

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MARGARET T. ALLEN, et al.,

Plaintiffs,

**BOARD OF TRUSTEES FOR ALABAMA
STATE UNIVERSITY; et al.,**

Plaintiff-Intervenors,

vs.

**ALABAMA STATE BOARD OF
EDUCATION, et al.,**

Defendants.

CIVIL ACTION NO. 81-T-697-N

SECOND AMENDED CONSENT DECREE

The individual plaintiffs and the class they represent (hereinafter "the class representatives") challenge in this litigation the defendants' implementation and use of the Alabama Initial Teacher Certification Tests. The class consists of all African-Americans who sought, are seeking, or will seek any level teaching certification, and who have failed, or may fail, a written test given by the Alabama State Board of Education as a requirement for teacher certification. Plaintiff intervenor is the Board of Trustees for Alabama State University. In general, the class representatives and plaintiff intervenor claim that: (1) the tests were implemented without adequate notice to the students and colleges; (2) the tests are unfair because they test students on matters which the students were not taught in the classroom; (3) the tests have an adverse and

disproportionate impact on black colleges and black students; (4) the tests are culturally biased and bear no relationship to job performance as a teacher; (5) the tests' disparate impact on blacks cannot be justified because said tests were not properly validated; and (6) that the actions of the defendants violate statutory and constitutional rights of the class representatives and plaintiff intervenor.

The defendants deny these allegations and affirmatively assert that the process by which the tests were prepared did insure the tests to be valid. The defendants also assert that they are using the tests as a device to insure that teachers in the classrooms of Alabama will have the knowledge necessary to teach.

Defendants have filed a motion to vacate or modify this Court's January 5, 2000 Amended Consent Decree (Doc. No. 641), arguing that the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425, represents a substantial change of law that warrants substantial amendment of the Amended Consent Decree. The Plaintiffs and Plaintiff-intervenor Alabama State University do not agree that NCLB represents such a change in law. But all parties have sought an amicable resolution of their differences and believe that the amendments set forth in this Second Amended Consent Decree are suitably tailored to meet defendants' view of the law while adequately protecting the interests of the class and are consistent with the Decree's original purpose. Upon due consideration of the pleadings and the briefs of the parties, and the relevant provisions of law, the Court also so finds and concludes.

On the 5th day of October 2004, three additional individuals filed motions to intervene and on October 20, 2004, they were joined by Norris Danzey (hereinafter "Buxton Intervenors"). These four claim that the original plaintiffs no longer have an

interest in the case sufficient to adequately represent the class. Defendants originally objected to the intervention but subsequently withdrew those objections. Also on October 20, 2004, the Allen class moved to add Tihonia Hinton (hereinafter "Hinton") as additional plaintiff representative of the class. There have been no objections to this Motion.

The parties agree to add the Buxton Intervenor and Hinton as class representatives making Jonathan Buxton, Aquanda Davis, Courtney Teague, Norris Danzey and Tihonia Hinton additional representatives of the class and making J. Cecil Gardner, Mary E. Olsen and Vance McCrary additional class counsel. Buxton Intervenor make no new claims in this matter.

The class representatives, plaintiff intervenor and the defendants are desirous of implementing a solution to these issues without the further expense of litigation. The parties have waived further hearing and have agreed on the form of this decree. The defendants do not admit and expressly deny that they have acted in any manner to violate the Constitution, any statute of the United States, or any other law or statute.

The Court is of the opinion that entry of this decree will effectuate the mandate of the Constitution and federal law. Accordingly:

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The defendants, their agents, servants and employees are hereby permanently enjoined from using any teacher certification examination which has a disparate impact on black teacher candidates for initial, advanced level or provisional certification, unless said examination has been validated for the purpose of teacher certification.

ARTICLE ONE: BASIC SKILLS TESTING

2. The provisions of this Article One shall apply only to basic skills testing. The provisions of this Article One shall be completely separate and distinct from and shall have no application in the context of Article Two.

3. The defendants may require, as a precondition for initial certification to teach in the State of Alabama, that a candidate successfully complete and pass a basic skills test designed to measure whether an applicant for initial teacher certification has a level of competence in reading, writing and mathematics that is sufficient to protect the interests of the public school children of Alabama (hereinafter "the basic skills test"), provided that the basic skills test has been validated for such use as provided for herein.

4. The basic skills test may be selected by the defendants from products available in the marketplace, or may be developed by defendants specifically for use in Alabama. If defendants elect to use an existing test, defendants shall provide to the other parties and the Monitoring Committee (which is provided for elsewhere herein) sufficient information to demonstrate that the proposed test is suitable for its intended purpose, recognizing that the ultimate suitability of the test may be determined only after the results of the validity investigations hereinafter required by this decree are known. The Monitoring Committee may (i) agree that the proposed test may go forward to the validation stage, (ii) request additional information from the defendants, or (iii) either with or without additional information, object to the proposed test on the basis that it is not suitable for its intended purpose and therefore should not be subjected to the required validity investigations. If the Monitoring Committee agrees to allow the

proposed test to move to the validation stage, the conditions and process specified in paragraph five shall take effect and govern. If the Monitoring Committee objects to the proposed test, it shall state its specific reasons in writing and furnish same to the parties. If defendants wish to pursue use of the proposed test over the Monitoring Committee's objection, they may present the matter to the other parties and seek resolution by agreement of the parties. If the parties cannot agree on the matter, defendants may file an appropriate petition with the Court, which shall decide the issue in such proceedings as the Court may deem appropriate. No such petition shall be filed, however, until after the parties have attempted in good faith to resolve the issue among themselves, including the use of mediation if requested by a party and so ordered by the Court.

5. If defendants elect to use an existing test as the basic skills test and such test is sanctioned under paragraph four, the following conditions concerning the utilization of the basic skills test by the defendants for initial certification as a teacher in the State of Alabama shall apply:

(a) The basic skills test shall be validated for use as a certification test for an initial Alabama teaching certificate in accordance with prevailing professional standards, the technical standards contained in the 1978 Uniform Guidelines on Employee Selection Procedures, 43 Fed. Reg. 38240, to the extent said Guidelines are applicable, and the most current Standards for Educational and Psychological Tests authored by the American Psychological Association (APA), the American Educational Research Association (AERA), and the National Council for Measurement in Education (NCME). This validation

study may be performed in part by the developer or publisher of the basic skills test (if any), as provided below, but in any event an independent contractor shall be engaged by defendants for this purpose, as also provided herein. For purposes of selecting this independent contractor, defendants shall prepare a Request for Proposals (RFP), which shall be submitted to and reviewed by the Monitoring Committee provided for herein, which shall offer its advice and comments to defendants and assist defendants as requested with the selection of the independent contractor. While their decisions are to be closely guided by the advice and recommendations of the Monitoring Committee, ultimate approval of and responsibility for all aspects of the validation study shall reside with defendants, within the terms and conditions of this Amended Consent Decree.

(b) The validation study for the utilization of the basic skills test by the defendants shall provide for two distinct domains of validation evidence. At least one domain of evidence must be from an empirically based criterion related validity investigation that evaluates performance on the basic skills test with regard to one or more appropriate external criteria. An independent contractor other than the test developer-publisher will be engaged by defendants, pursuant to the RFP described above, to conduct the empirically based criterion referenced validity investigation and the empirically based cut score investigation described below. The remainder of the validity study may be conducted by the test developer-publisher or the independent contractor, as determined by defendants, within the terms and conditions of this Amended Consent Decree.

(c) The validity study shall also include appropriate investigations of job relevance of the knowledge and skills to be tested and of the items on the basic skills test. Appropriate investigations of curricular validity and instructional validity shall also be conducted. If defendants elect to have these investigations carried out by the test developer-publisher, the Monitoring Committee shall have the opportunity to review and suggest changes to the proposed design of the studies.

(d) The validity study shall also include item and test bias studies the results of which are to be formally reported. Both logical and empirical bias investigations shall be conducted and the results reported, but it shall be acceptable for the contractor(s) to report and rely upon empirical results that may be available from the test developer-publisher or from other professional evaluations of the basic skills test. Under any circumstances, however, a logical review investigation of the basic skills test involving Alabama black educators must be included in the validity study and the results thereof formally reported. The black educators who form this bias review panel shall be approximately eight in number, shall be nominated by all the parties, and shall be selected by the State Superintendent of Education, according to the criteria and qualifications established by the State Superintendent and approved by the Monitoring Committee. Not more than half of the persons selected shall be persons nominated by defendants, provided that there are a sufficient number of persons nominated by the plaintiffs and plaintiff-intervenor.

(e) Findings from the various investigations included in the validity study will be reported by the contractor(s) or the defendants to the Monitoring Committee for study and evaluation. The Monitoring Committee shall report its findings and make recommendations to defendants regarding the use of the basic skills test as a factor in making certification decisions.

(f) A cut score for each subtest of the basic skills test (reading, writing and mathematics) will be established. An overall score on the entire basic skills test is not to be used for certification decisions, and no cut score for the overall test will be established. In establishing cut scores for the respective subtests, it is to be understood that defendants seek to establish a level of competence in reading, writing and mathematics for all prospective teachers that is sufficient to protect the interests of the public school children of Alabama, and that the effort to identify sound, reliable and defensible cut scores is to be guided by prevailing professional standards in accordance with the technical standards contained in the 1978 Uniform Guidelines on Employee Selection Procedures, 43 Fed. Reg. 38240, to the extent said guidelines are applicable, and the most current Standards for Educational and Psychological Tests authored by the American Psychological Association (APA), the American Educational Research Association (AERA), and the National Council for Measurement in Education (NCME) for setting cut scores. These policy decisions are to be reflected in the RFP.

(g) At least two approaches are to be used to ascertain cut scores for the basic skills test, one of which must be an empirical (examinee centered)

method. The empirical cut score investigation shall be carried out by the same independent contractor which performs the empirically based criterion referenced validation study. The second approach may be a judgmental standard setting investigation (test centered), which may be conducted by the test developer-publisher. This study shall be designed and carried out with input from the Monitoring Committee, but subject to defendants' final approval. Information gained from both approaches shall be used in setting cut scores.

(h) Findings from the cut score investigation, along with recommendations for the subtest cut scores, will be reported to the Monitoring Committee by the independent contractor and, if applicable, the test developer-publisher. The Monitoring Committee will in turn make recommendations to the defendants by identifying an appropriate cut score range separately for each of the three subtests. In establishing these ranges, the Monitoring Committee will determine whether it would be advisable, based on the findings of the cut score studies, test properties as found through the validation studies, and features of the investigations, to reduce potential high rates of false negatives by adjusting the recommended cut scores by a factor of the standard error of measurement or the standard error of the mean, or both. The Monitoring Committee shall also consider defendants' policy to establish academic standards for prospective Alabama teachers that are sufficient to protect the interests of the public school children of Alabama. While giving priority to adherence to sound psychometric principles, including the need to insure validity of the inferences to be made from the test scores, the Monitoring Committee shall also consider the desire of all

parties to avoid unnecessary adverse racial impact. The Monitoring Committee shall address these and other appropriate considerations in its report to the defendants, who shall set the final subtest cut scores within the ranges established by the Monitoring Committee.

6. If defendants elect to develop a basic skills test specifically for use in Alabama, the following conditions concerning the development and utilization of such test shall apply:

(a) Any independent contractor(s) engaged to develop a basic skills test, or to conduct validity studies or cut score investigations in connection with any such test developed by or for defendants, shall be selected as provided in paragraph 5(a), above.

(b) Prior to commencement of the test development process, the defendants will provide the Monitoring Committee an outline of the proposed process and such other information as needed for the Monitoring Committee to make a preliminary determination as to whether the proposed process is psychometrically sound and in compliance with the validation and standard setting requirements of this decree. The Monitoring Committee may (i) agree that the proposed process is satisfactory and should go forward, (ii) request additional information from the defendants, or (iii) with or without additional information, object to the proposed process. The Monitoring Committee will not object to the proposed process without first engaging with the defendants in an effort to resolve any concerns or disagreements. If the Monitoring Committee objects to the proposed process, it shall state its specific reasons in writing and

furnish same to the parties. If the defendants wish to pursue the proposed process over the Monitoring Committee's objection, they may present the matter to the other parties and seek resolution by agreement of the parties. If the parties cannot agree on the matter, defendants may file an appropriate petition with the Court, which shall decide the issue in such proceedings as the Court may deem appropriate. No such petition shall be filed, however, until after the parties have attempted in good faith to resolve the issue among themselves, including the use of mediation if requested by a party and so ordered by the Court.

(c) The provisions of paragraphs 5(a) through 5(h), including but not limited to the validation and standard setting requirements and the requirements for involvement by the Monitoring Committee set out therein, shall apply to the defendants' test development effort.

(d) In addition to providing information to and consulting with the Monitoring Committee as specifically required in paragraphs 5(a), 5(c), 5(e), 5(g) and 5(h), the defendants will generally keep the Monitoring Committee advised in writing of the progress of the test development effort. At any time the Monitoring Committee may request additional information from the defendants, and at any time the Monitoring Committee may note its concerns as to any aspect of the process, stating its reasons in writing and furnishing same to the parties. Upon receipt of any such statement of concern, the parties will attempt in good faith to resolve the issue among themselves and to the satisfaction of the Monitoring Committee, including the use of mediation if requested by a party and so ordered

by the Court. If the dispute is not resolved, the plaintiffs and/or plaintiff-intervenor may seek intervention by the Court but, pending resolution of the matter by the Court, the defendants may proceed with the test development process at their own risk of loss. In any proceeding relating to this provision, the Court shall approve defendants' proposed action only upon a finding that the proposed action would be consistent with generally accepted psychometric and measurement principles.

7. The basic skills test developed or used pursuant to paragraphs three through six, above, shall not be used or required by defendants as a precondition for admission to an approved teacher education program; provided, however, that nothing herein shall preclude an institution of higher education from using scores on the basic skills test, achieved in administrations of the test offered by the defendants, in connection with the institution's decision regarding whether to admit an applicant to the institution's teacher education program. There will be not less than two regular administrations of the test annually at each of the four sites. If necessary, the State Superintendent of Education shall authorize one additional administration of the test for the entire state at the Montgomery site during the summer.

8. The Monitoring Committee shall annually review results of the basic skills test administration for Alabama examinees and evaluate the psychometrics of same, including performance disparities between majority and minority groups, adverse impact, adequacy of cut-scores, and continuing adequacy of existing validation evidence. The Monitoring Committee shall issue an annual report to defendants by October 30th of each year, including any recommendations. In each annual report, the

Monitoring Committee shall make a recommendation to defendants regarding the continued use of said test. This recommendation shall be based upon a formal evaluation of the basic skills test through a study design formulated by defendants with the Monitoring Committee's advice and conducted at defendants' expense.

9. Should defendants elect to require basic skills testing under this Article One for teachers who hold a regular teaching certificate and who seek certification in a different teaching field, if the candidate for certification does not achieve a passing score on the basic skills test, pursuant to this Article One, the final decision to certify shall be made on the basis of a total score derived from the approved program GPA and the written test score. In devising the formula to arrive at a final score the written test score shall count 50% and the approved program GPA shall count 50%. Said formula is set out in Appendix A.

10. Should defendants elect to use the basic skills test for initial certification decisions, pursuant to this Article One, the following provisions shall govern, but only with respect to Basic Skills testing:

(a) An applicant who does not achieve the established passing score for a given subtest may nevertheless satisfy that requirement through a combination of the applicant's subtest score and grade point average ("GPA"), as defined below, provided such GPA is at least 2.5 on a 4.0 scale. For purposes of this decree, no GPA which is fractionally less than 2.5 shall be rounded upward so as to constitute a 2.5 GPA.

(b) GPA shall mean the applicant's cumulative GPA on all regularly scheduled coursework that is included in the applicant's undergraduate core

curriculum. The undergraduate core curriculum is coursework completed typically during an undergraduate student's first two years of general education studies and which generally coincides with the "general studies curriculum" as defined or established by the Alabama Articulation and General Studies Committee created by the Alabama Legislature in Act No. 94-202, operating under the direction of the Alabama Commission on Higher Education. The defendants shall adopt appropriate administrative regulations to implement this provision, including such provisions as may be necessary to recognize potential differences among institutions in the way the undergraduate core curriculum is defined.

(c) Applicants to whom this paragraph applies shall have their subtest score and GPA combined generally using the guidelines set out in paragraphs 10(a), and 10(b), above, and the principles underlying Appendix A. Calculations, weighting and exact formulas for combining an applicant's subtest score and GPA are to be established by the Monitoring Committee, taking into account the unique scale properties of the basic skills test, but in a manner essentially equivalent to that described above, and Appendix A, which paragraphs provide that the relevant written test score and GPA shall each contribute equally to the applicant's final score. The threshold for consideration of any applicant's GPA for combination with a basic skills test subtest score shall be a minimum 2.5 on a 4.0 scale in the undergraduate core curriculum as defined herein in paragraph 10(b).

(d) An applicant who does not achieve the established passing score for a given basic skills subtest, and who also does not satisfy that requirement through the combining of the applicant's subtest score and GPA (hereinafter "unsuccessful applicant"), may nevertheless satisfy that requirement by attending and passing a remediation course as described below. This option will be available, however, only to an applicant whose GPA is at least 2.5 on a 4.0 scale, with said GPA being calculated as provided in paragraphs 10(a) and 10(b), above.

(e) Defendants will offer coursework to an unsuccessful applicant designed specifically to allow the applicant to acquire and demonstrate competence on those mathematics, reading and writing knowledge's and skills embodied in the basic skills test. The successful completion of the course shall include the applicant's passage of a course completion assessment. The passage of this exit assessment shall be on a pass/fail basis. An applicant may elect to retake the relevant subtest of the basic skills test in lieu of the course exit assessment. The defendants shall be responsible, within the terms and conditions of this Amended Consent Decree, for the design and delivery of the remediation course and for the design and administration of the exit assessment.

(f) An applicant for initial teacher certification may take the basic skills test an unlimited number of administrations, and may satisfy the basic skills test requirement at any time available prior to or after the applicant's completion of an approved teacher education program. An applicant shall be entitled to use his or her highest respective subtest scores for all purposes contemplated by this

decree. Additionally, once an applicant achieves a passing score on a subtest of the basic skills test (i.e., reading, writing, or mathematics), he will be deemed to have successfully completed that subtest, irrespective of any subsequent score on that subtest.

(g) Separate mathematics, reading and writing courses are to be offered to unsuccessful applicants annually in at least four sites, which shall include Madison County, Jefferson County, Montgomery County and Mobile County. Alabama State University shall serve as the Montgomery County site. Based on experience gained during the first full operational year of these courses, the defendants shall, in consultation with the Monitoring Committee and the other parties, consider whether additional or different sites would better serve the respective interests of the State and the applicants. The final decision regarding different or additional testing sites shall rest with the defendants. Defendants may charge a reasonable fee for these courses, but any such fee shall be set so as not to unreasonably deny access to applicants of limited means. These courses and their content, which is to be defined by the content domain of the relevant subtest of the basic skills test, are to be developed by defendants or their agents. The Monitoring Committee will review all materials necessary to determine and assure that the courses cover the same content domain as the relevant subtest. Providers of the approved coursework are to be approved by defendants. In developing the coursework and any evaluation techniques or instruments used in connection therewith, the defendants shall act in accordance with sound educational and psychometric practices. The

Monitoring Committee will make such review as necessary to determine and assure that applicants are fairly and appropriately assessed on whether or not they meet the course objectives. The Monitoring Committee will review the defendants' plan for offering these courses, with attention to these and other matters, such as access to and equivalence of testing properties of the courses.

11. Should the defendants wish to use the basic skills test for any purpose other than initial teacher certification decisions (e.g., certification in a different field of a previously certified teacher or certification for administration), such additional use must be approved by the Monitoring Committee and will be subject to such conditions, including but not necessarily limited to, additional validity and/or cut score investigations, as the Monitoring Committee may recommend. Provided defendants act in accordance with the recommendations of the Monitoring Committee, no court approval shall be necessary in order to use the basic skills test for such additional purpose(s).

12. Should defendants conclude that any basic skills test previously in use should not (or cannot) continue to be used for making certification decisions, defendants may propose to use another test for that purpose in lieu of the existing test. If the defendants propose to use another existing test as the replacement test, the provisions of paragraphs four and five, above, shall govern. If the defendants propose to develop a replacement test specifically for use in Alabama, the provisions of paragraph six, above, shall govern. The plaintiffs and plaintiff-intervenor may file an objection to the use of a proposed replacement test, and the filing of such an objection shall cause an automatic stay of the use of the replacement test pending consideration of the Court.

ARTICLE TWO: SUBJECT-MATTER TESTING

13. Notwithstanding any other provision of this decree, and specifically without regard to the provisions of Article One, the defendants may require that applicants for initial teacher certification successfully complete, either alone or in addition to the basic skills test, a subject matter specific test appropriate to the area in which certification is sought (hereinafter "subject matter tests"). The provisions of Article Two shall apply to the validation, determination of cut scores, evaluation for bias, monitoring for adverse impact, and use of such tests by the defendants for initial teacher certification decisions, and/or any test administered for purposes of making "highly qualified" determinations simultaneously or in conjunction with initial teacher certification.

14. Selection of Subject Matter Tests. Without limitation of other subject-matter tests that ASDE may select and use in accordance with Article Two, ASDE is specifically authorized by this Decree to evaluate, and if judged appropriate by ASDE in consideration of the specifications and all evidence called for in the paragraphs below, to use the Praxis II series of subject-matter tests provided by Educational Testing Service for initial teacher certification decisions, and/or for making "highly qualified" determinations simultaneously or in conjunction with initial teacher certification, as long as such use otherwise complies with Article Two.

15. No-Fault Period. Prior to the consequential use of any Praxis II subject matter test under Article Two, ASDE will pilot-test such subject-matter test with actual candidates for initial teacher certification for no less than 12 months, during which period no candidate for initial certification will be denied a teaching certificate based upon his or her score on the subject matter test ("the No-Fault Period"). During the No-

Fault Period, ASDE shall perform the validity, cut-score, and bias studies provided for elsewhere in Article Two. Also during the No-Fault Period, ASDE will provide to the Monitoring Committee all information relating to the validity, cut-score, and bias studies conducted, including information relating to the performance of the tests and test items and the results of any validation, cut-score, bias studies, and associated data analyses. If the Monitoring Committee requests that ASDE request additional data, documents, or information from its test vendor or contractor, ASDE will convey such requests to the test vendor or contractor, provided that the request is reasonable. The parties recognize that in responding to any such request, the vendor or contractor may take into account the time, cost, and any burden involved in providing the information, as well as the vendor or contractor's proprietary and test security interests. Any disagreements regarding the Monitoring Committee's requests for additional information may be resolved by the procedures outlined in Paragraph 22.

16. Candidate Training and Orientation. If ASDE elects to administer Praxis II subject-matter tests under Article Two, ASDE agrees that it will make the following preparation and training services available:

(a) ASDE will cooperate with Educational Testing Service ("ETS") to make Praxis II study materials available to candidates, to the extent such materials are customarily and publicly available in the ordinary course of business from ETS. Specifically, for each Praxis II subject test used for initial teacher certification, at ASDE's expense, at least three copies of the available study guide for each subject matter test published by ETS will be purchased and deposited at the library of each teacher preparation program in Alabama that

offers a teacher preparation program in the particular subject area. It is understood that the Praxis II study guides include sample tests which are copyrighted and may not be duplicated. The intent of this provision is to have the study guides accessible for review by potential test-takers at no expense. Any individual who wishes to acquire their own individual study guide may purchase their own copy of the materials directly from ETS.

(b) Also, to the extent customarily and publicly available in the ordinary course of business from ETS, ASDE agrees to make available a training workshop for the faculty of teacher education programs, which training is designed to teach faculty how to better prepare prospective candidates for teacher certification for subject-matter testing. The parties understand and agree that the details of these workshops are provided by ETS and are subject to change from time to time. The intent of this paragraph is that defendants will commit to avail themselves of the training opportunities afforded by ETS, including the reasonable expenditure of funds to defray the cost of delivery. The workshops contemplated in this subparagraph will be provided three times annually for at least three years from the execution of this decree. Such workshops will take place at Alabama State University, which shall be responsible for providing appropriate facilities, and at such other locations, if any, that ASDE may designate. The faculty of all teacher preparation programs shall be eligible to attend any workshop. ASDE also agrees to purchase and deposit no less than one copy of ETS's "Professor's Guide" in the library of each teacher

preparation program in Alabama, and three copies at the institution(s) at which the faculty training workshops under this subparagraph are to be held.

17. Retesting. Candidates shall be permitted to re-take a given subject-matter test as many times as may be required to pass.

18. Validation. Any subject-matter test administered under Article Two shall test only those matters which are shown to be valid by content-based studies demonstrating the links between the test content domains and the content knowledge judged to be important for job performance upon entry into the teaching profession. The study for each subject-matter test shall include the following elements:

(a) A content validation study for each relevant set of test specifications. This study is based on established job analysis techniques and uses survey methodology to collect the judgments of a representative sample of Alabama teachers and other stakeholders within each relevant content area covered by the ASDE teaching license regulations. The goal of each study is to confirm the importance and job relevance of all content measured by each test.

(b) An alignment study that judges the fit between the Alabama state teacher and student standards on one side, and the particular test content specifications on the other side. This study uses focus group methodology to collect the judgments of a representative sample of Alabama teachers and other stakeholders within each relevant content area covered by the ASDE teaching license regulations. The goal of each study is to confirm the alignment between these standards and all content measured by each test. The alignment study called for in this subparagraph shall include item-level review of the items

included in two test forms of the test including the test form used for standard setting for each subject area, provided that the study include appropriate criteria to guide the exercise of subject matter expert judgment.

(c) For each test, separate standard setting (cut score) study(ies) will be conducted as detailed in subparagraph (d), below. Each study includes item level and test level validations of the importance of knowledge of the content for entry into the profession in Alabama. In reaching decisions relating to cut scores, ASDE agrees to consult the Monitoring Committee and shall give significant consideration to its recommendations. At a minimum, before any recommendation is made to the State Board of Education regarding the cut-score for any subject-matter test, the Monitoring Committee shall participate in (either personally or by telephone, at the Monitoring Committee's option) a meeting with ASDE's contractor and/or Technical Advisory Committee, as the case may be, to discuss the recommendation. However, in each case, the final decision for each cut-score shall be committed to the exclusive discretion of ASDE.

(d) In reaching cut-score decisions, ASDE agrees to carefully evaluate evidence derived from both judgment-based ("exam-centered") and empirical ("examinee-centered") methodologies. Also, ASDE, with the advice of the Monitoring Committee, will determine whether it would be advisable, based on the findings of the cut score studies, test properties as found through the validation studies, and results of the investigations, to reduce the potential occurrence of false negatives by adjusting the recommended cut scores by a

factor of the standard error of measurement, the standard error of the mean, or by some other professionally-justified degree.

(e) All such validation studies shall be performed in accordance with prevailing professional standards, including the then-current Standards for Educational and Psychological Testing authored by the American Psychological Association (APA), the American Educational Research Association (AERA), and the National Council for Measurement in Education (NCME) (hereinafter “the APA Standards”).

(f) In performing any and all studies required under Article Two, ASDE agrees to utilize, to the fullest extent possible and practicable, the expertise of the State’s Technical Advisory Committee in all technical matters relating to psychological and/or educational measurement associated with the tests covered under this decree. The Technical Advisory Committee shall invite the Chair of the Monitoring Committee to participate in any meeting or discussion scheduled or intended to address teacher subject matter testing and shall provide the Monitoring Committee Chairman with all correspondence and documents generated addressing teacher subject matter testing.

19. The validity and cut-score studies required under this Article shall be performed by highly qualified psychometric professionals who shall be independently contracted and unrelated to ASDE and/or the test vendor. The contractors shall be selected as follows. Defendants shall prepare a Request for Proposals (RFP), which shall be submitted to and reviewed by the Monitoring Committee provided for herein, which shall offer its advice and comments to defendants and assist defendants as

requested with the selection of the independent contractor. The RFP shall require, at a minimum, content validation and cut score studies. The Monitoring Committee shall be involved and may offer advice on both the content of the RFP and the selection of a contractor. While their decisions are to be closely guided by the advice and recommendations of the Monitoring Committee, the selection of a contractor, and ultimate approval of and responsibility for all aspects of the validation study shall reside with defendants, within the terms and conditions of this Amended Consent Decree.

20. Bias Review. In addition to the validation and standard-setting studies required above, during the No-Fault Period the defendants will conduct a professionally facilitated review by Alabama educators chosen by the ASDE of a representative sample of the test items, specifically, the test form used for standard setting for each subject area. For this review, ASDE will utilize a panel of Alabama black educators. The black educators who form this bias review panel shall be approximately eight in number, shall be nominated by all the parties, and shall be selected by the State Superintendent of Education, according to the criteria and qualifications established by the State Superintendent. Not more than half of the persons selected shall be persons nominated by defendants, provided that there are a sufficient number of persons nominated by the plaintiffs and plaintiff-intervenor. Any and all bias reviews undertaken pursuant to this paragraph may be performed by the test vendor, and need not be performed by an independent contractor as provided by Paragraph 19. ASDE or its vendor shall conduct item bias reviews and Differential Item Functioning analyses on all test items for which there is sufficient test taker evidence to support sound results. The purpose of this review is to combine a logical review of the test item content with the

data analysis and standard Differential Item Functioning analysis for each item. The findings of these studies will be made known to the Monitoring Committee and the ASDE. The opinions of the Monitoring Committee regarding the methodologies to be used in the conduct of these studies are to be sought, but their suggestions are not binding on ASDE. This bias review, conducted during the No-Fault Period provided for above, will not be repeated unless and until test specifications change.

21. The role of the Monitoring Committee under Article Two shall be:

(a) To review the validation evidence and other data provided to the Monitoring Committee pursuant to Paragraphs 15, 18(f), 19, 20, 24(a), and 24(b) of this Decree;

(b) to monitor and report, in accordance with Article Two of this Decree, the activities of ASDE, to ensure that its subject-matter testing programs comply with generally accepted psychometric principles and the requirements of this Decree, and

(c) to work collaboratively with the State's Technical Advisory Committee to advise the ASDE on technical issues relating to its subject-matter testing programs.

22. Dispute Resolution. All parties, and the Monitoring Committee, shall use their best efforts to maintain a collaborative working relationship between the Monitoring Committee and ASDE and its contractors, vendors, and technical advisors. In the event of a bona fide dispute between ASDE and the Monitoring Committee relating to any subject-matter test administered under Article Two, the following procedures and standards of review shall control:

(a) The Monitoring Committee shall report any disagreements or disputes between it on the one hand and ASDE or its contractors, vendors, and technical advisors on the other hand to Plaintiffs and Defendants within thirty (30) days. ASDE will not implement any actions or decisions upon which there is such a dispute or disagreement until thirty (30) days after the Monitoring Committee reports such a dispute.

(b) Within 30 days of receipt of any report from the Monitoring Committee described in subparagraph (a), above, a plaintiff or intervenor may formally initiate the dispute resolution process by serving written notice of the particulars of the dispute upon ASDE, with copies to all members of the Monitoring Committee.

(c) Within 30 days thereafter, the Monitoring Committee shall prepare and submit a report, formally setting forth its position on the dispute.

(d) Within 30 days thereafter, ASDE, or its contractors, vendors, or technical advisors, shall prepare a written response to the issue.

(e) If, within 30 days after ASDE's response, a resolution has not been reached, any party may initiate mediation proceedings, which shall be held at ASDE's expense.

(f) If, within 30 days after commencement of mediation, a resolution has not been reached, the defendants shall notify the other parties how it intends to proceed with respect to the dispute. If defendants opt to pursue a course of action in the design, development, or implementation of subject matter tests subject to this Article II which is inconsistent with a position of the Monitoring

Committee, the plaintiffs may move the Court to enjoin such action. The Court shall grant the injunction if plaintiffs show that the defendants' position is inconsistent with accepted psychometric and measurement principles. In the course of hearing any such matter, the Court may take such actions and hold such proceedings as it deems appropriate to the circumstances, including the appointment of a Special Master to make a Report and Recommendation.

23. While giving priority to adherence to sound psychometric principles, including the need to insure validity of the inferences to be made from the test scores, ASDE, its contractors and consultants, and the Monitoring Committee, shall also consider the desire of all parties to limit adverse racial impact.

24. Prior Validation Studies. The parties recognize and agree that defendants have previously collected validity evidence establishing the content validity of 30 Praxis II subject-matter subtests, intended to be used on a voluntary basis for "highly qualified" determinations. In order to minimize the needless expenditure of public funds, the parties agree that to extent consistent with sound psychometric principles and otherwise consistent with this Second Amended Consent Decree, the defendants may use the validation evidence from validation studies commenced prior to August 31, 2004. If defendants wish to utilize the prior validation evidence, the following procedures and rules shall prevail:

(a) The defendants shall prepare and submit a formal validation report to the Monitoring Committee, to include all information, data, documents, findings and recommendations related to the completed validity, cut score, and/or bias studies performed.

(b) if the Monitoring Committee has questions or requests for additional information regarding these validation studies, ASDE will respond reasonably to those questions or requests.

(c) The Monitoring Committee will review the documentation related to the prior validation studies and will report to the parties whether they appear sufficient and in general accord with the validation principles set in Article Two of this decree. If the Monitoring Committee so reports with respect to any subject-matter test(s), then ASDE may proceed to use the particular subject-matter test(s) so approved.

(d) If, upon review, the Monitoring Committee concludes that further studies, data collection, documentation, or other work is necessary to bring the existing validation evidence into general accord with the validation principles set in Article Two of this decree, then the Monitoring Committee shall provide a detailed written statement of the additional work to be performed on such studies.

(e) If the Monitoring Committee specifies that additional work is to be performed, then, with the consent of the Monitoring Committee (in view of the scope of work, economies of scale, timing, and other relevant considerations), the additional work may be performed by the test vendor, by the Technical Advisory Committee, or by an independent contractor selected in accordance with Paragraph 19.

(f) Upon the completion, to the satisfaction of the Monitoring Committee, of any additional work specified pursuant to subparagraph (d),

above, ASDE may proceed to use the particular subject-matter test(s) in question.

ARTICLE THREE: THE MONITORING COMMITTEE GENERALLY

25. The Monitoring Committee constituted under the January 5, 2000 Amended Consent Decree is hereby continued, provided that no later than 45 days following the entry of this Decree, any party may replace its designee on the Monitoring Committee by giving written notice thereof to all other members of the Monitoring Committee, the parties, and the Court. In the event that any plaintiff or intervenor's designee on the Monitoring Committee resigns or otherwise is unable or refuses to perform his or her responsibilities, the class representatives and ASU shall form a committee composed of one person selected by the Allen class representative, one person selected by the Smith class representative, and one person selected by ASU. This committee will within sixty (60) days select the replacement for the panel via a majority vote. In the event that ASDE's designee on the Monitoring Committee resigns or otherwise is unable or refuses to perform his or her responsibilities, ASDE may replace its designee by giving written notice thereof to all other members of the Monitoring Committee, the parties, and the Court. The Monitoring Committee's role and duties with respect to defendants' basic skills test shall remain the same as provided in the Amended Consent Decree of January 5, 2000. The Monitoring Committee's duties and role with respect to subject matter tests shall be as described in Article Two of this decree.

26. While remaining faithful to the obligations placed on it by this Amended Consent Decree, the Monitoring Committee will at all times act reasonably and

prudently with regard to the amount of time and expenses devoted to the performance of their duties and responsibilities hereunder. The Chair of the Monitoring Committee shall coordinate the Monitoring Committee's work in such a way as to achieve all reasonable economies, giving due regard to both the requirements of this decree and the public fisc. In fulfilling this responsibility, the Chair will consult with the defendants to develop a budget or other plan for the Committee's work. Any disputes regarding the Monitoring Committee's fees and expenses, if not first resolved informally, may be brought to a decision by the Court upon petition filed by the defendants within 20 days of the date that said fees or expenses are submitted.

ARTICLE FOUR: GENERAL PROVISIONS

27. The defendants are hereby permanently enjoined from using any past or present Basic Professional Studies Examinations as a separate test requirement.

28. Defendants shall cause court-approved class notice to be published in major daily newspapers in the cities of Huntsville, Birmingham, Montgomery, Mobile, Tuscaloosa, Dothan, Decatur and Gadsden, Alabama, twice each week, including one Sunday edition, if published, for three consecutive weeks, beginning 21 days from preliminary approval of this decree, or otherwise as may be ordered by the Court. In addition, defendants shall send the notice to the presidents (or chief executive officers) and deans of education of all Alabama colleges and universities which operate approved teacher education programs and to the presidents or chief executive officers of all Alabama postsecondary (two year) institutions. Defendants shall request these officials to post and distribute the notice at their respective institutions as broadly as practicable.

29. Defendants shall pay to counsel for the plaintiff class, which includes counsel for Eria P. Smith and Plaintiff-Intervenors' counsel, their reasonable attorneys' fees and costs incurred in connection with this action. The parties will attempt to agree upon the fees and costs, but if they cannot, they shall submit the matter to the Court for decision. Additionally, counsel for the plaintiff class shall be provided reasonable fees and expenses in monitoring compliance with this Consent Decree. Each year on or about the anniversary of the entry of this Decree, until one year after any new examination program is made operational, counsel for the plaintiff class shall submit to the Court a petition setting forth their fees and expenses for services rendered in monitoring compliance with this Decree, and, if the parties cannot agree upon the fees and expenses, the Court shall fix the amount of such fees and expenses to which class representatives' counsel are entitled.

30. The defendant and their agents, servants, and employees shall not disclose any information with respect to any teacher or teacher certification candidate about the method or formula used to make the final decision to certify the teacher or teacher certification candidate as it relates to the testing, GPA, and/or course completion provisions of this Second Amended Consent Decree. Likewise, any information ASDE provides to the plaintiffs, the intervenors, and the Monitoring Committee, shall be held confidential and shall not be disclosed, in whole or in part, or in summary form, to any person except for the express purpose of ensuring compliance with this Decree.

31. Duration and Termination of Decree. The Court shall retain jurisdiction over this matter to monitor and enforce the defendants' compliance with the terms of

this Decree to the extent necessary. If defendants choose under Article Two of this decree to use subject matter tests for initial teacher certification decisions, and/or for purposes of making “highly qualified” determinations simultaneously or in conjunction with initial teacher certification, this Decree shall be extended until such time as all subject matter tests have been fully implemented, at which time this action shall be placed on the Court’s administrative inactive docket. It is anticipated that the subject matter tests will “go live” approximately one year after the effective date of this Decree. After implementation of subject-matter tests and twenty-four months of live consequential use of the subject matter tests following the No-Fault Period, ASDE shall undertake a review of the subject matter tests, including the following issues:

- (a) the continued appropriateness of the test content;
- (b) the continued appropriateness of the cut score;
- (c) any changes in state and federal regulations, the state teaching and student standards, student curricula, or other relevant factors in the teacher licensure context; and
- (d) candidate performance on the subject matter tests.

After undertaking such review, any party may move the Court to reinstate the action to the active docket for the resolution of relevant issues and the entry of appropriate relief. If no such motion is filed, or, upon resolution of any such issues, then (1) this action shall be dismissed with prejudice, and (2) this decree shall be terminated.

32. The Defendant State Board of Education shall be authorized to develop administrative rules and regulations for the implementation of the terms of this Amended Consent Decree. The parties recognize the need for the State Board of Education to

adopt administrative code provisions which provide for directives on educational accountability requirements. These provisions may include, for example, issues such as reciprocity of teacher certificates from other states. The State Board of Education agrees to consider the spirit of this Amended Consent Decree in the adoption of administrative rules and regulations pertaining to teacher testing, as well as the psychometric parameters recommended by the Monitoring Committee. However, the State Board of Education shall have the sole authority for approval and adoption of administrative code provisions consistent with state law. For a period of two years from implementation of subject-matter tests under this decree, the ASDE will not use the statistical data from any subject-matter test for purposes of decertifying any individual teacher education program within any college of education, and at no time during the life of this decree will data regarding an institution's graduates' subject-matter test performance be used as the sole or principal criterion for any decertification decision. During the life of this decree, any such decertification decision must be based on at least the following factors: (1) graduates' performance on the Basic Skills Test; (2) graduates' first year performance evaluations; and (3) graduates' performance on subject-matter tests.

33. Teachers who hold a regular teaching certificate and who seek higher level certification in the same field shall not be required to pass an initial teacher certification examination. Teachers presently holding a teacher certificate shall not be required to pass the basic skills test for renewal of their existing Alabama Professional Educator Certificate. Teachers who hold a regular teaching certificate and who seek initial certification in a different subject area may be required to take and pass a subject-

matter test in accordance with Article Two of this decree. Should a teacher allow his or her Alabama Professional Educator Certificate to lapse due to non renewal or should an existing certificate be revoked, the teacher applying for a teaching certificate shall be required to complete all requirements for initial applicants, including passage of the basic skills test, provided, however, that a teacher whose certificate has lapsed due to non renewal may, within six months of the date of expiration of the former certificate, apply for re-certification without being required to pass the test.

34. Nothing in this Decree shall limit or otherwise affect defendants' right and authority to promulgate and enforce rules and regulations recognizing test scores, certification, and/or "highly qualified" status attained in other States as sufficient to teach in the public schools of Alabama.

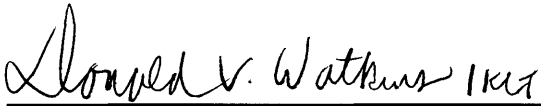
35. If defendants comply in good faith with this decree for the prescribed period, all parties agree that they will not contend that there are any remaining vestiges of segregation or racial discrimination relating to defendants' teacher testing programs for teacher certification, and they further agree that they will urge the Court to enter a finding to that effect.

SO ORDERED on this the 14th day of December, 2004.

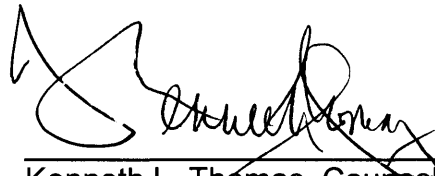


Myron H. Thompson
United States District Judge

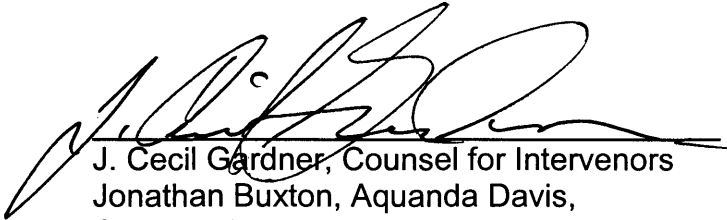
This document is approved by the plaintiffs' class counsel as evidenced by their signatures below. The counsel for the plaintiff-intervenor signs acknowledging this amended consent decree and it remains subject to the approval of the plaintiff-intervenor's board. The defendants' counsel signs only for the purpose of acknowledgement of the proposed amended consent decree and the amended consent decree remains subject to approval by the State Board of Education.



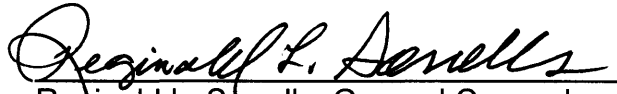
Donald V. Watkins, Counsel for Plaintiffs
Margaret T. Allen and persons similarly
situated



Kenneth L. Thomas, Counsel for Plaintiffs
Margaret T. Allen, Tihonia Hinton, and
persons similarly situated

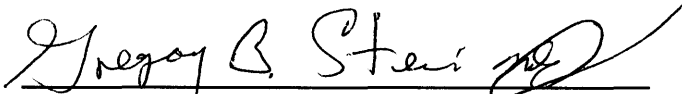


J. Cecil Gardner, Counsel for Intervenor
Jonathan Buxton, Aquanda Davis,
Courtney Teague, and Norris Danzey

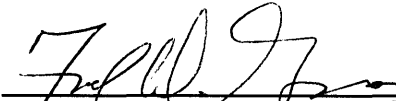


Reginald L. Sorrells, General Counsel,
Alabama State Department of Education

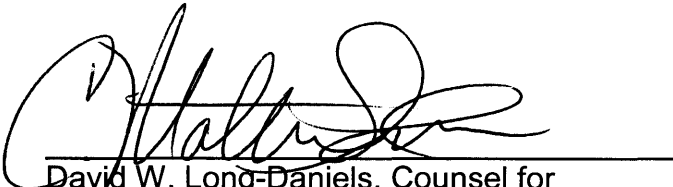
*David R. Boyd, Counsel
for Defendants*



Gregory B. Stein, Counsel for Plaintiff Eria
P. Smith and persons similarly situated



Fred D. Gray, Sr., Counsel for Plaintiff Eria
P. Smith and persons similarly situated



David W. Long-Daniels, Counsel for
Intervenor Alabama State University

*C. Matthew Smith
(additional counsel for
Alabama State University)*

Ken Wallis, Legal Advisor to the Governor

APPENDIX A

EQUATING GPA TO TEST SCORES

Raw scores on the test are converted so that the minimum passing score is 70 for all tests. This is the Converted test score.” “Approved program GPA” is the GPA attained in the candidate’s approved teacher education program; it is not the cumulative GPA for all college courses attempted. Under State Board of Education regulations, the lowest acceptable approved program GPA is 1.2 on a 3-point scale. On a 4-point scale this equates to a 2.2.

For candidates graded on a 3-point scale, an approved program GPA of 1.2 should be equated to a converted score of 70 on the test. To do otherwise would change the minimum-passing requirement. A GPA of 3.0 on a 3 point scale represents grades which are all A’s. This reasonably can be equated to a typical A which is represented by a converted test score of 95.

The scale for GPA’s extends from 1.2 to 3.0, a range of 1.8 points. The scale for test scores extends from 70 to 95, a range of 25 points. Hence, each point of GPA is equivalent to $25/1.8=13.889$ points on the test scale. Thus candidates graded on a 3-point scale would receive an equated converted score of $70[13.889(\text{GPA } 1.2)]$ where “GPA” is the approved program GPA. Candidates graded on a 4-point scale would receive an equated converted score of $70[13.889(\text{GPA } 2.2)]$. Application of this formula equates GPA to test score. To determine the final score of a candidate the following formula is used.

$$\text{converted test score} \div (70 \div [13.889(\text{GPA } 1.2)])$$

If the result is 70 or greater, the candidate passes. For candidates on a 4 point scale, 2.2 should be substituted for the 1.2 in the formula.