Introductory Comments

October 19, 2006

Sa'Da Johnson et al.

v.

Board of Education Champaign Community Unit School District #4

Case No. 00-1349

I was assigned this case in late 2000, approximately 4 years after the involvement of the United States Department of Education's Office of Civil Rights (USOCR) and the ensuing efforts by the Board of Education of Champaign Community Schools Unit #4 (the District) to resolve the student assignment and educational equity issues being raised by the black community.

Consistent with the complaints of the black community that their children were being denied a quality education

because of perceived discriminatory policies, procedures, and practices of the District, on June 15, 1998, the USOCR entered into a Resolution Agreement with the District to respond to those complaints by implementing policies, practices, and procedures to enhance the participation and educational achievement of its black students. This Resolution Agreement is part of the Consent Decree and is available for inspection on the Court's web site. **(SHOW SLIDES OF WEBSITE)** I encourage every resident of the District to read this document to obtain an unbiased understanding of the past history of the educational disadvantages long experienced by the black students of this District. For those who will not take the time to read this document let me quote from this early portender of the Consent Decree. In the introductory paragraph of the Resolution Agreement, found at Exhibit B of the Consent Decree, **(Show Slide)** without admitting any legal

liability for the educational condition of minority students, the District obligated itself to take "appropriate actions . . . to further its commitment to ensure that minority students are provided equal access to high standards, high quality education in accordance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq and its implementing regulations at 34 C.F.R. Part 100."

In furtherance of the Resolution Agreement the District Commissioned an independent educational equity audit of how black students were being treated, and hired the nationally renowned educational consultant from Harvard University, Dr. Robert Peterkin, to perform the audit. Dr. Peterkin's report, dated June 30, 1998, was also made part of the Consent Decree at Exhibit C, and is posted on the Court's website. Again, I urge you to read the Audit Report and the Memorandum of Understanding

between the District and the Plaintiffs dated July 6, 1998 found at Exhibit D of the Consent Decree. This Memorandum of Understanding adopts Dr. Peterkin's audit as the roadmap for showing how things were and what needed to be done to ensure equal access and quality education to minority students. The introductory paragraph of the Memorandum of Understanding, in speaking of the Education Equity Audit states: **(Show Slide)**

> The parties further agree that data and the results of Dr. Peterkin's audit provide sufficient factual basis to conclude that the District's practices are a substantial cause of conditions which have a significant disparate impact on minority students in the areas identified in Attachment 1, Paragraphs 5 through 13, and that remedial action is necessary. Furthermore, the parties concur that some District practices available either are not educationally justified or that there are alternative practices available which are of at least comparable educational soundness and which would not have the disparate impact caused by the present practices.

An Educational Equity Implementation Plan, found at

Exhibit E of the Consent Decree, was adopted by the District, that established a "comprehensive framework for improving the District's educational programs and opportunities in order to 'close the achievement gap'." Again, this document is part of the Consent Decree and is available on the Court's website. The plan addressed six major educational categories: (1) school climate and discipline; (2) special education; (3) gifted education; (4) student performance; (5) Columbia Center and Alternative programs; and (6) hiring and staff placement and retention. Most importantly within each category the Plan identifies the overall objective, establishes flexible goals and innumerates actions to be performed. **(Show Slide)** The objectives identify the broad outcomes or results which the District is striving to achieve. The flexible goals establish standards or measurements to determine whether the District is achieving its

objectives. The actions constitute the various activities which the District will undertake to meet the flexible goals. Now a word about these flexible goals which parallel the "racial fairness guidelines" established under the Controlled Choice Agreement–that being a maximum of plus or minus 15% of the proportionate racial composition of the student population.

Again, I quote from the Education Equity Implementation Plan. See Part I Section B (Exhibit E of the Consent Decree): **(Show Slide)**

> The racial fairness guidelines contained in this Plan reflect the guidelines identified in the Controlled Choice Agreement. However, the guidelines set forth in this Plan's flexible goals are not quotas. In his April 14, 2000 letter to the Superintendent, District consultant Dr. Robert Peterkin stated clearly that the plus or minus 15 % racial fairness guidelines contained in the flexible goals do not "commit [the District] to a rigid quota," but rather "allow the [D]istrict to grow toward achievement" of the Plan's objectives by striving to meet the highest standards. Of

> course, the District will aspire to reach the maximum levels of equity for the plus or minus 15 % goals and other standards.
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> In sum, the intent of the Plan's flexible goals and actions is for the District to make progress in each area each year, ultimately achieving the plans objectives. If the actions are not meeting the goals, and thereby the District is not achieving its objectives, the Plan contemplates that the parties will reevaluate the actions and goals and, if appropriate, modify them. This process of adaptation and compromise is precisely the approach by the parties in the development of this Plan. The parties recognize that the Plan constitutes a dynamic, not a static process. The Plan establishes a framework for the District, its staff and all segments of the Champaign community to work together in good faith to accomplish the Plan's objectives.

The Court shares the view of the Court Monitor that the racial fairness guidelines are a benchmark of reasonableness and a negotiated measure of progress. However, some may perceive the racial fairness guidelines as a quota, a number without statistical validity, or at the very least, an unrealistic and unattainable burden

placed on the District. To some extent, the Court understands these sentiments if not for the clear acknowledgment in the Consent Decree that the District cannot eliminate, and is not being asked to eliminate, impediments to black student achievement due to factors beyond its control, such as parental educational attainment and poverty. That is why the Implementation Plan speaks of eliminating "unwarranted disparities"–"unwarranted disparities" being those disparities resulting from policies, practices, and procedures within the Control of the District. As stated in the Memorandum of Understanding between the District and Plaintiffs (found at Exhibit D of the Consent Decree):

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> The Plan will address elimination of **unwarranted disparities** with respect to both the availability of educational services to minority students, and also the participation and performance of minority students in such services. The Plan will also be

designed to achieve the other aspects of educational equity for African American students identified in Attachment 1, and to achieve systemwide and school-level staff diversity.

After earnest negotiation over a period of 2 years, Plaintiffs and the District reached the agreement codified as a Consent Decree under the auspice of this Court on January 29, 2002. By involving the Court, the Parties invoked the protection of law and this Court to ensure that the District honored its agreement. Unfortunately, circumstances compel an inquiry as to the state of compliance at this juncture, with less than 3 years remaining before the Consent Decree is set to expire. We have thus passed the midway point of the Consent Decree but, regrettably, not necessarily the midway point of full implementation. Like many of you, the Court wishes the situation was otherwise, and the District was again left to its own timetable in complying with its legal and

contractual obligation to provide the same quality education for all its students. However, as the Court Monitor recognized in his last monitoring report, significant obstacles to full implementation remain, and whether those obstacles are appropriately dealt with over the next few years, will almost certainly determine whether the current decree will expire peacefully.

With this in mind, I would like to comment on three areas. First, I want to clarify the legal framework of the Consent Decree. Second, I want to talk about the briefs submitted by the Parties in contemplation of this hearing. Third, I want to talk about how I feel about some of the successes of the Consent Decree and I have asked Dr. Peterkin to address some of the challenges that remain.

Legal Framework of the Consent Decree

Underlying the Consent Decree is a civil rights

complaint charging the District with the denial of the state and federal constitutional and statutory rights of black students to equal educational opportunity and the elimination of racial discrimination in school assignments and educational equity issues. However, I want to make a distinction between what I see as the legal dispute and the broader societal issues involved here. The purpose of this litigation is to redress past practices by the District which admittedly have had a disparate impact on African American students. The goal of the Consent Decree is to make African American students whole for things that happened in the past; things that may not have been due to the School Boards's past illegalities but rather to its indifference, or perhaps exacerbated by other factors beyond its control such as housing patterns, poverty, parents' education and employment, family size, parental attitudes and behavior, and peer-group pressure. To the

credit of the School Board, regardless of the cause, it recognized that over the years, its black students had been short-changed and denied equal educational opportunity, and it made a solemn promise to eliminate from the equation its share of responsibility for the result. The School District was not lawfully compelled to enter into the Consent Decree or to make agreements beyond what the law may have required under the circumstances. However, the indicia of one's commitment to fairness and doing the right thing is not circumscribed by what the law requires; rather its boundaries are co-terminous with what the law does not prohibit.

In this regard, the Consent Decree is a litigation settlement agreement. Inherent in any settlement, is compromise. Each Party to this case has sacrificed something valuable in order to reach the compromise embodied by the Consent Decree. Each Party has also

received some benefit from this compromise. For example, both Parties have avoided the costs of full blown litigation. Many of you are probably familiar with the figures associated with the Rockford litigation–the Rockford District spent upwards of $280 million dollars in that case $20 millions dollars of which went to attorneys. And these numbers have not been adjusted for inflation. The Court is aware of various editorials and other commentary about the expenses for the court monitor and attorneys fees of Plaintiff's and Defendant District's counsel which to some may be considered inordinate. Even if these expenses were of the magnitude suggested, the amount pales in comparison to the anticipated costs of litigation, which would have realized no immediate benefits for the District or the Plaintiffs (benefits which clearly have happened under this process) but rather greater community upheaval and divisiveness.

To maintain the integrity of the voluntary process of negotiated settlements, compromise agreements such as the Consent Decree must be honored. Think how you would feel if, four years into a negotiated agreement the other side decided to back out. I'm not saying that that is what is happening here, but what I am trying to illustrate is that the Consent Decree is like any other private agreement in that regard – it was reached through compromise. However, there is one important difference: the Parties made their agreement a public affair by seeking and obtaining the imprimatur of the Court. This is an involvement the Court did not seek or desire, and would happily retire from the educational process as early as practical and appropriate. Throughout its involvement, the Court has been reluctant to interpose its opinion or judgment as to the educational needs of the District's black students or the manner in which they are to be met. Most assuredly, this is the

legal prerogative of the elected School Board tempered by its obligation to the Champaign community, including its black citizens, to see that all applicable laws are followed and equal educational opportunities are afforded all children within the district.

Now, in addition to the legal dispute, there are obvious societal concerns involved here as well. For example, I would suggest that the statistical disparity in educational performance between African American students and Caucasian students, should be a societal concern and that actions to the extent practical should be taken to remedy this disparity in the form of educational reform. But, this statistical disparity is not actionable in a judicial forum until it is linked to some type of legally cognizable discriminatory practice, and even then, the remedy would be tied to the discriminatory practice and not to the more general societal concern. But, while a

school district is not legally obligated to remedy statistical disparities resulting from factors outside of its control, it may want to do so to address societal concerns. Although not under a legal duty the District may have a moral duty to alleviate the lag in the educational achievement of black students where, like here, a case can be made that this gap would surely have been ameliorated if not for the benign indifference of the District over the years. Anyone reading the Educational Equity Audit commissioned by the District in 1998 cannot avoid the conclusion that African American students were not receiving a quality education. In today's world we cannot afford an undereducated populace, we cannot afford a racially divided nation. To successfully confront the worldwide dangers we face as a nation, whether it be global economic competition or terrorism, we must overcome our racial attitudes and act on our common heritage as

Americans rooted in the concept of fairness and justice for all citizens.

One great thing about negotiated settlements are that Parties can agree to do things that a Court cannot order them to do. In the Consent Decree, the District has agreed to do certain things to "eliminate, to the greatest extent practicable, unwarranted disparities" in the educational performance of African American students. Could this Court have ordered the District to do this had Plaintiff proved its case? That would depend on the type and extent of any proved discriminatory practices. So, the answer is--we don't know--because this case was not resolved in Court-it was resolved out of court through a negotiated settlement. Does it matter? Well, legally no, because Plaintiffs are entitled to the benefit of their bargain. But, if you accept that the educational performance disparities evident in this case are a

societal concern that needed to be addressed–then the Consent Decree was a win-win situation because you remedy the societal concerns along with the legal dispute.

Now, I realize there has been a lot of public debate in this community over the wisdom of the Consent Decree. I don't want to comment on this discourse, except to clarify the nature of the agreement. While the agreement has some flexibility by its terms, it contains binding legal obligations that must be fulfilled. One of the provisions of the Consent Decree is that this Court retains jurisdiction to enforce the obligations agreed to within it. So, if either Party fails in good faith to meet an agreed-to obligation, the Court has the power to "compel implementation."

The Parties Briefs

Now with that in mind. We are here today to discuss the District's plans to meet its agreed-to obligations

before the Consent Decree expires at the end of the 2008-2009 school year. I ordered briefing on this issue in the hopes of receiving a "road map" for bringing about successful implementation of the Consent Decree within the specified time frame. In my judgment, that is not what I got. So, I am going to give the Parties another chance, and I'll talk about that after you give your presentations. I expected collaboration between the District and Plaintiffs to produce a transparent, easily understood roadmap of where things stand today in context of where we want to be at the end of the Consent Decree and how we intend to get there during the remaining three years, and who will be held accountable for accomplishing the responsibilities under the Consent Decree.

The main elements lacking from the District's brief were transparency and specificity. Although the brief provides a decent summary of the successes and challenges

of the District's implementation of the Consent Decree, for most areas, the brief lacks the specific details necessary to critique or evaluate the viability of the District's plan to address the remaining challenges. Whether this is by design or oversight, or my linguistic inability to decipher the information, it will need to be resolved.

Successes of the Consent Decree

Finally, I want to recognize some of the successes of the Consent Decree.

The first success is Controlled Choice. According to the most recent monitoring report, Controlled Choice has been successfully implemented at the elementary and middle school levels. The District reports that for the 2006-2007 school year, more than 95% of participating families received one of their top three school choices. Further, I am very impressed with the movement towards a negotiated

resolution to the challenges regarding the North-Side seating capacity objectives of the Consent Decree which are related to the Controlled Choice Plan. I believe the efforts that have been made towards resolving this particular issue will, in the end, demonstrate the value of compromise to both sides of this dispute. Even if you disagree with the ideas involved in the "Great Campus Plan," you must recognize the value that this type of collaborative "out of the box" thinking has when you are faced with challenges like the seating capacity challenges faced here. It should be noted that, in the spirit of collaboration, Plaintiffs brought the "Great Campus" concept forward for consideration.

Also with regard to Controlled Choice, I want to recognize the success of Stratton Elementary School, and I want to congratulate the District, and in particular Sandra Duckworth and her staff, on the statewide

recognition of the achievements made at Stratton. Now when I hear the reports of success at Stratton, two things come to mind. First, I hope that the District recognizes the value that Sandra Duckworth brings to this school and that her value to the District will almost certainly be recognized by other school districts confronting these issues–especially considering the statewide attention she has received. One of the challenges faced by the District in fully implementing the Consent Decree is related to minority staff recruitment and retention–and I think retention is the key here. I don't think people like Sandra Duckworth are going to stick around if they are not appreciated both by the employer and the community.

The second thing that comes to mind is "learning from example." Given the success of Stratton, I think the District has some obligation to look at those successes for examples that can be implemented in other schools

within the District. For example, I understand from the Monitor that Zanita Willis was mentored by Sandra Duckworth and it is expected that she will carry this type of leadership example to Carrie Busey Elementary School as its new principle. I don't feel that this is being done to the degree that it should be. There must be other Sandra Duckworths out there given the proper incentives.

I want to recognize the improvements made in aligning the curriculum, and in particular at the elementary level. It is my understanding that Deputy Superintendent Dorland Norris supervises this process, as well as professional development and program evaluation. I would like to recognize her accomplishments in these areas.

Charting a new direction toward the goal of educational equity for all students within the district requires leadership at the top, and the Court is pleased that the School Board has accepted the challenge and is to

be commended for hiring as superintendent, Arthur Culver, who appears to be enthusiastic and committed to the goals of the Consent Decree. I want to recognize Superintendent Arthur Culver.

The Consent Decree is a daunting but not an overwhelming undertaking. No man could do it alone–I want to credit Superintendent Culver for finding people like Dorland Norris and Sandra Duckworth, and utilizing their individual talents in ways that have worked to achieve some of the successes we have seen.

In addition, he recognized the talented people who were already employed by the District when he arrived, and gave them additional opportunities to achieve. For example, Mary Mueller who is the Director of Gifted and Talented Education was already committed to the ideals of the Consent Decree. Superintendent Culver recognized and supported her commitment which has lead to an increase in

the participation of African American students in gifted and talented programs.

I wish I had time and knowledge to individually identify each other individual who has contributed to the Consent Decree successes, and I realize that many District employees have contributed in important and significant ways.

Unfortunately, many excellent educators labor under the burden of mistrust prevalent among black parents–many who are products of this District--who still perceive the District and its teachers as not really caring whether their children learn or not. In my judgment the Consent Decree has brought about modest change in this attitude, especially at the elementary school level.

I want to speak to the parents out there and particularly the African American parents, and call upon the strengths that we used to confront the segregation

that we faced back in the old days. That means we will send our kids to school fully expecting a quality education everyday. At the same time I feel compelled to call upon the teachers to recognize this effort, and believe these kids want to learn, and to teach these kids to the level of excellence they deserve, adjusting your teaching practices and classroom management in what ever way is necessary. This is the social contract that public education makes with its citizens, this is the contract that enabled me to succeed to this level even despite segregation.

The task of the District is indeed daunting as it must come to grips with and remediate the educational consequences of years of indifference to the plight of its minority students. However, the successes already mentioned prove that it can be done with committed leadership from the top down and in each individual

school. The Consent Decree has fostered the engagement of the public in this educational journey and the Court expects their fair-minded support for the objectives of the Consent Decree once they understand the demonstrated need. By the same token, this Court expects the District to expend its resources wisely in a manner that fully satisfies the requirements of the Consent Decree while at the same time providing a quality education for all students. The Consent Decree contemplates this.

Additionally, the Plaintiffs have an obligation under the Consent Decree to collaborate with the District in achieving the goals of the Consent Decree, and through their representatives and counsel they have done so. For example, the aforementioned collaboration on the "Great Campus" idea, participation on the PIC, suggestions for modification of district practices to better meet the needs of African American students, and to the countless

volunteer hours spent on various District committees.

Among other things, minority parents must do a better job of ensuring that their children diligently attend school, work hard, and strive for excellency. Some parents may be turned off by what has happened in the past. In order for the Consent Decree to fully bear fruit, these parents must be willing to once again trust their children to the schools. And the schools must not betray that trust, but use it to involve the parents to the maximum extent in educating children.

One final concern is the public perception of what the Consent Decree means to this community in terms of benefitting all children through its focus on upgrading the achievement level of some. New and educationally sound techniques and practices for the under-achiever can not help but benefit high-achieving students. Likewise, the increased competition resulting from closing the

achievement gap must surely enhance the educational process for all students. It behooves the District to clearly communicate the value and aspirations of the Consent Decree to the public and the benefits to the whole community when the educational train arrives at its destination as contemplated by the Consent Decree.

This public hearing is an opportunity to enhance this process by having public commentary on the District's itinerary.