flexible goals, the District also neglects to include all applicable goals and objectives in some areas. These exclusions allow the District to attempt to minimize its obligations under the Decree.

**B. District Fails to Address Key Issues Within Specific Areas**

**1. Achievement**

Even with good preliminary ISAT test results for SY2006, 54% of African American students are "Academic Warning or Below" for third grade reading; 58% are at that lowest category in eighth grade reading. While it is true that "African American Level III participation reached 39.2%" for SY2005 (Def.Br.4), there has been a downward trend in course grades since 2003. (Third Monitoring Team Report, 402)

The District's Report does not sufficiently address these significant disparities. The District prefers to rely on Annual Yearly Progress (AYP) in articulating its progress in student achievement at the elementary level. AYP under the No Child Left Behind Act, however, is a minimal standard that stretches to 2014 and should not be the measure of the District's greater obligations under the Consent Decree.

In terms of actual steps, the District simply refers the Court to the EEIP, its previous initiatives, and its staff development schedule. (See Def.Br.Exhs. G and H) These documents may provide valuable background information as to what initiatives have been undertaken to date but fail to provide date-specific, prospective steps for accomplishing the Consent Decree's objectives. For example, the District's acknowledgment in its Report that high school and middle school grade distribution "continues to be a challenge" (Def.Br.4) is unaccompanied by any specific plans for remedying the situation.

## 2. Enrollment and Attendance

Only offering that 70% of the 888 students served by TAOEP, its main attendance initiative for the past two years, improved their attendance, the District fails to note the actual level of improvement for the 70% of students or to acknowledge the continuing gap between African American and white students. (Def.Br.7) As reported by the Monitoring Team, the gap between African American and white students was about 1.2-1.4% at the middle school levels and 3.9% at the high school level. These differences amount to "very real days of missed instruction for a number of African American students." Third Monitoring Team Report, 77.

Despite the fact that TAOEP does not effectively or adequately address the attendance issues faced by African American students, the District continues to rely upon it without making changes to its existing model. Targeting chronic truants, TAOEP does not address the needs of students with less severe but significant attendance issues or students who have already dropped out. In fact, the District only addresses dropout and graduation rates for African American students in a one sentence footnote in its Report.[1] (Def.Br.2, fn.2)

Although the District mentions its efforts to involve community members in its attendance initiatives, it has yet to unveil a detailed Houston-like model for attendance improvement. Although repeatedly recommended by the Monitoring Team and supported by Plaintiffs, the District has delayed this initiative. Another critical element missing in the District's attendance discussion is the

[1]The Defendant contends there are no goals set forth in the Decree for drop-out and graduation rates. Plaintiffs direct the Defendant to the Educational Equity Memorandum attached as Exhibit D to the Consent Decree calling for the District to eliminate to the greatest practicable extent unwarranted disparities with respect to both the availability of education services to minority students and the participation and performance of minority students in such services. 188 F. Supp.2d 944, Exhibit D, p.4.

link between climate and attendance. If the District does not explicitly link attendance to climate, Plaintiffs fear the District's vague initiatives will never produce meaningful results.

### 3. Gifted and Talented Programs

While it is true that *district-wide* African American enrollment in elementary enrichment is within racial fairness guidelines (+/-15%), Carrie Busey and BT Washington schools have seen significant, consecutive declines in African American enrichment enrollment from 2004 through 2006 (Carrie Busey 28.7% to 18.8%; Washington 50% to 36.4%). Third Monitoring Team Report, App.D, 21; SY2006 QR(4), p. 400. The percentage of self-contained gifted students in the elementary schools who are African American has risen only 1.7 percentage points in 3 years (from 14.9% in 2003 to 16.6% in 2006). Third Monitoring Team Report, 168; SY2006 QR(4), p. D-4. The result is that by January 2006, the enrollment of African American students in self-contained gifted programs remains more than 4 percentage points below the lowest end of the compliance range. SY2006 QR(4), p. D-4.

Plaintiffs appreciate that many of the procedures used by the Director in the area of gifted and talented are to be codified under the District's report. The District, however, does not set forth a timeframe to produce the codified measures in a manner that will allow Plaintiffs and the Monitoring Team time to review the procedures in time for them to be in place prior to next year's identification process for gifted and talented and enrichment. Moreover, new strategies are needed, given the fact that enrichment enrollment at certain schools and gifted and talented district-wide have reached a plateau.

### 4. Special Education

The District's efforts to reduce the significant racial disparity in special education (SPED) enrollment have produced stagnant results throughout the Consent Decree. Trend data since 2002 shows that almost 25% of the District's African American students have been assigned to SPED, and in SY2006 they comprised almost 52% of total SPED enrollment, up from 50% in SY2004. SY2006 Q4 Report, p. 434. Nonetheless, the District's Report fails to set specific targets and supplemental action steps to overcome this inertia. Most of the measures cited in the Report offer only belated data collection and continued monitoring of existing and ineffective initiatives. (9/22/06 Def.Rep., pp.9-10) The absence of vigorous initiatives to accelerate reductions in minority SPED assignment is particularly troublesome in light of the Monitoring Team's continuing admonitions regarding the stagnation in SPED. (Third Monitoring Team Report, 86)

The Consent Decree requires the District to adopt innovative and research-based curriculum and instructional practices that take into account students' diverse learning styles. 188 F. Supp.2d at 985. However, the Report omits Plaintiffs' recommendation to pilot proven academic and behavioral interventions that have the potential to forestall SPED classification and to remediate SPED students' deficiencies, particularly in the behavior disorder, learning disabled, and mental impairment categories in which minority students are significantly over-represented. See Exhibit A at 13-15) Plaintiffs have voiced these recommendations repeatedly in numerous responses to the District's quarterly reports, the Monitoring Reports, and through participation on the SPED Task Force.

As noted in the Third Monitoring Report, African American students are disproportionately overrepresented in SPED classifications that require more subjective eligibility determinations and

closer to or below proportional representation in more objective classifications. Monitoring Team Letter to Judge McDade dated December 5, 2005, pp.6-7. The District proposes to continue the annual "random file reviews" of special education students' records to determine the appropriateness of minority eligibility determinations. (Def.Br.11) However, Plaintiffs have repeatedly urged the District to modify the random methodology because it does not address the issue of race-based disparities. (Def.Br.11) Plaintiffs' have instead requested that the District redesign the audit to focus specifically on whether minority and non-minority students with comparable academic and behavioral profiles are referred to, evaluated, and assigned to SPED at comparable rates.

**5. Student Discipline**

Contrary to the District's assertions, the discipline trends under the Consent Decree are dismal. The District's own SY2006 Fourth Quarterly Report indicates improvement on the elementary level - its "success story" in discipline - has reversed. There was an 11% increase in the number of elementary school disciplinary incidents from SY2005 to SY2006, with a corresponding rate increase for African American students in four of five incidents areas measured and four of eight action areas measured.[2] The situation on the middle and high school levels - optimistically labeled "mixed" by the District - is even worse. The District is moving away from both its own "flexible goals," with levels of racial disparity in discipline either treading water or actually getting worse over time. The District also fails to meet the fundamental Consent Decree goal of fine-tuning discipline to ensure it is only used as an intervention strategy and a means to improve student academic performance and behavior. The District's total number of disciplinary incidents skyrocketed an

[2]SY2006(4) QR, J-4, N-3, N-12. The Monitoring team has indicated that it will file Defendant's Fourth Quarterly Report and Plaintiffs' Response with the Court shortly.

astonishing 37% from SY2005 (21,269 total incidents) to SY2006 (29,222 total incidents) (SY2006(4) QR, I-4).

As noted in Exhibit A at 17-19, Plaintiffs believe that the District's proposals for discipline are insufficient. The District will require an enormous amount of effort - much more than is detailed in their Report - simply to reverse direction, let alone to meaningfully move toward racial fairness guidelines for discipline in the next three years.[3]

**6. Staffing, Hiring, and Recruiting**

As noted above, this is an area where the District has been highly successful, largely due to institutionalized explicit procedures, reviewed annually for effectiveness, that have allowed the District to make great strides in African American hiring. This year, the District has stated it will codify its procedures so that progress area can continue. The parties are also working together with community organizations to enhance retention efforts for African American certified staff.[4]

**7. Information Technology**

Although the District provides several steps regarding its Information Technology, it does not accurately describe the problems it has experienced in this area, nor does it establish targets that will accelerate its data integrity technology capabilities.

The problems surrounding the District's information technology reached a crisis point in 2006. Aware for months that its Fourth Quarterly Report was to be filed with this Court, and despite the fact the Monitoring agreed to the District's request to submit three rather than four reports a year,

[3]The School Resource Officer issue - one critical to the Plaintiff community - is not at all addressed by the District in its Report.

[4]Plaintiffs have not addressed staff and hiring and information technology in Exhibit A. Plaintiffs consider their disagreements in these areas minimal and will monitor the District's stated actions in their Report closely.

the District's SY2006 Fourth Quarterly Report was filled with errors and omissions.[5] The results from this data integrity issue are threefold: 1) the District cannot make appropriate adjustments if its data is incorrect, missing, or not even internally reviewed; 2) Plaintiffs' counsel is required to spend hours reviewing and critiquing data instead of focusing on programmatic issues; and, 3) the Monitoring Team is required to re-analyze statistics in on order to provide accurate monitoring data to the parties.

The Defendant's Report seems to set forth many action steps to correct District's data collection issues. Unfortunately, it does not provide for appropriate targets or accelerated time frames. (See Def.Br.Exh.U) There simply seems to be no urgency in the District's plan in this area, despite its importance to all other areas of Decree implementation. As it stands, it will take at least a year for the District to address its data issues.

**8. Controlled Choice**

The District drastically misrepresents its efforts in providing additional seat capacity in north Champaign. (See Def.Br.17) The District did not intensify its efforts until after Plaintiffs alerted this Court to its inaction. (12/12/02 Hearing Tr.60-61) This one year delay seriously jeopardized the District's opportunity to increase the seat capacity by the Decree time-frame of the start of the 2005-06 school year. Making matters worse, after a long process leading up to a referendum in the spring of 2006, the District sabotaged minority community support in the eleventh hour. With literally two hours notice to Plaintiffs' counsel and the Monitoring Team, before the Board acted, the Defendant selected Boulder Ridge as the location of the seats to satisfy the Decree.

[5]Monitoring Team Member James Lucey has consistently provided the Defendant guidance regarding data to help it prepare to file its first Quarterly Report with the Court.

For the District to have believed for one moment that the Boulder Ridge site, a location in a new development, well outside the neighborhood and average income range of the vast majority of African American student families, satisfied the Decree's objective to address structural displacement was astounding to the Plaintiff community. However, rather than just pursuing bad faith findings against the District, Plaintiffs regrouped and accepted the Monitoring Team's charge to focus on educational issues simultaneously with seat capacity issues.

In the span of just a few months, the Plaintiff community has rallied. With a charge led by Plaintiff Representative Imani Bazzell, Plaintiffs are researching a "Great Campus." Plaintiffs currently are working with several University of Illinois Professors to review research-based educational practices. Hopefully, the parties will be able to utilize this work to address seat capacity and provide exciting educational programming for students.

In regard to non-seat capacity Controlled Choice issues, the Defendant states the parties only discussed overrides. (Def.Br.19) Specifically, Plaintiffs requested more detailed information regarding over-rides of racial fairness guidelines in order to provide on-going documentation that will preserve the integrity of the Controlled Choice practices and procedures. The Defendant also does not address Plaintiffs' request to accelerate the pursuit of programmatic measures to promote diversity at all elementary and middle schools.

**9. <u>Alternative Education</u>**

Plaintiffs responded positively to the District's decision to implement an academic alternative school of choice with limited initial enrollment for SY2007-08. If properly implemented, the school should contribute to increased attendance and graduation rates and a lower drop out rate. We are disappointed, however, in the District's failure to set forth any substantive targets and initiatives for

Columbia Center or to address the high placement of minority students in private alternative day school centers.

Although Columbia Middle and High School are consistently racially identifiable and their students have the lowest academic performance (the most frequent grade is an "F") and attendance compliance in the District, the Report omits any measures to address the first and paramount IP Action Step for Columbia Center: to "...modify the curriculum, instruction, and requirements so that [Columbia's] students are able to continue on to post-secondary opportunities." (IP, p.13) Given the significant and historical deficiencies at Columbia Center, Plaintiffs believe it is insufficient for the District to pledge only "strengthening" instructional leadership and a curriculum that is only "consistent" with the District's "overall" curriculum.

### C. District Improperly Relies on Stagnant Strategic Plans and Pre-Existing Measures to Accelerate Efforts

The District significantly relies on its Strategic Plan in generating its Report. Since the District's first Strategic Plan was developed in 2002, Plaintiffs have cautioned that it is not an adequate Consent Decree monitoring tool. (Pl.Br., filed April 13, 2004) The District has issued two subsequent Strategic Plans.[6] A side-by-side comparison of the three documents indicates that the Strategic Plans are not adequately reviewed or modified on a year-to-year basis.[7] (See Def.Br.Exh.C) For example, according to the 2006-07 Strategic Plan, the District has been in the process of

[6]According to District counsel, there are Strategic Plans for the 2003-04, 2004-05, and 2006-07 school years. Plaintiffs were given no explanation for the lack of a plan for the 2005-06 school year.

[7]Given the length of the District's Strategic Plans for the 2003-04 and 2004-05 school years. Plaintiffs have not attached them here. The plans are available on the District's website at http://www.champaignschools.org/index2.php?header=./&file=strategicplan.

establishing a district-wide standard of early intervention strategy for attendance issues for four years straight. This same language appears verbatim in each of the three plans. Like so many other District documents, the Strategic Plan appears to be a rote exercise, with the same goal language kicked forward from year to year.

### D. Reliance on Principal Evaluations and Staff Development Plan Provides Inadequate Accountability

For several reasons, Plaintiffs believe that the District's heavy reliance on their annual principal evaluation process for accountability is misplaced. While Plaintiffs agree it is critical to include Consent Decree issues in the evaluation process, it is insufficient as an accountability device for Plaintiffs' purposes. First, the District's evaluation tool has been in use the entire time, yet unwarranted disparities between African American and white students have persisted. Second, as employment records, principal evaluations are not documents that can (or should) be shared with the Monitoring Team, Plaintiffs, and the community at large. Third, the timing of the evaluation tool is not geared toward accelerating the pace of improvements, since the reviews are primarily conducted annually in the spring of each year. (Def.Br.Exh. D at 3)

As for the District's staff development efforts, Plaintiffs appreciate receipt of its three-year schedule.[8] However, as staff development is referred to throughout the areas of the Report, Plaintiffs are unable to ascertain whether staff in each building receive certain training, whether new staff receive training as they begin in the District, whether building principals receive the same training as their staff to enable appropriate evaluation, or whether mechanisms are in place to ensure strategies from trainings are implemented at the building and classroom levels.

[8]In their Response to the Third Monitoring Team Report, Plaintiffs requested three-year plans for staff development plan and the budget for Consent Decree related issues.

## IV. DISTRICT'S MISSED OPPORTUNITIES

Plaintiffs initiated a good faith effort to collaborate with the District on the eight areas enumerated in the Court's Order and contemplated that the parties would be able to present joint plans in at least some areas. However, the District initially took the position that no contemporaneous collaboration was necessary, but at Plaintiffs' urging agreed to meetings to discuss its proposals for the eight areas on September 6, 2006, only one week before its Report was originally due. At the urging of the Monitoring Team during the August 24-25 quarterly meeting, the District agreed to an additional, earlier meeting on August 31. Plaintiffs believe the District's delay in initiating the collaboration meetings impeded agreement on initiatives to ensure compliance with the Consent Decree and resulted in what Plaintiffs believe is an unresponsive Report.

The collaboration meetings that eventually took place were, as the District noted, productive. The focus on developing plans allowed the parties to discuss critical issues and contemplate various strategies. However, in the end, the District largely failed to synthesize and formulate these collaboration discussions into its Report - including, most critically, Plaintiffs' repeated request for measurable interim steps in each area. The District also failed to incorporate some of the Monitoring Team's suggestions. For example, the District did not adequately address the Monitoring Team's request to include "back-up" steps if its strategies failed.

This Court's July 31 Order expressed concern with the District's compliance with the Consent Decree timeline but gave the District the opportunity to respond with an explicit framework to ensure compliance. Through its submission, the District had the opportunity to propose initiatives to accelerate its efforts to reach Decree goals and objectives by 2009. While the parties should (and needed to) collaborate, it is entirely possible for the District to validly disagree with Plaintiffs'

recommendations and put forth its own detailed initiatives. Yet, the District elected to submit a Report with many previously attempted and sometimes failed strategies or new strategies with inadequate monitoring provisions. The District failed to seize the opportunity provided to show the Court it can reach the targets and goals by 2009 and avoid any possible Decree extensions.

## V. CONCLUSION

Plaintiffs should not bear the burden of the Defendant's non-responsiveness to evidence of ineffective initiatives that deprive African American students of the remedial benefits to which they entitled under the Consent Decree, and request that the Court take that delay into consideration in determining the District's compliance.

Plaintiffs do not desire to be at odds with the District. Plaintiffs admire and respect this administration's belief that all children can learn. The parties clearly differ, however, in how to reach, and how to develop plans to help the parties accelerate efforts to achieve, Consent Decree goals, especially by 2009. In a spirit of continued collaboration, Plaintiffs therefore request that the District review Plaintiffs' Exhibit A closely to determine if it can voluntarily agree to Plaintiffs' (and the Monitoring Team's) suggestions and recommendations.

Respectfully submitted,

s/ Carol R. Ashley
One of Plaintiffs' Attorneys

Date: October 6, 2006

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 6, 2006 she caused a copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANT BOARD OF EDUCATION'S REPORT TO COURT OF CONSENT DECREE TARGETS AND STEPS, to be served by Electronic Court Filing, electronic mail, and overnight delivery upon the following counsel of record:

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