ATTACHMENT A

TIMETABLE FOR PLAN DEVELOPMENT

The following timetable will be followed by the Board pursuant to Part I, §16, except as modified by agreement between the Board and the Department of Justice or as extended by leave of Court:

October 15, 1980	Appointment of principal plan development consultant(s)
November 17, 1980	Progress report to Justice Department
December 4, 1980	Identification of plan components appropriate for funding in the basic and magnet categories under the Emergency School Aid Act and submission of appropriate funding proposals to the Department of Education
December 15, 1980	Progress report to Justice Department
January 15, 1981	Progress report to Justice Department
February 16, 1981	Progress report to Justice Department
	Prior to adoption of a plan by the Board, the Board will publish the proposed plan and hold public hearings thereon.
March 11, 1981	Completion of final plan and adoption of plan by the Board. The plan will be conveyed to the Justice Department and filed with the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 80
	)	
BOARD OF EDUCATION OF THE CITY OF CHICAGO,	)	
	)	
	)	
Defendant.	)	

JOINT MOTION OF THE UNITED STATES AND THE BOARD OF EDUCATION FOR ENTRY OF CONSENT DECREE

The United States of America and the Board of Education of the City of Chicago, by their respective counsel, respectfully move that the Court promptly enter the Consent Decree which has been agreed to between the parties and filed with the Complaint in this action.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

JUDGE SHADUR

UNITED STATES OF AMERICA, Plaintiff, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendant.	)	CIVIL ACTION NO. 80 C [illegible]

MEMORANDUM OF THE UNITED STATES IN SUPPORT OF THE MOTION REQUESTING ENTRY OF THE ATTACHED CONSENT DECREE

Since April 1980, the United States has engaged in negotiations with the Board of Education of the City of Chicago in an effort to resolve its allegation of ongoing violations of the civil rights of minority students in that city. In the attached Complaint the United States contends that the Chicago School Board has segregated minority students (both Black and Hispanic) from white students and from each other. The attached Consent Decree represents the agreement between the Chicago Board of Education and the Department of Justice to settle this matter and to implement, during the 1981-82 school year, system-wide school desegregation in the City's public schools. The Consent Decree, as presented today, does not provide the details of the desegregation plan to be implemented next fall; instead, it

outlines general principles which shall guide the School Board, its staff and consultants in developing a constitutionally-acceptable desegregation plan.

This memorandum is offered to explain key provisions of the Consent Decree and to show that these provisions have solid bases in the current law governing school desegregation cases.

I. The Complaint

In its Complaint, the United States alleges that through intentional, segregative acts a substantial proportion of the public school students in Chicago have been segregated from students of other races. The United States further alleges that the Chicago School Board has engaged in a systematic effort to contain black students, and, later, to isolate white students. */

II. The Propriety of a Consent Decree

In all civil litigation, the parties are encouraged to attempt to resolve their differences through settlement. Under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, the Attorney General of the United States must determine, before authorizing a lawsuit, "that such board or authority has had a reasonable time to adjust the conditions alleged in the complaint".

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*/ Such references to the Chicago School Board include all school boards since the middle of the 1930's the period during which our proofs would begin. The current members of the School Board have served since May 1980 (with one exception) and, in our view, have inherited the present results of past discrimination.

This clear invitation to negotiation is consistent with the spirit of other Titles of the Civil Rights Act of 1964, i.e., Title VII, which even more expressly requires efforts at voluntary conciliation before the filing of a lawsuit. See, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) (Title VII); United States v. Allegheny-Ludlum Industries, Inc., 517 F. 2d 826, 846-851 (5th Cir. 1975) (Title VII).

Settling complex lawsuits before trial saves judicial resources as well as the substantial costs of litigation, in time, person-power and dollars, to the parties. In cases involving public bodies, like school boards, the incentive to settle and conserve public funds is even greater. This is undoubtedly true in Chicago where the school board has been struggling for nearly a year against insolvency.

Moreover, in school desegregation cases, prompt resolution, through an equitable and constitutionally-acceptable settlement, allows for the speedy vindication of the rights of minority children who have been denied equal protection of the laws and equal educational opportunity. Where possible, these fundamental rights should be accorded sooner, rather than later.

Finally, in public law litigation, where compliance depends in part upon public acceptance and the least possible acrimony between the parties, settlement is particularly welcome for it signifies cooperation between the parties. In this instance, the United States recognizes that the successful desegregation of the public schools of Chicago, while continuing to be an

constitutional duty of local officials, will be furthered by the willing and expeditious assistance of state and federal agencies. And the prompt and voluntary cooperation of these several levels of government will best be guaranteed through the entry of this Consent Decree.

For these reasons, both general and specific to the circumstances of this matter, we respectfully submit that the public interest will be well-served by the Consent Decree which settles outstanding differences in an equitable and mutual manner.

III. Prefatory Sections of the Consent Decree

The first five paragraphs of the Decree outline: (1) the existence of the Complaint filed by the United States and, in summary fashion, its legal bases and factual claims; (2) the acknowledgement by the Board of Education that substantial racial isolation exists within its schools and its belief that this segregation is "educationally disadvantageous to all students"; */ (3) the belief of the Board of Education that educational benefits accrue through the "greatest practicable reduction in racial isolation", and that litigation of this action would cause a substantial expenditure of public funds which "can be more appropriately used to achieve the educational goals of the school system."

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*/ The Board of Education neither admits nor denies the allegations made in the Complaint with regard to intentional racial discrimination against students.

IV. Student Desegregation

By signing the Consent Decree, the Chicago School Board has agreed to develop and implement a system-wide desegregation plan. Such plans have been implemented, under court order, in many northern and western cities */ after a finding of system-wide violation. Keyes v. School District No. 1, 413 U.S. 189 (1973) (Denver); Reed v. Rhodes, 455 F. Supp. 546 (D.D. Ohio 1978), aff'd 607 F. 2d 714 (6th Cir. 1979) cert. denied, 48 U.S.L.W. 3899; (Cleveland); Milliken v. Bradley, 418 U.S. 717 (1974); (Detroit); Columbus School Bd. v. Pennick, 443 U.S. 449 (1979) (Columbus); Morgan v. Kerrigan, 509 F. 2d 580 (1st Cir. 1974) cert. denied, 421 U.S. 963 (1975) (Boston); Dayton Board of Ed. v. Brinkman, 443 U.S. 526 (1979) (Dayton).

In fashioning system-wide desegregation, courts have been guided by Chief Justice Burger's statement in Swann v. Charlotte-Mecklenberg School Board, 402 U.S. 1 (1971), "Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations", but that exact racial balance in each school building is not required. The fashioning of a feasible and constitutionally acceptable plan is left, in the first instance, to local officials who possess a better sense of their own city than does the Department of Justice. More important than creating racial balance at every school is the demonstration that the

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*/ In these cities, there had been no history of statutorily-required racial separation in the schools.

system has desegregated to the maximum extent feasible and has eliminated state-maintained black or white schools in favor of "just schools".

The parties agree that a comprehensive desegregation plan may result in the maintenance of some one-race minority schools. In such cases, the school district will justify the racial compositions of these schools and explain why they have not been included in the student reassignment section of the desegregation plan. Where such one-race schools remain, the School Board will implement "educational and related programs for any black or Hispanic school remaining segregated." The Supreme Court expressly approved this remedial and compensatory education in Milliken v. Bradley, 433 U.S. 267, 277-78 (1977) where Justice Powell, writing for the majority stated, "Pupil assignment alone does not automatically remedy the impact of previous unlawful educational violations; the consequences linger and can be dealt with only by independent measures".

The Board of Education has recognized that a number of techniques may be used to foster desegregation. These include voluntary techniques like magnet schools, permissive transfer programs and the clustering and pairing of school buildings. Should a combination of such voluntary measures, as well as mandatory reassignments which do not entail transportation, fail to provide the maximum practicable desegregation, mandatory reassignments and transportation, at Board of Education expense, will be components of the desegregation plan. Swann, supra, at 18;

Clark v. Board of Education of Little Rock, 449 F. 2d 493 (5th Cir. 1971), cert. denied 92 S.Ct. 954. Other cities have successfully mixed voluntary and mandatory desegregation techniques and have offered parents and students desegregative choices as an alternative to mandatory reassignment. In devising any mandatory transportation plan, the parties recognize that "no student shall be transported for a time and distance what would create a health risk or impinge on the educational process". Cisneros v. Corpus Christi Independent School Bd., 467 F. 2d 142 (5th Cir. 1972).

Since the creation of stably desegregated schools is the goal of the desegregation process, the parties have agreed that students presently in stably desegregated schools may be exempted from reassignment. Moreover, if the School Board can show that a school is becoming stably integrated through demographic changes, that school's students may be exempted from mandatory reassignments.

The parties agree that the desegregation plan should not exclude any ethnic group. Both parties recognize the legal and practical importance of bi-lingual education, Lau v. Nichols, 414 U.S. 563 (1974), and agree that student reassignments shall be made in a manner which ensures the continuation of necessary bi-lingual services for individual students.

In reducing racial isolation, the School Board agrees to diminish the overcrowding at some of its schools and will implement non-discriminatory disciplinary provisions. Moreover, to prevent

classroom segregation, the plan shall provide for specific monitoring of classes in desegregated buildings. The School Board also recognizes that its policies will influence the shape of future racial integration and promises to ensure that site selections for school buildings, school closing and the readjustments of attendance areas and feeder patterns shall be accomplished "so as not to cause the resegregation of schools".

In summary, the parties have agreed to a timetable for the submission by Chicago of a comprehensive student desegregation plan which shall include a number of standard features of student desegregation plans. The final plan shall be submitted by March 11, 1981 with monthly reports beginning on November 15, 1980. Should the parties disagree as to whether the proposed plan is consistent with the principles set forth in the Consent Decree, this Court shall be the final arbiter. The final plan shall be implemented in September 1981.

V. Facilitating the Success of the Desegregation Process

Institutions other than the Department of Justice and the Chicago School Board have a deep interest in and potential responsibility for student desegregation in Chicago. The proposed Decree recognizes these interests in several ways. The desegregation plan will provide programs for the training of the school district's own employees so that they can be as sensitive as possible to desegregation. The Board will approach local institutions like colleges and businesses for their support during

desegregation. Other school districts within the Chicago SMSA will be asked to participate in voluntary inter-district pupil transfer programs so as to further desegregation.

Desegregation does add costs to the operation of any school system. The United States is obligated to make every effort to find and provide available financial resources for the implementation of the plan. For instance, the Board's signing of a consent decree obligating it to implement student desegregation and to comply fully with other civil rights requirements has made it eligible for funding under the Emergency School Aid Act. This statute is administered by the Department of Education and was intended by Congress to provide some of the resources necessary for this task.

Finally, each party may add additional parties which may be obligated to share in the remediation of unconstitutional racial discrimination.

The United States recognizes that school boards acting alone cannot relieve the segregation existing in cities as large as Chicago and it believes that the coordinated administration of federal programs can create conditions that will facilitate school desegregation. To this end, the Attorney General promptly will convene a group of high-level federal agency representatives to promote the coordinated use of federal funds.

The Department of Justice recognizes the possibility that either the State of Illinois or surrounding school districts may

have been affected by the segregation extant in Chicago. We shall investigate both the State of Illinois and neighboring school districts and communities to determine whether either has contributed to student segregation within the Chicago SMSA. Upon completion of these investigations, the Department shall take whatever legal action is appropriate and consistent with the Civil Rights Act of 1964. This would include negotiations similar to those which have been conducted between the United States and the Chicago School Board, aimed at voluntary resolution of any disputes that may arise.

VI. Resolution of Other Issues

The School Board entered into understandings with the Department of Health, Education and Welfare in 1977 and 1979 with respect to classroom segregation, bi-lingual education and non-discriminatory teacher assignments. The School Board here agrees to comply with those agreements with respect to classroom segregation and the proper provision of bi-lingual education. The district shall also reassign faculty so that starting in September 1981, no school has more than 15% divergence in either direction from the district-wide ratio of black to white teachers, with the Board obligated to make its best effort to reduce this divergence to 10%.

In fulfilling the Consent Decree, the parties agree that this Court shall be the ultimate arbiter of compliance and shall resolve any differences between the parties, as to its terms or as to what constitutes compliance.

As the parties have reached a comprehensive agreement which promises to settle a potentially contentious matter, we urge this Court to enter the attached Decree at the earliest possible time.

Respectfully submitted,

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