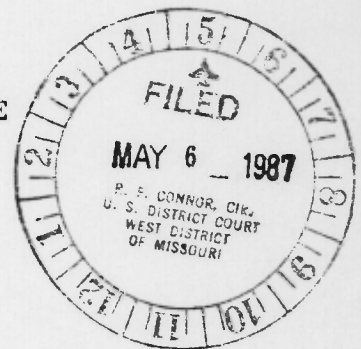


IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



KALIMA JENKINS, et al.,
Plaintiffs,

v.

STATE OF MISSOURI, et al.,
Defendants.

Case No. 77-0420-CV-W-4

OPPOSITION OF THE STATE OF MISSOURI TO KCMSD MOTION
FOR APPROVAL OF LONG RANGE CAPITAL IMPROVEMENT PLAN

The State of Missouri and related defendants (collectively, the "State") hereby oppose the motion of the School District of Kansas City, Missouri ("KCMSD") for an order approving its proposed Long-Range Capital Improvement Plan (the "Plan") and the related funding for projects identified as scheduled through the fall of 1990. For the reasons that follow, the State submits that KCMSD's motion should be denied.¹

¹ The Court's scheduling order, as amended, required the State to file its opposition to the KCMSD Plan by May 6, 1987, and to file any alternative plan on or before June 2, 1987. The State is presently considering an alternative capital improvements plan for the Kansas City School District that reflects the same views expressed herein, and architects retained by the State are inspecting the KCMSD school buildings to determine the necessity for the renovations proposed by KCMSD and the reasonableness of KCMSD's estimated costs for that work.

The State believes that the scope of KCMSD's proposed

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I. SUMMARY OF ARGUMENT

KCMSD's Plan, authored by Dr. Richard C. Hunter and endorsed unquestioningly by KCMSD and the Desegregation Monitoring Committee alike, is premised on a demonstrably unrealistic prediction of student enrollments that KCMSD's own Department Of Planning, Research, Evaluation and Testing (hereafter "Planning Department") has rejected as recently as February of this year. In addition, the Plan proposes funding allocations through the year 1990 that virtually absolve KCMSD and the citizens of the District of their traditional responsibility to support public education. If approved in its current form, KCMSD's Plan would have the State fund some 94% of an excessive renovation and reconstruction program of the KCMSD school system that is neither justified nor required.² The end result would be the waste of substantial funds already expended

renovations exceed those reasonably required as a part of a desegregation remedy, and will present that position in greater detail in its June filing and in the evidence it will present at the hearing scheduled to commence on August 3, 1987.

² KCMSD seeks funding for proposed building projects scheduled for completion by the fall of 1990 of \$202,202,625 in accordance with the chart entitled KCMSD Capital Funding Proposal ("Chart") attached to its Plan at Tab B. See Chart at 4. (This is an expanded version of the information contained in the untitled Chart submitted with KCMSD's Motion.) KCMSD's proposed allocation of the funds to be committed through the fall of 1990 calls for expenditures by the State of \$190,345,862 and expenditures by KCMSD of only \$11,856,763. Id.

on renovation of buildings KCMSD now proposes to abandon, and the construction of unneeded facilities that will further tax KCMSD's demonstrated inability to maintain the assets it presently administers.

KCMSD's Plan seeks to perpetuate the District's abandonment of its own responsibilities and continues the lack of planning and initiative that have brought the District to where it stands today. The State therefore urges that KCMSD's motion for approval of its Plan be denied.

II. ARGUMENT

A. KCMSD'S PLAN IS PREMISED ON UNREALISTIC ASSUMPTIONS REGARDING FUTURE STUDENT ENROLLMENTS.

While acknowledging that the population within the KCMSD "will continue to decline through the year 2005," Plan at 22, and that construction trends within the downtown area are "not likely to produce school-age children for the KCMSD," Plan at 17,³ KCMSD's Plan nonetheless projects an increasing student enrollment through the year 1995. Dr. Hunter's stated rationale for this illogical projection is that an increasing enrollment is

³ According to the statistics cited in the Plan, KCMSD enrollments declined more significantly than did population. The population decline during the period 1970-80 is reported to have been 25.3%, whereas the student enrollment declined by 44.8%. Plan at 22 & 23.

the "only scenario for the City worthy of consideration at this time." Plan at 23. However, KCMSD's Planning Department has repeatedly projected future student enrollments that are significantly lower than those predicted in the Plan, and KCMSD's existing school buildings are generally adequate to house the more realistic student population that KCMSD's Planning Department anticipates. Thus, KCMSD's Plan is premised on the need to accomodate an increasing student population that KCMSD's own Planning Department and all other relevant data reject.

Recognizing the obvious flaw in its critical enrollment assumption, KCMSD notes that it seeks funding only through the fall of 1990 and promises that it will seek to revise its Plan in two or three years if the KCMSD enrollment assumptions prove too optimistic. See KCMSD Motion For Approval Of Long-Range Capital Improvement Plan ("KCMSD Motion"), at 3.⁴ This is a false promise, however. By 1990, some 71% of the total construction funds envisioned by KCMSD's Plan are scheduled to have been committed or spent.⁵ By then, it will be too late for any

⁴ KCMSD's Motion identifies potential participation by the suburban districts in a voluntary interdistrict transer program as another possible factor that might lead to lower student enrollments than those on which its Plan is based. See KCMSD Motion at 3. For present purposes, the State's opposition focuses primarily on the flaws in the Plan's enrollment projections themselves, and does not address the necessity of adjusting enrollment projections downward in the event a voluntary interdistrict transfer program were implemented.

⁵ KCMSD attempts to camouflage its excessive program by promising to re-evaluate its needs in two or three years and by seeking funding only for projects planned through 1990.

meaningful reevaluation of what is already a demonstrably unrealistic set of student enrollment assumptions. By the time KCMSD's proposed reconsideration occurs -- if it occurs at all -- the District hopes to be far advanced in a construction program destined to build half-filled classrooms it cannot maintain.

1. The Enrollment Assumptions of KCMSD's Plan
Are Contradicted By All Available Data.

KCMSD's Plan is based on student enrollments derived from its Alternative III, which Dr. Hunter characterizes as the only scenario "worthy of consideration at this time." Plan at 23. However, Alternative III projects student enrollments that are significantly at odds with available data, and with the current projections of KCMSD's own Planning Department. All current evidence indicates that Alternative III is more a dream than a realistic basis for responsible planning for significant capital expenditures.

According to Dr. Hunter, Alternative III assumes an improvement in the "capture rates" attained by KCMSD and was established by using "[e]ssentially, the 1970 capture rate ... to

These efforts are of no value. The total funds through 1995 envisioned in the Plan is \$267,235,677, before adjustment for inflation. See Chart at 4. The corresponding proposed funding commitments through the fall of 1990 (on a pre-inflation basis) of \$190,765,229 represents some 71% of the total funding envisioned by KCMSD's Plan through 1995.

forecast future enrollments." Plan at 27. Dr. Hunter notes, moreover, that the enrollments projected in Alternative III are similar to enrollments that would be achieved if a sufficient number of nonminority students entered the KCMSD system to attain the goal of 40% nonminority enrollment set forth in KCMSD's Magnet Plan. See Plan at 28-29.

Neither Dr. Hunter nor KCMSD offer any legitimate justification for the selection of the 1970 capture rate as a basis for predicting future enrollments, other than unsupported judgments offered by Dr. Hunter to the effect that Alternative III reflects the anticipated results of changes already begun and envisioned for the KCMSD and "projects the most probable capture rate."⁶ See Plan at 29. No substantive basis is set forth for the selection of the 1970 capture rate, nor is any explanation offered of how the KCMSD will attain overnight a capture rate of an era of sixteen years past, the last year when the District had a numerical majority of white students. Clearly, Dr. Hunter has substituted hope for analysis. KCMSD, in turn, has ignored the considered views of its own Planning Department in adopting Dr. Hunter's strategem in its Plan.

⁶ The recent depositions of Elaine Tatham, author of the Mid-America Regional Council ("MARC") report entitled "Enrollment Forecasts," upon which Dr. Hunter relies, see Plan at 10, and Marlene Nagel, designated representative of MARC, made clear that the 1970 capture rate utilized in Alternative III was chosen by them simply because it was a year for which significant data exists. Neither Tatham nor Nagel made any effort to determine if KCMSD is likely to return to that capture rate, and when such a return would occur.

The contrast between Alternative III created at Dr. Hunter's behest and reality can be demonstrated by the data reported in the Plan itself. For example, Alternative III projects a total student enrollment of 44,879 for the 1985 school year. See Table 15 of Appendix I, at 31. However, the KCMSD Planning Department projected an enrollment of 36,451 for the 1985 school year, see Plan, Table 25, Appendix I at 81, which was reasonably close to the actual enrollment of 36,259 for the 1984/1985 school year and 35,590 as of January 29, 1986. See Plan at 24, Table 27, Appendix I, at 87.

The Planning Department's more recent data and projections confirm the folly of relying on Alternative III enrollments as a basis for long-range capital planning. In February of 1987, the Planning Department issued a report entitled "Projected Enrollments And School Building Utilization For 1987-88 School Year (hereafter "February '87 Projected Enrollments").⁷ As that report indicates, the total District enrollment in September 1986 was 36,309 students, and the Planning Department projected a September 1987 enrollment of 36,322 students. See February '87 Projected Enrollments at 4.

⁷ This report represents an update to the May 1986 School Building Utilization Study cited by Dr. Hunter. See Plan at 40. The School Building Utilization Study, together with the February '87 Projected Enrollments and a subsequent update and modification entitled "Projected Enrollments And School Building Utilization For 1987-88 School Year," dated March 6, 1987, are set forth in Exhibit 1 hereto. As can be seen by examining the March 1987 update, its enrollment projections do not materially differ from those of February 1987.

Finally, the reported enrollment as of January 28, 1987 was 35,899 students,⁸ which is close to the Planning Department's projection and significantly less than the enrollment that would be expected if Dr. Hunter's Alternative III were realistic.

The KCMSD Alternative III predictions for future years are equally misplaced. Alternative III projects an enrollment of 47,107 students for 1990, whereas KCMSD's Planning Department predicts 37,870 for that year. As noted above, the minimal enrollment increases to date indicate that the Planning Department's projections are considerably more reliable than Alternative III. Similarly, KCMSD's Alternative III predicts 47,898 students in 1995; KCMSD's Planning Department estimates that the 1995/1996 enrollment will be only 39,589.⁹

Enrollment projections undertaken independently by the School Data Section of the Missouri Department Of Elementary And Secondary Education (hereafter "DESE")¹⁰ further confirm the

⁸ KCMSD's enrollment as of January 28, 1987 is set forth in its Student Membership Report, which is Exhibit 2 hereto.

⁹ KCMSD's Alternative III is reported at pages 27 and 28 of the Plan and in Table 15 of Appendix I thereto. The projections of the KCMSD Planning Department are set forth in Tables 25 and 26 of Appendix I, and the actual enrollment figures for 1984/1985 and January 28, 1986 are set forth at page 24 of the Plan and Table 27, Appendix I at 83-87.

¹⁰ Beginning in the 1978-1979 school year, DESE compiled enrollment projections for the school districts, based on accumulated enrollment data and cohort survival projections. Beginning in 1980, DESE provided the school districts its projections for their use in planning and for other purposes, and it has maintained that practice since that time. The DESE projections previously provided KCMSD are set forth in Exhibit 3, hereto, together with other DESE projections of KCMSD

disparity between the student enrollments Dr. Hunter has created for the purposes of this Plan and the most probable KCMSD student enrollments for future years. The DESE projections are generally in accord with those of KCMSD's Planning Department, and thus are equally at odds with Alternative III. For example, DESE projected a total enrollment of 36,028 for 1985 -- similar to the KCMSD's Planning Department's projection of 36,451 and the reported actual enrollment of 36,259. For 1990, DESE projects an enrollment of 35,701 students, a figure that is reasonably close to the KCMSD's Planning Department's projection of 37,870 and substantially lower than the Alternative III projection of 47,107.¹¹

Finally, more recent available enrollment data also impeaches Dr. Hunter's Alternative III. In defending his choice of Alternative III, Dr. Hunter asserted that "under any of the projected scenarios, all indicators of future enrollments suggest a significant increase beyond the enrollment of 36,309 students for 1986-87." Plan at 28. The real facts indicate the contrary. Although Dr. Hunter's Alternative III posits a total enrollment of 44,879 in 1985 and increasing enrollments thereafter, the

enrollments.

¹¹ The State notes that the text of the Plan projects an Alternative III enrollment of 47,107. See Plan at 28. However, in Table 15, Appendix I, the Alternative III 1990 enrollment is projected at 47,117. The State has relied on the lower number, but acknowledges that the difference is likely immaterial.

actual reported enrollment for KCMSD as of January 28, 1987 was less than 36,000 students. Again, the real enrollments reported by KCMSD hardly suggest that additional students are flooding the KCMSD system as Dr. Hunter assumes they would be by this time.

2. KCMSD's Facilities Suffice To House The Reasonably Expected Student Enrollments Without Additional Expansion.

The data set forth in the Plan itself reveals how KCMSD's proposal is driven by its demonstrably mistaken assumptions concerning student enrollments in future years. In fact, KCMSD facilities currently in operation are adequate to house the present student enrollments, as well as the realistic projected future enrollments. No additional buildings are required.

The Plan reports that KCMSD had 21,087 elementary school students during the 1985-86 school term in grades K-6, who were housed in 50 elementary school facilities. See Plan at 29. Anticipating a change in elementary format from K-6 to K-5 , Dr. Hunter reports that the Alternative III enrollments for K-5 for 1995 -- the base year chosen for planning purposes -- is 22,943 students. Plan at 38. Based on that assumed student enrollment, and a recommended 90% utilization rate, Dr. Hunter asserts that the existing KCMSD building capacity would house 20,084 students, and thus that KCMSD would be short of capacity for 2,859 elementary students in 1995, requiring an additional 119.13 classrooms. See Plan at 42.

This reported "shortfall," however, is contrived from Dr.

Hunter's reliance on Alternative III as the data in the Plan demonstrates. In fact, KCMSD's reported capacity of 20,084 elementary students is more than adequate for the 18,840 students that KCMSD's Planning Department projects for grades K-5 for that year, cf. Table 26, App. I at 82, and reflects an excess capacity that is capable of absorbing even a substantial increase in enrollments if that should occur. Thus, the Plan's proposed new building program for elementary schools reflects in large measure KCMSD's false premise of significantly increasing elementary enrollments. Since the Plan generally contemplates elementary school buildings that will house from 400 to 600 students,¹² at least three of the proposed new elementary schools are totally unnecessary.

The Plan's asserted "shortfall" in building capacity is equally contrived for the middle and high schools. Again, no new building program is required to accomodate realistic student enrollments for future years. The Plan's prediction of a capacity shortfall of 170.19 middle school classrooms in 1995, see Plan at 55, assumes that the fictional Alternative III enrollment of 11,896 middle school students in 1995 must be accomodated. See Plan at 52-53. In fact, Dr. Hunter reports

¹² The proposed new elementary schools generally are to accommodate enrollments of 400-600 students, although the proposed elementary school at New West is to accommodate 1000 students. The average student size for all proposed new elementary schools is 565 students. See Plan, Table 3, App. II, at 8.

that the projections of KCMSD's Planning Department for middle school enrollments for grades 6-8 for 1995 (including special education and other special students) is 8,929, see Plan at 53, and that the capacity of the existing KCMSD middle schools and the one new middle school already authorized by the Court is 8,322, see Plan at 55, which is virtually the same as the KCMSD projected enrollment for 1995. Thus, Dr. Hunter's reported "shortfall" of 170 classrooms is only created by manufacturing an additional 3,000 students through reliance on Alternative III enrollments rather than the more likely enrollments that KCMSD's Planning Department has established.

Similarly, Dr. Hunter reports that KCMSD Planning Department projections anticipate a total high school enrollment of 10,649 in 1995-96. See Plan at 62.¹³ According to Dr. Hunter, the building capacity of the present high school buildings is 11,848. The Plan anticipates an increase in capacity to approximately 12,073 if KCMSD's challenged Magnet Plan is implemented. See Plan at 64. Thus, the existing buildings are adequate to house the realistic future enrollments projected by KCMSD's Planning Department, and substantial excess capacity would be generated if the challenged Magnet Plan is

¹³ Table 26 of Appendix I, which Dr. Hunter cites, reflects an enrollment of only 9718 students. The State cannot determine at this time whether Dr. Hunter's larger enrollment figure is in error, or whether it purports to include special students or some other consideration that is not explained. If Dr. Hunter's larger enrollment figure is an error, the excess capacity is even greater.

implemented as proposed. In spite of those facts, Dr. Hunter concludes that all of this additional construction is required to accomodate Alternative III's fictional enrollment of 13,060. See Plan at 63-64.

3. KCMSD's Reliance On The Assumed Drawing Power Of Magnet Schools Is Unsupported By All Available Evidence.

Since KCMSD's Plan places significant reliance on the anticipated increase in student enrollments that assertedly will be attained as a result of the magnet programs the KCMSD is attempting to implement, an examination of that proposition is warranted. In fact, the experience of St Louis and Kansas City both indicate that Dr. Hunter's extreme optimism is misplaced.

Like Kansas City, St. Louis established a "goal" of attracting a 40% nonminority enrollment into its magnet schools, and the Court of Appeals held in Liddell IX that interdistrict magnets should not be approved unless there is "a reasonable probability that at least forty percent of the white students will be residents of the suburbs" Liddell v. Board of Education, 801 F.2d 278, 282, reh'g denied, 804 F.2d 500 (8th Cir. 1986). As the Eighth Circuit noted in Liddell IX, in the 1985-1986 school year, only some 115 suburban white students were attending interdistrict magnets in St. Louis and only approximately 375 suburban white students were enrolled in the intradistrict magnets. Id. at 280. As the Eighth Circuit noted, only some 12% of the white students attending interdistrict

magnets in St. Louis were from the suburban districts. Id. at 282, n.3. More important for present purposes, however, the 115 suburban white students attending these magnets represent only some 6% of the total enrollment for those schools. Cf. id.

Judge Limbaugh's recent opinion in Liddell likewise affords no basis for the optimism expressed by Dr. Hunter and KCMSD. After examining the likelihood of achieving the 40% nonminority goal in a proposed magnet elementary investigative learning center at Kennard, the Court concluded that the "probability of attaining a 40% figure within three years seems untenable." Liddell v. Board of Education, No. 72-100 C(5), slip op. at 9 (E.D. Mo. March 17, 1987).¹⁴ Considering the likelihood that another magnet would attain the 40% nonminority goal in the absence of evidence of progress in that regard, Judge Limbaugh noted that the proposed renovation costs were an "astronomical sum of money to risk" in the hope of attaining this 40% goal, and that it could be "fiscally imprudent" to expend the proposed sums on renovation when such a low percentage of students were county transfers. Id. at 8.

While the magnet programs of St. Louis are admittedly not identical to those implemented and proposed for Kansas City,¹⁵

¹⁴ For the convenience of the Court, this opinion is set forth as Exhibit 4 hereto.

¹⁵ In St. Louis, the Court began with an intradistrict magnet program in 1980, and interdistrict magnets began in 1981 and increased in number from 1981 through 1984. Currently, there are 26 magnet schools in St. Louis.

the St. Louis experience certainly provides reason to question the rampant optimism of KCMSD and its expert. The St. Louis interdistrict magnet schools are now in their fourth year of operation, and their fourth year enrollment of white students from the suburban school districts is only 136 students.¹⁶ To date, the "goal" of attracting a substantial number of students from the St. Louis suburban school districts into the city school system has not even been approached.

The history and experience of KCMSD's development of its all-encompassing long range magnet program further evidences the remoteness of the possibility that the anticipated magnets will

The interdistrict magnet schools in St. Louis have demonstrated a limited ability to attract white suburban students, and certainly nothing approaching the 40% goal established by the Courts. In the years 1983-84, 1984-85 and 1985-86, these schools have, as a group, attracted white student enrollments from the suburbs of 4.6%, 5.6% and 6%, respectively. See Intra-City Magnets, Enrollment And Budget Analysis, Exhibit 5 hereto. The most recent interdistrict magnet white enrollments from the St. Louis suburbs for the seven interdistrict magnet schools is 6.2% of the total magnet student population. See St. Louis Magnet Schools/Programs, Analysis of Suburban Contribution As Of October 10, 1986, Exhibit 6 hereto.

The only magnet themes that appear to have significant attraction are the Visual and Performing Arts I ("VPA I") program, which reflects a 10% white suburban student enrollment for the 1986/87 school year, and the Military Middle Magnet, which has an 11.5% white suburban enrollment for that same school year. The VPA program seems to lose its attractiveness, however, since the VPA II program shows only a 6.3% white suburban enrollment. Id.

¹⁶ During this fourth year, the white intradistrict enrollment is approximately 404 students, for a total of 540 white students in the total magnet programs in St. Louis. See Exhibit 6 hereto.

attract the kinds of enrollments that KCMSD relies on in proposing its Plan. In fact, experience to date confirms the State's previous concerns that KCMSD's rush to adopt an ill-considered magnet program made it most unlikely that the program would accomplish its goals.

KCMSD gave magnet schools very little emphasis in its initial remedial plan filed in January, 1985, and magnet schools were not emphasized by this Court until June 1985, when it directed KCMSD to propose a budget for added funding of existing magnets in KCMSD and to conduct extensive surveys to identify magnet themes that would be most likely to attract nonminority student participation. Jenkins v. State, 639 F.Supp. 19, 34-35 (W.D. Mo. 1986), aff'd in part and rev'd in part, 807 F.2d 657 (8th Cir. 1986), pet'n for cert filed, ___ U.S.L.W. ___ (April 23, 1987). As the Court will recall, KCMSD's Court-ordered surveys evidenced some community support for programs for gifted students, as well as for programs emphasizing science and technology, which, in turn, produced an initial plan calling for some half-dozen magnet schools during the next few years and further planning based on the experience of those programs. This proposal was rejected by the KCMSD Board, however, apparently because it was not sufficiently sweeping in scope.

Shortly thereafter, KCMSD advanced a considerably more grandiose magnet plan that largely ignored the results of the

Court-ordered surveys ("Magnet Survey"),¹⁷ which had generally indicated that parents are considerably more interested in the basics of education than such esoteric concepts as the "Classical Greek" education and foreign language programs that are currently showcased by KCMSD.¹⁸ In fact, KCMSD has consistently proposed magnet programs that generated low levels of community interest

¹⁷ Although KCMSD maintains that its current proposals are based on these surveys, it is clear that its reliance was minimal. For example, although only a minority of parents were interested in magnet schools for elementary students, see A Qualitative Report on Attitudes Toward Magnet Schools at 31, over half of KCMSD elementary schools are to be converted to magnets. Similarly, the Magnet Survey reports that parental interest was lowest in foreign language magnet programs. See Magnet Survey at 17. KCMSD was unwise to ignore the results of their own survey; as reported in the Kansas City Times, the French and the German language magnet elementary schools received only a small number of first-choice applications. See "Magnet Applicants Mainly Minority," Kansas City Times (April 23, 1987), attached hereto as Exhibit 7. Moreover, although KCMSD has criticized the surveys, it has made no apparent effort to undertake additional surveys or engage in other means of measuring and responding to community interest and preferences. The handful of community hearings conducted prior to the submission of the magnet plan generally occurred after the plan already had been drafted by the consultants and during the summer vacation, when public involvement in school activities is at its lowest.

¹⁸ Another KCMSD witness, Dr. Holmes, testified in May 1985 that it is difficult to attract students from parochial schools and other private schools, see May 1985 Tr. at 22,891-22,892, and surveys indicate that parents of the suburban school systems are generally satisfied with the schools in their areas. Moreover, KCMSD's Planning Department has noted its inability to predict the possible future impact of the District's magnet and other programs on student enrollments, and the Planning Department thus has limited its planning based on a change in enrollment patterns to contingency planning so that the District might be prepared in the event such increases occur. See School Building Utilization Study, Exhibit 1 hereto, at 15-16.

or were not included in the surveys at all. Thus, it is not surprising that considerable parental skepticism is expressed in the recent series of articles on KCMSD's magnet programs in the Kansas City Star. See Exhibit 8 hereto.

Finally, KCMSD's student enrollment experience to date provides no support for KCMSD's assumption that the school system will generate the dramatic turnaround in student enrollments that Alternative III assumes. Although some modest increases in enrollment are evident in the 1986-87 school year, there is nothing to suggest that KCMSD enrollments are experiencing or will experience the dramatic revival that Dr. Hunter and KCMSD anticipate in the Plan. In fact, the actual enrollments for 1985 and 1986 are dramatically below those predicted in Alternative III. Additionally, although the KCMSD magnet schools reported increased enrollments from the 1985-86 to 1986-87 school year, including an increase of 268 white students, KCMSD's report of students attending magnet programs who live outside the District's boundaries reveals that, as of January 1987, only some 55 students had been drawn into the KCMSD magnet schools from the adjoining areas. See Exhibit 9, hereto.¹⁹

¹⁹ It appears that KCMSD's ability to attract white students from private and parochial schools is not notably better. In its article entitled "School officials optimistic on gaining white students" the Kansas City Star reports that only some 120 to 180 district residents who might otherwise have gone to private or parochial schools have entered the KCMSD magnets. See Exhibit 8 hereto.

B. RESPONSIBLE CAPITAL PLANNING SHOULD ASSUME RELATIVELY STABLE STUDENT ENROLLMENTS UNLESS AND UNTIL A SIGNIFICANT TREND TOWARD INCREASED ENROLLMENTS IS DEMONSTRATED.

As the proponent of a massive long-range capital improvements plan, KCMSD bears the burden of demonstrating that the program it advances. As the United States Court of Appeals for the Second Circuit cautioned in Arthur v. Nyquist, 712 F.2d 809, 813 (2d Cir. 1983), cert. denied, 466 U.S. 936 (1984), "a court must be alert not to permit a school board to use a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation." This admonition bears particular emphasis here. Whatever one might think of the merits of KCMSD's plans for the renovation of its school system on a voluntary basis, the Court-ordered remedies must be specifically related to "a current condition existing from intentional state action," Washington v. Davis, 426 U.S. 229, 240 (1976), quoting Keyes v. School District No. 1, 413 U.S. 189, 205 (1973), and the desegregation remedy must be tailored to fit the nature and extent of the constitutional violation. See Hills v. Gautreaux, 425 U.S. 284, 293-94 (1976); Milliken v. Bradley, 433 U.S. 267, 282 (1977) (Milliken II). It is apparent that KCMSD has not demonstrated any such relationship, and that its Alternative III offers no responsible basis for long range capital planning.

The facts indicate that KCMSD's Alternative III seriously

overestimated the student enrollments in three of the first five years it purported to predict, and there is no reason to believe that the accuracy of the Alternative III enrollment predictions for future years will be any better than those of the past. Nor can responsible capital planning be based on the promise of reconsideration in future years if experience suggests that the Alternative III enrollments are too optimistic. KCMSD's Plan contemplates commitments of more than 70% of the total funding prior to the time that its suggested reevaluation would occur, and by that time KCMSD and the State would be trapped in a capital improvements plan designed for a school district that bears little relationship to the one it must manage.

In fact, KCMSD's Plan approaches the student enrollment question in a backwards manner. Responsible planning for the long range capital needs of KCMSD must be based on the most likely future student enrollments, not some desired result or a goal that has not been demonstrated to have a strong chance of attainment.²⁰ To date, no significant increase in total student enrollments is evident, and all available data -- including enrollment projections generated by KCMSD's Planning Department

²⁰ Responsible planning should also include contingency plans for additional facilities in the event a significant increase in enrollments begins to emerge. Since KCMSD has based its Plan on the unrealistically large enrollments of Alternative III, however, no such contingency planning is apparent. All that KCMSD offers in this regard are a few statements that it will reconsider its overall plan in a few years -- by which time major capital expenditures will have been committed.

and provided some contingency planning to recognize the possibility of increased enrollments. Id. at 16, 17.

independently of this litigation -- indicate that KCMSD enrollments either will remain relatively stable or increase only modestly during the coming years. Finally, the critical media coverage of KCMSD's magnet programs in the local newspapers, combined with the recent failures of the KCMSD tax and bond initiatives to obtain even simple majority support, hardly evidence the kind of community support that suggests a dramatic turnaround of enrollment patterns.

In sum, there is no basis for accepting the optimistic scenario of Alternative III as the basis for long-range capital planning. Instead, the assumption of stable student enrollments, or, at best, modest growth, should be the premise of any long range capital improvements program for KCMSD, and should remain the premise until some other trend is firmly established. Any planning that assumes significantly larger enrollments should be limited to contingency planning, directed to the identification of modifications that might be required to accomodate a larger student population if it should appear.²¹

²¹ The School Building Utilization Study, set forth in Exhibit 1 hereto, provides an example of such contingency planning. Noting that the impact of magnet school attendance, possible voluntary transfers, Court-ordered minimum class sizes, and implementation of middle schools "cannot be predicted at this time", the Planning Department recommended against changes in school attendance zones and building utilizations based on those unpredictable considerations, see School Building Utilization Study at 15, and provided some contingency planning to recognize the possibility of increased enrollments. Id. at 16, 17.

C. KCMSD'S PLAN MISTAKENLY PROPOSED TO ALLOCATE THE
MAJOR FUNDING RESPONSIBILITY ON THE STATE.

KCMSD's motion asserts that the State is "the primary constitutional violator responsible for segregation within KCMSD," KCMSD Motion at 3, and thus seeks an order requiring the State to fund some 94% of the total capital improvements proposed for authorization prior to the fall of 1990. KCMSD's contention that the State is "the primary constitutional violator" is seriously at odds with the facts. Equally important, KCMSD's proposed funding allocations are precluded by the Eight Circuit's decision in Jenkins, which establishes that equal funding responsibilities are required in capital improvements and other desegregation programs. KCMSD's Plan is simply a continuation of the capital improvements first ordered by this Court in June of 1985. The Eighth Circuit's rejection of disproportionate funding for the initial capital improvements efforts controls here as well. Thus, there is no basis for ordering that any future capital improvements receive greater State funding than from the KCMSD. See generally, State's Response To KCMSD's Memorandum Regarding Allocation Of Funding Responsibility For Desegregation Remedial Programs, filed on April 23, 1987.

III. CONCLUSION

CERTIFICATE OF SERVICE

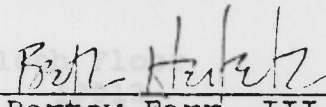
KCMSD has failed to demonstrate either that the Long Range Capital Improvements Plan it proposes is necessary or appropriate to address the real needs of the District, or that the construction program it seeks is a reasonable means of addressing the needs of this Court's desegregation decrees. The State therefore urges that KCMSD's Motion be denied.

Respectfully Submitted,

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Dated: May 6, 1987


Beth Heifetz

Dated: May 5, 1987

CERTIFICATE OF SERVICE

I hereby certify that a copy of Opposition Of The State Of Missouri To KCMSD Motion For Approval Of Long Range Capital Improvement Plan was hand delivered to:

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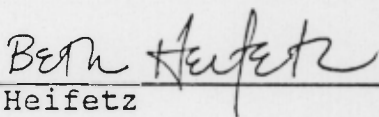
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Beth Heifetz

Dated: May 5, 1987