

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAR 10 1976

JOSEPH McELROY, JR., CLERK
BY *[Signature]*
Deputy

EDDIE MITCHELL TASBY and)
PHILIP WAYNE TASBY, by their)
parent and next friend,)
SAM TASBY, ET AL)

vs.)

CA 3-4211-C

DR. NOLAN ESTES, GENERAL)
SUPERINTENDENT, DALLAS)
INDEPENDENT SCHOOL DISTRICT,)
ET AL)

OPINION AND ORDER

The task presented to this Court is to adopt and implement a desegregation plan for the Dallas Independent School District (DISD) which will finally conclude the tortured history of this litigation and which will establish a unitary, nonracial system of public education in the DISD, as required by Brown v. Board of Education, 347 U.S. 483 (1954). This cause is here on remand from the Fifth Circuit Court of Appeals' decision of July 23, 1975, ^{1/} which affirmed in part and reversed in part this Court's 1971 desegregation order. The Fifth Circuit has instructed this Court to formulate a student assignment plan which will remedy the dual nature of the DISD found to exist in 1971.

I. The Parties

The cast of legal characters in this desegregation drama has changed since 1971, with the addition of new intervenors and the departure of intervenors previously in the case. The present actors still include the plaintiffs, representing a class of black and Mexican-American students in the DISD; the defendant DISD; the Curry intervenors, representing a group of North Dallas students; the intervenor James T. Maxwell, representing himself; and the

1/ Tasby v. Estes, 517 F.2d 92 (5th Cir. 1975).

City of Dallas. ^{2/} Additionally, the Metropolitan Branches of the National Association for the Advancement of Colored People (NAACP) were granted leave to intervene on August 25, 1975; the Strom intervenors, representing a class of persons living in naturally integrated areas of Western Oak Cliff and Pleasant Grove, were granted leave to intervene on August 25, 1975; and the Brinegar intervenors, representing a class of persons living in the naturally integrated area of East Dallas, were given leave to intervene on September 17, 1975.

On September 16 the Court challenged the business leaders of Dallas to become involved and further pointed out that everyone in the district had a job to do -- that it was not a job for the Court alone. The business leaders have responded to the challenge and have shown their sincere interest. Many churches, their leaders, and many organizations have expressed significant interest and offered to assist the Court. Additionally, a group of citizens formed a committee composed of six blacks, seven Mexican-Americans, one American Indian and seven Anglos. This group became an affiliate of the Dallas Alliance and became known as the Educational Task Force of the Dallas Alliance. The Dallas Alliance is a community service organization designed to act on and aid in the solution of urgent issues of the community. It consists of a forty member Board of Trustees, and seventy-seven correspondent organizations in the Dallas area.

This Task Force met for a period of four months and spent approximately 1500 hours together in devising concepts and principles for a desegregation plan for a DISD. They sent various members of their group to cities around the country to discover all possible tools for desegregation, and met with or talked with

^{2/} The City of Dallas remained a party to this phase of the proceedings but did not play an active role during this phase.

thirty leading figures in the desegregation field. Finally, on February 17, 1976, the Alliance group filed their plan for the DISD with the Court. The Court granted them the status of Amicus Curiae for the purpose of presenting their ideas and plan to the Court, and heard evidence from Dr. Paul Geisel regarding the plan.

The Court has before it several student assignment plans, offered to remedy the dual nature of the DISD. The School Board, being charged with the responsibility of devising an acceptable plan, ^{3/} filed its plan on the 10th of September, 1975. The NAACP devised a student assignment plan which was also filed on September 10. The Court was not wholly satisfied with either of these plans, as it indicated in a hearing on September 16. Therefore, the Court employed an expert in the field of education and desegregation, Dr. Josiah C. Hall of Miami, Florida. Dr. Hall presented a student assignment plan to the Court which was filed December 29, 1975. The plaintiffs meanwhile were working on a student assignment plan, and ended up filing two plans on January 12, 1976. Likewise, the

3/ Brown v. Board of Education (II), 349 U.S. 294 (1955).

Education Task Force of the Dallas Alliance met for several months considering concepts for a desegregation plan for the DISD, and filed their results with the Court on February 17, 1976. In addition, the Court received and has considered other plans and suggestions from various citizens and groups. ^{4/}

II. Applicable Law

In this complex and ever-changing area of the law, it is difficult if not impossible to discover hard and fast rules for this Court to follow. Certainly, the "transition to a unitary, non-racial system of public education was and is the ultimate end to be brought about." Green v. County School Board, 391 U.S. 430, 436 (1967); Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); Brown v. Board of Education II, 349 U.S. 294 (1955). Similarly, this Court recognizes that "[t]he objective today remains to eliminate from the public schools all vestiges of state-imposed segregation." Swann v. Board of Education, 402 U.S. 1, 15 (1970).

Nevertheless, school districts are like fingerprints -- each one is unique. Although the goal of a unitary, nonracial system is a constant, the method or plan for achieving that goal must be tailored to fit the particular school district involved. A plan that is successful in a district having a small student population or occupying a small area geographically, a rural district, a county-wide district, or a majority Anglo school district, will not necessarily be successful in a large urban district such as the DISD. As the Supreme Court observed in Brown II, supra at 299:

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the

^{4/} A group of students at Skyline High School drew a student assignment plan for the DISD and submitted it to the Court. Others were submitted by the Alliance for Integrated Education and a number of other groups and concerned parents.

primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of the school authorities constitute good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.

Throughout the proceedings on remand, this Court has held foremost in its mind the unique characteristics of the DISD, in order to insure that a feasible, workable plan is adopted which will realistically establish a unitary system in the DISD.

The Fifth Circuit remanded this case with instructions to formulate a new "student assignment plan." The DISD has maintained throughout these proceedings that the Court can consider nothing except a bare-bones student assignment plan. Although this Court recognizes that the mandate from the Fifth Circuit referred consistently to formulating a "student assignment plan," it does not interpret that language as limiting this Court to a plan which merely provides for moving bodies between buildings. As the Fifth Circuit held in Calhoun v. Cook, 522 F.2d 717 (1975), rehearing denied, 525 F.2d 1203 (1975):

The aim of the Fourteenth Amendment guarantee of equal protection on which this litigation is based is to assure that state supported educational opportunity is afforded without regard to race; it is not to achieve racial integration in public schools.

A student assignment plan cannot operate in a vacuum; it must include whatever additional tools are necessary to carry out the mandate that equal educational opportunity be provided, and to insure that a truly unitary system is established.

In adopting a student assignment plan, this Court is required to arrive at a delicate balance -- the dual nature of the system must be eliminated; however, a quota system cannot be imposed. The Supreme Court ruled in Swann, supra at 26, that

[t]he district judge or school authorities should make every possible effort to achieve the greatest

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possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools.

On the other hand, the Supreme Court held that

[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Ibid, at 24.

In arriving at this balance, the practicalities of the situation are to be taken into account. Davis v. School Commissioners of Mobile County, 402 U.S. 33, at 37 (1970). These practicalities include travel time and distance, and the age of the children.

An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process ... It hardly needs stating that the limits on time or travel will vary with many factors, but probably with none more than the age of the students.

Swann, supra at 30.

The Fifth Circuit instructed this Court to use the techniques discussed in Swann to dismantle the vestiges of the dual nature of the DISD. The Supreme Court said in Swann that "[d]esegregation plans cannot be limited to the walk-in school," if this will not produce a unitary system. Swann, supra at 30. All available techniques are to be considered in the formulation of student assignment plans, including the restructuring of attendance zones and the pairing of both contiguous and noncontiguous attendance zones. Swann, supra; Davis, supra. ^{5/}

The Supreme Court's decision in Swann also emphasized the equitable nature of the remedies phase of a desegregation case. It quoted the following language from Brown II:

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally,

^{5/} The pairing of noncontiguous attendance zones and the use of transportation is of course limited by the practicalities mentioned above.

equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.

Swann, supra at 12. Later it stated:

In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation ... As with any equity case, the nature of the violation determines the scope of the remedy.

This Court has kept in mind throughout these proceedings that its findings in 1971 were that the "vestiges" of a dual school system remained in the DISD, and not that the DISD was a dual system at that time. The plan adopted now must therefore remedy these vestiges without exceeding this Court's equitable powers to balance public and private needs.

Finally, guidance as to the role of this Court has been given by the Supreme Court in Green, supra at 439:

The obligation of the district court, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. ... Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed.

With this task in mind, the Court heard testimony regarding the feasibility and effectiveness of these plans presented by the parties during hearings which lasted continuously from February 2 to March 5. All the plans utilize, to varying degrees, the concepts of pairing and clustering schools, and of transporting students for the purpose of establishing an integrated or unitary school system, as approved by the Supreme Court in Swann, supra. Each of the plans

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incorporates other tools, as well as transportation, to help insure that an integrated school system is achieved. The Court finds some meritorious suggestions in each of the plans, including the concept of magnet schools suggested by the DISD, the plaintiffs and others; the majority to minority transfer program advocated by all parties; and the concept of a monitor or auditor proposed by the plaintiffs, the NAACP and the Dallas Alliance Task Force. The Court is convinced that the plan of the Educational Task Force of the Dallas Alliance will effectively establish a unitary system of education in the DISD and that it "promises realistically to work now." Green, supra at 439.

III. Present Characteristics of the DISD

The most significant feature of the DISD now as opposed to 1971 is that the DISD is no longer a predominantly Anglo student school system. In the years which have intervened since this Court's 1971 order, the percentage of Anglos in the DISD has declined from 69% to 41.1%, and projections show no reversal of this trend to a predominantly minority district. According to the most recently compiled figures, ^{6/} the racial composition of the DISD student body is 41.1% Anglo, 44.5% black, 13.4% Mexican-American, and 1.0% "other." In the 1970-71 academic year, the DISD enrolled 163,353 students in grades 1-12, whereas in December, 1975, the DISD enrolled only 131,757 students. Over the past five years the DISD has lost, for one reason or another, 40.9% of its Anglo student population. ^{7/}

^{6/} Dec. 1, 1975, DISD Hinds County figures. See Appendix A for racial composition of each grade level.

^{7/} An HEW Report shows that in October 1969 there were 97,103 Anglo students in grades 1-12, and in October 1975 there were 57,426 Anglo students in grades 1-12.

Nevertheless, the DISD continues to be the eighth largest school district in the nation, covering an area of approximately 351 square miles. Its 180 separate campuses house 141,122 students (including kindergarten), and its total expenditure for the 1975-76 academic year is \$164,788,000.

Although the DISD in 1975-76 cannot be considered to be wholly free of the vestiges of a dual system, significant strides in desegregation have been made since the Court's 1971 order as a result of natural changes in residential patterns in the past three years. In the 1970-71 school year, 91.7% of all black students in the DISD attended predominantly minority schools, whereas in the 1975-76 school year, the percentage has dropped to 67.6%. Testimony during the hearings showed that large areas of Dallas which formerly reflected segregated housing patterns are now integrated, namely Western Oak Cliff, Pleasant Grove, East Dallas, the area of North Dallas included in the attendance zone for Thomas Jefferson High School.^{8/}

Testimony also established that the DISD has undertaken in good faith and on its own to equalize the educational opportunity for all children during recent years. The plaintiffs introduced a 209-page Report of a Study of Instruction in the Dallas Independent School District 1974-1975 which was conducted by Dr. Francis S. Chase and eight staff associates. This report was initiated by the School Board, but Dr. Chase testified that he and his staff, who had no connection with the DISD, were not impeded in any way in conducting this study or presenting their findings. Their findings included the following passage:

The staff of the Study of Instruction has identified a number of characteristics in which the Dallas Independent School District is either pre-eminent or close to the top among public school systems. Some of these characteristics which hold high potential for the improvement of education are:

^{8/} See Appendix B, an exhibit introduced by the Strom intervenors which shows the changes in racial composition of formerly predominantly Anglo secondary schools.

1. The commitment to, and the heavy investment of resources in, curriculum, design, development, and implementation.

2. A broadly conceived and well-staffed program of research and evaluation to define needs, inform decisions, assess the effectiveness of programs and services, and indicate deficiencies in program implementation or operation.

3. The creation of an extensive network of communications through which community organizations and large numbers of teachers, students, parents, and other citizens may learn about and participate in educational decisions and programs.

4. Frank acknowledgment of barriers to equal educational opportunity, followed by constructive measures such as the Affirmative Action Program, the extension of Multi-Ethnic Education, the implementation of Plan A for better treatment of learning disabilities, and support for inner-city school renewal projects.

5. The number and variety of innovations initiated and the continuing search for ways of responding to the demands for improved education.

6. The extensive program of personnel development through released time, other special programs, and four area teacher centers which work in cooperation with seven colleges and universities.

7. The planning, development, and operation of career education programs and emphases -- with continuing efforts to extend and improve career education at all levels. 9/

In spite of the DISD's efforts, Dr. Chase' study concluded that there is still a gap between intent to provide equal educational opportunity and the achievement of this goal. But the study also concluded that the DISD is accepting the continuing challenge to speed progress and close this gap.

The Dallas Independent School District, in recent years, has acknowledged frankly the existence of persisting inequalities and inadequacies in its provisions for education. Instead of regarding these conditions as inevitable, the District has moved progressively to treat them as challenges with which it must cope swiftly and effectively. All school systems, and especially those in our larger cities, are faced with the urgent necessity of alleviating the learning disabilities which have their roots in poverty, prejudice, and other forms of discrimination. No other school district offers a better prospect for significant progress in this direction. 10/

9/ Study of Instruction, pp. 35-36.

10/ Ibid, p. 200.

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The study thoroughly evaluated the DISD's programs, pinpointing areas which needed improvement and making recommendations to that end. ^{11/} Dr. Chase testified that this study was unique in the amount of response it elicited from the School Board and the Administration; he testified that there is not one item cited that the Board and Administration have not responded to in some way. His testimony was that there can never be a perfect school system, but that at least the DISD is conscientiously on the road to providing equal educational opportunity for all.

The plan which this Court is ordering to be implemented promises to continue this trend of desegregation and will, when fully implemented, remove all vestiges of the former dual system in the DISD. The Court is convinced that this plan will, at the same time, "assure that state supported educational opportunity is afforded without regard to race." Calhoun, supra at 396. Milliken v. Bradley, 418 U.S. 717, 740-741 (1974); Alexander v. Holmes County Board of Education, 396 U.S. 19, 20 (1969); Brown v. Board of Education, 349 U.S. 294, 301 (1955).

IV. An Analysis of the Plans Before the Court

A. DISD's Plan

The DISD's plan was devised by the staff of the DISD under the direction and supervision of Dr. Nolan Estes. The district is divided into three categories for the purpose of student assignment -- the integrated parts of the school district, ^{12/} the remaining predominantly Anglo parts of the district, ^{13/} and certain minority parts of the district. The DISD's plan proposes to retain the present student assignment patterns for the naturally integrated

^{11/} Ibid, pp. 205-209.

^{12/} These areas are integrated due to residential housing patterns.

^{13/} These areas lie generally across the far northern and eastern portions of the DISD.

areas, ^{14/} as desegregation has already occurred in these areas. ^{15/}
Pairing and clustering techniques, both contiguous and noncontiguous,
were used to desegregate grades 4-12 ^{16/} of the predominantly Anglo
areas of the district. The grade configurations were proposed to be:

- K - 3 Elementary Schools
- 4 - 5 Intermediate Schools
- 6 - 7 Middle Schools
- 8 - 9 Junior High Schools
- 10 - 12 Senior High Schools. ^{17/}

The remaining predominantly minority areas of the districts would
continue to be served by predominantly one-race minority schools. ^{18/}

In addition, the DISD proposed to set up 17 magnet schools
to serve the entire district. Ten of these magnets would be for
the elementary level, and would offer "fundamental" programming ^{19/}
or "individually guided" programming. ^{20/} Seven of the magnets would
operate on the secondary level (grades 8-12 in six of the seven
cases), and would offer a variety of programs oriented toward careers,
the creative and performing arts, ^{21/} transportation and technology, ^{22/}
and world cultures. These programs are all in existence now in the
DISD and are proving extremely successful. ^{23/}

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- ^{14/} "Integrated" was defined by the DISD as not more than 75%
Anglos or more than 75% combined blacks and Mexican-Americans.
- ^{15/} There are 55 schools meeting this criteria.
- ^{16/} Grades K-3 would continue to attend schools closest their homes.
- ^{17/} There are 72 schools in this category.
- ^{18/} There are 48 schools in this category serving 42 attendance zones.
- ^{19/} "Fundamental" programming was described as concentrating on
reading, writing, and arithmetic, and being a highly structured
environment.
- ^{20/} "Individually guided" programming was described as using a diag-
nostic prescriptive approach in a highly flexible setting. There would be
approximately one teacher for every 15 students, and the students would be
able to move along at their own pace.
- ^{21/} This magnet would be located near Fair Park and would have those cultural
facilities available.
- ^{22/} This magnet would be located at Love Field, the airport recently closed.
- ^{23/} Skyline Career Development Center, serving grades 10-12, is recognized as one
of the outstanding magnet schools in the nation.

Finally, the DISD's proposal included the retention of the majority to minority transfer program presently in existence in the DISD.

The analysis showed that 13,947 students would be transported for desegregation purposes, ^{24/} and that the total cost to implement ^{25/} would be \$6,811,240, causing a 9¢ tax increase. ^{26/}

B. Plaintiffs' Plans

Plaintiffs' proposed plans were devised by the plaintiffs' attorneys, using guidelines laid down by Dr. Charles Willie of Harvard.

1. Plan A

Under Plan A, the DISD would be divided into seven elementary subdistricts. An attempt was made to have each school reflect the racial composition of that subdistrict. The naturally integrated elementary schools retained their present student assignment patterns. ^{27/} All other schools were paired or clustered for grades 1-12. ^{28/} The grade configurations proposed were grades K, 1-3, 4-6, 7-9, and 10-12. ^{29/}

^{24/} In the Western Oak Cliff area, the DISD's proposal would transport 1500 black students to predominantly minority schools.

^{25/} This includes the cost of buses, bus monitors, building modifications, portable classrooms, and magnets.

^{26/} Ch. 20.04d of the Texas Education Code, based on Art. 7 § 3 of the Texas Constitution, limits the assessment of school taxes for any school district in Texas to \$1.50 per \$100 property value. The tax rate for the DISD presently is \$1.40 per \$100 property value. Thus any plan which increases the taxation rate more than 10¢ would cause an increase in class size past the present 27 students, or else cause a reduction in enrichment programs.

^{27/} There were 13 elementary schools in this category.

^{28/} Kindergarten children would attend the schools closest their homes.

^{29/} This was done wherever possible. Other grade configurations do appear, such as K, 1-4, 5-6, 7-9, 10-12.

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Plaintiffs proposed the use of magnet schools constructed in the inner city to draw Anglos into those areas. They suggested the retention of the majority to minority program. They suggested that the DISD expand and improve its in-service training program for faculty and staff. Finally, they proposed a system of accountability to insure that the DISD complies with this Court's order and with the goal of quality education for each student enrolled in public school.

An analysis of Plaintiffs' Plan A showed that approximately 69,000 students would be transported, and that the projected total cost to implement ^{30/} would be \$22,030,590, causing a 29.4¢ tax increase.

2. Plan B

Under Plan B, the DISD would be divided into eight elementary level subdistricts. The residentially integrated areas were not included in the new student assignment patterns. ^{31/} One of the subdistricts would remain predominantly minority and would retain its present assignment patterns, ^{32/} but would become a "model cluster" with enhanced facilities and programs. The other areas were paired and clustered to achieve desegregation.

In addition, Plan B calls for magnet schools in all schools which had a predominantly minority enrollment prior to this year to enhance the attractiveness of these schools. ^{33/} Plan B ^{34/} proposes the expansion of the DISD's present bi-lingual program.

^{30/} DISD's projection based on the elements of Plan A, including cost of buses, bus monitors, building modification, and portable classrooms.

^{31/} There are 39 elementary schools in this category.

^{32/} This is the South Oak Cliff area, and included twelve elementary schools, two junior high schools, and one high school.

^{33/} This would include renovations and curriculum revision.

^{34/} Testimony from several experts indicated that the DISD's bi-lingual program is the best in the nation. Dr. Estes testified that the DISD is presently attempting to expand this program to all schools as rapidly as possible, but that the demand for bi-lingual instructors is presently greater than the supply.

Other features such as the majority to minority transfer program, in-service training, and a monitor or system of accountability mentioned above would also be included in Plan B.

An analysis of Plan B showed that approximately 47,000 students would be transported under this plan. The estimated cost of implementation ^{35/} is \$14,963,680, which would necessitate a 20¢ tax increase per \$100 property value.

C. NAACP Plan

The NAACP's proposal was drawn by Dr. Charles Hunter of Bishop College. It contained a number of concepts and proposals to be utilized by the DISD in implementing the plan, as well as a rough outline of schools to be paired and clustered to achieve desegregation. The naturally integrated areas were left with their present assignment patterns, and the rest of the schools were paired and clustered so that every school would have a racial balance comparable to the racial balance in the district (with a 10% variance up or down). ^{36/} Innovative programs would be fostered in the inner city schools, as well as in magnet schools, which would operate on a district-wide basis. Among other suggestions, the NAACP plan proposed monitoring procedures which would be available to make adjustments in student assignments when changes in racial patterns are noted.

An analysis of the NAACP's plan indicated that approximately 40,000 students would be transported. The estimated partial cost ^{37/} is \$7,163,310, necessitating a 15-1/2¢ tax increase for the buses and bus monitors alone.

^{35/} Using the same criteria mentioned above.

^{36/} The NAACP proposed to achieve racial balance between blacks and Anglos first and then follow with other minorities.

^{37/} It was not possible to give an estimated total cost because expenditures for building modification, moving portables and equipment could not be determined under their plan.

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D. Dr. Hall's Plan

The student assignment plan submitted to the Court by Dr. Hall is similar to those of the DISD and Plaintiffs' Plan B, in that it divides the district into the categories of residentially integrated areas, ^{38/} paired and clustered areas, and predominantly minority areas. The naturally integrated areas would retain their present assignment patterns. ^{39/} Schools in predominantly Anglo areas are paired and clustered with schools in predominantly minority areas to the greatest degree possible. ^{40/} The grade configuration for this category of schools is K-1 (nearest schools), 2-5, 6-7, 8-9, and 10-12. If the time and distance proved to be too great, then the schools would retain their present assignment patterns. ^{41/}

In addition, Dr. Hall proposed the establishment of Early Childhood Centers in Title I ^{42/} areas. These centers would be for ages 5 and 6, and hopefully age 4, and would provide enriched programs, using State and Federal Compensatory Education funds, with a pupil-teacher ratio of approximately 20-1. Additional personnel would also be provided as well. Dr. Hall also recommended using these centers as Community centers.

^{38/} Dr. Hall's guideline for determining an integrated school is no more than approximately 75% nor less than approximately 30% of combined minority groups.

^{39/} There are approximately 55 schools in this category.

^{40/} The factors of time and distance were taken into account by all parties - the DISD and Dr. Hall limited time of transportation to 30 minutes each way. The Plaintiffs strove for this, but acknowledged that in their plans greater time was involved. The NAACP's plan limited time of transportation to 40 minutes.

^{41/} The statistics regarding time and distance on these schools were carefully documented. There are 34 predominantly minority schools in this category. Five of the schools were elementary schools who would move on to integrated junior high and high schools. The schools in this category were considered by Dr. Hall to be superior schools (with the exception of renovation at three schools) in terms of facilities and the environment in which the schools are located. Nineteen of the schools in this category were at one time predominantly Anglo schools.

^{42/} This refers to funds provided for certain areas under the Elementary and Secondary Education Act of 1965.

Dr. Hall recommended the continuation of the DISD Metropolitan Learning Centers for secondary school students who do not respond to the traditional school setting. He suggested maintaining the present magnet school of Skyline Center for Career Education, and expanding the magnet concept wherever possible.

An analysis of Dr. Hall's plan indicates that approximately 20,000 students would be transported for desegregation purposes. The estimated cost of his plan ^{43/} would be \$7,163,310, and would necessitate a tax increase of 9.6¢.

E. The Dallas Alliance Plan

The student assignment plan proposed to the Court by the Dallas Alliance Task Force on Education utilizes many of the concepts or tools used in the other plans, and also introduces new concepts. Like the plaintiffs' plans, the Alliance plan divides the DISD into smaller subdistricts. These attendance areas or subdistricts would in general reflect the Northwest, Northeast, Southeast, South Oak Cliff, and Southwest geographical sections of the district. Every subdistrict except South Oak Cliff would have approximately the same student population and would have minority ratios which would approximate that of the whole DISD, plus or minus 5%. Grade levels would be standardized on a K-3, 4-8, 9-12 basis. For grades K-3, new attendance zones would be drawn to achieve as much natural desegregation as possible, and students would be assigned to the nearest school which would promote integration, not to exceed four miles from home. Attendance zones in K-3 would not necessarily consider the five attendance zones.

^{43/} This cost estimate was again provided by the DISD using the same criteria mentioned above.

On the K-3 level, special teaching strategies and enriched program options would emerge for students in all areas. The Alliance plan proposes that efforts to maximize parent involvement following the Early Childhood Education model from California be introduced in September 1976 and completed by September 1979. This K-3 approach would be primarily diagnostic-prescriptive. It would result in an adult-student ratio in instruction of approximately 1-10. (Adult is a teacher aide, a parent, an older student tutor, etc.)

For grades 4-8, students would only be assigned to schools within the attendance subdistrict in which they live. Areas that are naturally integrated would retain their present student assignment patterns (except that 8th grade would be added to the lower grades). Students in areas that are not naturally integrated would attend schools in the center of each subdistrict in which they live, in a manner so that each school's minority ratio reflects the minority ratio of the 4-8 student population of the area, plus or minus 10%. Magnet schools for 4-8 would also be established, with a priority on magnets in the South Oak Cliff area. The magnets would be open to all 4-8 students in the DISD on a voluntary basis. The magnets would also reflect the minority ratios of the 4-8 student population in all areas (with the exception of South Oak Cliff), with allowance for a 10% plus or minus variation from the percentage of all minority students in the DISD.

For grades 9-12, the Dallas Alliance proposes Magnet High Schools and Magnet Comprehensive High Schools. ^{44/} These would be open to all 9-12 students on a voluntary basis, but with minority ratios of the 9-12 student population of the DISD, with allowance for a 10% plus or minus variation from the percentage of all minority students in the DISD. Partnerships and working relationships between

^{44/} A Magnet Comprehensive High School includes regular high school curriculum as well as special career and other programs.

institutions of higher learning, the business and the cultural communities would be encouraged with each magnet high school. During the 1976-77 school year, at least four additional magnets would be opened in the central area of the city, ^{45/} and at least three additional magnets would be established by 1979-80. Each magnet would accommodate a minimum of 1,000 students, and would open as rapidly as it fills. Seven magnets would be therefore considered a minimum, not a maximum number to be implemented. Until all students attend magnet high schools, grades 9-12 would attend the nearest area high school in the subdistrict in which the students live.

Aside from student assignment concepts embodied in the K-3, 4-8, and magnet 9-12 arrangement, the Alliance plan addresses itself to other facets of a unitary school system. With regard to personnel, it proposes the development of recruiting and employment policies to insure that competent personnel are employed at all levels and that the percentages of white, black and brown administrators, principals, teachers ~~and other personnel~~ approximate DISD-wide the respective percentages of those races represented in the City of Dallas in 1976, as a minimum, within three years. The DISD would rely on expanded scope of positions, reassignment, and attrition to meet that goal. It proposes that the top salaried line administration positions (currently established at 185 in number)

45/ These were suggested as

- 1) a new magnet comprehensive Lincoln High School, costing approximately \$14,500,000
- 2) a magnet for Business Education and Management at Crozier Tech, established in cooperation with the businesses in the Central Business District (the downtown Dallas area)
- 3) a magnet for the creative arts of Madison High School, due to its proximity to the Fair Park Music Hall and other cultural facilities
- 4) a magnet for aviation training at Love Field, the airport partially closed due to the opening of the Dallas-Fort Worth Regional Airport, etc.

reflect the percentages of the ethnic makeup of the DISD student population (approximately 44% Anglo, 44% black, and 12% Mexican-American) by 1979. This transition would occur on a schedule of one-third by 9/1/77, one-third by 9/1/78, and one-third by 9/1/79.

The Alliance plan also proposes training for teachers to improve their proficiency and their ability to perform in a multicultural setting, assessment on a regular basis of the competence of personnel, and a system of internal and external accountability measures to insure that a unitary system was in fact achieved.

Although the exact numbers of students transported and the exact cost could not be determined,^{46/} it has been established by the DISD that approximately 20,000 students would be transported at a cost of \$5,830,000, necessitating a tax increase of 7.8%. The funds for the capital expenditure of \$16,500,000 for magnet schools the first year could be accommodated by the present bond issuance, without any additional tax increase. The annual operating cost of this plan has been estimated at \$5,000,000. This plan therefore is economically feasible without the increase in class size or decrease in established programs.

V. The Plan to be Implemented

The Court has carefully considered the various concepts suggested in the plans briefly summarized above, and finds that the following tools will be most effective in addressing and solving the problem of vestiges which remains in this large urban district of ours.

A. The Subdistrict Concept

Several experts, including the plaintiffs' Dr. Charles Willie, testified that with a city as large as Dallas, a series of

^{46/} The administration and staff of the DISD need to work out the details of this plan.

subdistricts (each with elementary, middle, and high schools) is more effective than one large district. This will give parents and students a sense of community and control over their schools, which the Supreme Court has recognized as so important to the successful functioning of our schools.

No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. See Wright v. Council of the City of Emporia, 407 U.S. 451, at 469. Thus, in San Antonio School District v. Rodriguez, 411 U.S. 1, 50 (1973), we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages "experimentation, innovation, and a healthy competition for educational excellence."

Milliken v. Bradley, 418 U.S. 717, at 742 (1973). Moreover, it helps minimize the transportation distance and time, since this is limited to each subdistrict. ^{47/}

Each subdivision will approximate the racial makeup of the DISD as a whole, with the exception of South Oak Cliff. ^{48/} Due to the geographic layout of the DISD, and the factors of time and distance, this South Oak Cliff area was left predominantly black in every plan proposed to the Court, with the exception of Plaintiffs' Plan A, which proposed to establish an exact racial balance in every school and which would have necessitated the transportation of

^{47/} Magnet schools would be on a city-wide basis, however.

^{48/} Estimates show that the racial makeup would be as follows:

	<u>Anglo</u>	<u>Black</u>	<u>Mexican-American</u>
I. Northwest	44%	39%	16%
II. Northeast	41%	42%	17%
III. Southeast	46%	46%	8%
IV. South Oak Cliff		98%	2%
V. Southwest	42%	27%	31%

49,000 students. The Court is of the opinion that, given the practicalities of time and distance, and the fact that the DISD is minority Anglo, this subdistrict must necessarily remain predominantly minority or black. However, this does not mean that the goal of equal educational opportunity for all cannot be achieved. In terms of facilities, Dr. Hall testified that with the exception of Budd and Harllee Elementary Schools and the site at Roosevelt High School, the facilities in this area can be categorized as superior. Additionally, Dr. Hall testified that the environment in which each center is located, i.e., the property immediately adjacent to the schools, as well as the residential area served by them, can be classified as superior. Dr. Hall testified that educational opportunities in terms of facilities or programs would not be improved by complete redistribution of all pupils, and in some situations, they would be lessened.

With the renovation of some of the facilities in this area, this subdistrict could be a model for the district and the nation, and attract Anglos to it on the basis of its superior programs and facilities.

B. The K-3 Diagnostic-Prescriptive Concept

The Court adopts the Dallas Alliance' concepts regarding grades K-3 for a number of reasons. As the Supreme Court observed in Swann, the most important factor to consider in implementing a transportation plan is the age of the children in relation to the time and distance travelled. Dr. Estes testified that the DISD's plan left the K-3 grades in the schools nearest their homes due to the fact that the children had not matured sufficiently to cope with the problems of safety and fatigue associated with significant transportation. The Court finds that this conclusion is sound, in terms of age, health, and safety of children in grades K-3.

Furthermore, there appears to be no deprivation of the right of the minorities to equal educational opportunities on the

K-3 level. As Dr. Chase testified, the disparity, if any, is in favor of the lower socio-economic areas on the K-3 level, due to the special programs and efforts of the DISD in those areas.

Finally, the diagnostic-prescriptive concept so successfully used in California will insure that children everywhere in the district will be afforded equal educational opportunity and that any remaining vestige of a dual system (if it in fact exists on the K-3 level) will be eliminated.

C. The 4-8 Central Area Concept

The concept of locating grades 4-8 close to the center of each Area or Subdistrict is based on pragmatic considerations. Transportation distance and time will be minimized for all students in these grades, no matter where they live in each subdistrict. By bringing all students in each subdistrict together in these grades, the plan assures that no group is deprived of equal educational opportunity. By locating special magnet programs in the South Oak Cliff area in grades 4-8, this area will attract students of all races from the district as a whole, and will insure that this area is not deprived of educational opportunities.

D. The 9-12 Magnet Concept

The magnet concept, widely used in other school districts, attracts students because of special career, vocational, or other programs that the magnet school offers. It is undisputed that the Skyline Career Development Center, which offers a myriad of career-oriented programs, is a model for the nation and that it demonstrates the success magnet schools can have in drawing students of all races and in offering quality education for all. ^{49/}

Moreover, this Court must adopt a plan which promises to be effective in eliminating the vestiges of a dual system. The

^{49/} The student body at Skyline presently reflects an ethnic population of approximately 60% Anglos, 33% blacks and 6% Mexican-Americans.

Court is convinced that the magnet school concept on the 9-12 grade level will be more effective than the assignment of students to achieve a certain percentage of each race in each high school. The Court tried this method of student assignment in 1971, and it has not proven wholly successful in achieving the goal of eliminating the vestiges of a dual system in these grades. The evidence shows that of approximately 1,000 Anglos ordered to be transported to formerly all-black high schools under this Court's 1971 student assignment plan, fewer than 50 Anglo students attend those schools today. Whatever the cause might be for the non-attendance of Anglos in those schools today, ^{50/} this Court finds that it can in no way be attributed to official actions on the part of school authorities.

While some blacks are still transported today to previously all-Anglo schools, these students could continue to do so under the majority to minority program, or could attend any magnet high school in the district. It should also be noted that changes in demographic

50/ As a result of the offer of evidence of the Curry intervenors, the battle of the sociological experts developed. The Curry intervenors took the position that a "forced busing" order would cause resegregation and a further reduction of the Anglo student population of the DISD. Plaintiffs responded that desegregation orders, even those including "forced busing," are not the prime factor in a decrease in Anglo school population. Whatever may be the strength or weakness of the opinions of these experts and the bases on which such opinions were reached, the fact remains that in the DISD between the 1971 desegregation order and today the Anglo student population has decreased by approximately 40,000. It is a well-settled principle of law that "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." Brown II, at 300. Nevertheless, this Court cannot control the prejudice or anti-busing sentiment which might exist in the minds of some private individuals. The mandate of the Supreme Court is to adopt the plan which promises realistically to be most effective, and after our experience with the 9-12 level, this Court is of the opinion a magnet school approach will accomplish this goal. See Mapp v. Board of Education, 525 F.2d 169 (1975).

patterns have resulted in the drastic reduction of predominantly Anglo high schools in the DISD.

The most realistic, feasible, and effective method for eliminating the remaining vestiges of a dual system on the 9-12 level, and for providing equal educational opportunity without regard to race, is the institution of magnet schools throughout the DISD. In this way, students of all races will join in working in areas of their special interest. Although these magnet schools cannot be created with the wave of a wand, they can be established at an accelerated pace with the help, financial and otherwise, of the business community of Dallas. The Court requests and sincerely believes that the business community will provide its resources and talents to help the DISD in this way. The Adopt-a-School program, presently operated by the DISD and such major corporations as Xerox and Bell Telephone, provides an example of what can be achieved through the cooperation of DISD administrators and educators on the one hand, and the business, educational, and cultural communities on the other hand. With the creation of this network of magnet schools, there can be no doubt that all vestiges of a dual system are eliminated.

E. The Concept of Naturally Integrated Areas

As mentioned above, there is a substantial number of schools in the DISD in which the racial makeup of the student population reflects naturally integrated housing patterns. Two groups of intervenors represent parents and students living in several of these residentially integrated areas -- namely the Strom intervenors, representing Western Oak Cliff and Pleasant Grove, and the Brinegar intervenors, representing East Dallas. These intervenors maintain that where integration in schools has been achieved through natural housing patterns, the present student assignments should be retained,

since no vestiges of a dual system remain in these areas. The Court is in agreement with this concept. There is no denial of the right of educational opportunity in these areas, and, as all parties recognized, there would be no benefit, educational or otherwise, in disturbing this trend toward residential integration. ^{51/}

F. The Concept of Accountability

As The Supreme Court recognized in Green, supra at 439, "whatever plan is adopted will require evaluation in practice"

A system of accountability performs three general functions:

- 1) it informs the Superintendent and the School Board how the administration is responding to the goals and objectives of the plan;
- 2) it provides the Court with an objective evaluation of the DISD's compliance with the ordered plan;
- 3) it informs the citizenry and serves as a tool for constructive input.

The Court is adopting the Alliance plan's concepts of accountability. Regarding the internal monitor, it will be acceptable for the DISD's Research and Development Department ^{52/} to report to the Court. This report shall be on December 15 and April 15 of the year, until a showing that a unitary system has been achieved. This report should include:

1. The number and percentage of pupils by ethnicity attending each educational center, including magnet schools.
2. The number and percentage of pupils by ethnicity being transported for desegregation purposes.

^{51/} The Brinegar intervenors pointed up the fact that since the Dallas Alliance plan does not yet detail student assignments, it is difficult to determine its impact on the integrated areas. The Court recognizes this problem, and will provide a one-week period after the student assignment portions of the plan are filed with the Court as hereinafter directed, for recommended modifications, if any, regarding the naturally integrated areas.

^{52/} If the DISD wishes to develop some other monitor or unit to report to the Court, it is free to do so.

3. The number and percentage of pupils by ethnicity obtaining majority to minority transfers (including the exception for Mexican-American students).
4. The number and percentage of teachers by ethnicity assigned full time in each educational center.
5. The number and percentage of new teachers, administrators, and teacher aides by ethnicity engaged by the DISD.
6. The current status of capital outlay projects.
7. The status of Early Childhood Education program.
8. The results of the annual standardized achievement tests program by school, grade, and ethnicity (April 15 report only).
9. Efforts made by the system to successfully implement the order of this Court in the following areas:
 - a. Parent involvement efforts
 - b. Staff development activities
 - c. Communications and community relations programs
 - d. Student leadership training programs

(April 15 report only).

Subject to the approval of the selection by the Court, the DISD shall also secure the service of an independent professional firm to evaluate compliance with this order and the efforts to achieve a unitary system by the DISD. Such report should be filed with the Court annually on April 15, until a showing is made that a unitary system has been achieved. The criteria for monitoring suggested by the Alliance plan should be used as guidelines for this external monitor.

The Tri-Ethnic Committee established by the Court's 1971 order has served as community monitor for the Court, the School Board, Superintendent, and the public regarding compliance with that order. The Tri-Ethnic Committee will continue its efforts in this regard with the same powers, duties, and responsibilities provided in the Court's 1971 order except that it is relieved of any duty to select independent evaluation services from outside the DISD.

Finally, the Court is aware of the fact that demographic changes may necessitate revisions in student assignments in the

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future. Therefore the Court will retain Dr. Josiah Hall as an advisor to the Court and may call on him to recommend revisions or to review recommendations of the DISD regarding future student assignment.

G. Personnel Concepts

It is well-settled that school administration and personnel play an important role in the achievement of a unitary school system. Administrators and personnel must be responsive to the needs of all racial groups, and must not discriminate against any group on the basis of race. In order to achieve and maintain a truly unitary DISD, the Court is adopting the personnel concepts of the Alliance plan. The Court is aware that training programs for teachers, principals and administrators already exist in the DISD. Naturally, these programs should be continued.

H. Majority to Minority Transfer Concept

None of the parties dispute the usefulness of this tool in providing educational opportunity without regard to race. This program will remain in effect for all grade levels under the guidelines presently utilized by the DISD, ^{53/} with the exception that minority to majority transfers will be allowed in instances where Mexican-Americans comprise less than 5% of the originally assigned school. This exception will be allowed in order that the bi-lingual education program will be available to all Mexican-American students who need it.

VI. Conclusion

The DISD has acted in good faith since this Court's order in 1971 and has made reasonable efforts to fulfill the obligations imposed by that order. The DISD has further taken good faith steps

^{53/} The use of the four-day school week for majority to minority transfer students shall be discontinued.

to eradicate inequality in educational opportunity which has previously existed in the DISD. Had the DISD not shown a willingness to improve the quality of education for all its students, and especially those in the minority areas which previously had been neglected, this Court might feel impelled to adopt a different remedy. However, the vestiges of a dual system remaining in the DISD can be realistically and effectively eradicated by the implementation of the plan adopted herein. This will not mean that the DISD will be perfect, for school districts are run by mere mortals, and judicial decrees can make them no more. It will mean that the DISD has fulfilled its obligation, under the Equal Protection Clause of the Fourteenth Amendment to the Constitution, that state-supported educational opportunity be afforded without regard to race.

Accordingly, it is ORDERED by the Court that the modified plan of the Educational Task Force of the Dallas Alliance filed with the Court on March 3, 1976, is hereby adopted as the Court's plan for removal of all vestiges of a dual system remaining in the Dallas Independent School District, and the school district is directed to prepare and file with the Court a student assignment plan carrying into effect the concept of said Task Force plan no later than March 24, 1976.

W.M. Taylor
UNITED STATES DISTRICT JUDGE

March 10, 1976
Date

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