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United States District Court, S.D. New York.

OPINION

UNITED STATES of America, Plaintiff,
and
Yonkers Branch-National Association for the
Advancement of Colored People, et al.,
Plaintiff-Intervenors,

SAND, District Judge.

v.

YONKERS BOARD OF EDUCATION; City of
Yonkers; and Yonkers Community Development
Agency, Defendants.

A. Background

CITY OF YONKERS and Yonkers Community
Development Agency, Third-Party Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, and Secretary of
Housing and Urban Development, Third-Party
Defendants.

*1 On November 20, 1985, this Court held that actions taken by the City of Yonkers and the Board of Education, with respect to housing and public schools, were in whole or in part intentionally segregative. *United States v. Yonkers Board of Education*, 624 F.Supp. 1276 (S.D.N.Y.1985). On December 18, 1985, the Court established a schedule for the action's remedy phase. The Yonkers Board of Education and the City of Yonkers were directed to submit remedy proposals on or before February 17, 1986. The United States Government and the NAACP were directed to respond to these proposals on or before March 10, 1986, and a hearing was scheduled for March 17, 1986.¹

No. 80 Civ. 6761 (LBS).

|
April 22, 1986.

Attorneys and Law Firms

United States Department of Justice, Civil Rights Division, Washington, D.C., Joshua P. Bogin, Sarah Vanderwicken, Dori K. Bernstein, for U.S.

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Vedder, Price, Kaufman, Kammholz & Day, Michael W. Sculnick, New York City, for defendants City of Yonkers and Yonkers Community Development Agency.

Butzel, Long, Gust, Klein & Van Zile, John B. Weaver, John H. Dudley, Mark T. Nelson, Detroit, Mich., for Yonkers Bd. of Educ.

James R. Sandner, Susan Bloom Jones, New York City, for defendant-intervenors Yonkers Federation of Teachers.

On January 23, 1986, the Yonkers Federation of Teachers ("YFT") moved to intervene.² This Court denied the motion without prejudice to renewal after a school desegregation plan had been proposed and also encouraged dialogue among the parties regarding any concerns or suggestions the YFT might have regarding the proposals. On March 13, 1986, the YFT's renewed motion to intervene was granted subject to certain conditions, the most important of which limited its intervention to "those aspects of the plan to be considered and adopted by the Court that relate to the teacher assignment provisions relating to transfer or seniority, and the interrelationship between any such provisions in the plan and Article 15 of the [YFT's] collective bargaining agreement."³ The Court also ordered the NAACP to designate a substitute class representative within fifteen days.

Immediately before commencement of the remedy hearing on March 17, 1986, the parties advised the Court that they might benefit from having a final opportunity to attempt to resolve their differences consensually. The

parties commenced negotiations immediately and continued negotiating through March 26, 1986, when the Board voted to submit to the Court modifications to its original proposal. On March 27, 1986, this Court directed the Board to file its modified plan no later than April 2, 1986 and directed the United States and the NAACP to submit any responses by 12:00 P.M. on April 7, 1986. The hearing was scheduled to commence on April 8, 1986.⁴

B. Applicable Legal Standards

The finding of an unconstitutionally segregated school system charges the Board “with the affirmative duty to take whatever steps might be necessary to convert to a ‘unitary’ system in which racial discrimination is eliminated.” *Diaz v. San Jose Unified School District*, No. C-71-2130 RFP (SJ), slip op. at 7 (N.D.Cal., Dec. 31, 1985) (citing *Green v. County School Board*, 391 U.S. 430, 437-38 (1968)); see *id.* at 9 (“[t]he burden of proposing an effective desegregation plan properly falls upon the defendant school district” but this in no way assures the district’s plan’s adoption (citations omitted)). In exercising its equitable power to fashion a remedy ensuring this transition, this Court must keep three principles in mind—the nature of the violation shall define the scope of the remedy; the remedy must restore the victims to positions they would have occupied in the absence of discriminatory conduct; the interests of local authorities in managing their own affairs should be honored to the extent constitutionally feasible. See *Swann v. Charlotte-Mecklenberg Bd. of Ed.*, 402 U.S. 1, 16 (1971); see also *Milliken v. Bradley (Milliken II)*, 433 U.S. 267, 280-81 (1977).

C. Discussion

1. The Proposed Order

*2 This Court notes at the outset that where there has been no objection made to a specific provision in the

Board’s Modified Plan, that provision is hereby adopted. To the extent that no objections have been raised, this Court accepts the Board’s basic premise that it should be given a fair opportunity to demonstrate that an essentially voluntary magnet school program can achieve desegregation in Yonkers. However, the Court also considers certain alterations to the Board’s proposal necessary for it to have real prospects of achieving desegregation “at the earliest practicable date.” *Green v. County School Board*, *supra*, 391 U.S. at 439. We summarize the principal changes in this Opinion and annex as an Appendix a proposed order which, when supplemented by additional data to be furnished by the parties within fifteen (15) days from the date hereof, shall be embodied in the Order to be entered herein.

2. The Remedy

The process of designing a remedy thus far has revealed large areas of agreement among the parties, to wit, principal reliance on attendance boundary adjustments, voluntary reassignments and school closings and consolidations as the basic tools for achieving a unitary system. It is also clear to this Court that the Board’s goal is and must be 100% integration (see proposed order at 11)—that means that no school in Yonkers is to be excluded or exempted and that a plan which contemplates leaving one or more identifiably minority schools in southwest Yonkers segregated would be entirely unacceptable. To the extent that the Board has projected a goal of less than 100% integration, Dr. Joan M. Raymond, Superintendent of Schools, has testified that this is nothing more than allowance for a margin of error. Tr. 145-47. In fact, Dr. Christine H. Rossell, the Board’s consultant and expert witness, testified that she had “never participated in drawing up a plan in which we didn’t put a magnet school in every single minority school to attempt to desegregate [it]” and that she opposed leaving any particular school segregated. Tr. 382-83.

Although we believe that the most critical aspect of any desegregation plan relates to the elementary school level, where patterns are set which are carried on through later school years, the plan for the secondary school level is considered first because it presents the fewest problems and has the broadest degree of consensus among the parties.

a. *Secondary Schools*

(i) Yonkers High School

The Board has slated Yonkers High School for conversion into the Saunders Trades and Technical districtwide Magnet High School presently housed at Burroughs. The Board also intends to expand the program to include computer and business components and has committed itself to modernization of the school's athletic facility. The Court directs the converted facility to also include a *strong* academic magnet program.

Academic programs will be available at all the other high schools—Lincoln, Gorton and Roosevelt—and the Court sees no reason why such a program at Yonkers would be incompatible with its nonacademic offerings. The school district's Director of Magnets, Dr. Gladys Pack, testified that nothing inherent in the Yonkers facility, which currently has honors and advanced placement courses, would preclude such a program. Tr. 724. Concerns regarding the weakening of other academic magnet programs could be met by providing Yonkers with nonduplicative offerings.⁵ Finally, the size of the facility and its condition, plus the fact that students in the various programs currently proposed will at times attend the same classes (Tr. 729), should provide enough flexibility to bring cohesiveness to the school and to circumvent any scheduling problems. (*see* proposed order at 9).

(ii) Whitman High School

*3 The Board proposes to use Whitman (closed in 1983 due to the presence of asbestos) as a staff development center which shall include, among other things, the District Resource Center, the Teacher Training Institute and the Office of Program Compliance. Both the United States and the NAACP advocate turning Whitman over to the City so that it can be considered for use as some form of housing development. Since time considerations require this Court to make a decision with respect to schools prior to housing and since the Board's proposed usage involves neither students nor program development, we shall defer final decision regarding Whitman until after the hearing on the housing remedy (now scheduled to commence on April 30, 1986) is completed.⁶ We

further inform the Board that if it moves the staff development center into Whitman in the interim, that move shall have little bearing on the ultimate determination whether, from both an educational and housing standpoint, other uses should be made of the facility. (*see* proposed order at 9).

(iii) 100% Desegregation at the Secondary Level

To the extent that any of the modifications proposed herein prevent the achievement of 100% desegregation by September, 1986 at the secondary level, the Court directs the Board to modify attendance boundaries accordingly or to adopt a "feeder pattern" where, for example, certain elementary schools are assigned to particular junior high schools in order to achieve desegregation as defined herein. In designing this system, the Court directs the Board to consider time and distance so that no group of students bears a disproportionate burden.

b. *Elementary School Assignments*

The fact that all of Yonkers is contained within a twenty square mile area, the demographic pattern of its residents and the location of its schools, makes Yonkers particularly suitable for the achievement of a great deal of desegregation through redistricting. The ease with which this can be accomplished and the minimal cost it would entail warrant its maximum utilization where attendance zone alterations would not impose untoward burdens on anyone in the community. In fact, *every* consideration as it relates to Yonkers supports heavy reliance on such an approach—the relative cost, convenience and burden it imposes as well as the speed with which it can be accomplished. The Court therefore directs the Board to redraw attendance zones between and among the following schools so that each such school is desegregated as defined herein and to submit its proposed new attendance zones to the Court within fifteen (15) days from the date of this Opinion:

9 and 5;

16 and 25;

13, 21 and 27;

17, and the northern section of the Fermi zone;

22.

In redrawing these attendance lines, the Board shall reassign both minority students (to formerly identifiably white schools) and white students (to formerly identifiably minority schools) so as to cause approximately equal changes in student assignments for minority and majority students. (*see* proposed order at 3).

*4 These redrawn attendance lines will desegregate all but ten of the City's elementary schools. It is thus for these remaining racially identifiable elementary schools that the Board's full commitment and belief in the success of a voluntary plan shall meet its challenge, a challenge which it has expressed a willingness to undertake with optimism in the outcome. There is no question that it shall be in the entire community's best interests that the desegregation plan succeed through free choice—and heavy reliance on dedicated magnet schools and particular magnet programs may encourage voluntary transfers for the purpose of desegregation.

Despite the somewhat belated nature of the Board's disclosure of its inability to implement all aspects of its plan by September, 1986, the task at present is to discern and to implement something that can work at that designated time. The Court therefore directs the Board to give priority to the creation of strong area attendance magnet schools in the remaining racially identifiable elementary schools in Southwest Yonkers—18, 19, King and Fermi. All parties now agree that the placement of the strongest magnets in the most heavily minority areas is a key element to the success of a magnet desegregation plan. *See, e.g.*, Tr. 382. A fair allocation of time, personnel and dollars also warrant this direction as does a premise basic to all desegregation plans—place emphasis on the lower grades so that more and more integrated schools progressively will come into being.

The Court also directs the Board to proceed with its plan to open School 10 as an Early Childhood Education Center in September, 1986. The Board has indicated that the implementation of this program will require minimal efforts because it is designed to be compatible with the architecture of the building. Tr. 1095.⁷ Thus, the Court recognizes that opening the Early Childhood Education Center will not detract from efforts and expenditures geared towards opening 18, 19, King and Fermi as attendance area magnet schools in September, 1986. The Board's efforts to operate the Center in a desegregated

manner (as defined herein) will greatly enhance both the immediate and the longterm success of the plan. (*see* proposed order at 4–5).

c. Student Assignment

Before the close of this school year, the Board shall inform *all* parents of students expected to attend elementary schools next fall of the existence of the available magnet programs. Parents will be requested to indicate three preferences for their children. Dr. Christine H. Rossell advocated at least three choices (Tr. 400), which require families to give serious consideration to *all* of the options and to whether or not their neighborhood school necessarily is best suited to their child's needs. *Diaz, supra*, slip op. at 17; 19; *see* Tr. 857–58; 866–67. For the first year, the 1986–87 school term, no student will be admitted into any school, magnet school or neighborhood attendance area school, without the parent having specifically requested that selection as one of the three choices. The Board shall make every effort to assign each student to the optimum choice school listed on his or her choice form.

*5 For the 1987–88 school year, the parent or guardian of each elementary school student in the district will again be required (as early in the school year as is deemed feasible by the district but no later than March 1, 1987) to submit to the Board in writing a school choice form listing three choices for his or her child in order of preference. This is because all [or most] of the magnet programs shall then be in operation. Each list must include at least one option where that child's attendance will further the goals of desegregation. Again, the Board shall make every effort to assign each student to the optimum choice school listed on his or her form. The same procedure will be followed in subsequent years for new students. (*see* proposed order at 13).

The Board also may adopt a voluntary reassignment plan if it desires for the secondary school level *provided* such a plan does not bar either the sending school or the receiving school from becoming or remaining desegregated as defined herein. When any program at either the elementary or secondary level receives more applications than it can honor, the District can process the applications in accordance with its stated methodology provided, again, that this shall not bar the City's schools from becoming or remaining desegregated. (*see* proposed

order at 14).

d. *Definition of "Desegregated School" and Evaluation Procedure*

A desegregated school shall be defined at present as one with a minority enrollment within $\pm 20\%$ of the districtwide average of minority students at that grade pattern organization level (*i.e.*, elementary school, junior high school or high school); if the school is a dedicated magnet or an attendance area magnet, however, it is desegregated if its minority enrollment is within $\pm 15\%$ of the districtwide average of minority students at that grade pattern organization level during the first year of operation and within $\pm 10\%$ of the districtwide average in the second year of operation. Moreover, the relevant minority population is comprised of Black and Hispanic students. The significant Asian population in some schools should not becloud the identity of the class on whose behalf this action is maintained. (*see* proposed order at 11).

The Court recognizes that these figures are subject to further revision as the plan evolves. At present, however, through implementing strong magnets in the southwest elementary schools for this September and expediting planning, implementation, and recruitment efforts for next year's programs, the Board will be given an opportunity to achieve the above-stated results. Should sufficient majority race students not voluntarily transfer *from* identifiably white schools and/or sufficient minority students not transfer *to* identifiably white schools, data this Court shall be apprised of by March 16, 1987,⁸ the Board shall propose its plan for accomplishing the desegregation of all its schools. The parties shall submit their comments to this proposal two weeks thereafter and, if necessary, the Court shall schedule an evidentiary hearing before ordering into effect a proposal to fully integrate the Yonkers elementary schools. At that point, the Court can implement such devices as enrollment caps⁹ if necessary, to achieve this goal. (*see* proposed order at 11).

e. *Human Relations*

*6 The Board's human relations program should be

supplemented with human relations training and community education programs for the pre-implementation period. The nature and timing of these programs should be included in the Board's final Order (*see* proposed order at 36).

f. *Parent Coordinator*

The Superintendent shall notify the Court and all the parties of the name, credentials and background of the prospective appointee for this position ten (10) days before any appointment is made final. The parent coordinator would be responsible for working with parents in recruitment and information dissemination and for developing a working relationship with parent organizations in the community. The parent coordinator also shall foster communication with non-English speaking parents. (*see* proposed order at 42a).

g. *Monitor*

The Court recognizes the desirability and need for a Monitor who can independently assess the plan's progress. Such a position cannot be appropriately filled by someone who is simultaneously charged with the plan's implementation.

A Monitor, through analysis of pertinent data, shall provide accurate, efficient and frequent assessment of the plan's progress. One of a Monitor's preliminary tasks shall be assessment of the admissions criteria for the magnet schools and magnet programs. The Board will submit the criteria to a Monitor by a date set forth in the order for those programs that are continuing or beginning operation in September, 1986. Any party may offer comments. Admissions criteria for programs slated to commence in September, 1987 will be submitted to a Monitor by a specified date and the same procedure will be followed.

Each party, after consultation with the others, shall suggest to the Court one or more candidates for Monitor. The nominee must be both qualified *and* willing to serve, and his or her specified compensation shall be borne by the Board. The parties are directed to make their nominations within fifteen (15) days from the date of this

Opinion. (*see* proposed order at 42).

h. Affirmative Action and Staff Reassignment

The Board has indicated complete awareness of the need for a more fully integrated faculty within the Yonkers school system in order both to further the success of the voluntary reassignment plan and to proceed in the fairest manner. The Court is aware that affirmative action programs have been ordered to ensure the fair distribution of minority faculty throughout a school district. *See United States v. Texas Education Agency*, 467 F.2d 848, 873 (5th Cir.1972) (instructed school board to “attempt to employ more Mexican-American teachers with the goal of attaining a ratio of Mexican-American teachers within the faculty that reflects more truly the ratio of Mexican-American students to the total population”); *see also Diaz, supra*, slip op. at 33–34.¹⁰ However, the Court will give the Board an opportunity to demonstrate its commitment to the principles it has espoused. The extent to which this has been accomplished shall be another element of the Court’s assessment of the plan in March, 1987.

*7 Regarding distribution of the present staff, the Board anticipates achieving a racial composition of teachers at each school within approximately \pm five percentage points of the districtwide average for minority teachers by September, 1986. The Board shall be given the opportunity to achieve this goal within the confines of the Yonkers Federation of Teachers’ collective bargaining agreement. If this proves impossible, the parties may make applications to the Court for the requisite modifications. (*see* proposed order at 18).

i. Bilingual Education

The Board’s proposed FLAME/multilingual programs cannot (and are not meant to) replace existing bilingual programs. The Board has expressed its commitment to a bilingual education program.

In its proposed order, the Board must designate where such programs shall be offered at both the elementary and secondary levels so that Hispanic parents can make informed enrollment choices. Spanish speaking students

also must be given full opportunity to participate in magnet programs and to the extent that their participation requires language assistance, the Board will make it available.¹¹ (*see* proposed order at 24).

j. Reporting

Along with the other data the Board shall report, it will include the following:

the location of special education classes (by classification); the number, race and home school attendance area of students enrolled in each class; the race of the teacher for each special education class.

The Board also shall make available a description of the data it presently collects or intends to collect after the plan is implemented. The parties may make other suggestions and the Board can file any objections or modifications to these suggestions with the Monitor. (*see* proposed order at 43–43a).

k. The City of Yonkers

The Board shall include the following in its proposed order, subject to further elaboration after the housing phase of the remedy hearing:

The City of Yonkers and the Yonkers Community Development Agency, their officers, directors, agents, employees and successors, shall not intentionally perpetuate or exacerbate racial segregation in the Yonkers public schools by engaging in conduct which blocks or otherwise refuses to permit because of race the development or construction of public or subsidized housing units in violation of Title VIII of the Civil Rights Act of 1968 or the Fourteenth Amendment to the Constitution.

(see proposed order at 43a).

YONKERS BRANCH, NAACP, et al.,
Plaintiffs-Intervenors,

vs.

1. *Prohibition Against Discrimination*
The Board shall also add the following provisions to its proposed order:

YONKERS BOARD OF EDUCATION, CITY OF
YONKERS and YONKERS COMMUNITY
DEVELOPMENT AGENCY, Defendants.

The Board, its members, officers,
agents, employees, successors, and
all persons in active concert or
participation with them shall not
discriminate against any student on
the basis of race, color or national
origin in the operation of the
Yonkers City School District.

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COURT'S PROPOSED ORDER

(see proposed order at 43a).

The foregoing has been a statement of the principles by which the Board should complete a proposed final order to be submitted to this Court by fifteen (15) days from the date hereof. Comments to the Board's proposed final order shall be submitted three (3) days thereafter.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff

APPENDIX

and

UNITED STATES DISTRICT COURT

YONKERS BRANCH, NAACP, et al.,
Plaintiffs-Intervenors,

SOUTHERN DISTRICT OF NEW YORK

vs.

UNITED STATES OF AMERICA, Plaintiff,

CITY OF YONKERS, YONKERS BOARD OF
EDUCATION AND YONKERS COMMUNITY
DEVELOPMENT AGENCY, Defendants.

and

80 CIV 6761 (LBS)

ORDER REGARDING SCHOOL DESEGREGATION
REMEDY

*8 This case proceeds pursuant to this Court's Order of November 20, 1985 which found, inter alia, that defendants Yonkers School Board of Education and the City of Yonkers are liable for the racial segregation of the Yonkers public schools.

On December 18, 1985, the Court ordered the Yonkers Board of Education to submit a proposed remedial plan by February 17, 1986. In response to that Order, the Board submitted a comprehensive remedial plan, entitled Educational Improvement Plan for the Yonkers Public Schools. The Board submitted modifications to its plan on April 2, 1986. The Court received responses and objections from the plaintiffs to both the Board's original and modified plan and conducted hearings on the adequacy of the Board's remedial plan, as modified, from April 8 to April 15, 1986.

A. IMPLEMENTATION STRATEGIES

The implementation strategies which form the foundation for the Yonkers public schools Educational Improvement Plan are varied and shall include:

1. School Closings

Because of the fact that there has been a serious underutilization of many of the Yonkers public schools, it is possible to move a number of children into desegregated schools through the prudent closing and opening of existing schools. The district shall close or convert the following schools:

6

9 (Open pending reevaluation 1988)

10

11*

32**

34

Fermi

Hawthorne

Yonkers High School

2. Neighborhood Schools

Because one of the most effective strategies for desegregating schools is the adjustment of school attendance areas to provide for greater racial balance, the district shall establish adjusted boundary lines for neighborhood schools. This will accomplish a basic community objective of maintaining neighborhood schools while at the same time providing for immediate integration of students.

Although limitations of building capacity, geographical restrictions, and residential patterns often limit usefulness of this strategy, the fact that all of Yonkers is contained within 20 square miles and that the City's demographic patterns are such that predominantly white schools and predominantly minority schools are contiguous with each other renders this particular technique unusually appropriate and helpful.

As can be seen in the attached appendix, where they are described by street names and indicated on maps along with projected enrollments by racial/ethnic groups, attendance lines have been redrawn at the elementary school level (in order to desegregate the schools as defined herein) between and among the following schools:

9 and 5;

16 and 25

13, 21 and 27

17, 23 and the northern section of the Fermi zone;

22.

These boundaries have been altered so as to cause approximately equal changes in student assignments for minority and majority students through the reassignment

of both minority students to formerly identifiably majority schools and majority students to formerly identifiably minority schools. At the secondary level, boundary lines also have been restructured to achieve these results. Consequently, racial/ethnic isolation of children in the Yonkers public schools will be sharply decreased by September, 1986 with relative ease, simplicity and equality of burden to all students.

3. *Dedicated Magnet Schools*

*9 In the mid 1970's, a number of large urban school districts embarked on a school improvement venture that would have unparalleled consequences for many of the nation's schools. Seeking a voluntary alternative to mandated busing as a means of effecting racial desegregation, these districts advanced the concept of magnet schools to eliminate or prevent minority group isolation and also to enhance academic performance in elementary and secondary schools. The federal government assumed a major leadership role in promoting magnet schools through the 1976 Amendment to the Emergency School Assistance Act (ESAA) which authorized grants to support the implementation of magnet schools in desegregating districts. As part of the overall ESAA mission, magnet schools were suggested as vehicles for maximizing parent involvement in planning special curricula that would be attractive enough to deter "middle class flight" from urban areas. "Special curricula" was defined as a course of study embracing subject matter or teaching methodology that was not generally offered to students in the school district. In short, magnet schools were considered specialty facilities that offered curriculum capable of attracting a substantial number of students from different racial ethnic backgrounds. By 1981, there were over 1,000 magnet schools in 138 urban school communities in the United States. That number continues to grow, and in New York State they are functioning as a key part of effective school desegregation plans.

The district shall operate dedicated magnet schools to reduce racial/ethnic isolation by attracting students to programs that emphasize areas of special interest. Students will be recruited to leave their regular attendance zone school to enroll in schools that are not a part of a specific attendance zone but are constructed based on student application and controlled by both racial/ethnic criteria and space limitation.

Admissions criteria for dedicated magnet schools, as well as for other magnet and specialized programs, will be submitted to the designated Monitor (*see page 42 infra*) by _____ and any party may offer comments. This procedure will be followed whenever a new program is slated to commence in the ensuing school term. All magnet students will take the required subjects and course work necessary for promotion and graduation, and all high school magnet students will have the opportunity to meet college entrance requirements.

Due to timing and financial constraints, the Board's first commitment to opening dedicated magnet schools in September, 1986, goes toward the Early Childhood Education Center at School 10. The program is designed to be compatible with the architecture of the building and its programming features components that have succeeded tremendously in other settings. The Center will in no way impede efforts to open area attendance school magnets at 18, 19, King and Fermi, where the Board shall place its foremost priority. *See page 5 infra*. It will reach out to children at their most impressionable age and thus have a lasting impact on the success of the Board's plan.

4. *Attendance Area Magnet Schools*

*10 In addition to the establishment of dedicated magnet schools, the district will establish attendance area magnet schools.

The strength of this strategy is that it will be used to attract white students into predominately minority schools at the elementary school level and will enhance racial ethnic balance at the secondary level.

The attendance area magnet schools will be integrated through the procedure of limiting the attendance of neighborhood children assigned to the school to 50% of the total enrollment capacity for the school. The other 50% of the students will be from throughout the district who elect to attend the school on a voluntary basis for the magnet program on a racially balanced bases. Student assignments shall be determined on the basis of procedures hereinafter set forth designed to maximize deference to students' choices to the extent possible consistent with the integrative goals of this plan.

At the secondary level, attendance area students and interested magnet students from throughout the district

will be selected by application controlling for racial and ethnic balance.

The magnet programs are based on community preference, interest, innovation and proven success in other districts throughout the State of New York, and for that matter, nationally. They include, but will not be limited to, new curriculum substance, new teaching procedures, computer based instruction, additional support services, and linkage with area universities, community facilities, hospitals and local businesses.

Moreover, as already indicated, the Board shall submit admissions criteria for each magnet program to the designated Monitor and any party may offer comments. *See page 42 infra.*

Again, a fair allocation of time, personnel and dollars warrant giving priority to the creation of the strongest area attendance magnet schools in those schools remaining racially identifiable after as much racial isolation has been obviated through new attendance lines as is possible. Thus, the Board has created its strongest magnet programs for Schools 18, 19, King and Fermi for September, 1986, and, to the extent to which time and money were remaining, created other attendance area magnet schools. Schools 18, 19, King and Fermi received priority because of our consultants' advice that the most efficient way to achieve our goals would be to place strong magnets in predominantly minority schools. The programs slated for these schools, as well as for the others that are planned and will be implemented either in September 1986 or thereafter, are described in the appendix to this proposed Order.

5. Voluntary Student Transfers—VST

The district shall direct a Voluntary Student Transfer program permitting minority students who attend predominately minority schools to transfer to non-minority schools. Conversely, white students attending predominately white schools may transfer to predominately minority schools of their choice for the same reason. The purpose of such transfers is to enhance the racial/ethnic balance of the receiving school. Such transfers will not be permitted, however, if they would adversely impact on the sending school.

*11 To encourage Voluntary Student Transfers,

enrichment and supplemental programs will be established in those schools where sufficient seating capacity has been identified.

B. SCHOOL DISTRICT ORGANIZATION

The district shall establish a K-6, 7-9, 10-12 grade pattern organization as follows:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

C. IMPLEMENTATION CALENDAR (the remainder of this calendar to be filled out by the Board in its proposed order; projections for Sept. 1987 also will be included)

The Board shall implement the school organization as set forth above in Paragraph B in accordance with the following time table:

September 1986

Strong area attendance magnet schools will be placed in 18, 19, King and Fermi, the precise nature of which shall be determined by the Board

The Early Childhood Center at School 10 shall be opened and operated.

The following schools shall be closed: 6, 11, 32 and 34.

Neighborhood elementary schools shall be opened and operated with the attendance zones as detailed (with street boundaries and racial/ethnic enrollment projections) as designated in the Appendix hereto.

Those schools which do not meet the district's integration goals and which remain predominantly minority during the transition period shall provide supplemental educational services as indicated herein in the Compensatory Infusion program section.

D. INTEGRATION GOALS AND TIMETABLE

The District shall use its best efforts to achieve the

following levels of desegregation as measured by the percentage of students attending desegregated schools at the respective grade pattern organizational levels:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

For purposes of this Order and at the present time, a desegregated school shall be defined as within $\pm 20\%$ of the districtwide average of minority^{***} students for that grade pattern organization level; if the school is a dedicated magnet or an attendance area magnet, however, it is desegregated if its minority enrollment is within $\pm 15\%$ of the districtwide average of minority students at that grade pattern organization level during the first year of operation and $\pm 10\%$ of the districtwide average for that grade pattern organization level in the second year of operation.

The Board shall report to the Court on March 16, 1981 the extent to which its plan has succeeded in achieving these goals through voluntary transfers. Should sufficient majority race students not voluntarily transfer from identifiably white schools and/or sufficient minority students not transfer to identifiably white schools, the Board shall propose its plan for accomplishing the desegregation of all its schools.

The parties shall submit their comments to this proposal two weeks thereafter and, if necessary, the Court shall schedule an evidentiary hearing before ordering into effect a proposal to fully integrate Yonkers elementary schools through such techniques as enrollment caps and other measures.

E. *STUDENT ASSIGNMENT*

1. *Recruitment*

*12 In order to maximize the extent to which the integrative goals of this order will be reached through voluntary student assignments, the administration of the Yonkers public school system will establish an intense recruitment phase and will include the following activities:

- dissemination of brochures and fliers describing the new program options throughout the city

- direct mailing of program options and descriptions to all parents
- newspaper, billboard and radio and cable television announcements of available magnet programs
- publication of all recruitment material in Spanish and Arabic
- school based recruitment meetings conducted by building administrators and central office staff
- telephone recruitment centers, English and Bilingual, through which parents will be called directly to explain magnet programs
- telephone hotline to respond to inquiries
- acceptance of initial registration by telephone as appropriate
- community meetings with minority groups and organizations to solicit support and assistance in the dissemination of magnet program availability
- door to door canvass by district personnel to explain magnet program availability
- magnet fair in which students and their parents will be transported to central display centers with movies, slides and material available for briefing

2. *Incentives*

In addition to the educational advantages available for participation in selected magnet programs, the Board of Education of the City of Yonkers may, in its discretion, request the federal government to provide a \$1,000.00 tax credit to the parents of every child voluntarily enrolled in a program to enhance the integration of the Yonkers public school system. During the past two decades the federal government has established various tax advantage initiatives as a means of implementing national policy. Clearly, school desegregation has been established as a federal policy and therefore the Yonkers Board of Education may, in its discretion, request federal assistance in the encouragement of Yonkers parents to participate voluntarily in the achievement of this national goal. The granting of this request, if made, is, however, not a

condition precedent to any other provision of this Order.

3. Selection

A fundamental aspect of the implementation procedures in the Remedy proposal will be the requirement that all parents must select the schools which their children will attend for September 1986 even if it is the neighborhood attendance area school. Parents must indicate their first three choices for schools for 1986–87. For the first year, no student will be admitted into any school, magnet school, or neighborhood attendance area school without the parent having indicated that selection as one of the three choices. The Board shall make every effort to assign each student to the optimum choice school listed on his or her choice form.

For 1987–88, the parent or guardian of each student in the district will again be required (as early in the school year as is deemed feasible but no later than March 1, 1987) to submit to the Board in writing a school choice form listing three choices for his or her child. This is because all (or most) of the magnet programs shall then be in operation and students should be given the opportunity to review the various considerations to the extent this is not disruptive to those already enrolled in existing programs (see page 14 *infra*). For the 1987–88 school term, at least one of the child's choices must be a school where that child's attendance will further the goals of desegregation as defined in this order. Again, the Board shall make every effort to assign each student to the optimum choice school listed on his or her form. The same procedure will be followed in subsequent years for students living in the district but attending public school for the first time, students born in the district who are beginning school, students transferring into the district, and students moving from one grade organizational level to the next (e.g., from junior high to high school).

*13 This procedure will begin immediately after the issuance of this Order. In subsequent years, as much planning lead time shall be provided as is possible. The objective of requiring three options is to force a choice and thereby inform parents of the availability of magnet program options and encourage their selection. All applications will be logged and numbered and a receipt given for each application. Only one application per child will be accepted. The procedure would be initiated immediately after issuance of the Order and certainly

before the end of the 1985–86 school year. In subsequent years, it would be initiated early in the school year to provide as much planning lead time as possible for the district and for parents. In addition to selection forms and program descriptions which will be mailed to all parents in the district, building principals, counselors and teachers will be required to meet with parents and review the options available to them.

(a) Admission Criteria

After the initial selection phase has been completed, the district will use the following process for admission into the magnet schools provided it does not prevent the district from achieving its goals for desegregation:

For those magnet schools or programs in which the requests of qualified students do not exceed stated capacity, those students will be immediately notified and admitted.

For those magnet schools or programs in which the requests of qualified students are greater than stated capacity, first priority will be given to those students already enrolled. Then, a random selection will be conducted on the basis of desired integrative goals. Such random selection will be conducted publicly with observers.

For those students whose first choice of a magnet school is not granted, the parents will be individually contacted to reaffirm the desirability of the second or third choice. Every effort shall be made at this stage to encourage the parents to accept the second or third choice of a magnet school.

For those students who are placed on a waiting list at the request of the parents because of the unavailability of space, a requirement will be established that they must reapply during the next recruitment phase but will be given preference provided that the granting of such preference will not adversely impact the racial/ethnic balance of the school.

If admission criteria are met, every preference will be given to the siblings of children already enrolled in magnet schools provided that such admission does not adversely impact on the racial/ethnic balance of the magnet school.

(b) Sibling Preference

When more applications for vacancies in a school or program are received than there are seats available, all applications will be randomly selected. After random selection, a rank-ordered waiting list, based on the random selection, will be developed. Names of siblings not initially accepted will be placed at the top of the rank-ordered waiting list. If only one twin is accepted the other twin will also be enrolled provided that whatever admission criteria exist, if any, are met.

(c) Admission to Specialized Programs (*see page 42 infra*)

***14** *Gifted and Talented* students selected for participation in the district's Gifted and Talented Magnet Programs are those who, by virtue of potential and/or achievement, are capable of high academic performance. Eligibility for the program is determined for each applicant following a careful analysis of standardized test scores, report card information, teacher input (on learning, task commitment, creativity and leadership) and parent input when possible. Entrance examinations will be included at the fourth grade level and above. All available information will be recorded and handled through a weighted matrix traditionally used for the selection of Gifted and Talented students. (Baldwin Matrix) On the basis of the test scores of the students who apply, a cut-off point will be determined and then students shall be admitted on a racial/ethnic balanced basis. It is anticipated that the selection will be geared toward the top five percent over the district cut-off point or points on multi-measures. Student selection shall be made to ensure a balanced racial/ethnic student composition and will be conducted by a committee of at least three administrators, to include at least one of whom would be minority.

Enrollment in these programs continues from one grade level to the next provided a student is achieving at the expected rate and level and the parents desire program continuation. A student may be counseled out of the program if progress is poor and/or the program is not in the student's best interest.

Citywide High School Career Specialty Magnet Programs will enroll students who have a sincere interest and believe they have the ability to succeed. Prior to submitting an application for such a program, counseling services will be provided so that there is reasonable expectation that the student will meet with success. The student and parent will be provided with information clearly outlining the schools' programs, expectations, and course requirements. If the number of applicants exceeds the available space, students will be selected based upon aptitude for the specific area, teacher recommendation, report card information and attendance patterns. These data will be weighted and ranked to ensure balanced racial/ethnic participation. Student selection will be made by a team of at least three administrators, at least one of whom shall be a minority member.

The Performing and Visual Arts Magnets will accept applications from interested students who must also undergo an audition in their specific areas of interest. These areas include Dance, Drama, Vocal and Instrumental Music. Selection will be made on the basis of specific criteria for each performing arts area. Student selection will be made to ensure racial/ethnic balance and selection will be made by a group of at least three performing arts teachers, at least one of whom shall be a minority member.

Students applying for Fine Arts and Graphic Arts programs must submit a portfolio of work for review. Selection will be made on the basis of specific criteria for the Visual Arts. Student selection will be made to ensure a racial/ethnic balance and selection will be made by a group of at least three Visual Arts teachers, at least one of whom shall be a minority member.

(d) Notification of Status

***15** Parents or guardians will be notified by mail indicating whether their children have been accepted, or placed on a waiting list for magnet schools or programs. Parents will be asked to confirm their intention to enroll their children in the program into which they have been accepted by mailing back within a stated return period, a confirmation letter which will have been enclosed in their letter of notification.

4. Appeal Procedure

Parents who wish to question admission procedures or appeal the decision of the selection committee will be required to put appeal in writing. The parent first will be invited to discuss the concern with a magnet counselor. If, after the counselor interview, the parent desires to continue the appeal, a Placement Review Committee will review all material and make a final determination of magnet placement. The Committee's decision will be on a case by case basis, but decisions must not adversely affect the program's racial/ethnic balance. If a student cannot be accepted immediately after review because of racial/ethnic balance, the student will be placed on a priority waiting list. The Placement Review Committee will be composed of at least three Central Office administrators to be determined by the Superintendent and will include minority participation.

F. STAFF ASSIGNMENT

The current racial distribution of teachers in the district is such that the number of teachers who would need to be reassigned to different schools in order to attain a uniform racial distribution of teachers within each of the schools is insignificant. The district anticipates that by September, 1986, the racial composition of teachers at each school will be within approximately \pm five percentage points of the districtwide average for minority teachers, as a result of reassignments in connection with school closings and conversions and the reassignment of teachers to magnet schools and magnet programs. Thereafter, the district shall attempt to maintain the racial distribution of teachers on a reasonably uniform basis, while respecting the provisions of the collective bargaining agreement between the district and the Yonkers Federation of Teachers.

If the Board cannot achieve this goal while adhering to the collective bargaining agreement, the parties may make applications to the Court for the requisite modifications.

With respect to the staffing of magnet programs and magnet schools, the district and the Yonkers Federation of Teachers have agreed to establish a process for selection which would address the mutual concerns of both parties.

Although the Court denied the application by the NAACP

for the adoption of an affirmative action hiring program at this time, it is without prejudice to renewal subsequent to March 16, 1987 if it should appear that the aforesaid efforts of the Board and the Yonkers Federation of Teachers have not achieved satisfactory levels of minority staff hiring and distribution throughout the Yonkers school system.

G. SPECIAL EDUCATION

1. Principals For Administration of Special Education

*16 In the administration of its Special Education services, the district shall adhere to the following principles:

That handicapped students be guaranteed the same constitutional rights provided all other students

That all other regular education interventions and strategies are explored and utilized where appropriate prior to a student's referral for and placement in special education programs

That in as much as special education is one among many instructional options encompassed within a continuum of educational services, it is the responsibility of both regular and special education to meet the educational needs of handicapped students, particularly with respect to such areas as occupational education, gifted and talented programs, limited English proficiency services and other magnet programs operated by the school district

That to the maximum extent appropriate, handicapped students should be educated with students who are not handicapped, and that removal of handicapped students from the regular education environment should occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily

That handicapped students are entitled to the right to due process, and the right to participate in appropriate education programs and activities in the least restrictive environment

That the provision of appropriate educational opportunities for handicapped students is based on the

identification and evaluation of each student's unique needs

That tests and evaluation materials will be non-discriminatory and utilized for the purpose intended

That all handicapped students and their parents should be afforded the protections of procedural due process in the identification, evaluation and placement within special education, including collection, use and dissemination of all data developed by the district for that purpose

That handicapped students be grouped for classroom placement by age-appropriate functioning level, and that such groupings reflect the system-wide racial/ethnic composition of all like special education groups at that functioning level, the only exception to this racial/ethnic criterion for grouping shall be those groupings designed for the provision of bilingual special education services

As legally mandated, each student receiving special education services will have an annual program review by the Committee on the Handicapped in order to evaluate the appropriateness and effectiveness of program placement and services and also a triennial assessment for the purposes of determining the need for continuation, change, or termination of special education services

2. Criteria For Location of Special Education Programs Within Individual

Programs for the following students: secondary-resource (R); secondary-learning problems (L); and secondary-emotional problems (E), will be placed in all junior and senior high schools with attendance zones to enable students requiring those programs to attend school in their home attendance zone.

***17** Programs for the following students: elementary-resource (R); elementary-learning problems (L); and elementary-emotional problems (E), will be placed in attendance zone elementary schools to the maximum extent possible. In the absence of adequate numbers of students of like functioning level in each elementary attendance zone school, programs for students of like functioning level will be placed in schools closest to their attendance zone school.

Programs providing services to elementary students who are educable mentally retarded (ER); hearing impaired (H), and neurologically impaired (N), will be placed in schools located in approximately the center of the city so that transportation is kept at a minimal level.

Programs providing services to secondary students who are educable mentally retarded (ER); hearing impaired (H), and neurologically impaired (N), will be placed in each attendance zone secondary school to the maximum extent possible based upon the numbers of students requiring such services. In the absence of sufficient numbers of students of like functioning levels, students will be placed in schools closest to their attendance zone schools.

Programs for "low incidence" handicapping conditions providing services to elementary and secondary students who are trainable mentally retarded (TR); speech and language impaired (SL); gifted learning disabled (HL); bilingual handicapped (LB); multiply handicapped (MH); physically or orthopedically handicapped (PH); Rockland Day Treatment Program (E-YDT); Yonkers Learning Center (E-YLC); diagnostic (D), and emotionally disturbed students with non-aggressive behavior (EN), will be placed in schools compatible with the unique needs of the students and the regular education programs within the school.

Programs providing speech (Spch) or vision (Vis) resource services for handicapped students whose only special education needs are these services will be provided to the students in their attendance zone schools.

3. Guidelines For the Assignment of Special Education Students Into Programs Within Schools

Transportation shall be provided to special education students where their homes are one and one-half miles from their assigned schools. Such transportation shall not exceed forty minutes of travel time and shall be scheduled to ensure that the school day affords a full day of instruction. Transportation will be provided to any special education students regardless of their residence and

school program if the Committee on the Handicapped (COH) determines that the handicapping condition is such that transportation is required.

Special education students shall have the opportunity to be mainstreamed in accordance with their Individual Education Program (I.E.P.)

Every effort will be made to maintain elementary special education students in their assigned K-6 school in order to ensure continuity of program. In the absence of an appropriate program in the assigned elementary school, the special education student may be reassigned to a different school only once. However, a change in placement by the COH overrides this one time only reassignment.

*18 Special education students are ensured access to all district extra curricular activities and, in addition, will be provided the necessary transportation.

Special education students are ensured access to all regular education occupational and magnet programs. Applicants for such programs will be required to complete the application process and to be diagnosed for career options by a professional. The assessment will be made available to the COH for recommendation.

Every effort will be made to ensure that the racial/ethnic composition of students of like functioning level student groupings shall reflect the composition of students of like functioning levels on a districtwide basis.

Special education students will be placed in classes designed to meet their needs and not assigned to integrate schools.

LIMITED ENGLISH PROFICIENT (LEP)—SPECIAL EDUCATION

Limited English Proficient (LEP) students who are of foreign birth or ancestry, who speak little or no English, and who have scored below the statewide reference point on an English language proficiency test, and who are referred to the COH for possible Special Education,

should be further assessed for language dominance in their native language in order to ascertain the language to be used for further assessment.

The use of tests for potentially handicapped LEP students will be non-biased and non-discriminatory in accord with the most current research. LEP students will be assessed by diagnosticians proficient in the child's native language, where available. In the absence of such a diagnostician, the student will be provided a translator during the assessment process. In this event, the COH will ensure the use of non-verbal assessment instruments as well. A native language representative will assist the parent/guardian and student in all aspects of the evaluation, diagnostic, and due process procedures.

Placement of the LEP child will be made based on the student's functioning level and native language proficiency.

REPORTING

Along with the other data the Board shall collect and maintain, it shall report the location of special education classes (by classification) the number, race and home school attendance areas of students enrolled in each class; the race of the teacher for each special education class. (see page 43 *infra*)

H. BILINGUAL EDUCATION

1. Assurances AND Commitment

The district is committed to continue meeting the needs of all Limited English Proficient students under the Remedy Proposal outlined in this document. The proposed FLAME and multilingual programs provide no substitute for bilingual education.

In order to guarantee that LEP students eligible for bilingual education or ESL continue to receive the services to which they are entitled and in accordance with the Yonkers public schools' goals, the district will maintain bilingual education and ESL programs consistent with Chapter 827 of the Laws of 1982, N.Y.S.

The district will use the “Guidelines for Development of Programs for Students with Limited English Proficiency Under Part 154 of the Regulations of the Commissioner of Education.” Thus, this Plan takes into consideration the special educational needs of all LEP students.

*19 English proficient Hispanic (monolingual or bilingual) students who are not eligible for the bilingual education program according to the State regulations will be assigned in accordance with the requirements of the Court Opinion and this Plan. Former LEP students who have achieved English language proficiency and/or have been in a program of bilingual education of ESL for three years will be mainstreamed and provided the same opportunity to participate in all educational aspects of this Plan.

Bilingual education and ESL staff will be assigned according to need, i.e., the numbers of LEP students in a building, consistent with the reassignment of students throughout the district.

It must be recognized that The Equal Educational Opportunity Act of 1974 acknowledges the “role model” value of Hispanic staff assignments to bilingual educational programs to overcome the language barrier of LEP students. For this reason there is a disproportionate minority staff assigned to bilingual education classrooms. However, they perform a distinct non-interchangeable task and the education law requires that bilingual education teachers be certified in common branches and/or content areas as well as in bilingual education in order to meet the special educational needs of LEP Spanish-speaking students. That assignment priority will be continued under the Order.

The Yonkers public schools has extended its commitment to LEP students and maintained standards of equal and quality education by creating the Department of Multilingual Education consisting of a Director, a Coordinator and a Secretary, all Hispanics. They will continue to implement and monitor the Bilingual Education Program in the Yonkers public schools.

By _____, the Board shall designate where bilingual programs shall be offered at both the elementary and secondary level for the 1986–87 term. The Board will also outline at this time how it shall provide language assistance for Hispanic students that want to enroll in special magnet programs.

2. Protective Principles

The Yonkers public schools will ascertain the eligibility of all students who qualify according to the requirements of State regulations. It will also notify the parents of such students in their native language as to their children’s eligibility and placement in bilingual education. However, many parents have expressed their desire to have their children not participate in bilingual education programs, but to participate in the ESL program offered in the same building or in other buildings where there are magnet programs. The district will continue to honor this parental request while continuing to offer the bilingual education program.

I. SUPPORTIVE SERVICES AND PROGRAM

1. Staff Development

A comprehensive staff development plan to assist administrators and teachers in the implementation of new programs for September will begin in the Summer of 1986.

Beginning in June, the New York State Education Department’s National Diffusion Network Team will conduct a series of inservice workshops for teachers for five separate programs included in the Remedy Proposal:

- *20 (a) Project Zoo
- (b) Kindermath Program
- (c) Project Ecology
- (d) The Early Prevention of School Failure Program
- (e) The Starwalk Program
- (f) Every Child a Winner

Additional workshops will focus on two special programs being provided to staff at every Voluntary School Transfer (VST) site. These programs are the *Talents Unlimited Program* and the *Student Team Leadership Program*. A special cadre of teachers and principals from these VST schools will be trained as turnkey facilitators who in turn will train other teachers and administrators in other VST schools which will house identical programs.

The new Comprehensive Staff Development Plan is based upon the New York State Education Department guidelines recommending a full day program for all teachers. Additional activities derived from a needs assessments and understanding of district goals are also incorporated into the Plan.

In addition, Staff Development activities in preparation for September, 1986 will include a minimum of three days of intensive training and five action workshops to be held during August, 1986 and which will be designed exclusively to provide the necessary program skills for every teacher assigned to a districtwide magnet program.

Over the course of the summer and continuing through the entire school year, university professors, representing Sarah Lawrence College will work with teachers in developing and expanding curriculum for the Foreign Language and Multicultural Educational (FLAME) Programs located at School 30 and also School 22. Teachers College, Columbia University will assist with the PEARLS Program, the State University of New York's Partnership Consortium will work with teachers in the Aesthetics and Science Programs located at Martin Luther King Jr., Fermi and Emerson; Iona College of New Rochelle will concentrate on computer programs located throughout the district, particularly in School 13; St. Joseph's Hospital, affiliated with the Medical and Health Magnet at Gorton High School, and a pool of other kinds of needed training for staff to ensure the successful implementation of the total instructional program in September.

2. Remediation

Remediation is not separate, but part of the total education process. It is an ongoing process and takes place when students are identified through a variety of sources including but not limited to teacher observations, New York State mandated tests, and districtwide evaluation procedures.

A formal process in the early identification of pupils who need special help in developing the basic skills of reading comprehension, mathematics, and writing, is required by the Yonkers Remediation Program. Early identification and the monitoring of pupil progress in developing these skills are important features of the current program and will continue to be emphasized under this Order.

The basic criteria for determining remedial instruction is based on student test scores on the mandated New York State Tests administered in Grades 3, 5, 6, and 8. Yonkers has a uniform sequential curriculum of instruction in four core areas which provides an equal opportunity for students to learn the skills necessary to pass both state and districtwide tests. However, when a student falls below the State Reference Point on these tests, the following process takes place:

*21 Stage I

Parental Notification: A standardized reporting form is sent to parents. The form includes the students' scores on the New York State Competency Tests and the content and scope of the instructional program. The form indicates the remediation teacher and provides an opportunity for parents to receive recommendations on how to assist in the reinforcement of the identified remedial area(s).

Stage II

Student Participation: Students receive both individualized and small group instruction from their classroom teacher and/or from the reading, and math specialist.

The students' progress is monitored through the Yonkers Remediation district Program which consists of an outline of skills necessary to master the basics in the content areas of reading, mathematics and writing.

Teachers use these skill outlines to monitor the students' progress as they master each recommended skill and records are kept for each student. Additionally, these skills are correlated to a district-wide curriculum which is being used in the regular education program.

Stage III

Termination of Pupil Participation in the Yonkers Remedial Program: When a pupil is provided remediation for a period of time (not less than six months) and there is strong evidence that the remediation is no longer needed, the student is re-tested with the appropriate N.Y. State test for the grade level. This opportunity is given to the student in February and June.

If the appropriate passing scores have been achieved, a student is removed from the remedial program. The

decision to end remediation must be supported by all available information and be endorsed by the classroom teacher.

Stage IV

Parental Notification: Parents are also notified when the remedial program is terminated. Written notice, containing the reason for ending the program, is provided. If parents request that remedial programs be continued, every effort must be made to accommodate their wishes.

Remediation

The Yonkers public schools will continue to refine its current Remediation Program. Remediation for Yonkers students will not be confined to the above process but will be developed, improved and expanded according to the needs reflected by the student population. It will continue to target those students in the non-desegregative environment during the transitional period and the Yonkers public schools will meet full compliance with the educational goals set forth in this Order.

The Yonkers program will be incorporated into educational experiences which will include parents as partners in reading; computer literacy training to reinforce basic skills; and the involvement of city library services to encourage reading for lifetime enjoyment.

“Thought is Taught” will be the new motto which will emphasize thinking skills as the pre-requisite to all basic skills.

3. School Improvement Plan

A basic component in the new program of instruction mandated by the State of New York, the Regents Action Plan, is the identification of those schools within the State requiring special assistance. Identification of these schools is made in an annual release of a Comprehensive Assessment Report in which the schools are identified according to the following selection indicators:

*22 Student test data on all pupil evaluation program tests, all Regents preliminary competency tests, all Regents examinations, all occupational education

proficiency examinations and all second language proficiency examinations.

Student enrollment by grade

Number of students transferred into the alternative high school equivalency preparation program

Data, as required by the commissioner, on diplomas and certificates awarded

Any additional information which the superintendent of the school district, or the chief administrative officer of the non-public school believes will reflect the relative assessment of a school building or district.

The Comprehensive Assessment Report for the Yonkers public school system was released on December 4, 1985, in which 12 schools were identified by the State of New York as in need of special assistance. (The list was subsequently reduced to 11 with the removal of Gorton High School.) Each of the schools is located on the west side of the city and all but 3 are predominately minority.

An integral part of the Comprehensive Assessment Report is the requirement that the Superintendent of Schools, in cooperation with the professional staff, establish a Comprehensive School Improvement Plan (CSEP) which would specify specific measures, procedures, and recommendations which would be undertaken to improve student achievement in the schools identified as being in need of assistance (CAR schools).

In addition to the Comprehensive School Improvement Plan being developed for the CAR schools, the administration directed that such plans be developed for each school so that a comprehensive assessment of needs, both programmatic and physical, could be provided for the school system. Although the district would be reorganized under this Order, that program will be continued and will follow the guidelines established by the New York State Education Department which are that the Comprehensive School Improvement Plans must be developed as follows:

In consultation with teachers, administrators and other school personnel

On an individual school basis for implementation in September of 1986

On the prescribed format (i.e. including definition of

individual school needs, goals, objectives, activities, timelines, and evaluation)

Using the Effective School Model—a grass roots approach to planning for effective change initiated by individual school staffs

An active program of inservicing of administrators and teachers has been undertaken by the administration for the development of the School Improvement Plan. These activities include the following

School administrators have been provided training in preparation for their tasks of acting as turn-key workshop leaders of sessions designed for plan development. These administrative staff development sessions included training by central office personnel, university professors, Metro Center staff and fellow principals who have successfully followed the Effective Schools Model.

*23 Two half and one full day workshop led by principals were conducted in each school. During these sessions CSIPs were developed and will be refined for presentation to the Superintendent of Schools, Board of Education and (in the case of the eleven CAR identified schools) the N.Y.S. Education Department.

Each school plan will be reviewed for additional assistance required for effective implementation. Beginning in March, six N.Y. State Education Department Effective Schools Consortium representatives will be worked in concert with the eleven CAR identified school principals and staffs in an effort to commence preparation for the plan. They will serve as support personnel along with local curriculum coordinators and Chapter II teacher trainers.

It should be noted that the selection of these schools was based on data for the 1983–84 school year and significant progress has been made in the improvement of student achievement in many of the schools identified by the State Education Department since that time. These efforts will be encouraged and further developed as the CSIP process unfolds but it must be recognized that many of the schools identified will be changed under this Proposal. The more significant task is to maintain an accurate identification of the children attending the CAR schools and to ensure appropriate remediation for them.

4. Districtwide Program

The District has developed various curricular models and programs designed to foster an understanding and appreciation of differences among races, cultures and groups. These include programs such as: Student Team Learning, Talents Unlimited, Ferguson-Florissant Writing Project which have been facilitated by ECIA Chapter 2 teacher training to ensure a consistent quality of inservice in these interactive programs. In addition to the classroom models and schoolwide programs, there are many districtwide activities designed to increase interracial exposure and improve intergroup relations.

High School Student Council

At the high school level, the district has established an inter-school student council to promote school improvement projects and to advise the Superintendent of student matters. Five high school students, one from each school, were selected for summer training in leadership and attended a New York State Student Seminar in July, 1985. This group of racially balanced students have given their leadership to the total group. The teacher-advisor for this group is a former *NATIONAL TEACHER OF THE YEAR*.

Outward Bound

The district has co-sponsored an Outward Bound Program which sent several high school students throughout the country to learn to survive with other students in a variety of experiences.

Convocation

The district is planning a seventh and eighth grade convocation on relevant topics to bring students together in a problem-solving situation. Future plans include a county-wide convocation under university sponsorship.

Summer School

A centralized summer school program is offered to all high school students and includes counseling services and remedial instruction.

**24 Music and Art Fair*

The district's Music and Art Fair is the culmination of school-based activities throughout the year and provides an opportunity for interracial exposure.

Spelling Bee

The district Spelling Bee is the culmination of classroom, school and area bees of all elementary schools. In addition to the English Spelling bee competitions, simultaneous competitions are also conducted in Spanish.

Enrichment Center

Over 840 gifted and talented students in grades 3–6 attend an Enrichment Center on a one-day-a-week basis with their teachers in an integrated scheduled program. Each day the Center houses 220 students from six different elementary schools. Students select from a wide array of enrichment courses including microbiology, media, architecture, foreign languages, et cetera. Student selection of courses guarantees that students from different schools in different areas meet and share interests on an interracial basis.

Interschool Trips

As part of the district's program with the Westchester Council of the Arts, cultural trips are planned for several elementary schools. In addition, interschool trips for specific school events are sponsored to provide for interracial exposure.

Yonkers Educational and Cultural Arts Center

The restoration of this beautiful turn-of-the-century mansion has truly been the result of community and school district interest and shared support. Students from the Saunders Trades and Technical High School's architectural department restored the building; community members donated money and resources; horticulture students from other district high schools beautified the grounds; and Culinary Arts students prepare meals for community events and public fetes. In addition, it serves as a teacher training facility and conference center open to the entire county.

In order to achieve the district's goals of creating a multi-cultural environment and reducing ethnic and racial isolation, the district will continue to support and expand multi-cultural activities.

5. Facilities

The infrastructure of the Yonkers public schools has been in a deteriorating state for many years due to the lack of capital funding. The situation in some of the schools within the City has approached a state of alarm in terms of physical condition, let along the learning environment for children and for staff.

It is to be noted that the district has a comprehensive Capital Improvement Program extending over the next five years and the rehabilitation needs of the facilities throughout the district are clearly severe. Every effort shall be made to continue the efforts of the district to obtain additional funding to continue the rehabilitation program which will be initiated under the \$11.3 million bond program.

6. Extra-Curricular Programs

There is a very comprehensive extra-curricular program in the Yonkers public school system, including interscholastic sports, intramural activities, and a variety of other activities related to student clubs, newspaper, drama clubs, bands, musical shows and other programs for students' interests and activity preferences. In order to ensure equality in terms of participation and availability of extra-curricular activity to students who attend Magnet Schools or who transfer voluntarily to enhance integration, the district will:

*25 ensure that transportation is available after school for those students who wish to participate in extra-curricular activities and who are transported to school.

pre-determined pick-up and drop-off points will be established for students participating in extra-curricular programs to ensure safety and reasonableness in terms of distance and also time.

In addition, the district will closely monitor the racial/ethnic composition of the extra-curricular program in each school to maintain an appropriate and desirable balance. Recruitment efforts will be established within each school to assist in the efforts to provide such a balance.

Extra-curricular programs shall be based on need, interest and preference of the students, both in the area attendance zone, as well as those students who voluntarily transfer to the school for racial/ethnic integration purposes.

7. *Compensatory Infusion Programs*

Those schools which do not meet the district's integration goals and which remain predominantly minority during the transition period will be eligible for intensive compensatory programs. These will include smaller class sizes, additional reading teachers, reading aides and trained mathematics specialists and aides who will provide individually guided instruction in small groups, using special materials and newly equipped labs. Transitional schools will also be eligible for increased guidance, psychological, and social work services to ensure an optimum learning environment.

Moreover, a summer school program for low achieving students is planned to mitigate the effects of "summer loss" and to provide additional instructional time. Prevention of future school failure is the goal of the group counseling component.

8. *Chapter I Services*

The Chapter I funds provided to the Yonkers public schools currently supports reading teachers, math teachers, ESL and teacher support in 10 elementary schools. The students who are receiving these services and who are entitled to receive these services will continue to receive them under the Remedy Proposal in one of two major ways:

Those schools under the new organization with a high percentage of eligible students will receive full time supplemental staff for small group remediation instruction in reading, math, and ESL. In addition, instructional material and equipment will also be provided.

In those schools where there are small numbers of eligible students, instruction will be provided in a resource model or a tutorial model. In those instances, Chapter I funds will be provided to support the additional teacher time required.

J. *TRANSPORTATION*

The Yonkers public school system has a long established policy of not providing transportation for students except that required for Special Education children. However, since 1980, transportation has been provided to children enrolled in Magnet Programs established throughout the district at both the high school level and also at the elementary level. A notable exception to this policy was the transportation provided to the Whitman Middle School students when that building was closed in April, 1983, because of asbestos. Those children were transported to other facilities within the area on an emergency basis. Another exception was made when Longfellow Middle School was closed for September, 1985, and those students did not have a neighborhood school to which they could be assigned pending the Court's decision. Consequently, transportation is being provided to those students who were permitted to select any school in which seats were available.

***26** Under this Order, transportation will be provided:

to those students who elect to enroll in Magnet Schools

to those students who elect to participate in the voluntary student transportation program

to those students who are required to travel in excess of 1 ½ miles to their neighborhood school

to parochial students who live within the City of Yonkers and who travel more than 1 ½ miles to their school

The Order is designed to minimize student attendance zones in a fashion consistent with its integrative goals so that transportation will be reasonable in terms of both distance and travel time. Because of the voluntary nature of this Order, it is impossible to establish routes required for transportation, or for that matter, the ethnicity of the students involved. Just as soon as the student assignments can be implemented, a consultant transportation firm will be contracted to work with the district to develop a safe, reasonable, and manageable transportation program that will be equitable in terms of burden for both majority and minority students. In addition, the transportation will be provided to those adults currently enrolled in the Adult Programs located in the Old Commerce building. It is the intention of the district to provide an evening shuttle service for those adults participating in Adult Education Programs at the Center for Continuing Education.

K. HUMAN RELATIONS

The effectiveness of a desegregation plan centers on the degree to which all of the members of the school community are willing to work together toward the common goal of making that effort a success. The building of good race relations must by necessity be an ongoing process that involves shared responsibilities among the community, school administrators, faculty and students.

To that end, the district shall implement a human relations program specifically designed to achieve the following objectives through appropriate activities scheduled in a timely manner:

(the Board shall insert human relations training and community education programs it has now planned for the pre-implementation period to this schedule and describe the nature and timing of these additional programs)

To increase alternatives of administrators in analyzing potential inter and intra group problems and promoting group cooperation.

Spring, 1986—The district in cooperation with Metro Center shall conduct a 12 hour workshop for principals and assistant principals which will emphasize the creation of a climate for change.

Spring, 1986—The district in cooperation with Metro Center shall conduct a workshop for assistant principals and pupil personnel staff designed to address issues involving student reactions to the Plan.

Spring, 1986—The district shall conduct a magnet school development workshop for staff and community to work together detailing the structure of the new magnet schools.

Summer, 1986—The district shall conduct a workshop for School Improvement teams currently carrying out the principles of the school improvement plans developed by each school.

*27 To improve communications among administrators, teachers, students and community.

During Fall, 1986 and Spring, 1987 the district shall conduct at least 6 hours of workshops for custodians, food service personnel, school registrars, secretarial staff and aides.

Fall, 1986—The district shall develop a Human Relations Newsletter designed to disseminate information about workshops, programs and activities relevant to area of human relations.

Fall, 1986—Development of individual and district wide advisory committees.

Fall, 1986—Establishment of a Rumor Control Center.

To enhance the awareness of administrators, school personnel and students of diverse cultural backgrounds.

Summer, 1986—Identification and orientation of a cadre to carry out human relations activities in the school.

Fall, 1986—Spring, 1987—Individual workshops for faculty in area of conflict resolution and sensitivity to diverse cultural backgrounds (20 hours).

Fall, 1986—Spring, 1987—Selected cultural organizations to work with students in enhancing knowledge of literary and cultural traditions of diverse groups.

To increase the training of a cadre of administrators and teaching personnel to facilitate the use of Human Relations experiences with students.

Fall, 1986—Spring, 1987—Training of a cadre of staff and faculty in the Student Team Learning concept.

Spring, 1986—Spring, 1987—Faculty representatives to participate in workshops at New York University organized by Metro Center.

To provide students with experiences which will assist them in developing and facilitating communication, decision making and problem solving skills.

Summer, 1986—High school students participation in Outward Bound Program.

Fall, 1986—Spring, 1987—Human Relations Workshop Sessions for elementary and secondary students (10 hours).

Spring, 1985—Spring, 1987—Scheduled meetings of members of High School Council to facilitate communications.

To assist students in developing an understanding of their rights and responsibilities as members of the school community.

Summer, 1986—Spring, 1987—Meet with community leaders to establish community projects involving students.

Fall, 1986—Administrators of individual schools to meet with students regarding school discipline code.

To provide information and training experiences for community groups which will encourage them to work together effectively for the benefit of school community.

Fall, 1986—Spring, 1987—Training to commence for P.T.A. Council members (3 hours).

Summer, 1986—Ongoing informational meetings with representatives from Yonkers Council of PTA's

To provide an atmosphere in which the school community will be assured of the safe transport of its students to and from school.

Fall, 1986—Spring, 1987—The district will increase the number of phone lines available for communication regarding transportation.

Fall, 1986—Human Relations training of bus drivers (6 hours).

Fall, 1986—Human Relations training for school bus aides (6 hours).

L. FUNDING

*28 It is anticipated that the necessary funding will be provided by the City of Yonkers and the Board is to advise the Court forthwith if for any reason it is unable to implement the programs set forth herein because of a lack of adequate funding.

M. ASSURANCES

The Board shall establish a comprehensive staff development program which will be a component of its ongoing in-service program for teachers and administrators and which will address areas such as racial attitudes, student discipline procedures, academic achievement and performance goals, teaching in a diverse racial/ethnic environment, and integration goals.

The Board shall provide students equal access to extracurricular activities. To facilitate such participation, it shall provide appropriate after school transportation for students eligible for transportation.

In the implementation of this Order, the Board shall provide a comprehensive program of information to the community, including committees of parents and other members of the public who have a particular interest in the issues that may arise during implementation, and to staff in an effort to attain maximum participation in all aspects of the integrative component of this Order including but not limited to media, community meetings, brochures, leaflets, and other recruitment activities. Plaintiff-Intervenors shall encourage members of the minority community to support the integrative components of this Order.

The Board shall ensure that with respect to the use of any desegregation techniques such as school closing or openings, site selections and new construction, and boundary adjustments, its policies and practices shall be consistent with the integrative purpose of this Order, as well as the principles of sound management and administration of the school district.

The Board shall ensure that this Order is afforded every opportunity for successful implementation through the provision of a comprehensive program of information to the community as well as appropriate human relations programs for staff and students.

The Board shall ensure that its Code of Disciplinary Standards is publicized and that clear and adequate notification is provided all students, parents, teachers and administrators of such standards and of the non-discriminatory

application of these disciplinary procedures.

The Board shall ensure that the location of transfer of ESL/Bilingual programs in its elementary and secondary schools take place in a manner which will not detract from the objectives of this Order while ensuring that sufficient numbers of students requiring such services are enrolled at each location in order to justify the provision of bilingual or ESL programs. As already noted, ample provision shall be made to enable, to the maximum extent possible, students desiring bilingual programs to participate in the dedicated and area attendance magnet programs described elsewhere herein.

The Board shall ensure that it continue its obligation to fully implement the terms and conditions of its existing agreements with the U.S. Department of Education's Office for Civil Rights and the New York State Education Department which have been designed to ensure compliance with Title VI of the Civil Rights Act of 1964, P.L. 94-142, Section 504 of the Rehabilitation Act of 1973, as amended, and the New York Commissioner of Education's Regulations regarding the provision of special education.

*29 The Board shall ensure, to the maximum extent possible, that racial isolation does not occur within any school building or program operated by the Board.

The Board shall ensure the provision of remediation to those students scoring below the State Reference Point in the State mandated Pupil Evaluation Program in the basic subject areas of reading and mathematics. In addition, the Board shall encourage the participation of those students in need of remediation in these magnet programs specifically designed to improve student achievement levels in the basic skills areas.

N. MONITORING

Each party, after consultation with the others, shall suggest to the Court one or more candidates for Monitor. The nominees must be both qualified *and* willing to serve,

and his or her specified compensation shall be borne by the school district. A Monitor shall be empowered to request specific information from the school district relevant to implementation of this Order. S/he shall issue reports _____ to the Court and the parties assessing different aspects of implementation of the remedy and shall be empowered to make recommendations to the Court with respect to changes s/he believes necessary to make the plan more effective. The Board and the other parties shall make their recommendations within fifteen (15) days from the date of the Court's Opinion.

Once a Monitor is appointed, one of his/her preliminary tasks shall be assessment of the school district's admissions criteria for the magnet schools and magnet programs. These criteria shall be submitted to the Monitor by _____ for those programs that are continuing or will be beginning in September, 1986. Admissions criteria for programs slated to commence in September, 1987 will be submitted to the Monitor by _____ and the same procedures will be followed. Any party may at each time offer comments on these admissions criteria.

O. PARENT COORDINATOR

The parent coordinator shall be responsible for working with parents in recruitment and information dissemination and for developing a working relationship with parent organizations in the community. The parent coordinator also shall foster communication with non-English speaking parents. The Superintendent shall notify the Court and all of the parties of the name, credentials and background of the prospective appointee for this position ten (10) days before any appointment is made final.

P. Reporting

By March 16, 1987, the Board of Education shall file with the Court and serve on Counsel for the United States, the NAACP and the Yonkers Federation of Teachers, a report setting forth the following information for the 1986-87 school year and projections for the 1987-88 school year:

1. Total Student Enrollment, by race, of:
 - a) the school district, not including Special Education

b) each organizational pattern in the district, not including Special Education.

c) each school facility, not including Special Education students.

d) each Special Education Program (or non-categorical/functional level) by race and by age level grouping

*30 e) each Special Education class together with designation of each student's home school attendance area.

2. The location of each special education class.

3. The race of each special education teacher.

4. The number of students, by race, participating in and/or requesting to participate in voluntary student transfers within the district.

5. The number of students, by race, participating in and/or requesting to participate in each of the Magnet Programs and in each of the Magnet Schools.

6. The total faculty, by race and experience level, of the school district.

7. The total faculty, by race and experience level, of each organizational pattern and school facility, excluding Special Education teachers and bilingual teachers.

8. The total school administrative staff, by race, of each school facility.

9. A current and accurate description of all Magnet Programs in operation and those to begin in September 1987.

10. A description of the district's human relations program.

11. A description of the district's staff development program.

12. The program capacity of each of the district's schools.

The Board shall also make available fifteen (15) days from the date of the filing of the Court's Opinion description of the data it currently collects and/or intends

to collect after the plan is implemented. Each party may make additional suggestions and the school district can file any objections or modifications it may have with the Monitor.

Q. MISCELLANEOUS PROVISIONS

1. City of Yonkers

The City of Yonkers and the Yonkers Community Development Agency, their officers, directors, agents, employees and successors, shall not intentionally perpetuate or exacerbate racial segregation in the Yonkers public schools by engaging in conduct which blocks or otherwise refuses to permit because of race the development or construction of public or subsidized housing units in violation of Title VIII of the Civil Rights Act of 1968 or the Fourteenth Amendment to the Constitution.

2. Prohibition Against Discrimination

The Board, its members, officers, agents, employees, successors, and all persons in active concert or participation with them shall not discriminate against any student on the basis of race, color or national origin in the operation of the Yonkers City School District.

R. MODIFICATIONS

The Board shall notify the United States and Plaintiffs-Intervenors of any proposed modification in the plans, programs, or policies described in this Remedy Order. Unless the Board shows good cause why the time should be changed, the United States and Plaintiffs-Intervenors shall have sixty (60) days from the dates of such notice in which to object to the proposed modification. If the United States or Plaintiffs-Intervenors object, no such modifications shall be put into effect by the Board without the approval of the Court. Nothing contained herein is intended or shall be construed to

prohibit the Board from changing or altering any school boundaries or establishing any new attendance zone, so long as such modification, alteration, or new zone neither impedes the integration envisioned under this Remedy Order nor violates any law relating to student assignment.

modification to remedy the specific non-compliance found to exist.

At any time, the Board may, if it deems it appropriate to do so, move for a declaration of unitary status.

S. CONTINUING JURISDICTION

*31 During the Board's implementation of the Plan, this Court shall retain jurisdiction of this action to enforce the terms of this Order and for all purposes consistent with attaining the objectives of this Order. Plaintiff or Plaintiff/intervenors may file a motion with the Court at any time during the period of implementation requesting enforcement or modification of this Order if the Board has failed to make reasonable progress in achieving the integrative objectives of the Plan. In ruling on any such motion, the Court shall base its determination on the totality of the circumstances, and shall seek to tailor any

APPENDIX

As per the Board's proposed order, to be amended consistently with this Opinion and Proposed Order.

All Citations

Not Reported in F.Supp., 1986 WL 4894

Footnotes

- ¹ On March 5, 1986, the Court granted the United States a two day extension of time for the filing of its response to the remedial plan submitted by the Yonkers Board of Education.
- ² On the same day, the Yonkers Board of Education withdrew its request for an extension of time in which to prepare its remedy proposal.
- ³ Tr. of March 13, 1986 at 3. Under the existing collective bargaining agreement, teachers are permitted to transfer voluntarily (or may be required to transfer involuntarily) on the basis of seniority. Seniority may be displaced by mandatory reassignment when students are to be provided with a unique learning skill or experience that cannot be satisfied under such a system. It also may be waived as a requirement for up to 25 voluntary transfers into newly created positions that will enhance staff integration on the basis of race, experience or training.
The Board's original proposal provided that the procedures outlined in Article 15 would govern transfers and staffing changes except where they would adversely impact on the racial and/or experiential composition set forth in that plan—for racial balance, plus or minus five percentage points of the district for each grade pattern organization level, and for experience range, plus or minus fifteen percentage points. *Educational Improvement Plan for the Yonkers Public School System of February 17, 1986* at 237. The Board subsequently withdrew this provision (see *Brief of Yonkers Bd. of Educ. Regarding Plaintiff-Intervenors' Response in Opp. to the Board's Modified Educ. Improvement Plan*, April 7, 1986, at 11–12) and, thus, only the NAACP currently advocates the proposal which impelled the YFT to intervene. Tr. of Remedy Hearing (hereinafter "Tr.") at 46; see also *NAACP's Response in Opp. to Modified Educ. Improvement Plan for the Yonkers School System Filed on April 2, 1986 by the Yonkers Bd. of Educ.*, at 25–26.
- ⁴ On April 2, 1986, this Court denied the Organization of Hispanic Parents of Yonkers' motion to intervene, but granted it leave to file a brief as *amicus curiae*.

⁵ Dr. Pack expressed concern primarily for Gorton High School, which is slated for use as a strong pre-professional magnet. However, if, for example, a strong social science academic magnet program was introduced at Yonkers, it would not overlap with Gorton's nor any other area high school's programs. Tr. 746. If the Board finds that Yonkers High School could not accommodate an academic program without an expanded prospective enrollment beyond the 1,200 contemplated by the Board, the Court does not perceive this as a barrier in light of the physical capacity of the building and the testimony adduced herein. Tr. 743.

⁶ Furthermore, for these same reasons, a move to the Whitman facility in the middle of the school term would not prove disruptive. Many of these planned programs are housed in no particular place. Activities such as teacher training, for example, currently occur wherever room can be made available. Tr. 1113-14.

⁷ Programming efforts also will be minimal because the Center builds on the successful student achievement of the district's State Funded Pre-Kindergarten Children and will replicate another nationally known program designed to prevent school failures of English or Spanish speaking children.

⁸ Dr. Raymond also agrees with the efficacy of this approach (Tr. 1115-16)—*i.e.*, to have in hand estimated enrollments for all the programs available in September, 1987 in the preceding spring so that the degree of success can be measured.

⁹ Enrollment caps were endorsed by the Board's own expert witness, Dr. Rossell. The Board's other expert witness, Dr. Bennett, called mandatory back-up provisions "helpful bordering on crucial." Tr. 893. When an enrollment cap is placed on a school, *new* students (those attending public school in the district for the first time as well as those making the transition from one grade level to another, such as from elementary school to junior high school) who are applying to the school are admitted only if their enrollment further assists the school in becoming desegregated. *See, e.g., Diaz v. San Jose School District*, no. C-71-2130 (RFP), slip op. at 22 & n. 13 (N.D.Cal., Dec. 31, 1985); Tr. 396-98; 898-900. Students reassigned because of the capping process are given the opportunity to select other schools to attend.

¹⁰ At present, 9.3% of the elementary classroom teachers and 8.6% of the secondary classroom teachers are minorities. Excluding special education students, the minority student population is presently 48.5%.

¹¹ The Court understands that a cluster of 20 or more Limited English Proficient (LEP) students per class is required to establish a bilingual program. However, the fact that English as a second language ("ESL") programs may be offered in schools without the requisite LEP cluster should in all likelihood give the Board enough flexibility to further the goals of the plan while simultaneously providing for the needs of Spanish-speaking children and optimizing their choices.

* The Court assumes that it is no longer necessary to keep School 11 open since the district shall implement the magnet programs at Schools 18, 19, Fermi and King in September 1986. The district should advise the Court in its further submission if this is inaccurate.

** See page 8 *infra*.

*** The relevant minority population is comprised of Black and Hispanic students.

