All pages were checked against paper copies and are as complete as the paper copies.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

FRANKIE PRATHER, et al.	)	
Plaintiffs,	)	
and	)	CIVIL ACTION FILE
ASHLEY AND B'RANDI ARMSTRONG, et al.,	)	NO. 11946-WCO
Plaintiffs-Intervenors,	)	
v.	)	
ROBERT R. FREEMAN, et al.,	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION, TO ENFORCE THE MANDATE OF THE COURT OF APPEALS, AND TO ENFORCE THE ORDERS OF THIS COURT

As has happened before in the recent past, the current class representatives (hereinafter "Plaintiffs") have filed a motion requesting the Court to intervene in the Defendants' operation of the DeKalb County School System ("DCSS") shortly before the beginning of a new school year. Their latest request for such intervention is the most intrusive one yet. The relief requested is not simply intemperate, it is irresponsible. If granted, Defendants would essentially be prohibited from making many important decisions concerning the operation of the DCSS "without

prior notification to and approval of" not only the Court, but Plaintiffs as well.

Beside the fact that the assumption of this kind of authority by the Court alone would invade areas of local school operations that heretofore have been held by the Supreme Court and the old Fifth Circuit Court of Appeals to be within the competence of local school authorities in the first instance,[1] giving Plaintiffs what would amount to a veto power over any changes in "school attendance boundaries" or areas or in "the grade articulation or purpose of any school" within DCSS would prove to be totally unworkable in practice. For example, if Plaintiffs' motion were granted, Defendants could not make any substantive changes in their existing magnet programs nor could they initiate any new magnet programs without first notifying the Court and the Plaintiffs of their plans and obtaining the approval of both for those plans. If Plaintiffs objected to any aspect of such plans, their "disapproval" would be sufficient to prevent the implementation of that aspect regardless of what the Court thought. Such an unfettered veto power would be unprecedented in the history of desegregation litigation in this country and would quickly lead to operational gridlock as far as the conduct of the affairs of the DCSS was concerned.

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[1] See Milliken v. Bradley, 418 U.S. 717, 741-42 (1974) and Lee v. Macon County Board of Education, 584 F.2d 70, 82 (5th Cir. 1978).

In addition, the literal wording of Plaintiffs' motion indicates that they want to prevent Defendants from "spending any proceeds from the 1989 school bond fund ... instituting any changes in programs, assignments of teachers and principals ... [and] committing the expenditure of any major portion of funds for new programs, including the Magnet Programs" without any qualification whatsoever. The effect of such relief, if granted, would be to freeze the operation of the DCSS in these crucial areas without providing any method for unfreezing its operation in them or replacing existing procedures with a scheme which would allow the system to continue operating. The procedural and practical problems that would be created by such a state of affairs are obvious. The dollar cost to the taxpayers of the necessary consequences of "preventing defendants from spending any proceeds from the 1989 school bond fund" alone would be tremendous.[2]

Even if Plaintiffs' motion were interpreted to permit the Court to override any objection Plaintiffs may have to a proposed course of action by Defendants after "prior notification" to the Court and Plaintiffs, the expenditure of judicial time and

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[2] All DCSS contractors working on projects budgeted from the recent bond issue would have to be notified immediately that payments to them would be suspended, and work would cease. Damage claims, shut-down and startup costs would all be laid at the school system's door.

resources that would be necessitated by requiring Defendants to give "prior notification" to the Court and Plaintiffs and to obtain the specific "approval" of the Court alone for every such proposed course of action would be tremendous. As the Court has remarked on many occasions in the past, judicial time and resources are a scarce commodity and should only be expended where absolutely necessary.

In the 22 years that this desegregation case has been pending the degree of Court oversight of school operations now being demanded has never been found necessary. The factual basis upon which Plaintiffs rest their contention that such an expansion of the Court's oversight role is now necessary, is filled with misleading and inaccurate statements, and in some cases, outright untruths.

Regardless of Plaintiffs' motives for filing their motion at this particular time,[3] there is simply no factual basis for it. To the extent Plaintiffs rely on Defendants' alleged failure to provide them with "relevant information" in a timely manner, they have other legal means for redressing this alleged wrong. In fact, prior to filing this motion they made use of these other legal means by filing a Motion to Compel Discovery, Enforce Court's Orders, Convene Discovery Conference, and Appoint a Monitor to Assure Flow of Information ("Motion to Compel"). The Motion to Compel has already been responded to in writing and will not be addressed in this response except where necessary to show a misstatement of fact by the Plaintiffs in their supporting brief for this motion.

To the extent the motion for a Preliminary Injunction is based on Defendants' alleged failure to notify the Court or

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[3] This most recent motion from the current class representatives, with its criticisms of this Court, can be seen as an effort to deflect attention from the attack by class members on the adequacy of their representation of the class which is scheduled to be heard beginning on August 6, 1990. The first time that matter was set down for hearing the current class representatives came forward with a motion to add NAACP as a plaintiff in their camp. That motion was directed to "heading off" the Armstrong Intervenors, (deposition of Roger Mills, 6/12/90, 161:20-161:25), and led to postponement of the June 25 hearing date. This latest motion also seeks to displace the crucial class representation issue. In fact, the current class representatives seem to be trying to win the representation dispute by default through the current motion.

Plaintiffs of certain actions taken by Defendants with respect to the operation of the DCSS since the entry of the Order on their motion for final dismissal (the "June 30, 1988 Order"), Plaintiffs have not referred to any legal precedent or prior order of this Court which specifically requires Defendants to provide Plaintiffs or the Court with prior notice of those actions. In addition, Plaintiffs' characterizations of Defendants' actions in this regard are misleading and inaccurate for the most part. Plaintiffs also ignore the fact that, since the entry of the June 1988 Order, Defendants have followed the same practice with respect to notifying the Court and the Plaintiffs of their actions that they followed prior to the entry of that order.

Finally, in their rush to have the Court act on the mandate from the Eleventh Circuit Court of Appeals, Plaintiffs ignore the very real possibility that the Defendants' Petition for a Writ of Certiorari will be granted by the Supreme Court and the decision of the Eleventh Circuit either modified or vacated. The petition, along with the petitions in cases from Topeka, Kansas, and Denver, Colorado, are being held pending a decision in Board of Education of Oklahoma City Public Schools v. Dowell, Case No. 89-1080. It is obvious that the Supreme Court intends to issue its first major school desegregation decision in over ten years and that whatever that decision is it will, in all likelihood,

have effect in cases other than Dowell. If the law applicable to this case were to change after this Court had acted to impose mandatory remedial measures on Defendants, it is entirely possible that the finite resources of the DCSS will be "committed wastefully and needlessly and irrevocably." The Court recognized as much in its April 25, 1990 conference with the parties[4].

The remainder of this response will be devoted to addressing the various factual statements made by Plaintiffs in the brief supporting their motion to point out where those statements were misleading, inaccurate, or flatly untrue and why.

PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiff's inaccurate factual statements begin with their motion. In it, they characterize the June 1969 Order entered by the Court as requiring the Defendants "to take all actions 'with the objection of eradicating segregation and perpetuating desegregation.'" A review of the page of that Order cited by Plaintiffs to support their characterization reveals that the

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> [4] The Court: Okay. Well, it is frustrating to continue to wait on that. Obviously if cert. is denied, then all stops are out and this Court's moving ahead with what it must do. If cert. is accepted, we are still in a state of uncertainty, probably for several months or a year, until the case is argued and decided. But if cert. is accepted, I have some concern that I am going to start ordering a lot of things that may not be necessary.

Transcript of the April 25, 1990 conference, page 7, line 19 through page 8, line 1.

language concerning the objective to be pursued by the Defendants predecessors in interest refers only to "locating and designing new schools ... expanding existing facilities, and ... consolidating schools." Moreover, the Court recognized at that time that this objective could properly be pursued only "[t]o the extent consistent with the proper operation of the [school] system."[5]

The only completely accurate factual statement contained in Plaintiffs' supporting brief concerns the failure of Defendants to deliver to them a particular report concerning "staff vacancies and assignments."[6] Defendants assume this report constitutes part of what Plaintiffs have referred to as the "Compliance Report" and that this term has reference to the various reports required by the provisions of the June 1969 Order. These reports were the subject of an earlier motion by Plaintiffs.[7] In that motion, Plaintiffs complained that Defendants had not filed any of the reports required by the June

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[5] Such a practical limitation on the pursuit of this objective was implicitly endorsed by the Eleventh Circuit Court of Appeals in its decision concerning the Court's initial disposition of Plaintiffs' motion to enjoin Defendants from expanding and constructing new facilities in an effort to relieve overcrowding at Redan High School. Pitts v. Freeman, 755 F.2d 1423, 1427 (11th Cir. 1985).

[6] Plaintiffs' supporting brief, page 2.

[7] See Plaintiffs' Motion to Enforce Court's Orders filed on or about July 12, 1989 (the "July 1989 Motion to Enforce").

1969 Order since the entry of the June 1988 Order. Plaintiffs sought to have Defendants file those reports for the school years 1988-89 and 1989-90. Defendants' response to that motion indicated that it was their understanding that the June 1988 Order superseded the reporting requirements imposed by the June 1969 Order.

The July 1989 Motion to Enforce was disposed of by an order of the Court entered on November 16, 1989 which did not address the question of whether the Defendants' understanding of the effect of the June 1988 Order was correct. Instead, it denied the July 1989 Motion to Enforce with respect to the reports required by the June 1969 Order as moot based on a telephone conference held the day before in which counsel for the Defendants stated the records sought by the Plaintiffs were available and would be supplied to them. This was done with respect to student enrollment information, but Defendants' investigations with respect to this pending motion have revealed that Plaintiffs' counsel never received the reports concerning faculty members. Defendants have determined that this failure was an oversight on Defendants' part, for which they apologize to Plaintiffs and the Court. While Defendants wish to point out that the far more important faculty information for the period in question had already been provided to Plaintiffs in the September 29, 1989 Report to the Court on balanced staffing, Defendants

acknowledge that this mistake should not have been made. A true and correct copy of the information required by the June 1969 Order for faculty vacancies and transfers is attached hereto as Exhibit "A". The Defendants regret any inconvenience this oversight may have caused.

Plaintiffs' complaint concerning the "report on anticipated student enrollment" is apparently directed to the information provided to Plaintiffs' counsel for the upcoming 1990-91 school year.[8] Plaintiffs' unqualified reference to "Magnet Programs" is misleading in that the report provided to Plaintiffs' counsel did include anticipated student enrollment in currently existing "Magnet Programs". It did not take into consideration anticipated student enrollment in those "Magnet Programs" which will be initiated during the 1990-91 school year. However, that information was provided to the Court and to the Plaintiffs in the "Report to the Court on Status of Compliance with Court of Appeals Mandate, Junior High Plans, and Bond Fund Expenditures" filed by Defendants on March 30, 1990 (the "March 1990 Report"). The enrollment period for these new "Magnet Programs" did not close until long after the anticipated student enrollment report was prepared. Thus, it would have been very difficult, if not impossible, for Defendants to include any useful information concerning the anticipated student enrollment in those "Magnet

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[8] Plaintiffs' support brief, p. 2-3.

Programs" when they had no clear idea from which schools the students for those programs would come. Plaintiffs had all of the information available concerning anticipated student enrollment in both the currently existing and to-be-initiated "Magnet Programs" when they received that report for the 1990-91 school year.

The same sort of thing happened with respect to the transfer of the entire sixth grade of Chapel Hill Elementary School to Murphy Candler Elementary School. At the time the anticipated student enrollment report was prepared, no decision had been made on how the overcrowding situation at Chapel Hill Elementary School would be handled. At the time of the report there had been no affirmative decision to move any of the sixth grade students to any other school, therefore it is difficult to see how Defendants could have done anything other than show those children as attending that school. Defendants stand ready to present evidence on the desegregative resolution of the overcrowding problem at Chapel Hill Elementary.[9]

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[9] The solution to the problem was agreed on after extensive consultation with representatives of the parents of the children affected and involves the temporary transfer of the sixth grade at Chapel Hill, a predominantly black school, to Murphey Candler, a school with a significant white student population. This is a temporary solution until the Chapel Hill Junior High School can be built and opened for student use, which should occur within the next two years, and will have the effect of decreasing the percentage of black students at Chapel Hill Elementary School as well as placing the black sixth graders from Chapel Hill in a more integrated environment. Similar temporary transfers of students have been done by the Defendants in the past without

As stated above, Defendants have filed a written response to the Motion to Compel concerning the alleged failure to answer adequately the interrogatories served in March 1990 (the "March 1990 Interrogatories"). For the purpose of responding to this motion Defendants simply point out that the same information concerning "school enrollments, capacities, and the M to M Program" was not requested by Plaintiffs' counsel in her letters to Defendants' counsel, the March 1990 Interrogatories and the Georgia Open Records Act request by Roger Mills.

For example, Plaintiffs' counsel initially requested information concerning "M-to-M enrollments," which was later clarified to mean "the numbers of students <u>leaving</u> which schools as well as the number of students <u>received</u> at which schools."[10] The March 1990 Interrogatories expanded this information request to include the race of the students participating in the program during the 1989-90 school year, the projected number of seats available for M-to-M students in the upcoming 1990-91 school year at each school, the schools that will be closed to the M-to-M program for the 1990-91 school year, the reasons why, and any "limitations on the program for the 1989-90 school year, and any projected limitations for the 1990-91 school year."[11] In

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objection (e.g., to accommodate asbestos removal activities).

[10] Motion to Compel, Exhibits A and C.

[11] Motion to Compel, Exhibit E, Interrogatory nos. 6, 8, and 22.

contrast, Mr. Mills Open Records Act letter asked only for "[d]ocuments showing for each school how the ceilings for M-to-M students were calculated and how certain schools were excluded from M-to-M student transfers".[12]

Similarly, Plaintiffs' counsel made no request for information concerning the capacity of each school within the DCSS, which was the information requested by Mr. Mills in his Open Records Act letter, until the March 1990 Interrogatories were served. In referring to the fact that those interrogatories "were not answered, even partially, within the thirty days required by law",[13] Plaintiffs ignore the additional fact that they granted Defendants an extension of time within which to respond to those Interrogatories and that the response was actually provided by the date on which Defendants understood it was due.[14]

Plaintiffs' statements concerning the Interrogatories they served on the Defendants in December 1989 (the "December 1989 Interrogatories") are even more misleading. Those interrogatories requested information concerning all legal fees and costs incurred by Defendants as a result of work done on their behalf by the law firm of Weekes & Candler, P.C., and

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[12] Exhibit B to Plaintiffs' Motion.

[13] Plaintiffs' supporting brief, p. 3.

[14] Motion to Compel, Exhibits F and H.

sought an itemization of the work done to incur those fees and a statement of the hourly rates paid for each attorney or other person who performed that work, as well as the hourly rates charged by these attorneys for similar work done by them on behalf of other "representative clients".

In contrast, the information requested by Francis Pauley under the Georgia Open Records Act was an "accounting of expenditures ... concerning the desegregation of the school system" since October 1989. This accounting was to include only the "payments" made to Defendants "regular Legal employees" and those made to other attorneys, as well as "fees" paid to consultants and experts who had assisted Defendants "in various ways", plus travel costs incurred by Defendants, their staff, and "the various attorneys and consultants".[15]

Defendants objected to the December 1989 Interrogatories about attorney fees as requesting irrelevant information, as well as information protected by the attorney-client privilege. There is no exception under the Open Record Act for irrelevant information, as there is under the discovery provisions of the Federal Rules of Civil Procedure. The validity of Defendants' objections to the December 1989 Interrogatories appears to have been conceded by the Plaintiffs since they have filed no motion to compel concerning them. Bringing up this dead issue now

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[15] Exhibit C to Plaintiffs' Motion.

serves only to show a misunderstanding of federal court procedures.

Plaintiffs' assertion that Defendants "have dismantled many of the magnet programs presented to the Court in 1987 in support of their 1986 Motion to Dismiss, contrary to their promises to expand such programs"[16] is simply not true. The June 1988 Order indicates that there were four magnet programs in existence at the time of the hearing on the Defendants' motion to dismiss and that Dr. Robert Freeman had testified at the hearing that the DCSS had plans to initiate magnet programs in the near future in three other schools. The June 1988 Order also indicated that DCSS had "two other magnet programs on the drawing board" and that it also operated "a number of integrated experience programs".[17] None of the then existing magnet programs referred to in the June 1988 Order have been "dismantled," and all of the magnet programs that Defendants had made plans to initiate, as testified to by Dr. Freeman, have, in fact, been initiated and are currently in existence.

The only programs referred to in the June 1988 Order that have been "dismantled" are the writing centers that had been established for 5th and 7th graders. These centers were referred to as "integrated experience programs" in the June 1988 Order and

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[16] Plaintiffs' supporting brief, p. 4.

[17] June 1988 Order, pp. 19-20.

were severely criticized by Plaintiffs in testimony given at the hearing on the Defendants' motion to dismiss as ineffective. The writing center programs were "dismantled" in part to enable Defendants to comply with the provisions of the June 1988 Order requiring the equalization of teacher experience and training in all schools within the DCSS. All of the teachers who participated in those programs have been assigned as writing specialists to the majority black schools within DCSS.

Finally, the budget for magnet and other educational enhancement programs operated by DCSS has grown from a little over 5.3 million dollars for the 1986-87 school year to a little over 24 million dollars for the upcoming 1990-91 school year. This 24 million dollar figure does not include the sums that are to be spent on the magnet programs that will be started after the start of the 1990-91 school year. These sums will total over 6.7 million dollars.[18]

Plaintiffs' reference to the resistance of Defendants to the "maximum utilization of the M-to-M Program",[19] apparently is concerned with the initial decision by the Defendants not to implement that program at a new elementary school (Pine Ridge Elementary), the availability of which for the beginning of the

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[18] All of the information concerning magnet schools referred to above is contained in Exhibit "B" attached hereto.

[19] Plaintiffs' supporting brief, p.4.

1989-90 school year was not certain until after the brochures for the M-to-M program for that school year had been printed. As was the case with respect to the portion of the July 1989 Motion to Enforce concerning the reports required by the June 1969 Order, Plaintiffs' motion to require the admission of three black students to the M-to-M program at Pine Ridge Elementary School was denied as moot, due to a satisfactory resolution of that issue by the parties.

Plaintiffs' reference to the failure of Defendants to notify the Court and them in a timely manner of changes in "school boundaries" incorrectly implies that the specific changes in "school boundaries" complained about were covered by the March 1990 Interrogatories.[20] In regard to this issue, it is important to note that it has been the standard operating procedure of the Defendants since the creation of the bi-racial committee in 1976 to approve school boundary line and attendance zone changes subject to their approval by that committee, which was then required to report any such changes to the Court.[21] In the June 1988 Order, the bi-racial committee was abolished, but the Court made no provision for the reporting of boundary line and attendance zone changes by the Defendants to any other entity.

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[20] Plaintiffs supporting brief, p.4.

[21] See Opinion and Order entered on November 3, 1976, pp. 25-26.

In its order entered on the July 1989 Motion to Enforce, the Court specifically denied Plaintiffs' request to reconstitute the bi-racial committee pending the resolution of Defendants' Petition for Writ of Certiorari to the Supreme Court.

Defendants actions with respect to approving and then notifying the Court of the boundary line and attendance zone changes necessitated by the opening of Browns Mill Elementary School in the upcoming 1990-91 school year and the anticipated opening of Salem Junior High School in early 1991 are consistent with their prior practice in this area. Under the circumstances, it is difficult to see how else Defendants' should have been expected to act in this regard. Moreover, even a cursory review of the March 1990 Report would have revealed to Plaintiffs that Browns Mill Elementary School was projected to open during the upcoming school year, and that this would require some adjustments to the existing attendance boundary lines. As pointed out by Defendants' counsel in his letter to the Court, the opening of Salem Junior High School will not necessitate a boundary line change, a fact which was also apparent given the information contained in the March 1990 Report.

As far as the March 1990 Interrogatories are concerned, the information requested in them was a description of "each attendance line change made beginning with the 1986-1987 school year." (emphasis supplied).[22] As of the date the Defendants

[22] Motion to Compel, Exhibit E, Interrogatory No. 9.

made their initial response to these interrogatories, no boundary line or attendance zone changes as a result of the hoped for opening of Browns Mill Elementary School had been "made". Plaintiffs were given information concerning all such changes that had actually been "made" by that date. In their supplemental response to the March 1990 Interrogatories, information concerning the planned boundary line and attendance zone changes necessitated by the opening of Browns Mill Elementary School was supplied to Plaintiffs.

Plaintiffs' statements concerning Defendants' specific assurances that "they would spend no bond funds nor proceed with any junior high plans" are flatly inaccurate. The assurances made by Defendants' counsel at the April 25, 1990 conference with the Court did not apply to the spending of bond money or the completion of plans for a junior high school that the Plaintiffs complain about.[23] The March 1990 Report clearly indicated that Defendants intended to use 7.5 million dollars of the first 40 million dollars of bond money for "computer enhancement" and 10 million dollars for the construction of a junior high school in the Southwest DeKalb/Cedar Grove area.[24] The March 1990 Report specifically stated that "two more junior

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[23] Plaintiffs' supporting brief, p. 6-7.

[24] March 1990 Report, p.37.

highs are currently under construction and are planned to open over the next three years", one of which was for the Southwest DeKalb/Cedar Grove area and that the DCSS "does not propose to suspend the ongoing construction projects".[25]

The 5 million dollars for the purchase of computer equipment and related materials referred to in Exhibit F of Plaintiffs' supporting brief is part of the 7.5 million dollars for "computer enhancement" referred to in the March 1990 Report. Similarly, the Chapel Hill Junior High School referred to in Exhibit G of the Plaintiffs' supporting brief is the same school identified as the Southwest DeKalb/Cedar Grove Junior High School in the March 1990 Report.

Contrary to Plaintiffs' implications,[26] the fact that commitments had already been made by the Defendants concerning the construction of Chapel Hill Junior High School and the use of 15 million dollars of the first portion of bond funds to buy computers for DCSS schools was specifically referred to by counsel for Defendants at that conference.[27] Counsel for Defendants went on to refer to the March 1990 Report as

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[25] March 1990 Report, pp. 33-34.

[26] Plaintiffs cite, out of context, to an excerpt from the transcript of the April 25, 1990 conference with the Court to attempt to support their point.

27 Transcript of April 25, 1990 conference, pp. 57-58.

containing a list of projects requiring the use of bond money to which Defendants were already committed.[28] At that time, counsel for Defendants assured the Court and Plaintiffs that Defendants would not "institute any new projects without first notifying the Court," which assurance has not been violated.[29]

Plaintiffs' statements concerning the effect on black students of Defendants' magnet programs are almost as inaccurate as their statements concerning Defendants' assurances to the Court.[30] Although it is true that in order to make room for certain magnet programs which make extensive use of computers and other sophisticated equipment some black students who attend the regular programs in the schools in question will be moved into trailers, it is also true that some students in other magnet programs will be taught in trailers and not in regular classrooms. It is reasonable to assume that at least some of the white students who participate in these other magnet programs were previously taught in regular classrooms.

Plaintiffs' assertion that all additional resources being expended on majority black schools which house magnet programs will benefit only the children in those programs is totally

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[28] Transcript of April 25, 1990 conference, p. 61.

[29] Transcript of April 25, 1990 conference, p. 61, lines 20-21.

[30] Plaintiffs' supporting brief, p. 9.

false. To begin with, most, if not all, of the majority black schools in the DCSS will be receiving additional resources other than those for magnet program-related purposes. In addition, Defendants will make every attempt to coordinate the use of magnet program-related resources and the students in them in a manner that will benefit the whole student body of the school housing each magnet program.

Plaintiffs have demonstrated absolutely no basis for their assertion that "school boundary changes, student transfers, bond fund expenditures, the implementation of Magnet Programs ...violate the clear directive of this Court's 1988 Order requiring defendants to 'assure that resources are distributed equally to all students...'".[31] The June 1988 Order required Defendants to equalize per pupil expenditures among all schools within the DCSS during the 1988-89 school year. Defendants were to file a report with the Court within two months of the end of that school year showing the progress they had made in this area. That report was filed on August 31, 1989, showing compliance with this directive.

Contrary to Plaintiffs' assertion in their supporting brief,[32] the Court entered an order on February 26, 1990, requiring Defendants to prepare and submit to the Court "a

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[31] Plaintiffs' supporting brief, p. 8.

[32] Plaintiffs' supporting brief, p. 6.

proposal describing the remedial action the Defendants intend to take by the beginning of the 1990-91 school year to comply with the Order of the Court of Appeals" and outlining "the action they intend to take on their own initiative in the future in order to achieve maximum possible desegregation." Defendants have submitted this report. It would be unproductive to consider the alleged deficiencies of the March 1990 Report until a decision is made concerning who will speak for the plaintiff class concerning those alleged deficiencies.

Until that decision is made, the Defendants will continue to comply with the Court's orders requiring the filing of reports and its commitment to the Court and Plaintiffs concerning the expenditure of the remaining bond funds. What the Plaintiffs have failed to realize is that none of the Court's prior orders require the Defendants to give either the Court or the Plaintiffs prior notice of any of its proposed actions. Defendants have voluntarily assumed such a responsibility with respect to the expenditure of additional bond funds, but will not enlarge this responsibility further unless so directed by the court.

Respectfully submitted,

WEEKES & CANDLER, P.C.

Gary M. Sams
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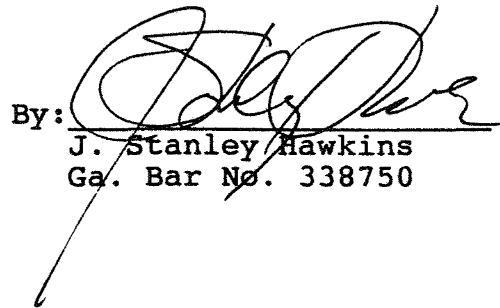
By: 
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For Exhibits "A" and "B" see Defendants' Response to Plaintiffs' Motion for a Preliminary Injunction, to Enforce the Mandate of the Court of Appeals, and to Enforce the Orders of this Court previously filed on August 2, 1990

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of the attached by depositing a true copy of same in the United States Mail with adequate postage affixed thereon as follows:

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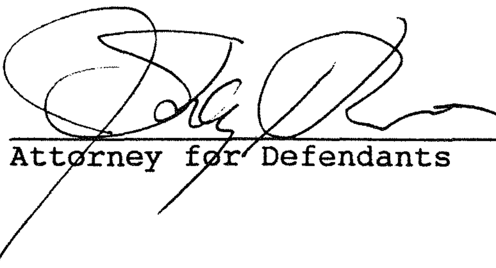
This 30 day of August, 1990.



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