

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PASADENA INDEPENDENT SCHOOL
DISTRICT; PASADENA BOARD OF
EDUCATION; E.T. LON LUTY
Superintendent,

Defendants.


CIVIL ACTION NO.
H-83-5107

JOINT PRETRIAL ORDER

I. APPEARANCE OF COUNSEL

The defendants in this action are the Pasadena Independent School District, the Pasadena Board of Education, and E. T. ^{Lon}~~Lou~~ Luty, in his official capacity as Superintendent of the School District (hereinafter sometimes collectively referred to as "Defendants" or "PISD"). ✓

Counsel for all of the defendants are Stephen Greenberg, Carla Cox, Sheila Asher, and Jeffery Jones, Martin, Cox, Greenberg & Jones, 707 W. 10th Street, Austin, Texas 78701 (ph. 512/480-8061).



The plaintiff in this action is the United States. Counsel for the plaintiff are George Henderson, Joel Nomkin, Vicki Schultz, Michele Marchand, and David Kolker, United States Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Room 7335, Washington, D. C. 20530 (ph. 202/633-1078), and Denise Ferguson-Southard, United States Attorney's Office, P.O. Box 61129, Houston, Texas 77218 (ph. 713/229-2714).

II. STATEMENT OF THE CASE

This action was brought by the Attorney General on behalf of the United States on August 19, 1983, to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. The action alleges that PISD has pursued and continues to pursue policies and practices which discriminate against blacks by depriving them of equal employment opportunities with respect to teaching positions because of race.

By order of this Court, entered October 24, 1984, trial in this case is to be held in two stages. Stage I will concern the issues of defendants' liability and prospective relief; Stage II, if needed, will address issues of individual relief.

III. JURISDICTION

The Court has full and complete jurisdiction of the subject matter and parties in this action. Jurisdiction of the Court is invoked under 28 U.S.C. §1345 and 42 U.S.C.

§2000e-6(b) . 1/

IV. MOTIONS

Pending before the Court is PISD's Motion For Pre-Trial Evidentiary Rulings Excluding Certain Evidence, and supplementary motions thereto. This Motion is opposed by Plaintiff.

1/ On January 6, 1984, the Court dismissed this action based on its application of the Supreme Court's decision in INS v. Chada, ___ U.S. ___ (1983), to 42 U.S.C. §2000e-6(c) and the President's Reorganization Plan No. 1 of 1978. However, on April 11, 1984, following the Fifth Circuit's decision in EEOC v. Hernando Bank, Inc., 724 F.2d 1188 (5th Cir. 1984), the Court vacated the dismissal and reinstated the case. On August 28, 1984, the Fifth Circuit denied defendant's request for an interlocutory appeal from the reinstatement order.

All questions regarding the Attorney General's authority to bring cases such as this have been put to rest by Congressional ratification of Reorganization Plan No. 1 in Pub. L. 98-532, 98 Stat. 2705 (Oct. 19, 1984).

V. CONTENTIONS OF THE PARTIES

A. Plaintiff's Claims

1. PISD has pursued and continues to pursue policies and practices which discriminate against blacks in recruitment and hiring for teaching positions within the school district by:

a. Failing and refusing to recruit black applicants for teaching positions on the same basis that whites are recruited for such positions;

b. Failing and refusing to hire black applicants on the same basis as white applicants for available teaching positions; and

c. Failing and refusing to use nondiscriminatory selection procedures for the hiring of teachers.

2. The policies and practices of PISD described in paragraph (1) above constitute a pattern or practice of resistance to the full enjoyment by blacks of rights to equal employment opportunity secured by Title VII of the Civil Rights Act of 1964, as amended.

B. Defendants' Answer

PISD denies that it has pursued or continues to pursue any policies or practices which discriminate against blacks in recruitment and hiring ^{for} teaching positions with the ✓
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School District, and specifically deny that they have:

a. Failed or refused to recruit black applicants for teaching positions on the same basis that whites are recruited for such positions;

b. Failed or refused to hire black applicants on the same basis as white applicants for available teaching positions; or

c. Failed or refused to use nondiscriminatory selection procedures for the hiring of teachers.

VI. ADMISSIONS OF FACT

The parties, while admitting to the truth of the following facts, do not thereby admit or deny that such facts are relevant to this action:

1. On August 31, 1981, the United States notified PISD that the Department of Justice was initiating an investigation of PISD's employment practices. See Exhibit 94 to 1st White. */

Fill in
*/ The United States took two depositions of Glen White, PISD's Superintendent For Personnel in this case. The first deposition covers eleven volumes, and was taken between May 16, 1984 and June 19, 1984. The second deposition covers — volumes, and was taken on December 18 and 19, 1985.

Citations to the first deposition of Glen White shall state, "1st White," while citations to the second deposition shall state, "2nd White."

Numbers in parenthesis refer to page lines.

2. Venue is properly laid in this District.

3. The United States District Court for the Southern District of Texas has jurisdiction of the parties hereto and the subject matter hereof.

4. All proper and necessary and indispensable parties are parties hereto.

5. Defendant Pasadena Independent School District (hereinafter sometimes referred to as "School District") was incorporated in 1868. 1st White, Vol. I at 40(15-17). It is an agency organized and existing under the laws of the State of Texas and, pursuant to Texas laws and under the direction of its Board of Education, provides public education to eligible children residing in its boundaries. Defendants' Answer, Third Defense, ¶3.

6. The historical and current boundaries of the School District are described in Exhibit 5 to 1st White. The School District is located in Harris County, Texas and includes a part of the City of Houston, the entire City of South Houston, most of the City of Pasadena and some unincorporated parts of Harris County. Answer, Third Defense, ¶3.

7. Defendant Pasadena Board of Education (hereinafter sometimes referred to as "Board of Education") is a school board organized and existing under the laws of Texas. It is the governing board for and supervises the operation of the

School District. Id., ¶4.

8. Defendant E. T. Lon Luty is superintendent of the School District and is its chief administrative officer. Id., ¶5.

9. Defendants School District and Board of Education are employers within the meaning of 42 U.S.C. §2000e(b). Id., ¶6.

10. Section 7 of Article 7 of the Constitution of the State of Texas (1876) declared that "[separate schools shall be provided for the white and colored children..." This provision was not repealed until August 5, 1969.

11. No black student attended a PISD school until the 1966-67 school year. 1st White, Vol. III at 81 (11-14); Vol. XI at 9 (4-13).

12. Records maintained by the Harris County, Texas Board of Education show that between the 1940-41 school year and the 1956-67 school year, at least 37 black students were transferred from PISD to other school districts. These transfers occurred as follows:

<u>School year</u>	<u>Number of Black Students Transferred</u>
1940-41	2
1941-42	5
1942-43	10
1954-55	4
1955-56	5
1956-57	11

Source: Harris County Board of Education, Common School District and Census Transfers.

13. According to data supplied by PISD to state and federal agencies, the race of students enrolled in the School District from 1962-63 to 1983-84, where such data are available, was as follows:

<u>Year</u>	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
*1962-63	24,497	24,497	0
*1963-64	26,394	26,394	0
*1964-65	27,949	27,949	0
*1965-66	29,568	29,568	0
**1966-67	30,528	30,519	9 (.03%)
**1967-68	32,277	32,272	5 (.02%)
**1968-69	33,720	33,706	14 (.04%)
*1969-70	35,687	No racial breakdown	
**1970-71	34,822	34,811	11 (.03%)
**1971-72	36,043	36,032	11 (.03%)
**1972-73	35,018	35,002	16 (.05%)
**1973-74	36,486	36,437	49 (.13%)
**1974-75	36,560	36,476	84 (.23%)
1975-76		Figures not available	
***1976-77	36,656	36,430	226 (.6%)
****1977-78	36,408	36,094	314 (.9%)
***1978-79	36,810	36,324	486 (1.3%)
****1979-80	36,481	35,852	629 (1.7%)
**1980-81	36,577	35,856	721 (2.0%)
****1981-82	37,433	36,631	802 (2.1%)
****1982-83	37,201	36,290	911 (2.4%)
****1983-84	36,332	35,353	979 (2.7%)

Sources:

- * Superintendents Annual Reports to the State Commissioner of Education, Texas Education Agency
- ** Summary of Enrollment & Staff of School System
- *** U.S. Dept. of Health, Education & Welfare/Office for Civil Rights, Directory of Public Elementary & Secondary Schools in Selected Districts - Enrollment & Staff by Racial/Ethnic Group
- **** Texas Education Agency Fall Survey Package, Individual School Campus Reports (data not present for all schools)

14. The first black teacher hired by PISD was Clarence Mallett. 1st White, Vol. IV at 42 (15-22). He was hired on October 19, 1972 -- nearly eight months after the date Title VII became applicable to public employers. See Defendants' List of Teacher Hires by PISD. March 1972 - June 1977 (June 17, 1985). The second black teacher hired by PISD was hired on July 18, 1974. See Defendants' List of Teacher Hires by PISD, March 1972 - June 1977.

15. Until the late 1960's or early 1970's, PISD's teacher application form required applicants to submit a photograph with, and to state their race on, the application. 1st White, Vol. VII at 23 (18-24), 24 (11-19).

16. According to the EEO-5 forms that PISD has submitted to the Equal Employment Opportunity Commission (EEOC), the race of elementary, secondary and other classroom teachers employed by PISD from years 1973-74 to 1980-81, and 1982-83 was as follows:

	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
1973-74	1446	1446	0
1974-75	1449	1445	4 (.3%)
1975-76	1554	1547	7 (.5%)
1976-77	1641	1628	13 (.8%)
1977-78	1650	1635	15 (.9%)
1978-79	1760	1734	26 (1.5%)
1979-80	1669	1649	20 (1.2%)
1980-81	1735	1715	20 (1.1%)
1982-83	1786	1753	33 (1.8%)

17. According to EEO-5 forms that PISD has submitted to the EEOC, the race of elementary, secondary and other classroom teachers hired by PISD from years 1973-74 to 1982-83 was as follows:

	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
1973-74	140	140	0
1974-75	186	183	3 (1.6%)
1975-76	208	206	2 (1.0%)
1976-77	237	233	4 (1.7%)
1977-78	219	216	3 (1.4%)
1978-79	214	208	6 (2.8%)
1979-80	225	224	1 (.4%)
1980-81	199	196	3 (1.5%)
1981-82	353	349	4 (1.1%)
1982-83	189	184	5 (2.6%)

18. According to defendants, the race of persons approved for hire by the PISD Board of Education for each year from March 1972 to December 1984, was as follows:

<u>Year of Approval By Board of Education</u>	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
1972	225	224	1 (.4%)
1973	218	218	0
1974	241	237	4 (1.7%)
1975	287	284	3 (1.0%)

<u>Year of Approval By Board of Education</u>	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
1976	270	264	6 (2.2%)
1977	260	258	2 (0.8%)
1978	294	285	9 (3.1%)
1979	296	293	3 (1.0%)
1980	297	295	2 (0.7%)
1981	386	377	9 (2.3%)
1982	277	270	7 (2.5%)
1983	108	107	1 (0.9%)
1984	225	214	11 (4.9%)
	3,384	3,326	58 (1.7%)

Source: Defendants' List of Teachers Hired by PISD: March, 1972 to June, 1977 (June 17, 1985); Defendants' List of Teachers Hired By PISD: May, 1977 to December, 1984 (March 28, 1985); Defendants' Supplemental Response to Plaintiff's Discovery Requests Pertaining to New Hires (Aug. 25, 1985).

19. According to the 1980 census, the population of the Houston Standard Metropolitan Statistical Area (hereinafter referred to as "SMSA") was 2,905,353 of which 528,510 (18.2%) were black. See 1980 Census of Population - General Population Characteristics - Table 15. According to the 1970 census, the population of the Houston SMSA was 1,985,031, of which 382,382 (19.3%) were black. See 1970 Census of the Population - Characteristics of the Population - Table 23.

20. According to the 1980 census, the number of non-black and black teachers* in the Houston SMSA, Harris County, and the State of Texas was as follows:

	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
Houston SMSA	49,262	39,488 (80.2%)	9,774 (19.8%)
Harris County	40,836	32,012 (78.4%)	8,824 (21.6%)
State of Texas	238,649	212,203 (88.9%)	26,446 (11.1%)

*/ Teachers, for this census count, include pre-kindergarten, kindergarten, elementary, secondary and special education teachers.

Source: 1980 Census of Population, EEO special file. ✓

21. According to the 1970 census, the number of non-black and black teachers in the Houston SMSA and the State of Texas was as follows:

	<u>Total</u>	<u>Non-Black</u>	<u>Black</u>
Houston SMSA	25,136	20,599 (82.0%)	4,537 (18.0%)
State of Texas	143,055	127,751 (89.3%)	15,304 (10.7%)

Source: 1970 Census of Population - Detailed Characteristics, Table 172, "Occupation of the Experienced Civilian Labor Force by Race and Sex."

22. According to statistics maintained by the U.S. Department of Education, the percentages of blacks receiving degrees in education from Texas institutions of higher education for years 1975-76 through 1980-81 (the years for which data are available) was as follows:

<u>Year</u>	<u>Total</u>	<u>Black</u>
1975-76	10,567	993 (9.4)
1976-77	10,431	872 (8.4)
1978-79	10,283	827 (8.0)
1980-81	9,021	687 (7.6)
Total	40,302	3379 (8.4)

Source: U.S. Dept. of Education/Office for Civil Rights Data on Earned Degrees Conferred by Institutions of Higher Education by Race, Ethnicity, and Sex Table 6: Total Bachelor Degrees for Major Field Conferred by Institutions of Higher Education

23. Also according to the U.S. Department of Education, the percentages of blacks receiving degrees in education from institutions of higher education within a 50 mile radius of the Houston SMSA (including Texas A & M; Prairie View A & M; Texas Southern University; Texas Women's University; University of Houston-Central; University of Houston-Clear Lake; Gulf Coast Bible College; Houston Baptist University; University of St. Thomas; and Rice University) for years 1975-76 through 1980-81 (the latest years for which data are available) was as follows:

<u>Year</u>	<u>Total</u>	<u>Black</u>
1975-76	1728	439 (25.4)
1976-77	1679	344 (20.5)
1978-79	1615	359 (22.2)
1980-81	1290	221 (17.1)
Total	6312	1363 (21.6)

24. According to the 1980 Census, the proportions of blacks in the general population of census tracts that are completely within the boundaries of PISD are as follows:

<u>Tract</u>	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
345.02	2659	23	.9
346.00	4047	193	4.8
347.01	5684	103	1.8
347.02	4761	247	5.2
347.03	2170	9	.4
347.04	6455	142	2.2
348.01	4354	50	1.1
348.02	8939	27	.3
349.01	4050	17	.4
349.02	5746	10	.2
350.01	1208	3	.2
350.02	1809	3	.2
350.03	3666	280	7.6

<u>Tract</u>	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
350.04	5087	8	.2
351.00	4087	1	.02
353.01	4421	20	.4
356.01	3887	62	1.6
356.02	2738	18	.7
356.03	5073	15	.3
356.04	3177	35	1.1
357.01	6291	38	.6

<u>Tract</u>	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
357.02	8259	15	.2
358.01	3341	8	.2
357.03	3920	65	1.7
359.01	12,579	96 97	.8

Total of Tracts Completely in PISD	118,408	1489	1.2
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Source: 1980 Census of Population and Housing Census Tracts, Houston, Texas, SMSA Maps; 1980 Census of Population and Housing, Census Tracts, Houston, Texas, SMSA

25. According to the 1980 Census, the proportions of blacks in the general population of census tracts that are partially within the boundaries of PISD (i.e. that overlap the boundaries of PISD) are as follows:

<u>Tract</u>	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
322.01	23	0	0
322.02	4220	3	.07
322.03	3215	0	0
322.04	2704	0	0
323.02	3993	444	11.1
324.02	9170	2077	22.6

Don't delete the numbers, but do delete the column headings.

<u>Tract</u>	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
324.03	53	0	0
352.00	534	11	2.1
353.02	6360	1	.02
355.01	6654	51	.8
355.02	8180	61	.7
358.02	4779	17	.4
359.02	5261	26	.5
370.00	7356	149	2.0
371.01	24,209	1115	4.6
<hr/>			
Tract	Total Population	Total Population	% Black
371.02	7,971	646	8.1
372.00	4,063	75	1.8
<hr/>			
Total of Tracts Partially in PISD	98,745	4676	4.7

Source: Id.

26. According to the 1980 Census, 6782 persons, including 1707 blacks, living in census tract 324.02, live in the portion of the tract which lies outside of the boundaries of PISD. 1980 Census of Population Block Statistics Maps; and Block Statistics, Table 2, Characteristics of Population and Housing Units, by Blacks (microfilm) According to the 1980 census, 4403 persons, including 343 blacks, living in census tract 371.01, live in the portion of the tract which lies outside of the boundaries of PISD. Id.

27. According to the 1980 census, blacks constitute 2.6% of the general population in the census tracts that are

~~of the general population in the census tracts that are~~ ✓
 partially within the boundaries of PISD (see paragraph ²⁵ ~~16~~ ✓
 above), excluding the general population in the parts of tracts
 324.02 and 371.01 that lie outside of the boundaries of PISD
 (see paragraph ²⁶ ~~16~~ above).

28. According to the 1980 census, the proportions of black elementary and secondary teachers in the census tracts that are completely within the boundaries of PISD as follows:

<u>Tract</u>	<u>Total Elem. & Secondary Teachers</u>	<u>Black Elem. & Secondary Teachers</u>	<u>% Black</u>
345.02	20	*	
346.00	73	7	9.6
347.01	57	0	
347.02	51	10	19.6
347.03	57	0	
347.04	54	8	14.8
348.01	13	0	
348.02	34	0	
349.01	16	0	
349.02	126	*	
350.01	0	0	
350.02	24	*	
350.03	44	0	
350.04	69	*	
351.00	23	0	
353.01	22	*	
356.01	24	0	
356.02	0	0	
356.03	85	*	
356.04	62	*	
357.01	79	*	
357.02	226	0	
358.01	27	*	
357.03	58	7	12.1
359.01	235	0	
Total of Tracts Completely in PISD			
	1479	32	2.3

Source: 1980 Census of Population, Equal Employment Opportunity Special File [machine-readable data file]. An asterisk (*) under the "Black Elem. & Secondary Teachers" column means that the relevant data has been suppressed by the Census Bureau because of confidentiality reasons.

29. According to the 1980 census, the proportions of black elementary and secondary teachers in the census tracts that are partially within the boundaries of PISD are as follows:

<u>Tract</u>	<u>Total Elem. & Secondary Teachers</u>	<u>Black Elem. & Secondary Teachers</u>	<u>% Black</u>
322.01	-	*	
322.02	25	*	
322.03	13	*	
322.04	31	*	
323.02	29	9	31.0
324.02	211	93	44.1
324.03	0	*	
352.00	0	*	
353.02	35	*	
355.01	42	0	
355.02	96	0	
358.02	37	*	
359.02	143	0	
370.00	145	0	
371.01	493	56	11.4
371.02	120	0	
372.00	108	0	
Total of Tracts Partially in PISD	1528	158	10.3

Source: Id.

30. According to the 1980 census, blacks constitute 1.1% of the elementary and secondary teachers in census tracts that are partially within the boundaries of PISD, excluding tracts 324.02 and 371.01. Id.

31. Glen White is Assistant Superintendent of Personnel of PISD. 1st White, Vol. I at 4(9). He has held this position, or its functional equivalent, continuously since 1964. Id. at 7 (10-8(9), 33(15-18). Mr. White has been employed by PISD since 1953. Id. at 4(20).

32. As Assistant Superintendent of Personnel (or its functional equivalent), Mr. White, since 1964, has been in charge of PISD's Personnel Office. In this capacity, he has had responsibility for, inter alia, the recruitment and selection of teachers for the school district. Id. at 8(16-18), 73(21-23); Vol. III at 192(4-6).

33. Zolly Jones is Supervisor of Personnel Records in PISD's Personnel Office. She has held this position continuously since February 1, 1978. 1st Jones at 5 (20-25). */ Ms. Jones was also employed in the Personnel Office as a general secretary from October 1967 to August 1974, and

*/ The United States took two depositions of Zolly Jones, PISD's Supervisor of Personnel Records, in this case. The first was taken on June 15, 1984; the second on December 20, 1985. The transcripts of the depositions are one volume each.

Citations to the first depositions of Ms. Jones shall state, "1st Jones;" citations to the second deposition shall state, "2d Jones."

from August 1977 to February 1978. Id. at 6(5-6). Between August 1974 and August 1977, she was employed as secretary to PISD's Director of Health Services. Id. at 6 (7-11).

34. According to Ms. Jones, since 1978, in her capacity as Supervisor of Personnel Records, she is responsible for and familiar with the maintenance and organization of the personnel records of, inter alia, PISD's teachers and applicants for teaching positions. Id. at 9(10)-10(7). Ms. Jones states that she is also responsible for supervising the way the secretaries in the Personnel Office respond to inquiries from teacher applicants. Id. at 121(15-22).

35. In a letter dated November 30, 1978, to the Office of Civil Rights of the (then) Department of Health, Education and Welfare, Mr. White described PISD's recruitment practices. See Exhibit 49 to 1st White. According to that letter, when the School District "need[s] a teacher with a specified teaching field," it "let[s] current employees know of this need and through their contacts in professional associations, their neighborhood or graduate school they let this need be known." Id. The School District's expectation is that "by making [PISD] a good working place with the highest salary that economic conditions will permit and the best benefits available, the teachers themselves would be the best source of recruiting other teachers." Id.

36. The "Golden Rod" is a newsletter prepared by PISD which is distributed to all employees in the School District. 1st White, Vol. III at 112(19)-113(1). Commencing in the late 1970's, PISD has "occasionally" placed notices in the "Golden Rod" advising its employees "that for the coming school year there would ... probably be vacancies in most areas, and if they had acquaintances, friends, teachers, whatever, they should recommend the district to them," id. at 113(15-25), and "invite them to apply," id. at 112(19)-113(1).

37. An example of such a notice appeared in the March 4, 1981 issue of the "Golden Rod." That issue stated, under the heading "TEACHING VACANCIES FOR NEXT SCHOOL YEAR," the following:

The district anticipates vacancies in most teaching fields for next school year. Employees having friends or relatives who are good teachers and would be interested in teaching in Pasadena next year may call the Personnel Office (944-7411, ext. 242) for application materials to be sent. If you wish, Personnel will include a note to them giving your name as the person making the referral.

38. Since 1972, the PISD Personnel Office has consistently maintained and posted a list of vacant teaching positions within the School District. 1st White, Vol. IV at 122 (20)-124(22). This list has been updated on an "ongoing" basis throughout the school year. Id. at 125 (11-18); 1st White, Vol. VII at 17(7-10). The list is made available to

PISD employees and the outside public. See 1st White, Vol. IV at 129 (7-16).

39. According to Mr. White, since the 1964-65 school year, PISD has visited one -- but only one -- university for the purpose of interviewing or otherwise recruiting teacher candidates: the University of Houston at Clear Lake ("Clear Lake"). 1st White, Vol. III at 118(7-17), 194(6-11); Vol. X at 121(20).

40. Between 1981 and 1983, the University of Houston at Clear Lake conducted six job fairs (one each semester) for students in its elementary and secondary teaching program. PISD attended, and interviewed Clear Lake students, at each of these fairs. See "Teacher Career Day Interviews" (prepared by Clear Lake).

41. PISD did not attend the job fairs conducted by Clear Lake during the spring and fall semesters of 1984. Nevertheless, Mr. White did authorize the University to post the following notice at the fall fair: "Pasadena ISD will not be participating in the Fall Semester Teacher Career Day, but they are interested in hiring you to teach. If you wish to be considered for a teaching position with Pasadena ISD, please contact the district Personnel Office." See document prepared by University of Houston at Clear Lake Office of Placement

Services. With PISD's authorization, the University posted a similar notice for its spring 1984 job fair.

42. The proportion of blacks receiving bachelor's degrees in education from Clear Lake, according to 1980-81 data, was 2.7%. See U.S. Dept. of Education/Office For Civil Rights - Data on Earned Degrees Conferred by Institutions of Higher Education By Race, Ethnicity, and Sex, Table 6 ("DOE Earned Degree Statistics").

43. PISD has never visited Texas Southern University or Prairie View A & M University for the purpose of interviewing or otherwise recruiting teacher candidates. See 1st White, Vol. III at 118 (7-17).

44. The proportions of black students receiving bachelor's degrees in education from Texas Southern University and Prairie View A & M University, according to 1980-81 data, was 90.2% and 90.8%, respectively. See DOE Earned Degree Statistics.

45. According to Mr. White, at least since 1964, PISD has not sent written notices of teacher vacancies within the school district to any universities. 1st White, Vol. III at 191(9-15).

46. According to Mr. White, since 1965, the only occasions on which he telephoned universities for the purpose of recruiting teacher applicants to the school district were as

follows: (i) "once or twice," id. at 186(11), or "three times possibly," id. at 188(15-16), he called the University of Houston - University Park Campus "to see if they had a math or science teacher," id. at 186(14-15); and (ii) "five or six years ago," id. at 187(3-4), he called Sam Houston University, Texas A & M University, and Prairie View A & M University "looking for an agriculture teacher." Id. at 186(21); See id. at 188(18-20)

47. According to Mr. White, he does not recall ever asking a specific black teacher employed by PISD to recruit teacher applicants. Id. at 172(4-6).

48. In order to be employed as a regular classroom teacher in the State of Texas, a person must satisfy the certification requirements set forth in the Texas Education Agency's ("TEA") Guidelines For School Personnel Certification, Allocations, and Records ("TEA Certification Manual") (contained in Exhibit 65 to 1st White). PISD does not impose any certification requirements in addition to those set forth in the TEA Certification Manual. 1st White, Vol. VIII at 72(18-21).

49. Under the Manual, a person may serve as a regular classroom teacher only if she holds an appropriate one-year or permanent Texas teacher's certificate, or is eligible for hire

under an emergency or special assignment permit. See Exhibit 65 to 1st White. A person is eligible for hire under an emergency or special assignment permit only if the school district "sign[s] before a notary" that no certified teacher is available. 1st White, Vol. IV at 92(22-25); 1st White, Vol. III at 44(14-20).

50. All of the documents a person must submit in order to be considered for employment as a teacher by PISD are specified in PISD's application form (contained in Exhibit 70 to 1st White). 1st White, Vol. VII at 11(5), 53(13-17).

51. According to the application form, a person must submit: (i) a completed application, (ii) a handwritten letter of application, (iii) a transcript, and (iv) a list of references or a placement file from a university. See Exhibit 70 to 1st White; 1st White, Vol. VII at 4(20-11(5)).

52. The only instructions given on the application form regarding the listing of references are as follows:

Give full name and address of each reference. In naming references, if you have had teaching experience, give supervisors, principals, and all superintendents who are familiar with your classroom work. You MUST include references from your present or latest teaching position. If you have had no teaching experience, give the names of the college instructors with whom you have taken your major subjects. You must include the name of the instructor who supervised your practice teaching course. The judgment of a non-professional person in reference is usually valuable only from the standpoint of general character. If all of

your references are in a placement agency you need give the name and address of only that agency. It will help if you have your placement papers forwarded to us.

53. Once the Personnel Office receives an application, it mails reference forms to the persons listed as references on the application. 1st Jones at 55(19)-56(2).

54. According to Mr. White, of those reference forms which the Personnel Office mails, it "like[s] to receive back a minimum of three" in order to consider an application file complete. VII at 7(10)-8(4).

55. According to Zolly Jones, of those reference forms which the Personnel Office mails, "at least two" must be returned in order to consider an application file complete. 1st Jones at 51(5).

56. An applicant need not submit a teacher's certificate in order to complete her application file. 1st White, Vol. VII at 9(12-24).

57. According to Mr. White, an applicant for a teaching position 2/ with PISD may not be employed by the school district unless (i) the Personnel Office determines to interview the applicant; (ii) the Personnel Office determines to refer the applicant to a principal whose school has a vacancy; and (iii) such principal, after interviewing the

2/ "Teaching position," as used herein, unless otherwise indicated by the context, refers to a full-time as opposed to a substitute teaching position.

applicant, recommends to the Personnel Office that the applicant be hired. 1st White, Vol. I at 16(20)-17(11). Unless each of these three steps are satisfied, according to Mr. White, a teacher applicant may not be hired. Id.

58. The three steps set forth in paragraph 40, above, are modified in the case of persons who apply for teaching positions in the areas of vocational education, special education, music, or athletics. These four areas are each headed by a separate director. 1st White, Vol. VII at 57(25)-58(20). According to Mr. White, an applicant in one of these areas may not be employed by PISD unless: (i) the Personnel Office determines to interview the applicant; (ii) the Personnel office determines to refer the applicant to the appropriate director for an interview by that director; (iii) the director and the Personnel Office together agree to refer the applicant to a principal whose school has a vacancy in the relevant area; and (iv) the principal, after interviewing the applicant, recommends to the Personnel Office that the applicant be hired. 1st White, Vol. VII at 58(1-4), 69(23)-70(8), 71(6-12), 75(3-6). Unless each of these four steps are satisfied, according to Mr. White, a teacher applicant in these areas may not be hired. Id.

59. The cover letter to PISD's application form (contained in Exhibit 70 to 1st White) states: "Please allow us about ten days to complete your application file, THEN CALL OR WRITE US and we will make arrangements to talk with you if we have or anticipate vacancies in your field." The application form itself declares (on page 1): "A PERSONAL INTERVIEW IS NECESSARY TO COMPLETE THE APPLICATION."

60. Since 1964, Mr. White has had responsibility for deciding which teacher applicants should be interviewed by the Personnel Office, and for conducting those interviews that are granted. 1st White, Vol. VII at 13(18-21).

61. At the time of his first deposition in this case (spring 1984), Mr. White had delegated to Gary Hext, then Assistant in Personnel, the responsibility for conducting and deciding whether to conduct interviews with applicants for vocational education and special education teaching positions. Id. at 13(22) to 14(6). For two school years, 1980-81 and 1981-82, Mr. White had also delegated to Mr. Hext such interviewing responsibilities in the areas of music, physical education and athletics.

62. According to Mr. White, since 1972, the only criterion used by the Personnel Office in deciding whether to grant interviews to teacher applicants has been the

completeness of the applicants' files. See 1st White, Vol. IV at 134(9-13), 142(7)-143(25).

63. Mr. White states that he considers an applicant's file complete -- for purposes of being granted an interview -- if it includes a completed application, a transcript, a handwritten letter and three references. Id. at 134(9-13).

64. According to Mr. White, in the following situations, the Personnel Office grants interviews to teacher applicants even if their file is not complete: (i) if an applicant is applying for an "extremely scarce area," i.e. one with few applicants; (ii) if an applicant "has come from a long distance" i.e., a driving distance of more than an hour, (iii) "if it's near to the starting of the school year and we have an opening;" or (iv) if an unexpected vacancy occurs in "the middle of the school year." Id. at 134(17)-137(2); 1st White, Vol. 7(11-13).

65. According to Mr. White, it is "[b]asically" the applicant's responsibility to arrange for and "initiate the interview." 1st White, Vol. I at 16(4-5).

66. However, Mr. White states that there are cases in which the School District arranges for and initiates interviews. Id. at 16(14-15). Mr. White states that in the past, these cases have occurred (i) when vacancies existed in August, near the start of the school year, id. at 16(9-15), and

(ii) when vacancies arose during the school year, at a time when there was not an "adequate flow of applicants," 1st White, Vol. VII at 50(23) to 51(5).

67. According to Mr. White, in the cases referred to in paragraph ⁶⁶~~49~~, above, the School District does not place a note in the applicant's folder indicating that the District, rather than the applicant, initiated the interview. 1st White, Vol. VII at 52(1-11). ✓

68. According to Mr. White, if a teacher applicant telephones or writes to the Personnel Office to request an interview, as a routine practice, a secretary in the Office pulls the applicant's file to determine whether it is complete. 1st White, Vol. VII at 15(4-16); 1st Jones at 124(1-4), 146(9-15). If the secretary finds that the file is complete, she places it on Mr. White's (or, as appropriate, Mr. Hext's) desk so that he may determine whether and when to interview the applicant. 1st White, Vol. III at 15(4-9); 1st Jones at 123(6-12).

69. According to Mr. White, if the secretary finds that the applicant's file is not complete, she generally informs the applicant "to call back when the application is complete." 1st White, Vol. VII at 16(11-19); 1st Jones at 197(13-16). However, according to Mr. White, even if the application is not complete, if the secretary finds that the applicant falls

within one of the situations described in paragraph ⁶⁴~~47~~, above, ✓
she places the file on Mr. White's (or Mr. Hext's) desk so that
he may determine whether and when to interview the applicant.
1st White, Vol. VII at 16(4-20).

70. According to mr. White, he has instructed the ✓
secretaries in the Personnel Office that, when an applicant
asks the Office whether any vacancies exist in their field, the
secretaries should not only respond to the question, but should
also ask the applicant whether the applicant wishes to arrange
for an interview. 1st White, Vol. X at 54(10) - 55-(24). Mr.
White states that secretaries should ask the applicant whether
the applicant wishes to arrange an interview even if no
vacancies exist at that time in the applicant's field. Id.
According to Mr. White, if the applicant responds that she does
desire an interview, then the secretary should bring the
applicant's folder to him (or Mr. Hext) so that he may decide
whether and when to interview the applicant. Id. at 55(10-15).

71. According to Mr. White, he has instructed the
secretaries in the Personnel Office that when an applicant asks
the Office whether their file is complete, the secretary should
inform the applicant that "to complete [their] application,
[they] need to have an interview with Mr. White or Mr. Hext."
Id. at 53(6-7).

72. According to Zolly Jones, when an applicant asks a secretary in the Personnel Office whether any vacancies exist in their field, but does not explicitly ask for an interview, then the secretary "probably ... wouldn't" ask the applicant whether the applicant wishes to arrange an interview, 1st Jones at 127(13-14); instead, Ms. Jones states that the secretary would "leave it up to the applicant[] to pursue that," id. at 124(11-12); see 132(6-11).

73. According to Ms. Jones, when an applicant asks a secretary in the Personnel Office whether their file is complete, the secretary informs the applicant that an interview is required in order to complete the application. Id. at 126(23-25).

74. According to Mr. White, when a secretary presents him with the file of an applicant requesting an interview, he almost always grants the interview. 1st White, Vol. VIII at 131(15-18). According to Mr. White, "[v]ery rarely will [an applicant] not get an interview. Almost everybody gets an interview." Id.

75. According to Mr. White, an applicant is rarely denied an interview because of the absence of a vacancy in their field. 1st White Vol. IV at 133(14-25), 141(12)-142(7-9); Vol. VII at 31(3-22); Vol. IX at 61(22-24). To the contrary,

according to him, as long as there is "any hope within a foreseeable future of openings" in an applicant's field, the applicant is granted an interview. 1st White, Vol. IV at 141(12-17).

76. According to Mr. White, in the elementary area, "there is always a chance for a vacancy". 1st White, Vol. IX at 61(24-25).

77. According to Mr. White, in only a "few" situations since 1972 has the Personnel Office denied an interview because of the merits of an application. 1st White, Vol. IV at 142(10-16). These situations, says Mr. White, have involved applications containing "references from previous service that indicate absolute failure as a teacher or possible failure as a student teacher," *id.* at 142(19-22), or applications from persons who have no possibility of receiving a teacher's certificate or an emergency or special assignment permit, *id.* at 142(24)-143(5).

78. According to Mr. White, merely because a person writes on their application that she does not hold or qualify for a teacher's certificate does not alone preclude the person from being interviewed. Instead, Mr. White states that he reviews all relevant information in the applicant's file to determine whether -- despite the applicant's belief to the

contrary -- the applicant may in fact be eligible for a certificate or permit. 1st White, Vol. 8 at 76(25)-78(1).

79. According to Mr. White, during his interviews of teacher applicants, he does not use a written list of questions. 1st White, Vol. VII at 32 (11-12).

80. According to Mr. White, the only written criterion governing his discretion regarding whether to refer an applicant to a principal -- other than the TEA certification requirements -- is the directive in the School District's policy manual that "the best qualified person" should be selected for every job. 1st White, Vol. VII at 123 (18-25); see 124 (7-19).

81. Mr. White states that he bases his decision regarding whether to refer an applicant to a principal on a "total picture" of the applicant. See, e.g., 1st White, Vol. VII at 142 (24), 148 (21)-149(2); Vol. VII at 154 (3); Vol. IX at 97 (17). According to Mr. White, the factors in this picture include, inter alia, the applicant's prior experience inside and outside of education, 1st White, Vol. VII at 132(1-2); her grades, id.; her "evidence of care and concern about kids," id. at 132 (7-8); her "ability to communicate both verbal and written, id. at (8-9); and her "enthusiasm," Vol. VIII at 137 (8). Mr. White states that these factors have remained

"basically ... the same" since 1965. 1st White, Vol. IX at 140(3).

82. According to Mr. White, the sources that he relies upon in assessing an applicant's "total picture" are: (i) the documents in the applicant's file (i.e., the completed application, transcript, handwritten letter, and references); (ii) his interview with the applicant; and (iii) information he may have received from any calls he may have placed to persons who had supervised or otherwise had knowledge of the applicant, including persons whom the applicant did and did not list as references. See 1st White, Vol. IX at 68(18)-69(10); Vol. VIII at 118(25)-119(14-17).

83. According to Mr. White, he records his assessment of an applicant's "total picture" on an interview evaluation form. The form he used for this purpose from 1972 to 1979 is contained in Exhibit 73 to 1st White; the form he has used from 1979 to the present is contained in Exhibit 72 to 1st White.

84. According to Mr. White, there is no single factor that controls his referral decision. See, e.g., 1st White, Vol. VII at 117(19-21); Vol. VIII at 133(10), 136(19)-137(22), 154(20-155(2)). He states that he has not -- and cannot -- rank which factors are most important or least important in deciding whether to refer an applicant. 1st White, Vol. IX at 107(3-9).

According to Mr. White, the weight he assigns to any one factor may vary depending upon the job applied for. Id. at 111(21).

85. According to Mr. White, in deciding which applicants to refer to a principal, he does not give a preference to applicants graduating from one university as opposed to another. 1st White. Vol. VIII at 63(22)-64(10), 84(18)-85(4). He states that in making the referral decision, he treats all universities alike, provided that they are recognized as accredited by the TEA. Id.

86. According to Mr. White, PISD does not require that applicants in any teaching area have prior teaching experience. 1st White, Vol. VIII at 113(14).

87. According to Mr. White, possession of prior teaching experience by applicants is most significant (with respect to deciding whom to refer to a principal), in the case of applicants for first grade teaching positions. Id. at 117(15-19). In filling first grade teaching positions, Mr. White states that he has a significant preference for applicants with prior teaching experience. Id.

88. Outside of the first grade area, prior experience is "one of many factors" that Mr. White says that he considers in deciding which applicants to refer to a principal; it is not a "controlling factor." Id. at 115(18-19); see id. at 117(19-21).

89. According to Mr. White, he does not refuse to interview applicants on the ground that the handwritten letters they submit with their applications are poorly written. Id at 131(10-18). He states that he grants interviews to applicants even if their handwritten letters demonstrate a "serious deficiency in communication skills." Id.

90. The quality of an applicant's handwritten letter is one of many factors that Mr. White says that he considers in deciding whether to refer the applicant to a principal; it is only part of the "whole picture" of the applicant. Id. at 133(10).

91. According to Mr. White, PISD does not require that applicants for any teaching position have a minimum grade point average at their university. Id. at 135(4).

92. According to Mr. White, grades are one of many factors that he considers in deciding which applicants to refer to a principal; grades are not a controlling factor. Id. at 137 (23-24).

93. According to Mr. White, in making the referral decision, he is "not looking for all A's;" neither is he "looking for all D's and F's." Id. at 134(9-10).

94. According to Mr. White, he has selected for referral to principals applicants with C averages over applicants with

higher averages when the "total picture" of the C average-applicants was better. Id. at 136(19)-137(22).

95. According to Mr. White, in reviewing the grades of an applicant, he does not actually calculate their grade point average. Instead, he states that he estimates the applicant's cumulative average. 1st White, Vol. IX at 74(4-21). His estimate, he states, is based on all of the applicant's grades, including grades received in any graduate courses. Id.

96. In estimating the grades of an applicant, Mr. White states that he does not examine whether such grades are based on a three, four or five-point scale. Id. at 74(22)-75(4).

97. According to Mr. White, the quality of an applicant's references -- including any references whom he may have telephoned, ⁸² see paragraph ~~65~~, above -- is one of many factors that he considers in deciding whether to refer the applicant to a principal. See 1st White, Vol. XII at 154(20)-155(2), 156(23-25). He states that it is possible that he has selected for referral to a principal a person with lower reference ratings over a person with higher ratings because of the difference in their respective total pictures. Id.

98. According to Mr. White, in cases in which he telephones an applicant's supervisor or other person familiar with the applicant in order to obtain information about the

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applicant, see paragraph 65, above, he does "[n]ot consistently" place a note in the applicant's file recording the fact or substance of the call. 1st White, Vol. VIII at 130(15). To the contrary, Mr. White states that he only "occasionally" places such a note in the file. Id. at 129(17).

99. According to Mr. White, an applicant's possession of a graduate degree, such as a master's degree, is another one of the several factors he considers in deciding whether to refer the applicant to a principal. 1st White, Vol. IX at 123(11-17), 124(1-12).

100. According to Mr. White, the number of applicants that he refers to a principal per vacancy depends on "the availability of good applicants." 1st White, Vol. VII at 42(20-21). "If they are available," Mr. White states that his practice is to refer "two or three" applicants per vacancy. Id. at 43(13). However, according to Mr. White, there are occasions in which he refers only one applicant. Id. at 73(4-21).

101. According to Mr. White, the fact that an applicant is referred to a principal is not consistently noted in the applicant's file. 1st White, Vol. X at 60(14-20), 74(2-5). He states that this fact would be noted only if: (i) he "happen[s] to have written on the bottom of an interview

sheet[:] referred to a certain person" - something which he states that he does "not consistent[ly]" do, or (ii) the "principal happen[s] to fill out an interview sheet and sen[ds] it in" - something which he states principals are not required to do, and do not do as a matter of practice. Id. at 74(10-15), 72(17)-73(9).

102. According to Mr. White, if at the time of his interview with an applicant no vacancy exists in the applicant's teaching area, then after the interview, he causes the application to be returned to the file drawers (see ¹¹⁵⁻¹¹⁸ ~~98-101~~ paragraph ¹ below). 1st White, Vol. VII at 33(9-24). ✓

103. According to Mr. White, when a vacancy arises in a particular area and he has already interviewed applicants in that area, he "will go to that subject area and screen through those applicants and look at [his] interview [evaluation forms], and pull a group out and send some of them out to see principals, the ones that [he] think[s] were best at that particular time." Id. at 34(4-8). In order to do this, Mr. White states that he examines all of the folders under the subject area, and pulls out those folders having the "best interview sheets." Id. at 34(16).

104. According to Mr. White, an applicant may not be selected for a vacancy unless the applicant is recommended for hire by the principal in the school where the vacancy exists.

1st White, Vol. I at 17(11); Vol. VII at 78(23). Thus, according to Mr. White, a principal has the power to veto any applicant who has been referred to the principal by the Personnel Office. 1st White, VII at 78(23).

105. According to Mr. White, the only instruction or criterion governing a principal's discretion whether to recommend an applicant for employment is the directive in the school district's policy manual that the best qualified person should be selected for each job. Id.

106. According to Mr. White, principals are not required to explain in writing their decision to recommend or not to recommend an applicant, nor do principals do so as a matter of practice. Id. at 79(13), 116(5-9), Vol. X at 72(17)-73(9).

107. According to Mr. White, in cases where a principal decides not to recommend an applicant, Mr. White frequently refers the applicant to another principal whose school has a vacancy. 1st White, Vol. VII at 59(9-13). Mr. White says that he may refer an applicant up to three times to different principals. Id. According to Mr. White, his decision whether to refer an applicant more than once depends on whether "other jobs [are] available at that time." Id. at 63(2-7).

108. According to Mr. White, if a principal recommends an applicant for hire, the Personnel Office then writes a "letter

of commitment" informing the applicant that she will be recommended to the Board of Trustees for employment. Id. at 147(5). According to Mr. White, the letter asks the applicant to submit a letter of acceptance within a designated period of time, and lists any materials the applicant must supply in order to complete her file. Id. at 147(1-16).

109. According to Mr. White, if an applicant responds to a letter of commitment with an acceptance in writing, the Personnel Office then submits a memorandum to the Superintendent of the school district recommending that the applicant be submitted to the Board of Education for hire. Id. at 154(23)-157(9).

110. According to Mr. White, the Superintendent has the power to veto a recommendation from the Personnel Office to hire an applicant. Id. at 158(11-19). However, Mr. White states that no Superintendent has ever exercised this power (i.e., rejected an applicant) since 1964. Id.

111. According to Mr. White, after an applicant has been recommended for hire to the Superintendent, the Superintendent in turn recommends the applicant to the Board of Education. Id. at 161(22).

112. According to Mr. White, the Board of Education has final authority with respect to the hiring of teachers. Id. at

161(25). Mr. White states, however, that since 1964, the Board has never rejected an applicant who has been recommended for hire by the Superintendent. Id.

113. According to Mr. White, the decision by the Board of Education to approve an applicant for hire is reflected in the Official Agenda of the Board's meetings. 1st White, Vol. II at 118(24)-119(6).

114. According to Mr. White, the steps in PISD's teacher hiring process have remained essentially the same since 1965. 1st White, Vol. IX at 138(16-18).

115. According to Mr. White, since 1964, the Personnel Office has divided teacher applications into active, inactive and discontinued file drawers. 1st White, Vol. X at 74(22)-75(4).

116. According to Ms. Jones, when the Personnel Office receives a teacher application, one of the secretaries in the Office creates a folder for the application and places the folder in one of the active file drawers. Id. at 55(19)-56(2).

117. According to Ms. Jones, the active file drawers are labeled with the names of teaching fields (e.g., math, english, lower elementary). Id. at 54(14)-55(3). Ms. Jones says that within each field, the Personnel Office files the folders of applicants, in alphabetical order, who apply for that field. Id. at 54(14)-55(3).

118. Ms. Jones states that she has instructed the secretaries in the Personnel Office how to determine the proper teaching field in which to file an application. Id. at 56 (20-25). According to her testimony, her instructions are essentially as follows:

(a) First, the secretary should look at Part II of the teacher application form, labeled "POSITION DESIRED." Under Part II the applicant is asked to express a 1st, 2nd and 3rd choice of teaching field within one or more of three specified grade levels (elementary, intermediate, or high school). The secretary should file the application according to the applicant's first choice. See generally 56(12)-60(15).

(b) An application folder should be filed under only one teaching field. Id.

(c) If an applicant expresses a first choice in more than one teaching field (e.g., has listed 5th grade as her 1st choice within elementary, and math as her 1st choice within intermediate), then the secretary should read the application to determine the field in which the applicant has student teaching or full-time teaching experience. The secretary should then file the application in the field in which the applicant has had such prior teaching experience. Id. at 57(15)-58(12).

(d) Applicants expressing a first choice in one of the elementary grades should be filed under either "lower" or "upper" elementary. Id. at 56(20)-57(7). Lower elementary is considered kindergarten through 3rd grade; upper elementary is 3rd grade through 5th grade. Id. at 57(10-12).

119. The last page of PISD's teacher application form (Exhibit 70 to 1st White) states: "This application, if properly filled out, will be kept in the open file until the first of October. If for any reason the applicant is not appointed by that date and he still wishes to be considered for an appointment, renewal of the application must be made in writing."

120. According to Ms. Jones, at some date after October 1 of each school year, the Personnel Office usually transfers from its "active" to its "inactive" file drawers the application folders of persons who have not requested that their applications be considered beyond October 1. Id. at 73(21), 75(17).

121. According to Ms. Jones, when an application folder is transferred from the active to the inactive drawers, it is placed in the same teaching field, in alphabetical order, as it had been placed in the active drawers. Id. at 63(14-18).

122. According to Ms. Jones, the Personnel Office does not remove any materials from a folder when it is transferred from the active to the inactive drawer. Id. at 81(17-20).

123. According to Ms. Jones, the secretaries in the Personnel Office attempt to transfer folders from the active to the inactive drawers once a year, sometime between October and January. Id. at 87(14-17). However, Ms. Jones states that it is "possible" that in one or more years during the period since 1978, no such transfer of folders occurred. Id. at 68(1)-69(1), 76(7-13).

124. According to Mr. White and Ms. Jones, the Personnel Office does not not transfer an application folder from the active to the inactive drawers if the applicant -- either orally or in writing -- requests that their application be considered for vacancies occurring beyond October 1. See 1st White, Vol. VII at 36(5-14); Vol. X at 78(25)-80(17), 80(21)-81(3); 1st Jones at 64(23)-66(19). According to Mr. White and Ms. Jones, if an applicant makes such a request, their application is kept active by the Personnel Office until the following October 1. Id.

125. According to Mr. White, an applicant may request that their application be reactivated even after their folder has been transferred to the inactive drawers. According to Mr. White, when such a request is made, the Personnel Office

transfers the folder back to the active drawers. 1st White, Vol. VII at 57(4-11).

126. According to Mr. White, when an applicant orally requests that their folder be kept active beyond October 1, the Personnel Office should place a note in the applicant's folder recording the applicant's request. 1st White, Vol. VII at 36(5-7). However, Mr. White states that there have been occasions when no such note was made. Id. at 36(12-14).

127. According to Mr. White, when he reviews application folders in order to select an applicant for a vacancy, he does not look at folders in the inactive drawers. 1st White, Vol. VII at 35(17)-36(24).

128. According to Ms. Jones, when Mr. White requests that a Personnel Office secretary bring to him application folders for consideration for a vacancy, the "normal procedure" is that the secretary only retrieves folders in the active drawers. 1st Jones at 77(5).

129. According to Ms. Jones, if Mr. White requests that a Personnel Office secretary bring to him application folders for consideration for a vacancy, and if for some reason application files which should have elapsed on October 1 have not yet been transferred to the inactive drawer, then the secretary would "[i]n all likelihood" not retrieve such elapsed files. Id. at

79(7-9). However, Ms. Jones states that it "would be possible" that such elapsed files would be brought to Mr. White. Id. at 77(13).

130. According to Ms. Jones, in the ordinary course of business, the Personnel Office maintains application folders for five years. At the conclusion of five years, Ms. Jones states that the Office destroys all documents in the folders except applications, transcripts and interview sheets (if any), and transfers the folders from the inactive file drawers into the "discontinued" file drawers. Id. at 86(12)-87(9). According to Ms. Jones, the Office completely destroys the folders after they have been in the discontinued drawers for one year. Id. at 94(16-21).

131. According to Ms. Jones, during the investigation by the United States which led to this lawsuit, the Personnel Office changed its usual practice regarding the transfer of folders into the discontinued drawers. In particular, Ms. Jones states that she cannot recall the Office having transferred any files into the discontinued drawers since June 1982. Id. at 154(13-20).

132. According to Mr. White, since 1965, all employees in the Personnel Office, including himself, 1st White, Vol. I at 33(21), Gary Hext, id. at 28(24), Zolly Jones, id. at 36(12), and the clerical and secretarial employees, id. at 95(7)-98(12),

~~in the Office~~ are and have been white, with the following exceptions: ✓

(i) The Coordinator of Pupil Personnel for PISD is Hispanic. Id. at 76(21-77(16)). According to Mr. White, the Coordinator's position does not involve responsibilities for the hiring or recruitment of teachers. See Id. at 21(2-13).

(ii) In 1983, the District hired a Hispanic to fill a clerical position in the Personnel Office. Id. at 95(7)-98(12).

(iii) At the time of Mr. White's first deposition, PISD employed a black high school student on a part-time basis as a clerical in the substitute teaching office. 1st White, Vol. VII at 3(5-17).

133. According to Mr. White, since 1965, PISD had not employed a black as an elementary, intermediate, or high school principal, associate principal, or assistant principal. 1st White, Vol. I at 80(8-21), 83(15-22), 84(6-17).

134. According to Mr. White, of the 43 principals in PISD, 40 are white and three (3) are Hispanic. Id. at 80(8)-84(5).

135. According to Mr. White, at least since 1965, all of PISD's Assistant Superintendents, Superintendents, and members of the Board of Education have been white. Id. at 34(17)-35(9), 35(15-21), 64(12-16).

VII. CONTESTED ISSUES OF FACT

a. Whether PISD has engaged in a pattern or practice of discrimination in employment against blacks?

b. Whether PISD has failed or refused to recruit black applicants for teaching positions on the same basis that whites are recruited for such positions?

c. Whether PISD's use of word-of-mouth recruitment; its recruitment activities at the University of Houston's University Park and Clear Lake campuses; and its failure or refusal to recruit at any predominantly black institutions, has isolated blacks from the "web of information" which flows around opportunities at PISD, or operates as a "headwind" to blacks? If so, is there a nondiscriminatory explanation for such recruitment practices and/or are these practices justified by business necessity?

d. Whether PISD has failed or refused to hire black applicants on the same basis as white applicants for available teaching positions?

e. Whether there is a statistically significant disparity between the proportion of blacks who have applied for teaching positions with PISD and the proportion of blacks hired for such positions? If yes, is there a nondiscriminatory explanation for this disparity?

f. Whether there is a statistically significant disparity between the proportion of black applicants who have been interviewed by PISD for teaching positions and the proportion of white applicants who have been interviewed for such positions? If yes, is there a nondiscriminatory explanation for this disparity?

g. Whether PISD has given a preference in granting interviews and in hiring to persons who have friends or relatives in the School District, student-taught in the District, attended a PISD school, or have any other prior association with the District or an employee of the District, or who evidence knowledge of inside information about vacancies in the District? If yes, has such a preference had an adverse impact on blacks? If yes, is such preference required by business necessity?

h. Whether PISD has a relatively recent history of engaging in policies or practices which have the purpose or effect of segregating black students from white students or of precluding black students residing within its boundaries from attending schools within the School District?

VIII. AGREED APPLICABLE PROPOSITIONS OF LAW

a. In Title VII actions alleging a pattern or practice of discrimination, the Fifth Circuit "adhere[s] to the pattern of proof set out in Teamsters [v. United States, 431 U.S. 324, 357-62 (1977)] and Hazelwood [School District v. United States, 433 U.S. 299 (1977)]." Payne v. Travenol Laboratories, 673 F.2d 798, 818 (5th Cir.), cert. denied, 459 U.S. 1038 (1982).

b. In a pattern or practice action, the "initial burden" is on the plaintiff to "demonstrate that unlawful discrimination has been a regular policy or procedure followed by an employer...." Teamsters, supra, 433 U.S. at 360. The plaintiff may meet this burden by proof of either disparate treatment or disparate impact. See, id. at 335-36 n. 15.

c. "Disparate treatment" means that an "employer simply treats some people less favorably than others because of their race...." Id. "Disparate impact" refers to "employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." Id.

d. Title VII prohibits "not only overt discrimination, but also practices that are fair in form but discriminatory in operation. The touchstone is business necessity. If an

employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971). Once an employment practice has been shown to have a discriminatory impact, "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." Griggs, supra, 401 U.S. at 432; see Connecticut v. Teal, 457 U.S. 440, 446 (1982).

e. A plaintiff may establish a prima facie case of disparate treatment using statistics alone if the statistics show a significant or gross disparity in the treatment of workers based on race. Hazelwood School District, supra, 433 U.S. at 307-08. Generally, a statistical disparity which is "more than two or three standard deviations ... undercut[s] the hypothesis that [the challenged employment] decisions were being made randomly with respect to race," and thus warrants an inference of discrimination. Id. at 311 n. 17; Harrell v. Northern Electric Co., 672 F.2d 444, 447 (5th Cir. 1982).

f. Statistical evidence may be "buttressed with evidence of a history of discrimination practiced by the employer, individual instances of discrimination, and opportunities to discriminate that exist in the employer's decision-making process." Payne, supra, 673 F.2d at 817. If the statistical

evidence is "insufficient alone to establish a prima facie case, the plaintiff may get over his or her hurdle by combining statistics with historical, individual, or circumstantial evidence." Id.

g. A "prima facie case of discrimination in recruiting" may be established by evidence of a "statistically significant disparity between the racial composition of the applicant pool and that of the relevant labor market...." Castaneda v. Pickard, 648 F.2d 989, 1003 (5th Cir. 1981).

h. Evidence that an employer with a substantially all-white work force engages in "word-of-mouth recruiting" establishes a prima facie case of discrimination where such recruiting "isolate[s] blacks from the 'web of information' which flows around opportunities at the [employer]" or "operates as a 'built-in headwind' to blacks" seeking employment. United States v. Georgia Power Co., 474 F.2d 906, 925 (5th Cir. 1973); accord Wilkins v. University of Houston, 654 F.2d 388, 399-400 (5th Cir.), mod. on rehearing, 662 F.2d 1126 (1981), vacated 693 F.2d 134 (5th Cir. 1983).

i. Evidence that an employer recruits for personnel only at all-white or predominantly all-white educational institutions establishes a prima facie case of discrimination where such recruiting "isolate[s] blacks from the 'web of

information' which flows around opportunities at the [employer]" or "operates as a 'built-in headwind' to blacks" seeking employment. Id.

j. A prima facie case of discrimination in hiring by a school district may be established by evidence of a statistically significant disparity "between the racial composition of [the district's] teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market." Hazelwood, supra, 433 U.S. at 308.

k. Generally "applicant flow data provides a very good picture of the relevant labor market because it allows one to compare the ethnic composition of an employer's workforce with that of the pool of persons actually available for hire by the employer." Castaneda, supra, 648 F.2d at 1003. However, "where there is an allegation that the employer's discriminatory practices infect recruiting ... such applicant flow data cannot be taken at face value and assumed to constitute an accurate picture of the relevant labor market. Discriminatory recruiting practices may skew the ethnic composition of the applicant pool." Id.; accord Wheeler v. City of Columbus, 686 F.2d 1144, 1152 (5th Cir. 1982).

1. Once the plaintiff establishes a prima facie case of a pattern or practice of employment discrimination, the "burden then shifts to the employer" to show that "the Government's proof is either inaccurate or insignificant." Teamsters, supra, 431 U.S. at 360, or to "provide a nondiscriminatory explanation for the apparently discriminatory result," id. at 361 n. 46. When the employer is a school district having a "relatively recent history of discrimination, "it may meet this burden only with "clear and convincing evidence...." Castaneda, supra, 648 F.2d at 994.

m. An employer's burden of rebuttal "will not be met by general assertions of good faith or of hiring only the best applicants." Boykin v. Georgia-Pacific Corp., 706 F.2d 1384, 1393 (5th Cir. 1983); accord, Teamsters, supra, 431 U.S. 342-43 n. 24. Similarly, where an employer uses "all white personnel to subjectively determine whether black outside applicants ... [are] qualified," and the employer fails "to prove [its selection criteria] were applied in accordance with any standards or objective criteria," its "assertion that lack of qualifications justified its failure to hire blacks is insufficient refutation." Harrell, supra, 672 F.2d at 448.

n. If the employer seeks to establish that the plaintiff's statistical proof is flawed, it "must do more than raise theoretical objections to the data or statistical approach

taken; instead, the defendant should demonstrate how the errors affect the results, ... particularly in cases where the plaintiff has demonstrated gross disparities in employer practices...." Capaci v. Katz & Besthoff, Inc., 711 F.2d 647, 654 (5th Cir. 1983).

o. "If an employer fails to rebut the inference that arises from the Government's prima facie case, a trial court may then conclude that a violation has occurred and determine the appropriate remedy." Teamsters, supra, 431 U.S. at 361.

VIII. CONTESTED ISSUES OF LAW

The contested issues of law, in addition to those implicit in the contested issues of fact (Sec. VI, supra), are:

a. Whether PISD has violated Title VII of the Civil Rights Act of 1964, as amended, by discriminating against blacks with respect to its teacher recruitment practices?

b. Whether PISD has violated Title VII by discriminating against blacks with respect to its teacher hiring practices?

IX. EXHIBITS

a. Counsel for the plaintiff and defendants have attached as Attachments A and B hereto two (2) copies of their respective Exhibit Lists. All exhibits on those lists will be exchanged on December 30, 1985, absent agreement by counsel to

the contrary. However, either party may supplement its Exhibit List up to January 5, 1986, for the purpose of adding exhibits which relate to any report prepared by an expert of the other party. All such exhibits which are added to the Exhibit List must be exchanged no later than January 5, 1986.

b. All exhibits will be offered and received in evidence as the first item of business at trial. If either counsel objects to the admissibility of any exhibit, he shall so notify the Court and opposing counsel in writing, at least three (3) business days before trial, if possible, and shall furnish a written copy of the disputed exhibit and legal authorities supporting his position; provided, however, that any objections to supplemental exhibits which are added to the exhibit list pursuant to paragraph (a) above, shall be made as the first item of business at trial.

X. WITNESSES

Counsel for the plaintiff and defendants have attached as Attachments C and D hereto a copy of their respective witness lists. [NOTE: This list must set forth the names and addresses of witnesses who will or may be used with a brief statement of the subject matter and substance of their testimony. The qualifications of expert witnesses must also be listed.]

In the event there are any other witnesses to be called at the trial, their names, addresses and the subject matter of

their testimony shall be reported to opposing counsel as soon as they are known. This restriction shall not apply to rebuttal or impeaching witnesses, the necessity of whose testimony cannot reasonably be anticipated before the time of trial.

XI. SETTLEMENT

It currently appears that all settlement efforts have been exhausted, and that this case must be tried.

XII. TRIAL

Trial will probably last three weeks.

[Note: Include a statement here as to the availability of witnesses, including out-of state witnesses]

XIII. DISCOVERY

Should either party include an expert report on the Exhibit List, the other party may depose the expert who prepared the report up to January 5, 1986 or up to any other date agreed to by counsel for the parties.

XIV. ATTACHMENTS

? The parties have attached as Attachments E and F hereto their respective proposed findings of fact and conclusions of law. [with supporting authorities and a memorandum of law.]

UNITED STATES DISTRICT JUDGE

Date: _____

APPROVAL RECOMMENDED

George Henderson
Lead Attorney For Plaintiff

Date: _____

Stephen Greenberg
Lead Attorney for Defendant

Date: _____

Attachment A

Plaintiff's Exhibit List

Attachment B

Defendants' Exhibit List

Attachment C

Plaintiff's Witness List

Attachment D

Defendants' Witness List

Attachment E

Plaintiff's Proposed Findings of Fact
and Conclusions of Law, and Memorandum of Law

Attachment F

Defendants' Proposed Findings of Fact and
Conclusions of law, and Memorandum of Law