

FILED BY wle D.C.

00 DEC 11 PM 4: 19

ROBERT F. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

BRENDA K. MONROE, et al.

and

UNITED STATES OF AMERICA

Plaintiffs,

v.

JACKSON-MADISON COUNTY SCHOOL
SYSTEM BOARD OF EDUCATION, et al.,

Defendants.

C.A. No. C-1327

ORDER

This cause came before the Court on defendants' Motion for a Declaration of Unitary Status and Final Dismissal (filed December 17, 1999) and the plaintiff-parties' responses thereto opposing the Motion. See Preliminary Response of Plaintiffs in Opposition to Defendants' Motion for Unitary Status (filed January 20, 2000) and United States' Memorandum in Opposition to Defendants' Motion for Unitary Status and in Support of Motion for Scheduling Order (filed January 20, 2000).

The parties have engaged in extensive informal discovery and negotiations regarding issues one or more of them contend are raised by the Motion. As a result of these negotiations, the parties have reached an Agreement, which is attached to and incorporated herein. The Agreement includes: a new Long-Range Plan for facilities and student assignments to which the Monroe plaintiffs and the United States have agreed, and which defendants have agreed to implement, subject to receipt of funding therefor; and various other measures to be implemented by defendants (including academic programs and activities, and faculty and staff assignments).

OBVIOUS

The Agreement also establishes procedures for the resolution of issues that may arise in the course of its implementation by the parties.

The parties have reached their Agreement subject to the Court's approval. The Agreement provides that enforcement by the Court shall be necessary only in the event that the parties are unable to resolve their differences themselves or through specified means of alternate dispute resolution. In the Agreement, the parties pledge to move the Court for removal of this matter from the active docket upon the defendants' receipt of a commitment for full funding of the capital components of their Long-Range Plan; if necessary, in limited circumstances described in the Agreement, this matter may be returned to the active docket.

After reviewing the terms of this Agreement and the attachments thereto, as well as the record in this case, the Court concludes that approval of the parties' Agreement, as an Order of the Court, is fair, equitable and consistent with applicable law. The Court further concludes that the parties' Agreement, if properly implemented, will further desegregation of the Jackson-Madison County Schools and establish an orderly path toward the school system's attainment of unitary status in the areas of facilities, student assignments, student transportation, faculty and staff assignments and extra-curricular activities.

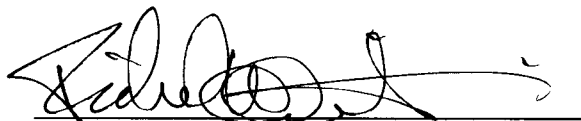
It is, therefore, ORDERED, ADJUDGED AND DECREED:

1. that the parties' Agreement, including the attachments thereto, are hereby approved and entered as an Order of the Court; and accordingly,
2. that defendants, the Monroe plaintiffs and the United States are hereby directed fully to implement the provisions of the Agreement;
3. further, the Monroe plaintiffs shall have sixty (60) days from the date of entry of this Order to make application for attorneys' fees and costs. The parties shall endeavor to resolve this matter without a hearing. In the event the parties conclude that a hearing is necessary, the parties shall so notify the Court.

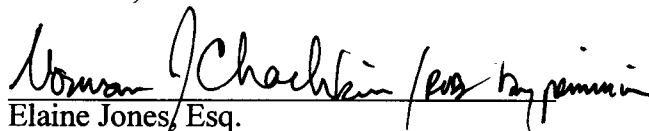
SO ORDERED, this 8th day of December, 2000.

s/Julia Smith Gibbons
UNITED STATES DISTRICT JUDGE

Approved and Agreed:

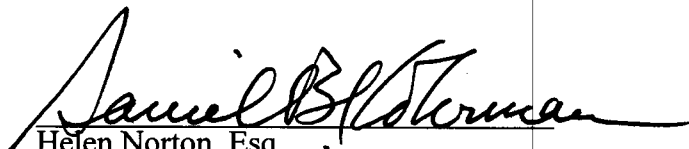


Richard H. Dinkins, Esq.
Dodson, Parker, Dinkins & Behm
306 Gay Street, 400 Realtors Building
Nashville, Tennessee 37219



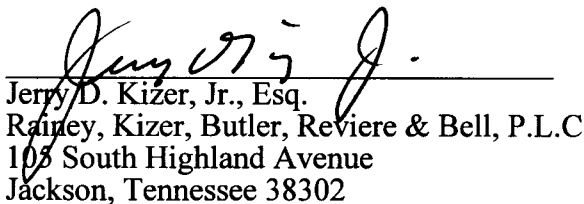
Elaine Jones, Esq.
Norman J. Chachkin, Esq.
NAACP Legal Defense
& Educational Fund, Inc.
99 Hudson Street, 16th Floor
New York, NY 10013

Counsel for Plaintiffs
Brenda K. Monroe, et al.



Helen Norton, Esq.
Deputy Assistant Attorney General
Michael S. Maurer, Esq.
Daniel B. Kohrman, Esq.
Sunil Mansukhani, Esq.
Trial Attorneys
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
601 D Street, N.W., Suite 4300
Washington, DC 20530

Counsel for Plaintiff
United States of America



Jerry D. Kizer, Jr., Esq.
Rainey, Kizer, Butler, Reviere & Bell, P.L.C
105 South Highland Avenue
Jackson, Tennessee 38302

Counsel for Defendants, the Jackson-
Madison County School System Board of Education, et al.

AGREEMENT

THIS AGREEMENT is made by and among the parties to the case styled *Brenda Kay Monroe, et al., and United States of America v. Jackson-Madison County School System Board of Education, et al.*, Civil Action No. C-1327 (the "Lawsuit"), currently pending before the United States District Court for the Western District of Tennessee, Eastern Division, (the "Court"): plaintiffs Brenda Kay Monroe, *et al.* (the "Private Plaintiffs"), plaintiff United States of America ("United States"), and defendants Jackson-Madison County School System Board of Education, *et al.* ("Board"). A principal purpose of this Agreement is to update in light of current circumstances the Consent Judgment of November 16, 1990, which as modified, governs the desegregation of schools operated by the Board. In addition, in this Agreement and the associated Long-Range Plan ("Plan"), appended hereto as Exhibit A, the parties identify steps to provide for stable, long-term desegregation of the school system, the removal of the Court's active supervision by placement of the case on the inactive docket and an orderly process leading to a declaration of unitary status.

INTRODUCTION.*

1. On August 10, 1998, the Board convened its Long-Range Planning Committee ("Committee") to develop a long-range plan for the construction of schools, assignment of students to schools, programming and other matters. One acknowledged goal of the long-range plan was to "contribute to meeting the objectives of the Consent Judgement of November 16, 1990 on a long-term basis." August 25, 1998 Consent Judgment at page 5. The Court's August 25, 1998 Consent Judgment directed the parties to confer during the 1998-1999 school year on modifications to attendance zones in conjunction with the construction and renovation of school facilities. In January, 1999, the Board acted to assign responsibilities for long-range planning to the Superintendent of Schools. In light of the work of the Committee, the parties agreed, *see* Court orders dated August 25, 1998 and November 10, 1999, that only limited changes in school zones to secure further student desegregation would be required, notwithstanding student desegregation requirements set forth in the November 16, 1990 Consent Judgment.

*The signatories to this Agreement have included this introductory section to provide a historical context and background; however, nothing contained in this section (or in the documents referred to therein) shall be interpreted to modify, contradict, override or otherwise alter the meaning of the language contained in the remainder of the Agreement.

Working in consultation, the parties to the Lawsuit discussed various goals and objectives to guide the development of a long-range plan. From these discussions emerged a series of proposals, as well as "Factors of Consideration," a copy of which is appended hereto as Exhibit B.

2. In April 1999, the Superintendent and his staff prepared and submitted to the Board the *Vision for the Future*, consisting of two alternative plans (Plan A and Plan B) of construction and pupil assignment. In the course of discussions between the parties, in October 1999 the Superintendent and his staff presented to the Board for its approval a modified version of Plan B. After approval by the Board, the Private Plaintiffs and the United States were asked to review the modified Plan B and to provide their comments and suggestions. The parties engaged in extensive analysis of and negotiations regarding the modified Plan B which led to the adoption of various further modifications to the Long-Range Plan. The Plan agreed to by the parties (the Fall 2000 *Vision Plan*) is contained in Exhibit A.

3. In December 1999 the Board filed with the Court a Motion for Declaration of Unitary Status (the "Motion"), which was and is opposed by the Private Plaintiffs and the United States. (Grounds for opposing the Motion were initially set forth in responses to the Motion filed in January, 2000, by the United States and by the

plaintiffs.) The parties to the Lawsuit have engaged in extensive informal discovery relating to issues that one or more of the parties contend are raised by the Motion.

4. The parties enter into this Agreement in order to establish and memorialize the terms upon which they have agreed to address issues one or more of the parties contend are raised by (a) the Board's Plan, (b) the need for timely and effective implementation of all components of the Plan, (c) the Board's Motion, and (d) the desirability of resolving such matters on an agreed basis rather than through contested litigation. The mutual promises of the parties to this Agreement serve as consideration therefor.

TERMS.

5. Following the Board's approval and adoption of the Plan and its execution of this Agreement, and following entry of the Court's Order approving this Agreement, the Board will use its best efforts to secure as soon as possible a commitment for the funding of the Plan.

- a. The Private Plaintiffs agree to use their best efforts to assist the Board in securing funding (from whatever source) adequate to fully implement the Plan. The parties anticipate that "Title I" or other federal funds received by the Board from the United States Department of Education will be used to partially fund the Plan. To secure such funds for these

purposes, the Board agrees to take steps that may be necessary under these federal programs (including waiver applications). The Board recognizes that it bears the legal obligation for implementing the necessary elements of public education, with funding from the State of Tennessee and its political subdivisions. Such elements include, in this instance, facility construction and renovation and other programs and components that the Board has pledged to implement as a condition of carrying out this Agreement, and which will be required by the Court's Order approving this Agreement. Therefore, during the term of this Agreement, the Board shall, in its periodic budget requests to the Madison County Commission, as well as its funding interactions with the State of Tennessee and the United States, at all times seek funding sufficient to carry out the Plan.

- b. The parties concur that to fulfill this Agreement, full funding is required of all components of the Plan. In particular, in regard to facilities and student assignments, full funding is required of all capital (construction and renovation) projects in the Plan, and of all operational and programmatic components (including magnet programs) intended to

enhance student desegregation or to assure equal educational opportunity at racially isolated schools.

- c. In the event the Board is unable to obtain a commitment for the full funding anticipated in the Plan for all capital (construction and renovation) projects, this Agreement shall be void and unenforceable.

6. The parties anticipate that, upon approval and commitment of the funding for the capital (construction and renovation) projects specified in the Plan, there will be a multi-year period, currently projected not to exceed four (4) years, during which the Board will construct and renovate school facilities, implement other components of the Plan, and carry out applicable portions of this Agreement. This period of time shall be referred to as the "Implementation Period."

7. Implementation schedules and priorities. The Board is committed to completing school construction and renovation projects and related student assignments changes included in the Long-Range Plan according to the projected time schedule attached hereto as Exhibit C, which shall be referred to as the "Facilities and Student Assignments Transition Schedule." The Board also is committed to identifying a schedule for implementation of curricular and programmatic components of the Plan. The same shall be known as the "Program Transition Schedule."

- a. As soon as funding commitments for the capital (construction and renovation) projects anticipated in the Plan have been secured, and prior to the beginning of any construction, the Board shall confirm, or identify to Private Plaintiffs and the United States specific proposed modifications, if any, to the Facilities and Student Assignments Transition Schedule. In any such proposed modifications, the Board shall place a priority on completion of renovation projects, shall provide for student assignment changes to be implemented no later than the completion of facilities improvements at schools affected by such changes, and shall reflect its commitments set forth in paragraph 8.b.
- b. No later than 90 days after the execution of this Agreement, the Board shall provide plaintiffs and the United States a listing of curricular and programmatic components of the Plan and a projected schedule for phasing in such components. The "Program Transition Schedule" shall require that curricular and programmatic components of the Plan are to be implemented at each school designated to house such components, no later than the opening of the school following completion of construction or renovation work specified in the Plan. To the extent it is feasible to do so, consistent with sound educational practices, and

with available human and other resources, the Board agrees to implement such programmatic components earlier than the completion of facilities improvements at facilities designated to house such components.

- c. The parties shall endeavor to agree on components of the proposed “Program Transition Schedule” and on any proposed modifications to the “Facilities and Student Assignments Transition Schedule.” In the absence of an agreement within 15 days following the date on which the Board furnishes each of these documents, any party may pursue the Dispute Resolution Process provided for in paragraph 29 of this Agreement. In such event, the Board may proceed to implement immediately such components of the Facilities and Student Assignments Transition Schedule that are not within the Dispute Resolution Process.
- d. The Board is committed to new school construction on the following sites described in Exhibit A hereto: Ashport Road (new elementary school; North cluster); Jackson Technology magnet site (new elementary school; East cluster); Bemis site (new intermediate school; South cluster); East Union site (new middle school; East cluster); and Pringles Park site (new high school; East cluster).

- e. Within 90 days following execution of this Agreement, one or more facilities consultants hired by the United States and/or Private Plaintiffs shall be permitted to inspect Board facilities and records relating to facilities, and communicate with school personnel responsible for district facilities operations (or for administering particular facilities), for the purpose of developing a report and recommendations concerning the nature, extent, and estimated cost of facilities improvements needed at Alexander, Lincoln and Whitehall elementary schools, and Jackson Central Merry (East) High School (west cluster high school), consistent with the provisions of this Agreement and the Board's Plan, including improvements needed: at Alexander, to facilitate its success as an "enhanced option" school; at Lincoln, to facilitate its success as a magnet school; at Whitehall, to facilitate its educational effectiveness as a community school, operating specialized enrichment and compensatory programs; and at JCM East, to facilitate its success as the west cluster high school.

The facilities consultant(s) described above shall, among other things: (1) take into account the May 26, 2000, report of Dr. Wise (facilities consultant to the Board), which identifies facilities renovation

priorities and was prepared in accordance with the May 2, 2000, Consent Judgment; (2) take into account information regarding renovations and improvements required at other schools under the Plan, as well as capital maintenance of all schools in the system; and (3) communicate with Dr. Wise. To this end, the Board agrees to provide, within 60 days following execution of this Agreement (*i.e.*, thirty days prior to projected completion of the report(s) and recommendations), a schedule and description of projected expenditures of the \$6.8 million allocated in the Board's Plan for "System-Wide Capital Outlay," and projected capital maintenance needs and priorities through the remainder of the projected six-year life of this Agreement. The Board informs the parties that the \$6.8 million budget for "System-Wide Capital Outlay" is for calendar years 2000 through 2004.

The Board shall respond in writing to the report(s) and recommendations within sixty (60) days stating what steps it will take to implement each recommendation or the reason(s) it declines to do so. The parties shall discuss the report(s) and the Board's response, and attempt to agree on steps to implement any recommendations therein. If the parties are unable to agree, the United States or Private Plaintiffs

may invoke the Dispute Resolution Process with regard to any portions of the report(s) and recommendations.

- f. Upon completion of construction and renovation projects specified in the Plan (including any modifications approved in accordance with paragraph 7.e.), the Board shall implement, prior to further or additional capital improvements in the system, (defined for the purpose of this provision as the expenditure of funds for the purpose of creating new or additional classroom space), the expansion or improvement of the site at Jackson-Central Merry East Campus to accommodate practice fields for desired sports and construction of a regulation high school stadium (located on the East or West Campus) with regulation track, home and visitor seating, home and visitor dressing facilities, and other necessary facilities.

The Board agrees to this additional construction project as further consideration for this Agreement, and agrees to be contractually bound to complete the same prior to any further or additional capital improvements (as defined in this subparagraph) when funds become available following any determination by the Court that the Board has achieved unitary status in the area of facilities. *See* paragraph 24.

8. Implementation contingencies. The parties agree that the components and projected completion dates contained in the Board's "Facilities and Student Assignments Transition Schedule" and its "Program Transition Schedule" are subject to postponement in light of the modification of financing arrangements, construction delays and other unforeseen circumstances.

- a. In such circumstances (except as provided in paragraph 7.a), the Board shall notify the parties (*e.g.*, in a status report, see paragraph 10, or otherwise) well in advance (at least 90 days, and 180 days, if possible) of any postponement the Board considers necessary.
- b. With regard to initial implementation of the Plan, in the event of any proposed changes, the Board agrees to adopt measures as close as possible to those specified in the Plan and which will achieve no lesser degree of desegregation. In the subsequent years of this Agreement, the Board agrees to consider any changes in accordance with paragraph 12.b.
- c. If data available as of the Board's January 30, 2002 status report indicates that either or both of the two elementary school new construction projects will be delayed beyond fall 2002, the Board shall propose and implement alternate transition steps not identified in the

Facilities and Student Assignments Transition Schedule. These steps shall put a priority on (i) assignment changes complete within a cluster where practicable; and (ii) student assignment changes to the extent practicable to permit Lincoln elementary to operate as a magnet school as contemplated in the Plan.

- d. If the Board decides to identify a proposed alternative site for any of these projects, it shall immediately inform the other parties of such a proposal, explain in detail the grounds for such a decision and identify any related proposed changes in the Plan. Any such alternative site shall not adversely impact desegregation of student assignments under the Plan, and shall be subject to approval by the other parties.
 - e. In the event of a disagreement between the parties as to any changes proposed by the Board as provided in paragraph 8.a., 8.b., 8.c. or 8.d., any party may invoke the Dispute Resolution Process set forth in paragraph 29.
9. Inactive docket. The parties agree that once funding commitments for construction and renovation projects in the Plan have been secured, and following any proceeding under paragraphs 7.a and 7.b., the Lawsuit should be placed on the inactive docket of the Court, and that they will jointly file a request with the Court

seeking that status. The parties further agree that this case shall remain on the inactive docket continuing through the Monitoring Period (*see* paragraph 23) subject to the provisions of paragraphs 29 and 31.

10. Status reports. During the implementation period, the Board will provide counsel for the Private Plaintiffs and for the United States with written progress reports detailing the current status of funding, facilities projects, student assignment changes, and program or operational components of the Plan addressed in this Agreement (*i.e.*, matters identified in the Facilities and Student Assignments Transition Schedule and the Program Transition Schedule), and any other efforts underway to implement the Plan. Those reports shall be furnished by September 30 (after the beginning of the school year), January 30 (after the end of the first semester of the school year), and June 30 (after completion of the school year).

11. Magnet and enhanced option planning. The Board shall develop by the beginning of the 2001-02 school year a comprehensive process to advise parents and the public of the educational components and pupil assignment options contained within the Plan, to recruit and encourage students to exercise options made available under the Plan so as to achieve desegregated schools by voluntary means, and to stimulate and increase public support for the Plan and the programs specified therein. The Board shall provide to the parties a substantially complete written draft of its plan

no later than May 1, 2001. Private Plaintiffs and the United States shall have sixty (60) days to provide written comments on the plan.

- a. The Board's comprehensive process shall contain, at a minimum, the following elements: a public relations strategic plan; a student (and parent) recruitment plan; a time-line and process for parents/students to make school choices; a plan for recruiting and training staff to administer and deliver instruction in school choice programs; a staffing plan for carrying out the Board's comprehensive process; and a budget for activities through the end of the Monitoring Period (*see* paragraph 23.a.). The Board shall place its plan into operation on a schedule that will facilitate the success of its voluntary desegregation efforts.
- b. The Board shall periodically evaluate publicity and recruitment efforts for voluntary desegregation programs to assure their effectiveness, and shall redesign them whenever it appears that desegregation is likely to be improved by doing so. The parties anticipate that the Board will carry forward the most successful techniques and approaches developed through this process beyond the end of the Court's jurisdiction in this case.

- c. For each new or modified school-specific magnet or other educational program to be implemented as part of the Plan (*i.e.*, expanded Lincoln magnet, modified middle and intermediate school arts magnet, new technology magnet programs in the East cluster, Alexander enhanced option program, Whitehall enhanced community school program, new college preparatory focus magnet high school at JCM west), the Board agrees to identify, in (or with) the status report (required in paragraph 10) one (1) year prior to program implementation, the new or modified program and how it has been integrated with the overall school program, including: curriculum (specialized courses, etc.); instructional methodology; staffing (including process and criteria for selecting administrators, faculty and staff); any specialized admissions procedures (including how students would be admitted from a waitlist, and any admissions prerequisites); plans for specialized training of school staff; any specialized extracurricular opportunities; and any plans for involving parents in the program. The Board shall describe with specificity how each magnet or option program is designed to secure a stable, high-quality, desegregated education environment. The plaintiff

parties shall have ninety (90) days to comment on the Board's reports regarding development of specialized programs under the Plan.

12. Voluntary desegregation measures. The Board shall attempt to achieve maximum practicable desegregation through voluntary means. In each year in which this Agreement is in effect, and beginning with the January 30, 2003, status report, the Board shall evaluate and report on its efforts to secure desegregated student enrollment by voluntary means, including at the following schools designated by the Plan to implement such methods: Alexander (enhanced option program), Ashport Road, Lincoln (science/math magnet), Malesus, Jackson Technology magnet (in east cluster) and Parkview (Montessori magnet) elementary schools; and the college preparatory focus magnet high school located at JCM west campus. The Board also agrees to report annually, beginning with the January 30, 2003, status report, on implementation of magnet programs designated for intermediate, middle and high schools in the east cluster.

- a. The Board shall evaluate the impact of its desegregation efforts based on whether they result in enrollments (measured by fall data reported to the State) within a range of $\pm 15\%$ of the district-wide black student enrollment percentage at the grade levels served by each school.

- b. The Board shall initiate voluntary desegregation measures, such as those described below, at any elementary school (other than Beech Bluff and Whitehall, which are projected to exceed $\pm 15\%$ of the district-wide black student enrollment percentage at the elementary level), and at the JCM West magnet High School, if fall data reveal that the school has fallen outside the applicable range. In the January 30 status report each year (beginning January 30, 2003), for each school in which the black student enrollment percentage differs by more than 15% from the district-wide average at the grade levels served by the school, the Board shall identify to the parties a plan, for implementation that spring, reasonably calculated to bring the school within the applicable range by the next school year. Such measures may include, but are not limited to: additional transfer choices for students at the school, and/or opportunities for students to transfer to the school; magnet (or other) program revisions, including new or additional steps to attract out-of-zone transfers; reserving seats in the kindergarten (and in other grades where space is available) for out-of-zone transfers to the school; preferences (sibling, employment or other) to encourage student transfers; and/or additional recruitment efforts, including from students waitlisted at other

choice schools. Each school's plan also shall identify specific action steps, and any additional resources to be made available (*e.g.*, staff, transportation, program funding, etc.).

- c. If the Board is unable to secure results within 20% of the district-wide black student enrollment percentage at the elementary level for any elementary school (other than Whitehall or Beech Bluff) for two consecutive school years beginning with the year of opening for new schools and with the first year of full incorporation in the Plan for all other schools, the Board shall consider and report to the parties regarding potential changes in student attendance zones for the school which might further the goal of stable, long-term desegregation of student enrollments.
- d. During the life of this Agreement, the plaintiff parties will not seek to compel the Board to make modifications in zone lines and/or student assignments. If the Board decides to initiate such a modification, the Board shall give the other parties notice at least six months (180 days) prior to proposed implementation. Any such change must not adversely impact desegregation of the school system at that grade-level (*i.e.*, elementary, intermediate, middle, high) and, should to the extent

practicable, be in furtherance of the implementation of the Long-Range Plan.

- e. If any party disagrees with a Board proposal or plan described in paragraphs 12.b. and 12.d., the party should notify the other parties in writing; if the party's concerns cannot be accommodated, the party may invoke the Dispute Resolution Process. A Board decision with regard to potential changes in student attendance zones, as described in paragraph 12.c., shall not be subject to the Dispute Resolution Process.

13. Certificated and Non-certificated Staff Assignment

- a. There shall be full faculty and professional staff desegregation at each school and at the central office. Specifically, the Board shall take all reasonable steps to ensure that the percentage of minority faculty and minority professional staff at each school and the percentage of minority personnel on the central office staff shall be within $\pm 10\%$ of the system-wide percentage of certificated personnel.
- b. No later than the beginning of the 2004-05 school year, the percentage of minority non-certificated personnel (*i.e.*, all staff other than faculty and administrative staff) in each school in the district and at the central office shall be within $\pm 15\%$ of the district-wide average for non-

certificated minority personnel. For each newly constructed school opening prior to the 2004-05 school year, the percentage of minority non-certificated staff at the new school shall be within $\pm 15\%$ of the district-wide average for non-certificated minority personnel.

- c. The Board shall apply nondiscriminatory and objective criteria in making certificated and non-certificated assignments and reassignments to schools and to the central office as follows:
- (1) All vacancies will be posted and volunteer transfer requests will be considered first. If the minority/non-minority ratio still does not satisfy paragraphs a. and b., then assignment of new hires and following that, if still necessary, then mandatory reassignments will be made based on employment seniority in order to satisfy the requirements of paragraphs a. and b.
 - (2) In all other respects, the Board shall hire, assign, promote, pay, demote, dismiss, and otherwise treat certificated and non-certificated personnel without regard to race, color, or national origin.
 - (3) In order to achieve the objectives set forth herein, the Board shall continue to implement the Plan to Recruit Minority Applicants for

Certificated Positions in the Jackson-Madison County School System, approved and adopted by the Board on March 14, 1991 (the "Recruitment Plan") and page C-3 of the Policy manual for the Jackson-Madison County School System and, as necessary, amend the Recruitment Plan in accordance with this Agreement.

In addition, the Board shall:

- (a) Include in its recruitment efforts as identified in the Recruitment Plan and as set forth herein all certificated positions, in addition to teaching positions, specifically including special teaching positions (*e.g.*, art, music), special education gifted teachers, school (and Board) psychologists, speech therapists, vision consultants and foreign language instructors.
- (b) Similarly, for non-certificated school and central office staff, the Board shall continue to utilize its present method of notifying potential applicants of vacancies and, in addition shall send, no less than quarterly, announcements of actual and expected vacancies in non-certificated positions to the following: (1) all churches to which the

notice of the Recruitment Plan is sent; (2) the Jackson-Madison County branch of the NAACP; and (3) all members of the Bi-Racial Committee. The Board shall, in the first mailing of such notices to the churches, also send notice that the Board is actively seeking minority applicants for such positions. At least every two years, the Board shall update its list of churches. Particular emphasis shall be given to the recruitment and employment of persons in the categories of teachers aides, technicians, skilled crafts and unskilled laborers.

d. The Board recognizes the importance of, and is committed to employing, a diverse teaching staff in its assignment of teachers to schools and within schools. In furtherance of that end, the Board agrees to implement measures designed to recruit additional minority faculty to teach honors/AP and gifted classes, and minority faculty to serve as coaches or sponsors of extra-curricular activities. Such measures shall include:

- (1) Outreach – All openings in any of the aforementioned positions listed in subparagraph d. will be advertised district-wide so as to ensure that all interested individuals are made aware of the

position. Principals shall inform all faculty members in their school of the vacant position. The Assistant Superintendent for Personnel shall certify, prior to the engagement of coaches, that their employment or assignment by the Superintendent is in compliance with the provisions of the Recruitment Plan, Board personnel policy and the relevant provisions of this Agreement. Such certification shall include, but not be limited to, a specification of the measures taken to recruit and engage African-American coaches.

- (2) Notification – By July 15 each year, principals shall provide a written report to the Superintendent listing the number and race of the individuals applying for any of the positions listed in subparagraph d. and providing an explanation for why a particular candidate was chosen. These reports shall be made available to the plaintiff parties upon request.
- (3) Accountability – The Superintendent’s annual review of each principal’s job performance shall include an assessment of the principal’s efforts and effectiveness in recruiting minority faculty members to fill the positions listed in subparagraph d.

- e. As the Long-Range Plan is implemented, subparagraphs 13.a. and 13.b. will be considered and adhered to in the assignment and reassignment and/or transfer of teachers and administrative staff. Reassignments and/or transfers of personnel shall be processed through the Board's personnel office.
- f. It is understood and agreed that, while employment issues have been addressed in this Agreement, no effort has been made to address individual or class complaints of discrimination; consequently, a subsequent finding that the Board is unitary in the area of faculty and staff employment shall not operate to preclude an individual or class complaint of employment discrimination, any evidence in support of or opposition thereto, or the granting of relief therefrom.

14. The Board shall develop and present to the parties within 90 days of the date of hire of the consultant identified in paragraph 16 a plan to encourage minority students to participate in all programs and activities. This plan, which will incorporate the individual school plans described in paragraph 14.a.(3) below, will replace the "Jackson-Madison County School System Plan to Encourage Minority Student Participation in all Academic Programs and Activities" that was developed pursuant to Section III.B. of the November 16, 1990 Consent Judgment. Each year by July 15,

the Superintendent will provide a written report to the Board and to the plaintiff parties about the implementation and effectiveness of such plan during the most recent school year.

- a. The plan to encourage minority students to participate in all programs and activities shall include, but not be limited to, the following components:

- (1) Parental notification– To support efforts to enhance participation in programs and activities, elementary school faculty and staff, and, as appropriate, central office staff, shall discuss with parent(s) of each incoming second grade student (*e.g.*, at parent-teacher conferences) the availability and entrance criteria for the ACE program, GEMS program, and other special programs run by the school. Middle and high school staff, and, as appropriate, central office staff, shall discuss with each incoming middle and high school student and his/her parent(s) the school's academic programs, including honors and advanced placement courses, the availability of the proposed college preparatory focus magnet high school, the benefits of pursuing a challenging academic curriculum, and the school's extracurricular opportunities. The

plan shall identify other methods by which parents are to be informed of programs and activities.

- (2) Training– School-based administrators, faculty, counselors, and other instructional staff shall receive in-service training, by the conclusion of the 2001-02 school year, in areas including, but not limited to: cultural sensitivity; identifying characteristics of academically talented and gifted students in historically underserved populations; and methods of instruction for ethnically and socioeconomically heterogeneous student populations.
- (3) Individual school plans – Each school shall develop, within 60 days of the consultant’s date of hire, its own action plan describing with specificity methods by which all students are to be informed of and encouraged to participate in programs and activities, particular means by which school staff (including faculty, counselors and activity sponsors) are to implement the plan, and the names of staff, parents, and students who will serve on a school committee to identify and address any barriers that may result in minority underrepresentation in programs or activities.

(4) Central office oversight – The Superintendent or his central office designee shall review annually with each principal his/her school's plan in light of data on minority student participation in all programs and activities, and meet with the school committee formed pursuant to subparagraph three of this section. The superintendent's annual review of each principal's job performance shall include an assessment of the principal's efforts and effectiveness in encouraging minority students to participate in all programs and activities. The Superintendent shall annually report to the Board and the parties, by July 15, each school's efforts to increase minority participation in programs and activities, as well as his/her assessment of which, if any, of these efforts have been effective.

- b. The plaintiff parties shall have 30 days from the receipt of the Board's plan to provide any suggestions, recommendations, or concerns about the plan, and the parties will attempt to resolve any differences that may arise within 60 days of the plaintiff parties' receipt of the plan. The Dispute Resolution Process described in paragraph 29 shall be utilized for any component of the plan for which agreement has not been reached.

Components of the plan not subject to the Dispute Resolution Process should be implemented at the end of this 60-day period.

- c. The Board shall utilize the consultant retained pursuant to paragraph 16 to assist in the formulation and implementation of the plan described in this paragraph.

15. The parties consent to be bound by the following provisions of the November 16, 1990 Consent Judgment, as amended:

- a. Section II (Student Desegregation), subsection A. (Majority-to-Minority Transfer Policy) (except A.2.d.);
- b. Section IV (Magnet Program), except to the extent superceded by the magnet program provisions of this Agreement and the Long-Range Plan: *i.e.*, (a) conversion of Jackson MS performing arts magnet (grades 6-8) to new performing arts and technology magnet middle school (grades 7-8, at East Union site) and new Jackson performing arts and technology magnet intermediate school (grades 5-6, at current Jackson MS site); and (b) conversion of Parkview elementary magnet from k-5 to k-6 program; and
- c. Section V, subsection A.6. (surplus school buildings).

The parties agree to revisit the issue of an M-to-M transfer program after full implementation of the Long-Range Plan at the elementary school level, in order to consider whether and the extent to which M-to-M transfers complement, conflict and/or are consistent with the Plan. The parties further agree that the Board shall propose, at an appropriate time prior to opening the new middle school in the east cluster, a revised performing arts magnet program to be shared by the new middle school in the east cluster and the intermediate school (to be operated at the current Jackson Middle School). The Board's revised arts magnet program shall reflect the fact that the current program serves all grade 6-8 students at Jackson Middle, while the proposed east cluster schools for grades 5-6 and 7-8 will operate both arts and technology magnet programs. To assure continuity and effectiveness of arts magnet programs, and strong student participation in such programs across grades 5-8, the Board agrees, at a minimum, to provide arts magnet programs resources comparable to those now provided for arts magnet students in grades 6-8. In addition, the Washington-Douglass School shall continue to be utilized to house early childhood education and a family resource center.

16. The parties shall jointly agree on the identity of a consultant, to be employed by the Board during the Implementation Period, whose responsibilities (other than

those identified in paragraph 14) shall be to investigate, study and report to the parties regarding:

- a. the participation of African-American students in the ACE (elementary grade levels) and GEMS (all grade levels) programs and advanced placement and honors courses (middle and high school levels);
- b. the pre-referral, testing, and placement of African-American students in the special education program and in resource classes at all grade levels;
- c. the retention in grade and withdrawal from school prior to high school graduation of African-American students; and
- d. the representation of African-American students at the Alternative School.

If the parties have been unable to reach agreement on the identity of the consultant within 60 days after approval of this Agreement by the parties, each party may recommend a single candidate with experience in the aforementioned areas. The consultant will then be chosen jointly by Dr. Bill Wise, who now serves as a consultant to the Board, and Dr. Larry Winecoff, who now serves as a consultant to the United States. The consultant will be chosen from those candidates recommended by the parties. The consultant's report to the parties in the aforementioned areas will be presented to the parties within 180 days of the consultant's date of hire. The date

of the report can be modified upon the agreement of all the parties. The consultant's report shall include (a) a complete listing of the data reviewed and persons interviewed; (b) a description of the analysis undertaken; (c) an explanation of the consultant's findings; and (d) the consultant's recommendations, if any. The Board and the consultant will confer and develop a plan to address issues, if any, raised by the consultant. The plan will be presented to the parties within 90 days of the consultant's report, unless the parties agree otherwise. Any party make invoke the Dispute Resolution Process specified in paragraph 29 below within 60 days of receiving the Board's plan if any disputes about the content of the plan cannot be resolved. Components of the plan not subject to the Dispute Resolution Process shall be implemented at the end of the 60-day period.

17. The parties agree that the fact that a consultant has been engaged to investigate the matters described in paragraph 16 above will not prohibit the parties, with or without assistance of the consultant, from proposing, discussing, or agreeing to (a) programmatic modifications to the Plan, in order to more quickly accomplish its purposes, or (b) measures to address matters one or more of the parties contend are related to the Motion. Moreover, Private Plaintiffs or the United States may separately engage one or more consultants, at their own expense, to assist in evaluation of implementation of the Plan or evaluation of matters Private Plaintiffs or the United

States contend are related to the Motion. The Board agrees to be responsive to reasonable requests for information to assist consultants of the Private Plaintiffs or the United States or their counsel in this regard.

18. The parties agree that no oral statement made or information provided (except data prepared by the Board in the regular course of business, but not excepting data prepared by the Board at the request of the consultant) by any party to the consultant employed by the Board pursuant to paragraph 16 of this Agreement or the consultant(s) employed pursuant to paragraph 17 of this Agreement, nor any of the consultant's(s') findings, reports, and/or recommendations shall be construed as an admission by any party or an admission by the Board of a constitutional violation. The reports and testimony of the consultant employed by the Board pursuant to paragraph 16 may be used in a subsequent judicial proceeding in this Lawsuit only with the consent of all parties. Nothing in this paragraph shall limit in any way the parties' right to take discovery on any of the matters raised in the reports, and to take the depositions of any persons (except the consultant) referred to in the reports, and/or to introduce into evidence any information and/or testimony that is otherwise admissible. The deposition of the consultant(s) hired pursuant to paragraph 16 of this Agreement may be taken upon consent of all the parties.

19. During the implementation period, counsel for the Private Plaintiffs and the Board shall confer (either in person or in a conference call) as necessary, and shall invite counsel for the United States to participate in such conferences, in no event less frequently than quarterly, to discuss the following matters (and any additional issues that may be raised in connection with implementation of the Plan or by the Motion); any steps proposed based on discussions between less than all the parties must be shared immediately with any party absent from such discussions:

- a. demographic or other changes that may affect school enrollments projected under the Plan, including the availability of updated or more precise or additional information concerning attendance zones established in the Plan;
- b. changes that may affect the use of facilities or portions thereof, or affect building capacities or pupil assignment options reflected in the Plan, including, for example, changes in the condition of school facilities or in state or federal laws or regulations;
- c. refinement and continued development of the program and curricular offerings in each school and cluster;
- d. issues arising during the process of transition from the current pupil assignment plan to that contemplated by the Long-Range Plan and,

particularly, the feasibility of implementing transitional pupil assignment and/or programmatic changes (identified in the Plan) during the implementation period;

- e. success of recruitment efforts geared toward achieving desegregated schools by voluntary means;
- f. the development of a mechanism for assessing, documenting and publicizing, during the life of this Agreement, the success of the Plan in maintaining a system of desegregated schools and the continued improvement of the curricular and programmatic quality of public education, so as to fulfill some of the purposes of the Plan and the Factors of Consideration (information contained in the annual monitoring reports described in paragraph 21 of this Agreement shall be utilized for this purpose once those reports become available);
- g. measures to enhance the recruitment, employment, promotion and other employment opportunities for African-American faculty, staff (including school-level administrative personnel and coaches) and administrators;
- h. other aspects of school system operations which one or more of the parties contend are relevant to the issues raised by the Motion;

- i. potential action in any of the foregoing areas which may be appropriate in light of the information provided and the issues discussed by the parties; and
- j. such other matters as may be suggested by any of the parties.

20. No oral statement made or information provided (except data prepared by the Board in the regular course of business) by any party in the course of the discussions required by paragraph 19 of this Agreement shall constitute or be construed as an admission by any party or an admission by the Board of a constitutional violation. No oral statement made or information provided (except data prepared by the Board in the regular course of business) in the progress reports required by paragraph 10 of this Agreement shall constitute or be construed as an admission by the Board of a constitutional violation, although it may be admissible for other purposes.

21. The Board shall submit to the parties' counsel of record annual reports fully detailing its efforts to comply with the provisions of this Agreement (as ordered by the Court) for the duration of the implementation and monitoring periods. These reports shall be submitted at the conclusion of each school year by July 15th, with the first report due July 15, 2001. The Superintendent shall certify in writing that all of the information contained in each annual report is true and correct to the best of his

information, knowledge, and belief and that a copy of the report has been submitted to and reviewed by the Board.

The annual reports shall also include the following information:

a. Student Assignments to Schools

- (1) The number and percentage of students, by race and by grade, enrolled at the elementary, middle, and high school levels in the District overall, and in each District school (including the juvenile academy and the alternative school).
- (2) For each school, the District shall identify the number of students, by race, attending school outside of their residential attendance zone for each of the following reasons: majority to minority transfer, child of school employee working at another school, attending a magnet school, attending a special education program unavailable at the student's zoned school and called for by an IEP, and any other reason. Upon request, the District shall provide to the plaintiff parties in hard copy and in a computer accessible format the following data on all students in the District for expert analysis: name, address, school zone of

residence, school attending, race, grade, and reason attending a school out of zone (if applicable).

- (3) The number of students applying, accepted and ultimately enrolling in each school, by race, grade, and attendance area, via current option programs or options permitted by the Long-Range Plan.

b. Faculty and Staff

- (4) The number and percentage of certificated full-time teachers, part-time teachers, principals, assistant principals, administrative assistants, counselors, and non-certificated staff, by race, by position, by level of education and by level of experience (in five year increments up to fifteen years), in each school in the District.
- (5) The number of central office staff, by position and race.
- (6) The number and race of faculty members, by school, assigned to teach in the GEMS program, ACE program, special education classes, honors/AP classes, and in any other special academic program.

- (7) The number and race of faculty members, by school, assigned to coaching and non-athletic faculty sponsor positions at the middle and high school level. This list should include the name of the activity to which each coach or sponsor is assigned, and the amount of any compensation afforded for such assignments.
- (8) A description of efforts, by school and by central office staff, to increase the number of minority faculty teaching in the GEMS program, ACE program, honors/AP classes, and in coaching and faculty sponsor positions, and an explanation for any deviations from a $\pm 10\%$ range for certificated staff or $\pm 15\%$ for non-certificated staff at a particular school (by comparison with the district-wide racial composition of certificated or non-certificated staff).

c. Faculty Recruitment and Hiring

- (9) A list of all recruitment trips, including schools visited, date and duration of each visit, whether or not the school visited is a predominantly minority institution, and a listing of the recruiters visiting the school, by race, ethnicity and position.

- (10) Any modifications to the written hiring and assignment practices and procedures for certificated and non-certificated staff, and the reasons for such modification.
- (11) A description of the Board's efforts to recruit and hire minority faculty and non-certificated staff members (distinguishing between existing and newly formulated efforts), and copies of all vacancy announcements that are posted, all advertisements published and scripts of all radio or television announcements related to the employment of faculty and non-certificated staff.
- (12) A list of the vacancies occurring/created and filled for school-based administrators, faculty and staff (separately listing certificated and non-certificated staff), by school, position, race of the person leaving the position (if applicable), and the race of the person filling each vacancy.

d. Student Assignment Within Schools

- (13) The number and percentage of students enrolled in special programs, by race, by class, by school, and by program, including but not limited to the GEMS and ACE programs.

- (14) The number and percentage of students, by race, by class, and by school, enrolled in resource, honors, advanced placement, and "in-house credit" classes at the middle and high school levels.
- (15) A description of actions taken, by school and by the central administration, (including changes to existing recruitment, selection processes and admissions criteria) to enhance participation by minority students in special programs and advanced courses, and any documents in support thereto.
- (16) The number and percentage of students, by race, grade, and school, (a) served by the S-team, (b) evaluated for special education services, and (c) placed in the special education program during the most recent school year.
- (17) The number and percentage of students, by race, grade, school, and exceptionality in the special education program.
- (18) The number and percentage of students, by race, grade, and school, (a) referred for evaluation for GEMS services, (b) determined eligible for GEMS services, and (c) served by GEMS during the most recent school year.

(19) The number of students, by race, grade, and school, (a) referred for evaluation for ACE services, (b) determined eligible for ACE services, and (c) served by ACE during the most recent school year.

(20) The number of teachers and other District staff, by race, who have received training pursuant to paragraph 14.a.(2). For each training session, please provide the date of the training and copies of the training materials.

e. Student Discipline

(21) The number and percentage of corporal punishments, in-school suspensions, referrals to the alternative school, out-of-school suspensions, and expulsions, by school and race of student.

(22) The types of offenses, totaled by school and by race, resulting in an out of school suspension, an expulsion, or a referral to the alternative school.

f. Extracurricular Activities

(23) The number of students, by race, participating in extracurricular activities, by school and activity.

- (24) Any modifications to the eligibility requirements for participation in any extracurricular activity.
- (25) Any programs or policies adopted to remove barriers precluding students from participating in extracurricular activities due to financial or other reasons, and a description of the actions taken, by school and at the central office level, to increase the participation of underrepresented groups in extracurricular activities.

g. Quality of Education

- (26) The number and percentage of students, by race and school, who (a) graduate with honors diplomas, (b) regular diplomas, (c) withdraw from school, and (d) are retained.
- (27) Copies of any reports submitted by or to federal, state or local agencies (or otherwise available to the Board) detailing standardized test results by race in the District.
- (28) A description of the activities the District has undertaken, by school, with federal Title I (and other federal) funds.

h. Other

- (29) The number of computers currently operating and regularly used by students, and the number of current library volumes, by school.
- (30) A description of the efforts made, by school and by the central administration, to increase the level of involvement by minority parents in the school's programs and activities.
- (31) Copies of all written complaints from job applicants, district employees, parents, or students made to the Board or to any federal or state agency concerning alleged racial discrimination, and a description of the Board's response.
- (32) The percentage of students, by school, eligible for free and reduced lunch benefits.

22. Bi-Racial Committee. A Bi-Racial Committee shall be formed and placed into operation by July 1, 2001, and shall have the following:

a. Objectives - (1) To act as an advisory committee with respect to existing desegregation orders, desegregation issues and with federal and state law prohibiting discrimination on the basis of race in the provision of services to students, parents and patrons of the Jackson-Madison County School System. (2) To ensure that district constituents have a forum for expressing their concerns with regard to the availability

of equal educational opportunities in the school district. (3) To assist the Board in publicizing and garnering public support for the Long-Range Plan and the programs contained in it. (4) To monitor and assess, on a continuing basis, the efficacy of the Long-Range Plan and, specifically, the programmatic portions thereof.

b. Duties

- (1) The Bi-Racial Committee (BRC) shall operate as an advisory committee to the Jackson-Madison County School System.
- (2) The BRC is charged with the responsibility of monitoring the implementation of the Long-Range Plan, assessing the efficacy of the programs implemented in the Plan; advising the School Board with respect to the availability of equal educational opportunities for all district students in the areas of: student assignment, extra-curricular activities, school programs, school construction and site selection, faculty/administrative hiring, recruitment, promotions and assignments, transportation, resource allocation and quality of education issues.
- (3) The BRC shall review any reports, annual or otherwise, provided to the Board, the District Court and/or the plaintiff parties in the desegregation case.

- (4) The BRC has authority to send information requests directly to the School Board or Superintendent. The information requests will be limited to the matters listed in (2). The School Board or Superintendent will respond within thirty (30) days of the request.
- (5) The Board agrees to provide space for the BRC to meet and reasonable support services (*e.g.*, copying) on request.
- (6) During the 2001-2002 school year the Superintendent and/or his staff will work with the BRC to study the existing curriculum as it relates to multicultural content and perspectives and will jointly recommend to the Board any changes or additions deemed appropriate.

c. Membership

- (1) The BRC shall consist of no more than nine (9) members and shall have annual alternating racial majorities. No member shall be a current employee of the School System. There shall at all times be at least one (1) member from each of the four clusters contained in the Long-Range Plan.
- (2) The Jackson-Madison County branch of the NAACP and the Jackson-Madison County Board of Education shall each appoint three (3) members, at least two (2) of whom shall be either parents,

grandparents, or guardians of children currently enrolled. The Jackson-Madison County Chamber of Commerce, the City Council of the City of Jackson, and the Madison County Commission shall each appoint one (1) member.

- (3) To constitute the first committee for the first year, the Jackson-Madison County Branch of the NAACP shall choose three persons to serve on the BRC, one of whom shall be black and serve for one year, one of whom shall be white to serve for two years and one of whom shall be black to serve for three years. The Jackson Madison County Board of Education shall choose three persons to serve on the BRC, one of whom shall be white and serve for one year, one of whom shall be black to serve for two years and one of whom shall be white to serve for three years. The Chamber of Commerce appointee shall be black and appointed for one year, the City Council's appointee shall be black and appointed for three years and the appointee of the County Commission shall be white and be appointed for a term of two years.

Thereafter, for each succeeding year the NAACP and the Board shall each make an appointment for a three year term and, as

the term of the initial appointee of the Chamber, the City Council, and the County Commission expires, their successor shall serve a three year term. The Chamber, City Council, and County Commission shall alternate their respective appointments between black and white appointees, with the intent of the selection method to preserve an alternating racial majority and also as required, appointments shall be made to preserve the participation of each cluster on the BRC.

- (4) Persons serving on the BRC shall have a commitment to the Factors of Consideration and the Long-Range Plan and to a racially diverse learning environment.

d. Officers

- (1) The BRC shall have a Chairperson, a Vice-Chairperson and a Secretary, who shall be elected annually by a simple majority vote of the membership.

- (2) **Duties**

- (a) The Chairperson shall initially create the BRC meeting schedule. The BRC shall meet regularly, not less than once each quarter. S/he shall call meetings and maintain order at BRC meetings. S/he shall serve as the official liaison of the

BRC to the School Board and shall be responsible for presenting all information requests to the Board. S/he shall be responsible for submitting and presenting all BRC recommendations to the School Board in writing and in person at School Board meetings.

- (b) The Vice-Chairperson shall assume the duties of the Chairperson in his/her absence at BRC meetings and at School Board meetings.
- (c) The Secretary shall be responsible for maintaining full and accurate minutes of each BRC meeting and shall be the custodian of all documents and other records of the BRC.
- (d) The BRC shall produce an annual report to the System detailing any concerns, recommendations, commendations or such other matters as may be appropriate.

23. Monitoring Period. At the conclusion of the Implementation Period, when the construction and renovation projects identified in the Plan have been completed, the Board shall implement any remaining programmatic, curricular or operational components of the Plan that have not theretofore been implemented and shall also

effectuate all attendance zones, pupil assignment procedures and admissions processes described in the Plan.

- a. For a period of two school years thereafter (the "Monitoring Period"), the Board may, but is not required to, taking into consideration the monitoring reports, and after giving notice to the Private Plaintiffs and the United States of potential modifications in student assignments (and the anticipated impact upon student enrollments, by race, at affected schools) at least 60 days prior to their proposed effectuation, propose such modifications to the Plan as will more fully accomplish the objectives of the Plan.
- b. The parties agree that during the Monitoring Period, the Board will not make changes in attendance zones or in pupil assignment policies or procedures (including assignment to magnet schools or other schools of choice) that will cause any school to become racially identifiable or will cause any racially identifiable school to move further from the district-wide black student enrollment percentage for the grades served by the school. For purposes of this Agreement, a school shall not be considered racially identifiable if the percentage of black students is within $\pm 15\%$ of the district-wide black student enrollment percentage at that grade level (*i.e.*, elementary, intermediate, middle, high).

- c. During the Monitoring Period, upon receiving notice pursuant to subparagraph a. above of any proposed modifications in pupil assignments, Private Plaintiffs or the United States shall promptly notify the Board if either party concludes that any proposed modification in student assignment does not comply with subparagraph b. above. The parties shall then confer in an effort to resolve their differences. If agreement cannot be reached within 60 days from the date of notice to the Board (or within such enlarged time period to which the parties may consent), the parties shall pursue the Dispute Resolution Process provided for by paragraph 29 of this Agreement to resolve the matter.
- d. Similarly, during the Monitoring Period, if any party concludes that measures proposed or taken by the Board affecting matters described in subparagraph b. above, or affecting any other matters relating to the Plan, are inconsistent with the purposes of the Plan or with this Agreement, the party may pursue the Dispute Resolution Process provided for by paragraph 29 of this Agreement to resolve the matter.

24. One year after commencement of the Monitoring Period, if no issue regarding full compliance by the Board with its facilities obligations under paragraphs 7 and 8 of this Agreement has been pursued through the Dispute Resolution Process provided

for by paragraph 29 of this Agreement, or, if pursued, has been resolved, the plaintiff parties will agree that the Board has satisfied its obligations regarding partial unitary status with respect to facilities and will join the Board in asking the Court to enter an order to that effect. As further consideration for this Agreement the Board agrees to the priority for the additional construction project identified in paragraph 7.f. of this Agreement and agrees to be contractually bound to complete same prior to further or additional capital improvements (as defined in paragraph 7.f.) when funds are available following any determination by the Court that the Board has achieved unitary status in the area of facilities.

25. Two years after commencement of the Monitoring Period, if no issue has been pursued regarding full compliance by the Board with its obligations under this Agreement concerning either student assignments, faculty and staff, pupil transportation, and/or extracurricular activities, through the Dispute Resolution Process provided for in paragraph 29 of this Agreement, or if pursued, has been resolved, the plaintiff parties will agree that the Board has satisfied its obligations regarding partial unitary status with respect to student assignments, faculty and staff, pupil transportation, and/or extracurricular activities and will join the Board in asking the Court to enter an order to that effect.

26. The parties agree that they will, during the Implementation Period and the Monitoring Period, attempt to reach agreement, as early as feasible, on as many as possible of the outstanding unresolved issues one or more of the parties contend are connected with the Motion. To the extent agreements are reached, they may be incorporated into this Agreement through the execution of Addenda. The parties may (but are not required to) utilize the Dispute Resolution Process provided for by paragraph 29 of this Agreement for this purpose. Formal discovery by the parties and any hearing on issues raised by the Motion for Unitary Status will be stayed during the implementation and monitoring periods, except for hearings required for motions for partial unitary status heretofore described in paragraphs 24 and 25, any hearing and any related discovery conducted pursuant to the provisions of paragraphs 29 and 31, and any hearing and any related discovery concerning the Motion in the event this Agreement is rendered void because of failure of a commitment for full funding of the capital (construction and renovation) projects anticipated in the Plan (referred to in paragraph 5.b. of this Agreement). If this Agreement is rendered void, and the Board proceeds with its Motion, the parties shall jointly request the Court to set a discovery and trial schedule that will afford the parties 90 days for depositions and other discovery, to be followed by an evidentiary hearing at the earliest possible date that is convenient to the Court and the parties.

27. The parties have reached an agreement that, if fully and properly implemented, likely will position the Board to obtain unitary status with respect to the areas of facilities (*see* paragraph 24), as well as student assignments, faculty and staff, pupil transportation, and extracurricular activities (*see* paragraph 25). The parties recognize that they have differing opinions regarding the relevance or significance to a determination of full unitary status of other issues, such as, for example, quality of education and within-school assignments. Nothing herein shall prohibit or limit the parties from litigating such matters when the Motion is presented for consideration by the Court as provided in paragraph 28, nor from engaging in discovery or other trial preparation for a hearing before the Court on the Motion. It is understood and agreed, however, that the commitments of the parties contained in this Agreement are made and done in an effort to narrow, as much as possible, the number and scope of issues or matters one or more of the parties contend relate to the Motion that will remain for adjudication by the Court after implementation of the Plan and the passage of the Monitoring Period.

28. At the conclusion of the Monitoring Period, if the parties have resolved all matters that each contends are related to determination by the Court of the school system's entitlement to full unitary status, they shall jointly request the Court to take action on the Motion consistent with such resolution. Otherwise, they shall jointly

request that the Court establish a schedule for presentation and adjudication of remaining questions one or more of the parties contend are relevant to the Motion and will jointly request the Court to establish a new discovery schedule.

29. Dispute Resolution Process. Although this Agreement may be enforced by the Court as provided in paragraph 31 below, the parties agree that any disputes arising in connection with this Agreement or the implementation of the Plan should be resolved without recourse to the Court if at all possible.

- a. In the event of a dispute among the parties with respect to a matter addressed in this Agreement, the parties shall confer and consult in good faith in an effort to resolve the matter. Such consultations shall constitute the first step in the Dispute Resolution Process established by this Agreement.
- b. If those efforts are unsuccessful (and, where applicable, within the time periods established within earlier paragraphs of this Agreement with respect to specific subject matter), the parties agree to seek to resolve their differences with the assistance of a mediator. Such mediation shall constitute the second step in the Dispute Resolution Process established by this Agreement.

- c. Following efforts to reach a resolution through discussion among the parties, any party may invoke the second step of the Dispute Resolution Process by notifying the other parties of its intention to do so. The parties shall thereafter seek within a period of no more than 30 days to agree on the identity of a mediator. The parties may utilize the services of private mediators or consultants such as the American Arbitration Association or they may select an individual of their choosing as a mediator.
 - d. In the absence of an agreement among the parties with respect to the identity of the mediator, the parties shall jointly request the assistance of the mediation services of the Court.
 - e. Once the mediator has been selected, the parties shall cooperate with the mediator in scheduling and presentation of their positions and in seeking to resolve their differences with the assistance of the mediator.
 - f. If mediation efforts are unsuccessful, any party may file an appropriate motion with the Court to reinstate the Lawsuit on the active docket for the purpose of considering whether an order to enforce the relevant provision(s) of this Agreement should issue.
30. Notwithstanding any terms of this Agreement to the contrary, the parties agree that, in the event the Court adjudicates questions one or more parties contend

are relevant to the Motion for Unitary Status the parties do not by entering this Agreement waive, and therefore fully preserve, the right to present their positions (including those set forth in the Motion and the responses thereto), in regard to the burden of proof applicable to proceedings regarding unitary status. The Board reserves the right to file a separate brief with this Agreement further stating its position with respect to burden of proof. The parties agree that the plaintiff parties should have a right to respond (and the Board a right to reply).

31. The parties recognize and affirm that the terms and conditions of this Agreement, while contractual in nature, must receive the approval of the Court in order to be made effective and can therefore be enforced, after utilization of the Dispute Resolution Process described in paragraph 29, by appropriate motion filed in the lawsuit. To this end, the parties agree jointly to request that this Agreement be appended to and incorporated in any Order of the Court granting approval of the Agreement. They further concur that this Agreement shall be binding upon, and inure to the benefit of, the parties, their respective successors, and assigns.

32. This Agreement may contain more than one counterpart of the signature pages and such counterparts shall have the same force and effect as though all of the signers had signed a single signature page.

This Agreement is hereby executed as of the 28th day of November 2000.

**Jackson-Madison County School
System Board of Education**

Brenda Kay Monroe, et al.

By: Carl Long
Chairman

By: _____
President, Jackson-Madison County
Branch of the NAACP

By: Loy Weaver
Superintendent

United States of America

By: _____
Helen Norton, Esq.
Deputy Assistant Attorney General
Michael S. Maurer, Esq.
Daniel B. Kohrman, Esq.
Sunil Mansukhani, Esq.
Trial Attorneys
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
601 D Street, N.W., Suite 4300
Washington, DC 20530


**Counsel for Plaintiff
United States of America**

This Agreement is hereby executed as of the 28th day of November 2000.

**Jackson-Madison County School
System Board of Education**

Brenda Kay Monroe, et al.

By: _____
Chairman

By: 
President, Jackson-Madison County
Branch of the NAACP

By: _____
Superintendent

United States of America

By: _____

Helen Norton, Esq.
Deputy Assistant Attorney General
Michael S. Maurer, Esq.
Daniel B. Kohrman, Esq.
Sunil Mansukhani, Esq.
Trial Attorneys
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
601 D Street, N.W., Suite 4300
Washington, DC 20530

Counsel for Plaintiff
United States of America

This Agreement is hereby executed as of the 28th day of November 2000.

**Jackson-Madison County School
System Board of Education**

Brenda Kay Monroe, et al.

By: _____
Chairman

By: _____
President, Jackson-Madison County
Branch of the NAACP

By: _____
Superintendent

United States of America

By: *Daniel B. Kohrman*

Helen Norton, Esq.
Deputy Assistant Attorney General
Michael S. Maurer, Esq.
Daniel B. Kohrman, Esq.
Sunil Mansukhani, Esq.
Trial Attorneys
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
601 D Street, N.W., Suite 4300
Washington, DC 20530

Counsel for Plaintiff
United States of America