IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, et al., Plaintiffs,	)	
vs.	)	MOTION TO INTERVENE AS PARTIES PLAINTIFFS
SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO, et al., Defendants.	)	

I. Intervention of Right

Pursuant to Rule 24 (a) of the Federal Rules of Civil Procedure, the Congress of Hispanic Educators, individually and on behalf of its member Chicano teachers and parents within School District Number One, Denver, Colorado and Arturo Escobedo, Joanne Escobedo, Eddie R. Cordova, Robert Pena, Robert L. Hernandez, Margaret M. Hernandez, Frank Madrid, Ronald E. Montoya, Naomi R. Montoya, John E. Dominguez, Esther E. Dominguez, John H. Flores, and Anna Flores, individually and on behalf of Linda Escobedo, Mark Escobedo, Renee Cordova, Barbara Cordova, Theresa K. Pena, Craig R. Pena, Randy R. Hernandez, Roger L. Hernandez, Russell C. Hernandez, Rachelle J. Hernandez, Jeanne S. Madrid, Ronald C. Montoya, John E. Dominguez, Mark E. Dominguez, Michael J. Dominguez, Luis E. Flores, Joni A. Flores, and Theresa Flores, minor children, move for leave to intervene as of right as parties plaintiffs in order to assert the claim set forth in their proposed complaint which fully incorporates and adopts the complaint of the present plaintiffs and a copy of which is attached hereto, on the ground that the intervenors have an interest relating to the transaction which is the subject of the action and are so situated that the disposition of the action may as a practical matter impair or impede their ability to

protect that interest because their interest is not adequately represented by existing parties.

1. Intervenor Congress of Hispanic Educators is a Chicano teachers civil rights organization composed largely of Chicano teachers and counselors employed by School District Number One, Denver, Colorado. Intervenor Congress sues on its own behalf because its membership has been and continues to be detrimentally affected by defendants' discriminatory hiring promotion, recruitment, and selection practices. It also sues on behalf of its members who have been detrimentally affected by defendants discriminatory hiring, promotion, recruitment, assignment and selection practices to the additional educational detriment of the Chicano students, and further, on behalf of its members insofar as they and their children have been the victims of these and other of defendants' discriminatory educational practices.

2. Intervenors Arturo Escobedo, Joanne Escobedo, Eddie R. Cordova, Robert Pena, Robert L. Hernandez, Margaret M. Hernandez, Frank Madrid, Ronald E. Montoya, Naomi R. Montoya, John E. Dominguez, Esther E. Dominguez, John H. Flores, and Anna Flores are citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado who sue as next friends on behalf of Linda Escobedo, Mark Escobedo, Renee Cordova, Barbara Cordova, Theresa K. Pena, Craig R. Pena, Randy R. Hernandez, Roger L. Hernandez, Russell C. Hernandez, Rachelle J. Hernandez, Jeanne S. Madrid, Ronald E. Montoya, John E. Dominguez, Mark E. Dominguez, Michael J. Dominguez, Luis E. Flores, Joni A. Flores, and Theresa Flores, minor children, citizens of the United States and the State of Colorado, and residents of and students attending schools within School District Number One, Denver, Colorado and who are affected by the discriminatory practices of Defendants.

3. These Intervenors have a substantial interest in the outcome of the litigation in that the class they represent

comprises the bulk of the minority children, parents, and teachers to be affected by this Court's order. Any orders with regard to student reassignment, teacher reassignment, curriculum modification, or other provisions for equal educational opportunity will have a significant effect upon the lives of the intervenors as individuals and as an organization.

4. Because the decision of this Court will resolve the responsibilities of the Defendant, School District Number One, Denver, Colorado, with regard to Chicano children, teachers and people residing within its confines, the disposition of the action may as a practical matter impair or impede intervenors' ability to protect their interests.

5. These intervenors represent a wide cross-segment of the Chicano community which despite the general legal competence of counsel for the existing plaintiffs is not adequately represented in these proceedings, because the existing plaintiffs who are primarily Blacks, and their counsel lack exposure to the diverse problems that confront the Chicano community, because resolution of Chicano educational problems requires an expertise which the existing plaintiffs do not have, because the resolution of unconstitutional practices by the defendants may require remedies which will have a unique effect on Chicano education goals, and because a plan for equal educational opportunity in the District may involve competing interests between Chicanos and Blacks both of whose interests the existing plaintiffs cannot adequately and forcefully represent in such a competitive situation, intervenors' interests are not adequately represented by the existing plaintiffs.

6. Intervenors hereby adopt and incorporate by reference all the facts set out in the attached complaint as part of their application for intervention.

7. Intervenors purpose is in no way calculated to impede

or delay relief but is intended only to insure effective relief.

WHEREFORE, intervenors Arturo Escobedo, Joanne Escobedo, Eddie R. Cordova, Robert Pena, Robert L. Hernandez, Margaret M. Hernandez, Frank Madrid, Ronald E. Montoya, Naomi R. Montoya, John E. Dominguez, Esther E. Dominguez, John H. Flores and Anna Flores, individually and on behalf of Linda Escobedo, Mark Escobedo, Renee Cordova, Barbara Cordova, Theresa K. Pena, Craig R. Pena, Randy R. Hernandez, Roger L. Hernandez, Russell C. Hernandez, Rachelle J. Hernandez, Jeanne S. Madrid, Ronald C. Montoya, John E. Dominguez, Mark E. Dominguez, Michael J. Dominguez, Luis E. Flores, Joni A. Flores, and Theresa Flores and the Congress of Hispanic Educators, individually and on behalf of its members request that this Court allow them intervention as of right as parties plaintiffs in the within cause of action.

II. Permissive Intervention

Alternatively, pursuant to Rule 24 (b) of the Federal Rules of Civil Procedure, the aforementioned intervenors move for leave to intervene permissively as parties plaintiffs in order to assert the claim set forth in their proposed complaint which fully incorporates and adopts the complaint of the existing plaintiffs, on the ground that intervenors have a common interest relating to all of the claims which form the basis of this within action and state as follows:

1. Intervenors hereby incorporate by reference each and every statement in Paragraphs 1 through 3 of Part I of this Motion.

2. Intervenors hereby incorporate by reference each and every statement in Paragraphs 4 through 6 of Part I of this Motion insofar as those paragraphs indicate a common interest relating to all of the claims which form the basis of this action.

3. Intervenors hereby adopt and incorporate by reference all the facts set out in their complaint which

accompanies this Motion, as part of their application for intervention.

4. Intervenors hereby incorporate by reference Paragraph 8 of Part I of this Motion insofar as it indicates no desire to impede or impair relief.

5. Intervenors' motion is brought prior to this Court's acceptance of any desegregation plan and is timely brought to protect intervenors' common interest without undue delay or prejudice to existing parties.

6. The Supreme Court of the United States recognized the substantial interest of intervenors' class, Chicanos, in the instant action.

7. A denial of intervention might result in a multiplicity of suits concerning identical matters with regard to intervenors' class.

WHEREFORE, intervenors Arturo Escobedo, Joanne Escobedo, Eddie R. Cordova, Robert Pena, Robert L. Hernandez, Margaret M. Hernandez, Frank Madrid, Ronald E. Montoya, Naomi R. Montoya, John E. Dominguez, Esther E. Dominguez, John H. Flores, and Anna Flores, individually and on behalf of Linda Escobedo, Mark Escobedo, Renee Cordova, Barbara Cordova, Theresa K. Pena, Craig R. Pena, Randy R. Hernandez, Roger L. Hernandez, Russell C. Hernandez, Rachelle J. Hernandez, Jeanne S. Madrid, Ronald C. Montoya, John E. Dominguez, Mark E. Dominguez, Michael J. Dominguez, Luis E. Flores, Joni A. Flores, and Theresa Flores, minor children, and the Congress of Hispanic Educators, individually and on behalf of its members request that this Court allow

them to intervene permissively as parties plaintiffs in the within cause of action.

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

VILMA S. MARTINEZ
SANFORD J. ROSEN

National Office
145 Ninth Street
San Francisco, California 94103
(415) 626-6196

Paul A. Baca
PAUL A. BACA

Carlos M. Alcalá
CARLOS M. ALCALÁ

Regional Office
209 16th St., Suite 200
Denver, Colorado 80202
(303) 893-1893

ATTORNEYS FOR THE INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 1974, I served a true and correct copy of the foregoing Motion to Intervene As Parties Plaintiff, Complaint in Intervention and Memorandum of Law In Support of Motion to Intervene As Parties Plaintiffs to:

Gordon Greiner, Esq.
500 Equitable Building
Denver, Colorado 80202

Michael H. Jackson, Esq.
Security Life Building
Denver, Colorado 80202

by depositing same in the United States Mail, postage prepaid.

Marian J. Hogg

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, et al.,

Plaintiffs,

vs.

SCHOOL DISTRICT NUMBER ONE,
DENVER, COLORADO, et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AS PARTIES PLAINTIFF

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

VILMA S. MARTINEZ
SANFORD J. ROSEN
PAUL A. BACA
CARLOS M. ALCALA

TABLE OF CONTENTS

TABLE OF CASES

TABLE OF OTHER AUTHORITIES

Tendered 1/4/74

(D)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JAN 11 1974
[illegible] CLERK
BY ..... DEP. CLERK

WILFRED KEYES, et al.,

Plaintiffs,

CONGRESS OF HISPANIC EDUCATORS, an unincorporated association; ARTURO ESCOBEDO and JOANNE ESCOBEDO, individually and on behalf of LINDA ESCOBEDO and MARK ESCOBEDO, Minors; EDDIE R. CORDOVA, individually and on behalf of RENEE CORDOVA and BARBARA CORDOVA, Minors; ROBERT PENA, individually and on behalf of THERESA K. PENA and CRAIG R. PENA, Minors; ROBERT L. HERNANDEZ, and MARGARET M. HERNANDEZ, individually and on behalf of RANDY R. HERNANDEZ, ROGER L. HERNANDEZ, RUSSELL C. HERNANDEZ, RACHELLE J. HERNANDEZ, Minors; FRANK MADRID, individually and on behalf of JEANNE S. MADRID, a Minor; RONALD E. MONTOYA and NAOMI R. MONTOYA, individually and on behalf of RONALD C. MONTOYA, a Minor; JOHN E. DOMINGUEZ and ESTHER E. DOMINGUEZ, individually and on behalf of JOHN E. DOMINGUEZ, MARK E. DOMINGUEZ and MICHAEL J. DOMINGUEZ, Minors; and JOHN H. FLORES and ANNA FLORES, individually and on behalf of THERESA FLORES, JONI A. FLORES, and LUIS E. FLORES, Minors; and on behalf of all others similarly situated,

Intervenors,

vs.

DENVER SCHOOL DISTRICT NUMBER ONE, et al.,

Defendants.

COMPLAINT IN INTERVENTION

I. NATURE OF THE CLAIM

1. This is a class action for declaratory and injunctive relief to redress the deprivation of rights secured to the intervenors by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §§1983, 1988, 2000 c-8 and 2000 d. The intervenors, on behalf of themselves and all others similarly situated, seek declaratory and injunctive releif with respect to past and present discriminatory practices of

the defendants which deny, on account of race, color, or national origin to the minor Chicano children residing in said school district, educational opportunities afforded to similarly situated Anglo children and all of which serves to provide an unequal allocation of resources on the basis of race and national origin.

II. JURISDICTION

2. The jurisdiction of the Court is invoked pursuant to: (a) Title 28 U.S.C. §§2201 and 2202, this being an action for the purpose of determining questions of actual controversy between the parties; (b) Title 28 U.S.C. §1331, this being an action arising under the Fourteenth Amendment to the Constitution of the United States and the amount of controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars ($10,000); (c) Title 28 U.S.C. §§1343 (3) and (4), this being a civil rights and equal rights action filed pursuant to Title 42 U.S.C. §§1983, 1988, 2000 c-8 and 2000 d insofar as this is an action commenced by citizens of the United States to redress the depriviation under color of statute, ordinance, regulation, custom, or usage of the State, of rights, privileges and immunities secured by the Constitution and laws of the United States.

III. INTERVENORS

Organization

3. Intervenor Congress of Hispano Educators is a teachers civil rights organization composed largely of Chicano teachers, counselors, and staff employed by School District Number One, Denver, Colorado. Intervenor Congress sues on behalf of itself for its membership growth and retention has been and continues to be detrimentally affected by defendants discriminatory hiring, promotion, recruitment,

assignment, and selection practices, and on behalf of its members who have been detrimentally affected by defendant's discriminatory hiring, promotion, recruitment, assignment, and selection practices and further in behalf of its members insofar as they and their children have been the victims of these and other of defendant's discriminatory educational practices.

Parents and Children

4. Intervenors Arturo Escobedo, Eddie R. Cordova and Robert Pena, members of the Congress of Hispanic Educators, are adult citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

5. Intervenors Joanne Escobedo, Robert L. Hernandez, Margaret M. Hernandez, Frank Madrid, Ronald E. Montoya, Naomi R. Montoya, John E. Dominguez, Esther E. Dominguez, John H. Flores, and Anna Flores are adult citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

6. Intervenor children who sue by the parents and next friends, are minor citizens of the United States and the State of Colorado, and residents within School District Number One, Denver, Colorado.

a. Intervenors Linda Escobedo and Mark Escobedo sue by their parents and next friends, Arturo Escobedo and Joanne Escobedo, and are students attending Manual High School and Horace Mann Junior High School respectively.

b. Intervenors Renee Cordova and Barbara Cordova sue by their parent and next friend, Eddie R. Cordova, and are students attending Abraham Lincoln High School and Kepner Junior High School respectively.

c. Intervenors Theresa K. Pena and Craig R. Pena sue by their parent and next friend, Robert Pena, and are students attending Park Hill Elementary School.

d. Intervenors Randy R. Hernandez, Roger L. Hernandez, Russell C. Hernandez, and Rachelle J. Hernandez sue by their parents and next friends, Robert L. Hernandez and Margaret M. Hernandez, and are students attending North High School, Lake Junior High School and Cheltenham Elementary School.

e. Intervenor Jeanne S. Madrid sues by her parent and next friend Frank Madrid, and is a student attending Bryant-Webster Elementary School.

f. Intervenor Ronald C. Montoya sues by his parents and next friends Ronald E. Montoya and Naomi R. Montoya, and is a student attending Brown Elementary School.

g. Intervenors John E. Dominguez, Mark E. Dominguez and Michael J. Dominguez sue by their parents and next friends, John E. Dominguez and Esther E. Dominguez, and are students attending Valverde Elementary School.

h. Intervenors Luis E. Flores, Joni A. Flores, and Theresa Flores sue by their parents and next friends, John H. Flores and Anna Flores, and are students attending West High School, Baker Jr. High School, and Greenlee Elementary School.

7. The said adult intervenors are all of Chicano descent, citizens of the United States, the State of Colorado, and residents within School District Number One, Denver, Colorado and bring this intervention on their own behalf and on behalf of all others similarly situated.

8. The said minor intervenors and the minor children of Chicano descent similarly situated are eligible to attend, and are presently attending public schools in School District Number One, Denver, Colorado. These schools are operated by and under the jurisdiction, management and control of the defendants.

IV. CLASS ACTION

9. Intervenors bring this action in their own behalf and on behalf of others similarly situated pursuant to Rule 23 (a), 23 (b) (1) (A), 23 (b) (1) (B), 23 (b) (3), Federal Rules of Civil Procedure. The class is composed of:

(a) All Chicano school children, who by virtue of the actions of the Board complained of in the First Cause of Action, Section III of the plaintiff's complaint, are attending segregated or substantially segregated schools and who are forced to receive unequal educational opportunity including inter alia, the absence of Chicano teachers and bilingual-bicultural programs;

(b) All those Chicano school children, who by virtue of the actions or omissions of the Board complained of in the Second Cause of Action, Section IV of the plaintiff's complaint, are attending segregated schools, and who will be and have been receiving an unequal educational opportunity.

(c) All those Chicano teachers, staff, and administrators who have been the victims of defendant's discriminatory hiring, promotion, recruitment, assignment, and selection practices and whose victimization has additionally caused educational injury to Chicano students in that Chicano teachers, staff, and administrators are either nonexistent or underemployed. Additionally, the class is composed of present and future teachers, staff, and administrators who may be affected by this court's impending relief in such a manner as to detrimentally affect Chicano children within said district.

10. The intervenors incorporate and adopt by reference Section II, A, paragraph 3 and subparagraphs thereunder of the plaintiff's Complaint.

V. DEFENDANTS

11. The intervenors incorporate and adopt by reference Section II, B, paragraphs 1 through 4 of the plaintiff's Complaint and subsequent amendments thereto.

VI. STATEMENT OF THE CLAIM

12. Though of different origins, Blacks and Chicanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students.

13. Chicanos constitute an identifiable class for purposes of the Fourteenth Amendment within School District Number One, Denver, Colorado.

14. The intervenors incorporate and adopt by reference the entire contents of the First Cause of Action of the Plaintiff's Complaint.

15. The intervenors incorporate and adopt by reference the entire contents of the Second Cause of Action of the Plaintiff's Complaint.

16. In September, 1968, 59% or 37,539 of the 63,385 Anglo students in the public schools in said school district, were in 43 schools, the pupil populations of which were over 85% Anglo.

17. In September, 1968, 62% or 8,451 of the 13,639 Black students in the public schools in said school district, were in 15 schools the pupil populations of which were over 85% Black and/or Chicano.

18. In September, 1968, 50.2% of the 18,611 Chicano students in the public schools in said school district, were in 35 schools the pupil populations of which were over 50% Chicano and/or Black.

19. In September, 1972, Chicanos continued to constitute the largest minority group within said school district, comprising 23% (21,389 of 91,616) of the total student enrollment.

20. In September, 1972, 50.5% of the 21,389 Chicano students in the public schools in said school district, were in 41 schools the pupil population of which were over 50% Chicano and/or Black.

21. In September, 1972, Chicano classroom teachers constituted 131 or 3.26% of the district's 4,015 teachers.

22. In September, 1972, Chicanos employed in other certificated and classified personnel positions constituted 554 or 12.4% of the district's 4,442 employees so identified.

23. There is a gross statistical disparity of Chicano teachers, staff and administrators in School District Number One, Denver, Colorado as is made evident by Intervenor's Exhibit A which is hereto attached.

24. Chicano students suffer educationally when Chicano teachers, staff, and administrators are not employed or are underemployed.

25. Qualified Chicano teachers have been refused employment by defendants.

26. The aforementioned statistical disparity is the result of defendants discriminatory hiring, promotion, recruitment, assignment, and selection practices.

Relief

27. Intervenors hereby incorporate and adopt by reference the entire contents of the Prayer for Relief for the First Cause of Action of the plaintiff's Complaint.

28. Intervenors hereby incorporate and adopt by reference the entire contents of the Prayer for Relief for the Second Cause of Action of the plaintiff's Complaint.

29. Additionally, intervenors on behalf of themselves and all others similarly situated request that this Court issue a permanent injunction restraining and enjoining Defendants and their agents, representatives, employees, successors, and all persons who act in concert with them, from:

(a) utilizing teaching methods, curricula, and other policies that discriminate against intervenors and their class;

(b) operating the defendant district in a fashion which violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000 d , and HEW Guidelines promulgated pursuant to 42 U.S.C. §2000 d-1;

(c) utilizing plant, equipment, materials, supplies, and curricula that is intended to or does, in fact, discriminate against intervenors on the basis of national origin, race, and color as between the pupils under the control and supervision of the Defendants;

(d) de-emphasizing the teaching of the Spanish language;

(e) denying equal educational opportunity in any other manner to Chicano students on the basis of language, culture, race, color, or ethnic origin;

(f) utilizing discriminatory hiring, promotion, recruitment, assignment, and selection techniques;

(g) utilizing pupil testing and tracking procedures that are intended to and which in fact, discriminate against intervenors on the basis of national origin, race, and color as between the pupils under the control and supervision of the Defendants.

30. Additionally, Intervenors on behalf of themselves and all others similarly situated request that this Court affirmatively require the Defendants and their agents, representatives, employees, successors, and all persons who act in concert with them to:

(a) institute affirmative use of hiring, promotion, recruitment, assignment, and selection techniques designed to achieve parity in said school district such that the percentage of

Chicano teachers, principals, and other professional staff will approximately reflect the percentage of Chicano students in the Defendant's schools;

(b) institute practices and procedures designed to provide all students in the school district with sufficient English language skills, without attaching a stigma to Spanish language background;

(c) institute a multicultural teaching program in all schools and classes in the school district such that the goals, values, and interests of Chicanos are fully integrated into the district teaching program;

(d) institute a multicultural-bilingual program to all children in need or want thereof in order to insure equal educational opportunity;

(e) institute a program to minimize the drop-out rate of Chicano students; and

(f) institute a program designed to enlighten and sensitise school personnel and school board representatives as to cultural and racial differences of the Chicano students in the defendant district and the effects of imposing a monocultural educational program.

Intervenors further pray for all further general and equitable relief as this Court may deem necessary, together with all costs and attorneys' fees.

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

VILMA S. MARTINEZ
SANFORD J. ROSEN

National Office
145 Ninth Street
San Francisco, California 94103

Paul A. Baca
PAUL A. BACA

Carlos M. Alcalá
CARLOS M. ALCALA

Regional Office
209 16th St., Suite 200
Denver, Colorado 80202
(303) 893-1893

ATTORNEYS FOR THE INTERVENORS

Intervenors Exhibit A

DENVER PUBLIC SCHOOLS
REPORT OF ESTIMATED ETHNIC DISTRIBUTION OF CLASSROOM
TEACHERS AND OTHER CERTIFICATED AND CLASSIFIED PERSONNEL

September 29, 1972

ADMINISTRATIVE STAFF

Carle E. Stenmark, Assistant Superintendent
for General Administration

Joseph E. Brzeinski, Executive Director
Department of Planning, Research, and Budgeting

Prepared by

Gearld C. Hicken, Director of Budgeting
Allan M. Hosler, Coordinator
Department of Planning, Research, and Budgeting
December, 1972

BOARD OF EDUCATION

Stephen J. Knight, Jr., President
Frank K. Southworth, Vice-President
William G. Berge
Robert L. Crider
Theodore J. Hackworth, Jr.
James C. Perrill
Bernard Valdez

ADMINISTRATIVE STAFF

Howard L. Johnson, Superintendent

Charles E. Armstrong, Assistant Superintendent
for Facility Planning and Engineering

Roscoe L. Davidson, Assistant Superintendent
for Education

Edgar A. Olander, Assistant Superintendent
for Administrative Services

Carle E. Stenmark, Assistant Superintendent
for General Administration

DENVER PUBLIC SCHOOLS
Department of Planning, Research, and Budgeting

ESTIMATED ETHNIC DISTRIBUTION OF CLASSROOM TEACHERS

ELEMENTARY SCHOOLS - SEPTEMBER 29, 1972

School	American Indian No.	American Indian Percent	Negro No.	Negro Percent	Oriental No.	Oriental Percent	Spanish Surnamed No.*	Spanish Surnamed Percent	All Others No.*	All Others Percent	Total Teachers No.*	Total Teachers Percent
Alameda							1	10.5%	8.5	89.5%	9.5	100.0%
Alcott			1	5.1%					18.5	94.9	19.5	100.0
bury									23	100.0	23	100.0
ch Grove			1	3.6					26.5	96.4	27.5	100.0
shland			3	10.7			2	7.1	23	82.2	28	100.0
shley			4	21.1					15	78.9	19	100.0
Barnum					2	6.5%	1	3.2	28	90.3	31	100.0
Barrett			8	45.7			1	5.7	8.5	48.6	17.5	100.0
Beach Court					1	5.6			17	94.4	18	100.0
Belmont					1	11.1	1	11.1	7	77.8	9	100.0
Berkeley									12.5	100.0	12.5	100.0
Boettcher and Hospital			2	7.1					26	92.9	28	100.0
Boulevard									16	100.0	16	100.0
Bradley			3	9.4					29	90.6	32	100.0
Bromwell			1	9.5					9.5	90.5	10.5	100.0
Brown			1	4.2					23	95.8	24	100.0
Bryant-Webster			2	7.0			3.5	12.3	23	80.7	28.5	100.0
Carson			3	10.9	2	7.3			22.5	81.8	27.5	100.0
Cheltenham			4	11.8	1	2.9	3	8.8	26	76.5	34	100.0
Clfax									12.5	100.0	12.5	100.0
College View									22	100.0	22	100.0
Columbian			3	14.0					18.5	86.0	21.5	100.0
Columbine			13	31.7			1	2.4	27	65.9	41	100.0
Cory			2	9.5					19	90.5	21	100.0
Cowell			1	5.4					17.5	94.6	18.5	100.0
Crofton			2	13.3	1	6.7	1	6.7	11	73.3	15	100.0
Denison			1	6.5			1	6.5	13.5	87.0	15.5	100.0
Doull			2	6.2					30.5	93.8	32.5	100.0
Eagleton									16.5	100.0	16.5	100.0
Ebert			5	29.4	1	5.9	1	5.9	10	58.8	17	100.0

* The decimal .5 denotes a teacher assigned half a day to classroom teaching in that particular school.

School	American Indian No.	American Indian Percent	Negro No.	Negro Percent	Oriental No.	Oriental Percent	Spanish Surnamed No.*	Spanish Surnamed Percent	All Others No.*	All Others Percent	Total Teachers No.*	Total Teachers Percent
dison			1	3.9%			1	3.9%	23.5	92.2%	25.5	100.0%
llis			1	3.5					27.5	96.5	28.5	100.0
llsworth					1	15.4%			5.5	84.6	6.5	100.0
lmwood							5	27.0	13.5	73.0	18.5	100.0
lyria			2	33.3					4	66.7	6	100.0
merson									11.5	100.0	11.5	100.0
ans					2	7.7			24	92.3	26	100.0
irmont			2	7.9			2	7.8	21.5	84.3	25.5	100.0
airview			8	20.2			5	12.7	26.5	67.1	39.5	100.0
allis									12	100.0	12	100.0
orce	1	3.2%	2	6.5			2	6.4	26	83.9	31	100.0
arden Place			10	26.7			3	8.0	24.5	65.3	37.5	100.0
ilpin			5	14.7			2	5.9	27	79.4	34	100.0
odsman									18	100.0	18	100.0
oldrick			2	7.3	1	3.6	2	7.3	22.5	81.8	27.5	100.0
reenlee			4	9.7	1	2.4	3.5	8.4	33	79.5	41.5	100.0
ust			1	3.5	2	7.0			25.5	89.5	28.5	100.0
allett			6	22.6					20.5	77.4	26.5	100.0
arrington			5	22.7					17	77.3	22	100.0
ohnson			1	4.3					22	95.7	23	100.0
napp			2	7.7			2	7.7	22	84.6	26	100.0
night			2	8.7					21	91.3	23	100.0
incoln			2	9.8					18.5	90.2	20.5	100.0
Kinley			1	8.7					10.5	91.3	11.5	100.0
cMeen			4	12.3					28.5	87.7	32.5	100.0
itchell			12	30.8					27	69.2	39	100.0
ontbello			3	19.4	1	6.4			11.5	74.2	15.5	100.0
ontclair			2	8.7			1	4.3	20	87.0	23	100.0
ontclair Annex			1	22.2					3.5	77.8	4.5	100.0
oore			2	8.3					22	91.7	24	100.0
unroe					1	4.5	1	4.6	20	90.9	22	100.0
ewlon			1	4.3					22	95.7	23	100.0
almer			1	7.4					12.5	92.6	13.5	100.0
Park Hill			7	18.4					31	81.6	38	100.0

*The decimal .5 denotes a teacher assigned half a day to classroom teaching in that particular school.

School	American Indian No.	American Indian Percent	Negro No.	Negro Percent	Oriental No.	Oriental Percent	Spanish Surnamed No.*	Spanish Surnamed Percent	All Others No.*	All Others Percent	Total Teachers No.*	Total Teachers Percent
Philips			5	22.7%	1	4.6%			16	72.7%	22	100.0%
Pitts			1	6.5					14.5	93.5	15.5	100.0
Remington			3	17.1			3	17.1%	11.5	65.8	17.5	100.0
Rosedale									15.5	100.0	15.5	100.0
Sabin			2	4.5					42.5	95.5	44.5	100.0
Schenck			1	4.2			1	4.2	22	91.6	24	100.0
Schmitt			1	4.7					20.5	95.3	21.5	100.0
Sherman					1	7.7			12	92.3	13	100.0
Slavens			2	8.3					22	91.7	24	100.0
Smedley			1	4.1	1	4.1	1	4.1	21.5	87.7	24.5	100.0
Smith			9	20.0					36	80.0	45	100.0
Steck			1	8.0					11.5	92.0	12.5	100.0
Stedman			10	39.2			1	3.9	14.5	56.9	25.5	100.0
Steele			2	8.0					23	92.0	25	100.0
Stevens			1	8.7					10.5	91.3	11.5	100.0
Swansea			1	3.9			1	3.9	23.5	92.2	25.5	100.0
Teller			1	5.6	1	5.6			16	88.8	18	100.0
Thatcher			2	16.7			1	8.3	9	75.0	12	100.0
Traylor									26.5	100.0	26.5	100.0
University Park			3	8.7					31.5	91.3	34.5	100.0
Valverde			2	8.7					21	91.3	23	100.0
Washington Park			1	5.4					17.5	94.6	18.5	100.0
Westwood			1	2.9	1	2.9	4	11.6	28.5	82.6	34.5	100.0
Whiteman			3	14.6					17.5	85.4	20.5	100.0
Whittier			9	23.1	1	2.6	2	5.1	27	69.2	39	100.0
Wyatt			4	20.0			2	10.0	14	70.0	20	100.0
Wyman			2	12.1					14.5	87.9	16.5	100.0
TOTALS	1	.0%	220	10.6	24	1.1	62	3.0	1,776	85.3	2,083**	100.0

*The decimal .5 denotes a teacher assigned half a day to classroom teaching in that particular school.

*This total includes teachers of Early Childhood Education.

DENVER PUBLIC SCHOOLS
Department of Planning, Research, and Budgeting

ESTIMATED ETHNIC DISTRIBUTION OF CLASSROOM TEACHERS

JUNIOR HIGH SCHOOLS - SEPTEMBER 29, 1972

School	American Indian No.	American Indian Percent	Negro No.*	Negro Percent	Oriental No.	Oriental Percent	Spanish Surnamed No.	Spanish Surnamed Percent	All Others No.*	All Others Percent	Total Teachers No.*	Total Teachers Percent
Baker			4	7.6%			7	13.2%	42	79.2%	53	100.0%
Byers			1	1.8			2	3.6	53	94.6	56	100.0
Cole			19	29.2			5	7.7	41	63.1	65	100.0
Gove			5	12.5	2	5.0%	1	2.5	32	80.0	40	100.0
Grant			2	4.9			1	2.5	37.5	92.6	40.5	100.0
Hamilton			3	4.1			1	1.4	68.5	94.5	72.5	100.0
Hill			7	10.6	1	1.5			58	87.9	66	100.0
Kepner			4	5.6	1	1.4	1	1.4	65	91.6	71	100.0
Kunsmiller			5	6.2			2	2.5	73.5	91.3	80.5	100.0
Lake			1	1.6	1	1.6	2	3.3	57	93.5	61	100.0
Mann			2	3.1			4	6.1	59	90.8	65	100.0
Merrill			3.5	5.9			1	1.7	54.5	92.4	59	100.0
Morey			8	15.1	1	1.9	5	9.4	39	73.6	53	100.0
Place			7	11.5	1	1.6	2	3.3	51	83.6	61	100.0
Rishel			4	6.7			5	8.3	51	85.0	60	100.0
Skinner			1	1.6	2	3.3			58	95.1	61	100.0
Smiley			14	19.6			1	1.4	56.5	79.0	71.5	100.0
TOTALS			91	8.8	9	0.9	40	3.8	896	86.5	1,036**	100.0

*The decimal .5 denotes a teacher assigned half a day to classroom teaching in that particular school.

**Classroom teachers at John F. Kennedy are included with senior high school teachers.

DENVER PUBLIC SCHOOLS
Department of Planning, Research, and Budgeting

ESTIMATED ETHNIC DISTRIBUTION OF CLASSROOM TEACHERS

SENIOR HIGH SCHOOLS - SEPTEMBER 29, 1972

School	American Indian		Negro		Oriental		Spanish Surnamed		All Others		Total Teachers	
	No.	Percent	No.	Percent	No.	Percent	No.*	Percent	No.*	Percent	No.*	Percent
Abraham Lincoln	1	.9%	2	1.8%			3	2.7%	104.5	94.6%	110.5	100.0%
East			12	10.5	1	.9%	2	1.8	99	86.8	114	100.0
George Washington			4	3.5	1	.9	3	2.6	106	93.0	114	100.0
John F. Kennedy			1	.7			1	.7	134	98.6	136**	100.0
Manual			30	28.7	3	2.9	5.5	5.3	66	63.1	104.5	100.0
North			1	.9			5	4.4	108	94.7	114	100.0
South			1	1.0	1	1.0			96.5	98.0	98.5	100.0
Thomas Jefferson			1	1.2					83.5	98.8	84.5	100.0
West	1	1.1	2	2.1			11	11.6	81	85.2	95	100.0
TOTALS	2	0.2%	54	5.6%	6	0.6%	30	3.1%	878	90.5	971**	100.0

*The decimal .5 denotes a teacher assigned half a day to classroom teaching in that particular school.

**This total includes junior high schcol teachers at John F. Kennedy.

DENVER PUBLIC SCHOOLS
Department of Planning, Research, and Budgeting
September 29, 1972

ESTIMATED ETHNIC DISTRIBUTION OF OTHER CERTIFICATED AND CLASSIFIED PERSONNEL

Certificated	American Indian No.	American Indian Percent	Negro No.	Negro Percent	Oriental No.	Oriental Percent	Spanish Surnamed No.	Spanish Surnamed Percent	All Others No.	All Others Percent	Total Personnel No.	Total Personnel Percent
Supervising Teachers					1	5.3%			18	94.7%	19	100.0%
Coordinators			7	7.4%			2	2.1%	86	90.5	95	100.0
Deans			5	17.8	1	3.6			22	78.6	28	100.0
Assistant Principals			4	8.7	1	2.2	2	4.3	39	84.8	46	100.0
Elementary Principals			7	8.1	1	1.2	4	4.7	74	86.0	86	100.0
Junior High and Metro Youth Principals			3	16.7			1	5.5	14	77.8	18	100.0
Senior High and Opportunity School Principals			1	10.0			1	10.0	8	80.0	10	100.0
Supervisors			2	4.2			1	2.1	45	93.7	48	100.0
Directors									14	100.0	14	100.0
Superintendent, Assistants, and Executive Directors			3	12.0			1	4.0	21	84.0	25	100.0
Teacher Assistants			6	20.0			2	6.7	22	73.3	30	100.0
Teachers on Special Assignment			3	8.6	1	2.8	3	8.6	28	80.0	35	100.0
Teachers (including Balarat, Cultural Arts and Understandings, Denver Boys, Inc., Juvenile Hall, etc.			1	4.0	1	4.0	2	8.0	21	84.0	25	100.0
Counselors			14	10.9	2	1.6	9	7.0	103	80.5	128	100.0
Psychological Services - Full-time			1	5.6					17	94.4	18	100.0
Part-time			1	25.0					3	75.0	4	100.0
Social Work Services - Full-time			7	10.9			2	3.2	55	85.9	64	100.0
Part-time			2	15.4					11	84.6	13	100.0
Health Services - Full-time			4	4.7			4	4.7	77	90.6	85	100.0
Part-time			5	16.1	4	12.9			22	71.0	31	100.0
Teachers - Child Development Centers	2	5.6%	5	13.9			9	25.0	20	55.5	36	100.0
Special State and Federal Programs			1	6.7			3	20.0	11	73.3	15	100.0
Teachers - Instrumental Music			1	3.3					29	96.7	30	100.0
Teachers - Speech Correction			3	9.1			2	6.1	28	84.8	33	100.0
Opportunity School Teachers (including Preschool teachers)			1	1.2			1	1.2	84	97.6	86	100.0
Metro Youth Education Center teachers (Full-time and Part-time)			5	8.6	1	1.7	4	6.9	48	82.8	58	100.0

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, et al., Plaintiffs, vs. SCHOOL DISTRICT NUMBER ONE, DENVER, COLORADO, et al., Defendants.	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AS PARTIES PLAINTIFFS

STATEMENT OF THE CASE

Plaintiffs brought this class action suit alleging violation of their rights under the Fourteenth Amendment and Section 1983 of Title 42 U.S.C. as a result of segregation in the Denver Public Schools. Plaintiffs alleged that the violations resulted from present segregation and from the School Board's rescission of three resolutions aimed at eliminating or lessening that segregation. Plaintiffs produced evidence indicating the School Board's efforts to segregate the races within the school system, specifically in the Park Hill area. There was further evidence indicating less educational opportunity at the non-Anglo schools due to inter alia, less experienced faculty, higher dropout rate and a disproportionately large number of mobile units located in the minority schools.

Plaintiffs sought an injunction to: 1) restrain the School Board from effecting rescission of the three resolutions aimed at lessening segregation and 2) cause the School Board to put those three resolutions into effect. The District Court granted the injunction, finding that plaintiffs had a ". . . right to be protected from official action by state officers which deprives them of equal protection of the laws by segregating them because of their race." (303 F. Supp. 279, at

288). The District Court further considered the case on remand from the Court of Appeals which ". . . questioned the specificity of (the) . . . injunctive order and . . . directed that (the District Court) . . . consider Title IV, Section 407a of 1964 Civil Rights Act, 42 U.S.C. Section 2000c-6(a), "(303 F. Supp. 289, 290). The District Court held that the section "does not apply to a private action asserting violation of the Constitution. . ." Id. at 295. In its summary of findings the District Court determined that "(b)etween 1960 and 1969 the Board's policies with respect to these northeast Denver Schools show an undeviating purpose to isolate Negro students . . ." (303 F. Supp. 289, 290). The northeast Denver area referred to is the predominately Negro Park Hill section. The injunction remained in effect.

There were unreported proceedings of the Court of Appeals and a reported opinion at the Supreme Court level denying a motion to stay the injunction and a motion to dismiss. 402 U.S. 182 (1971)

During the trial on the merits the District Court found that 1)". . . the effect of these various [school board] acts on the racial composition of the Park Hill schools was . . . to isolate and concentrate Negro students in those schools which had become segregated in the wake of Negro population influx into Park Hill while maintaining for as long as possible the Anglo status of those Park Hill schools which still remained predominantly white. . ." (313 F. Supp. 61, 65), and 2) the core city schools (outside Park Hill) were affected by de facto segregation and should be included in a plan of desegregation and integration. The Court here noted that in some of the core city schools ". . . there are concentrations of Hispanos as well as Negroes . . . (and that) the Hispanos have a wholly different origin and the problems applicable to them are often different" from those of the Negroes (313 F. Supp. 61, 69). This was the District Court's first ruling

affecting a significant number of Hispanos in the Denver Public Schools, and was reversed by the Court of Appeals while the Park Hill ruling was upheld.

The United States Supreme Court granted certiorari to plaintiffs concerning the Court of Appeals reversal of the District Court ruling on the core city schools, and denied certiorari to the respondents on the Court of Appeals affirmation of the District Court's Park Hill ruling. The Supreme Court, in an opinion by Justice Brennan, modified the judgment of the Court of Appeals to vacate instead of reverse the District Court ruling on the core city schools. The matter was remanded to the District Court to be considered in accordance with the Supreme Court opinion. As a result, the ruling that the school authorities intentionally segregated the Park Hill schools ". . . (shifted) to those authorities the burden of proving that other segregated schools within the system (were) not also the result of intentionally segregative actions . . ." (93 S. Ct. 2686, 2698). The School Board was to be given an opportunity to prove that Park Hill was ". . . a separate, identifiable and unrelated section of the school district that should be treated as isolated from the rest of the district. If the respondent School Board fail(ed) to prove that contention . . . (and) if the District Court determin(ed) that the Denver Public Schools system is a dual school system, respondent School Board has the affirmative duty to desegregate the entire system 'root and branch'" (93 S. Ct. 2686, 2700).

The District Court determined on remand that the school board had not met its burden of showing Park Hill to be a geographically isolated section of the city, thus the entire district was tainted by segregation and that the School Board must desegregate, "root and branch" (District Court Order, December 11, 1973). The result is that desegregation will now affect all Denver Public Schools, not only the predominantly Negro and Anglo Park Hill Schools. The December 11, 1973 order marks the first time that Chicanos have been totally,

equally, and integrally included in an order of this Court.

I. Intervention Generally.

While the distinction between intervention of right and permissive intervention is nebulous, theoretically, the distinction is that the intervenors of right have a substantial interest apart from that of the existing plaintiffs while the latter intervenor enjoys only a common interest. Thus, the two intervenors are treated somewhat differently. Essentially, the functional difference between the two approaches is the ability to satisfy independent prerequisites once a court has decided which type of intervention is proper.

Under the aegis of intervention of right, the intervenor need not show independent venue, 3B Moore, Federal Practice ¶24.19 (2d ed. 1969) [hereinafter cited as Moore] or procedural timeliness 3B Moore ¶24.13 (1). Although establishing independent venue poses no particular problem in the instant case, it must be independently established when permissive intervention is sought. Procedural timeliness is similarly regarded: a statute of limitations whose time has run will not bar an intervention of right, but would be fatal to a permissive intervention. Where, as here, there is a continuing violation, procedural timeliness is not an issue under either theory of intervention. However, substantive timeliness cannot be perfunctorily dismissed as a contested issue. See NAACP v. New York, 93 S. Ct. 2591, 2602 (1973) (". . . it is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be timely.") It is the "substantive" sense that will control references to timeliness throughout the remainder of this brief.

II. Petitioners Are Entitled To Intervention Of Right Because: They Have A Substantial Interest In The Outcome Of The Litigation; This Interest May Be Impaired Or Impeded By The Instant Action; This Interest May Not Be Adequately Represented By The Existing Parties, And Their Application Is Timely Made.

In Rule 24(a), Federal Rules of Civil Procedure, the Supreme Court fashioned a laconic statement of the prerequisites for an intervention of right. In relevant part it provides:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Thus, Rule 24(a)(2) and subsequent judicial interpretation of that rule clearly set forth four requirements for intervention of right: substantial interest, possible impairment of that interest, inadequate representation, and substantive timeliness - none of which are major obstacles to the instant applicant intervenors.

A. Substantial Interest

It is axiomatic that the applicants merely state that they have a substantial interest in the outcome of the litigation. The Supreme Court explicitly noted that "though of different origins Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students." 93 S.Ct. 2692 (1973). See also Colorado Department of Education, Ethnic Distribution in Colorado Public Schools, (1973) United States Commission on Civil Rights, Mexican American Education Study, Ethnic Isolation of Mexican Americans in the Public Schools in the Southwest (April, 1971); United States Commission on Civil Rights, Mexican American Education Series, The Unfinished Education (October, 1970).

The interest of Chicano students to be free of discrimination in public schools is a legally protected interest recognized under the Fourteenth Amendment. See, e.g., United States v. Texas Education Agency, 467 F.2d 848 (5th Cir. 1972) (en banc); Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir. 1972) (en banc); United

States v. Texas, 466 F. 2d 518 (5th Cir. 1972); Alvarado v. El Paso Independent School District, 445 F. 2d 1011 (5th Cir. 1971); Delgado v. Bastrop Independent School District, Civil Action No. 388 (W.D. Tex. June 15, 1948). More specifically, the Supreme Court recognized the interest of Chicanos to be free of discrimination in Denver Public Schools. 93 S. Ct. at 2691-92.

Though education has not yet been elevated to the level of a fundamental right, San Antonio Independent School District v. Rodriguez, 93 S. Ct. 1279 (1973), its importance as a substantial interest affecting the entire life of a child has been afforded judicial notice in a legion of cases. See, e.g., Brown v. Board of Education, 347 U.S. 483 (1954) (Brown I).

Chicanos in Denver must live with whatever plan this Court orders. Therefore, it is only right and just that they have an interest in fashioning that plan. If this Court is to order a desegregation plan, then it must provide sufficient protective integrative devices to allay the fears of the Chicano community that Chicano children will be bused into middle-class neighborhoods where they will be made to feel inferior and will be discriminated against by students, teachers, administrators, and staff because of their poverty and inalienable racial characteristics. It has been well documented that in Denver the Chicano community is the most alienated ethnic group from the trappings of law. D. Bayley and H. Mendelsohn, Minorities and the Police: Confrontation in America at 109-142 (1969). The educational needs peculiar to Chicanos must be recognized in whatever plan is developed. Although the applicants have incorporated all of the interests of the present plaintiffs in the Intervenor's Complaint in Intervention, there are other interests listed in Intervenor's Prayer for Relief which exemplify some particular types of discrimination which Chicanos particularly endure. These must be remedied by protective integrative devices to avoid the alienation of Chicano children and the eventual conflict

in a desegregated but not integrated setting. For example, a school book that presently reflects only Anglo culture would be a pregnant source of eventual alienation and conflict. This situation is not remedied by ordering that future books reflect Black culture. While both Black and Anglo cultures should be included, Chicano culture must also be included in order to avoid the chronic problems of alienation and conflict. Some problems affect only Chicanos: a continued de-emphasis on the use of Spanish while not a fertile source of conflict for either the Black or the Anglo communities, is a source of great consternation for Chicanos. Other problems have a disproportionate impact on Chicanos: while Black students constituting 17% of all Denver students suffer from the absence of Black teachers who constitute only 11% of all Denver teachers, Chicano students constituting 23% of all Denver students suffer from an even greater absence of Chicano teachers who constitute only 3% of all Denver's teachers. Troubled by a similar disproportionate ratio of Chicano teachers to Chicano students in a tri-ethnic setting, Judge Wisdom in United States v. Texas Education Agency (Austin Independent School District), 465 F. 2d 848 at 873 (1972) stated:

> In United States v. Montgomery County Board of Education, 1969, [citation omitted], the Supreme Court held that, as a goal, in each school the ratio of white to black teachers should be substantially the same as the ratio of white to negro teachers throughout the system. The black-white faculty ratio in that case substantially reflected the black-white student ratio. Swann reaffirmed this principle. Rigid adherance to this principle would be inequitable in this case, however, since there are so few Mexican-American teachers, 3 percent of the total faculty as against a Mexican-American school population of 20 percent.
>
> When the figures speak so eloquently, a prima facie case of discrimination is established. See Swann v. Charlotte - Mecklenburg Board of Education, supra; Brooks v. Beto, 5 Cir. 1966, 366 F. 2d 1. The school board therefore should 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.

The Austin case is, in every respect, strikingly similar to Keyes. Finally, there is the busing itself. The present plaintiffs will surely ask for and the Court in light of Swann will almost surely grant, extensive student reassignment. Intervenors have a substantial interest on behalf of themselves and other Chicanos in seeing that Chicanos are treated equitably in any reassignment plan. A sense of inequitous treatment by the Chicano community may doom any plan to massive resistance by a community that is already justifiably distrustful of the school system. Intervenors have an interest in fair and just treatment. If busing is to be ordered it must be equitable. If Chicanos are to be bused out of West Denver, then Anglos must be equally bused out of South Denver. If schools are to be paired and clustered, then all care must be taken to avoid any unfairness to the Chicano community.

Chicanos have attempted intervention of right to assert their substantial interest in a tri-ethnic school desegregation in other cases. In a position later rejected by the Supreme Court in Keyes, a district court adjudicated away over a century of second-class citizenship and found Chicanos to be "whites." Both Chicano parents and Anglo parents were rejected intervention of right or permissively. The Fifth Circuit, in a per curiam opinion, emphatically rejected the lower court decision insofar as it rejected intervention to Chicanos on the basis of being "white." See Ross v. Eckels, 468 F. 2d 649 (5th Cir. 1972).

By comparison with other cases in which courts have granted intervention under Rule 24(a)(2), the interest of the Chicano parents is compelling. The Chicano community's interest in ending present and preventing future educational discrimination against their children is certainly equal to or greater than that of the successful Rule 24(a)(2) intervenors in each of the following cases: a gas distributor guarding against a competitive disadvantage by its supplier

as the result of an antitrust suit, Cascade Natural Gas Co. v. El Paso Natural Gas Co., 386 U.S. 129 (1967); a development corporation seeking to assert its ownership over coral reefs as against the United States and two other companies, Atlantic Development Corp. v. United States, 379 F. 2d 818 (5th Cir. 1967); a lien holder state public assistance agency aiding a disabled employee in the employee's FELA action, Lalic v. Chicago, Burlington and Quincy R.R. Co., 263 F. Supp. 987 (N.D. Ill. 1967); individual stockholders intervening to protect their assets from a merging oil corporation making "insider's" profits, Abrams v. Occidental Petroleum Corp., 44 F.R.D. 543 (S.D. N.Y. 1968); a taxpayer seeking production of papers relating to his tax liability, United States v. Bedford, 406 F. 2d 1192 (7th Cir. 1968); dairy farmer's seeking to appeal a district court decision that would have curtailed differential payments from the Secretary of Agriculture, Zuber v. Allen, 387 F. 2d 862 (1967); a general contractor that would ultimately indemnify if a subcontractor lost an action, Coleman Capital Corp. v. Fidelity and Deposit Co., 43 F.R.D. 407 (S.D. N.Y. 1967); a state banking commissioner in an action brought by a state bank against the United States Controller of Currency seeking to enjoin the authorization of a particular national bank, Nuesse v. Camp, 385 F. 2d 694 (D.C. Cir. 1967); a striking labor union seeking to enter a collusive suit brought to circumvent a picket line through a spurious action in replevin, General Electric Co. v. Bootz Mfg., 289 F. Supp. 504 (S.D. Ind. 1968). If the American judicial system can grant an intervention of right to businessmen concerned with a loss of their profits, surely that same system can find it in its power to recognize the ever more compelling interest that the Chicano community has in the future of its children.

Finally, this Court should recognize the substantial interest which the Denver Chicano community has in the education of its children because it is the law in this

circuit. In Dowell v. Board of Education of Oklahoma City Public Schools, 430 F. 2d 865, at 868 (10th Cir. 1969), the United States Court of Appeals for the Tenth Circuit made it clear that intervention is to be freely allowed in long, drawn-out desegregation cases; a fortiori, the Tenth Circuit rule is that courts in this circuit are to recognize parents substantial interest in the education of their children.

In summary, Denver Chicano parents ask this Court to recognize their interest in ending educational discrimination directed at their children. That discrimination has been noted by the Supreme Court, the State Department of Education, and the United States Commission on Civil Rights. The interest has been found to be legally cognizable in a legion of cases. This most alienated ethnic group in Denver should have the exigencies of its special interests recognized by the Court. The Chicano community's interest is as compelling or more compelling than that of a long list of successful Rule 24(a)(2) intervenors. Finally, applicants are clearly within the ambit of the Tenth Circuit Rule to freely allow intervention.

B. Possible Impairment of Intervenor's Interest

Prior to the 1966 Amendments to Rule 24(a), the degree to which an applicant's interest had to be affected to trigger Rule 24(a) was a subject of great controversy. The majority rule seems to have required a res judicata effect. However, the Advisory Committee notes clearly demonstrate that whereas the pre-1966 Rules had required a party to be "bound by a judgement in this action," the new rules omitted "bound" to eliminate the res judicata requirement. See Alperin, Construction of Federal Civil Procedure Rule 24(a)(2), as amended in 1966, insofar as Dealing with Prerequisites of Intervention as a Matter of Right, 5 ALR Fed. 518, at 527 (1970). Thus, the effect of the amendment was to liberalize the requirements for intervention. See Neusse v. Camp, 385 F. 2d 694 (D.C. Cir. 1967) (res judicata effect rejected as

applicable standard in admitting Rule 24(a)(2) intervenors). The Chicano applicants for intervention are obviously within the scope of the stricter, pre-1966 Rule 24(a)(2) in that the Chicano community is more than tenably bound by res judicata and collateral estoppel arising from the current action. Cf. Sam Fox Publishing Co. v. United States, 366 U.S. 683 (1961). Therefore, it is safe to conclude that the same intervenor's must be within the scope of the liberalized Rule 24(a)(2) intended to relax, not stiffen the requirements for intervention of right. The Chicano community in Keyes if denied intervention would nonetheless by arguably bound by a decision affecting its class within the borders of School District No. 1, Denver, Colorado. Whether or not an entire racial class in a civil rights suit can be so bound is far from a settled matter, but where the present plaintiffs purport to represent intervenor's class the problem is acute enough to warrant judicial scrutiny that the intervenor's ability to protect their interest may be impaired or impeded by the present action. This is especially warranted in light of the fact that mere stare decisis has been held to be sufficient to compel intervention of right. See Nuesse v. Camp, 385 F. 2d 694 (D.C. Cir. 1967). The effect on the Denver Chicano community of a court order would be much greater than mere stare decisis.

Secondly, a more pragmatic argument is that courts are disinclined to favor two actions where, as here, one is possible. Wisdom, J.'s dissent in Bennett v. Madison County Board of Education is on point:

> [A] second separate suit . . . would be unsound for the court and the parties. The court should handle school cases as units . . . The types of discrimination which a school must abjure and undo are inherently interrelated . . . The fundamental policy of Rule 24 to encourage simultaneous adjudication of related claims, is the same policy that underlies the practice of considering together all school desegregation issues." 437 F. 2d at 556.

The interest in judicial economy has played an integral part in determining the sufficiency of the effect of current

litigation on future lawsuits. The courts have long recognized that where a party's future litigation against a party in an ongoing lawsuit may be affected by the current suit, the absent party - the Chicano community here - is entitled to intervention of right. See e.g., Coleman Capital Corp. v. Fidelity and Deposit Co., 43 F.R.D. 407 (S.D. N.Y. 1967) (an intervening general contractor, obligated to indemnify, would be left in a precarious position if a subcontractor lost the suit); Neusse v. Camp, supra, (stare decisis effect on a banking commissioner a sufficient effect on absent party to warrant intervention of right).

Thirdly, by comparison with other cases in which courts have granted intervention under Rule 24(a)(2), preserving the ability of the Chicano applicants for intervention to protect their interest is compelling. The Chicano community's interest in ending present and future educational discrimination against their children is certainly equal to or greater than that of the successful Rule 24(a)(2) intervenors listed in paragraph II. A. above. See e.g., Atlantic Development Corp. v. United States, 379 F. 2d 818 (5th Cir. 1967) (mere stare decisis effect); Abrams v. Occidental Petroleum Corp., 44 F.R.D. 543 (S.D. N.Y. 1968) (economic effect); General Electric Co. v. Bootz Mfg. Co., 289 F. Supp. 504 (S.D. Ind. 1968) (economic effect).

Finally, in other school desegregation cases where parents have sought to intervene under Rule 24(a)(2), the courts have readily "conceded that [parent's] asserted interest might, as a practical matter, be impaired by the disposition of [the desegregation] litigation." United States v. Board of School Commissioners, Indianapolis, Indiana, 466 F. 2d 573, at 575 (1972). These same courts have also readily conceded that parents have a substantial interest in the outcome of desegregation litigation. See e.g., Moore v. Tangipahoa Parish School Board, 298 F. Supp. 288, at 293 (E.D. La. 1969). Where intervention of right has been denied in school desegregation cases, it has been because the courts have found white parent applicants for intervention adequately represented by the school board. See, e.g., id.

C. Adequate Representation

Though it is true that intervention in school desegregation cases has generally been denied on the ground of adequate representation, see, e.g., Hatton v. County School Board, 422 F.2d 457 (6th 1970); Hobson v. Hansen, 44 F.R.D. 18 (D.D.C. 1968), this line of cases is readily distinguishable. In virtually all of these cases, white parents or other parents attempted intervention to oppose integration, while the Chicano parents here seek not to oppose integration, but to ensure that the court's remedy: (1) treats all children equitably, and (2) considers the exigencies of Chicano education. Where a district court failed to distinguish between Chicano and Anglo parents, but instead found them to be whites and then relied upon the white-parent line of cases to deny intervention of right, that district court was reversed in so far as it applied an incorrect legal standard (Chicano parents cannot be denied protection on the pretext that they are "white") to deny intervention to Chicano parents. Ross v. Eckels, 468 F.2d 649 (5th Cir. 1972). A fortiori, the district court erred in its application of the white parent line of cases to Chicanos. The Fifth Circuit's position in Ross v. Eckels was inferentially bolstered by the Supreme Court in Keyes when it found Chicanos to be an "identifiable class" and ruled that "schools with a combined predominance of Negroes and Hispanos [are to be] included in the category of 'segregated' schools." 93 S.Ct. at 2691-92. Thus, Chicanos cannot be counted as whites for any purpose in the Keyes desegregation suit, but must be treated as an identifiable minority group.

Although the white-parent line of cases is inapplicable, this does not guarantee intervention unless the appellant's interest is not adequately represented by the present plaintiffs. This court should be guided by the Supreme Court's admonition in Trobovich v. United Mine Workers of America, 404 U.S. 528, at 538 n. 10 (1972):

> The requirement of the Rule [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal. See 3B J. Moore, Federal Practice ¶24.09-1 [4] (1969). (Emphasis added).

This seemingly innocuous statement should not be lightly regarded. Prior to Trobovich, a controversy regarding the burden of proof in showing inadequacy of representation for purposes of Rule 24(a) had caused a flurry of contradictory decisions. 5 ALR Fed. at 525-27. In the leading case allowing intervention of right decided immediately after the 1966 Amendments, the Supreme Court encouraged the dispute by failing to reject Justice Stewart's reasoning in dissent that the new Rule 24 was a mere adaptation of the old Rule 24(a)(2). See Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, at 155 (1967). Thus leading commentators were encouraged to conclude:

> Consequently, it must be inferred that prior precedent defining what constituted 'inadequacy of representation' under the old rule, should generally be applicable under the new rule. (footnotes omitted)

3B J. Moore, Federal Practice ¶24.09-1 [4] (1969). Courts no less than commentators were befuddled. Some courts held that the applicant had the burden of showing inadequate representation. See, e.g., Edmondson v. State of Nebraska, 383 F.2d. 123 at 127 (8th Cir. 1967) ("Inadequacy of representation is a necessary element to be proved by a party seeking to intervene under Rule 24(a)."). Other courts have followed the better reasoned approach of Judge Leventhal in his Nuesse v. Camp analysis of the modifications to Rule 24(a)(2):

> While the change in wording does not relate to any change in standard as such, it underscores both the burden of those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention. (Emphasis added).

385 F.2d 694, at 702 (D.C. Cir. 1967).

The Supreme Court seems to have taken a middle position in Trobovich. The burden of showing inadequate representation is still on the applicants, but with important restrictions: (1) the applicant need no longer show representation is inadequate only that it may be -- thus Judge Leventhal's rejection of

strict constructionist pre-1966 cases, 385 F. 2d at 702-03, is correct insofar as these are no longer exclusive standards; (2) the burden imposed on the applicant if not totally non-existant as Judge Leventhal envisioned, is at most minimal. In Trobovich the Supreme Court continued a trend toward further recognizing the liberalization of Rule 24(a)(2).

But even before Trobovich, the United States Court of Appeals for the Tenth Circuit in Dowell had decided the rule in this circuit that intervention in school desegregation cases is to be freely allowed. Therefore, Trobovich, did not really change the liberal rule already entrenched in the Tenth Circuit, it merely fortified it. The white-parent cases earlier alluded to did not themselves try to settle or even take sides in the construction to be given "adequacy of representation", they skirted the issue by finding that regardless of how the burden controversy came out, white parents were well represented by the various school boards. See, e.g., Moore v. Tangipahoa Parish School Board, 298 F. Supp. 288 (E.D. La. 1969).

But while it is clear that the "white-parent" line of cases is not applicable to the instant applicants and that Trobovich and Dowell compel the application of a liberalized standard by this Court, all this does not give sufficient guidance as to the "nuts and bolts" of adequate representation in this case. In Trobovich, Justice Marshall reasoned that representation may be inadequate when the plaintiffs must serve "two distinct interests, which are related but not identical." 404 U.S. at 538. There the Secretary of Labor had a duty to both union member's and the public interest as a whole. The Court rejected even a good faith effort by the Secretary in a balancing of interests as sufficient to meet union member's plea for independent counsel. The complaint itself -- in the context of dual duties -- was sufficient to warrant intervention of right. Similarly, in an well reasoned post-Trobovich opinion by Judge Robinson in Hodgson v. United Mine Workers of America, 473 F.2d 118 (D.C. Cir. 1972) the court employed three tests to determine adequacy of representation:

(1) length of time the existing plaintiffs have taken to adjudicate the suit; (2) whether or not the existing plaintiffs have asked for all the relief that applicants themselves would reasonably ask for; and (3) the dual function which the existing plaintiff was compelled to perform. This Court might benefit from an application of these tests to the instant case.

First, the Hodgson court offered a caveat against hastily identifying long delays with lax advocacy. The applicants will not pursue this point any further than to comment that the four and one-half year delay to reach the point we are at today is reasonably a function of crowded court dockets and the dejure-de facto quagmire; however, it is a factor to be considered by this Court.

Second, in the Complaint in Intervention, the Prayer for Relief is an attempt to secure for the intervenors relief not previously requested by the existing plaintiffs. Intervenors seek nothing new or novel. There is no request in the Intervenors' Prayer for Relief that has not been granted in a number of previous Chicano desegregation suits. See, e.g., United States v. Texas Education Agency, (Austin Independent School District), 467 F.2d 848 (5th Cir. 1972) (en banc); Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir. 1972) (en banc); United States v. Texas, (Del Rio - San Felipe), 342 F. Supp. 24 (E.D. Tex. 1971), aff'd, 466 F.2d 518 (5th Cir. 1972). The Montgomery - Austin dichotomy so eloquently presented by Judge Wisdom alluded to previously, is basic to Chicano desegregation. This basic was accepted as a genuine necessity by the existing parties only after a lengthy discussion with MALDEF attorneys. It initially appeared as point 3(c) of the Plaintiff's December 17, 1973 Suggested Conference Agenda. Protective integrative devices such as multicultural-bilingual education specifically designed for Chicanos in desegregation settings have also found widespread acceptance, but were not requested by the existing plaintiffs. It is a fact that the Department of Health, Education, and Welfare in accepting plans

from Anglo-Chicano school districts dismantling dual districts in order to secure compliance with Title VI of the Civil Rights Act of 1964 and the May 25, 1970, HEW - Office for Civil Rights, Memorandum promulgated pursuant thereto, will accept no less than what the Complaint in Intervention requested as additional relief. See, e.g., Dept. of HEW, Beeville Plan; Dept. of HEW, Weslaco Plan; Dept. of HEW, El Paso Plan. The May 25, 1970 HEW Memorandum to School Districts With More Than Five Percent National Origin-Minority Group Children, Hearings Before the Senate Committee on Equal Educational Opportunity, 91st Cong., 2d Sess, at 2579-80 (1970) is cogent testimony of the federal government's recognition of the particular discrimination directed at Chicanos by, inter alia, dual districts. Yet that May 25 Memorandum has never been presented as a standard for this Court in relief to be requested. Evidence of Chicano segregation as a basis for eventual relief is almost universally established by means of early twentieth century school board minutes. See generally, Comment, De Jure Segregation of Chicanos in Texas Schools, 7 HARV. CIV. RIGHTS - CIV. LIB. L. REV. 307, at 311-33 (1972). This avenue is one that the intervenors have requested and that the existing plaintiffs join them in exploring. The intervenor's requests are not spurious, unprecedented, or tangential. They are serious attempts at integrating the needs of the Chicano community into the present plaintiff's requests. Additionally, there are diverse facets of the same problem that the intervenors' eyes may view differently. For example, tracking may be a uniform concept for some, but for Chicanos, tracking to meet language differences constituting permanent tracks as proscribed by the May 25, 1970 Memorandum would merit particular attention.

Giving notice to parents of school activities might not play a large role in the present plaintiffs plan, but for Chicano intervenors whose class has all too often been confronted with foreign language gobbledygook, English language notice as proscribed by point four of the May 25 Memorandum cannot be given perfunctory treatment. The intervenors would be interested in

Spanish language notice as the May 25 Memorandum requires. Otherwise, the school district would continue to offer milk to the stork and the fox on a discriminatory basis that provides only a facade of equality.

Intervenors are asking for relief different from that requested by the present plaintiffs. As can be expected in tri-ethnic desegregation cases, there will be some overlap just as there may be some conflict. It is precisely this potential for conflict that mandates intervention of right under the third test as utilized by both the Supreme Court in Trobovich and District of Columbia Circuit in Hodgson.

Third, the present plaintiffs in Keyes may inadequately represent the intervenors because counsel must function in a dual capacity. A plan for equal educational opportunity in the District may involve competing interests between Chicanos and Blacks, both of which interests the existing plaintiffs cannot adequately and forcefully represent in such a competitive situation. The present plaintiffs are mostly Black and the issues presented to the Court have been clearly Black dominated. One look at the exhibits presented in the record to the Supreme Court will show that some of plaintiffs exhibits dealt exclusively with Blacks while none did so for Chicanos. See, e.g., Plaintiffs Exhibits 410 and 38, Keyes v. School District Number 1, Denver, Colorado, Vol. 5, Supreme Court Record at 2106a and 2116a. Thus, Exhibit 410 reflects the number of Blacks employed by Denver Public Schools at various times in history. No similar exhibit was included respective to Chicanos although a cursory survey of Denver Public School employment sheets could have produced a similar exhibit. While intervenors could make a comprehensive review of differential treatment, this would serve only to demonstrate a fact that this Court is already well aware of. Exhibits 302 and 303, for example, reflect the number and percentages respectively of senior high students from 1963-68. However there is one critical difference between Exhibits 302 and 303. While Exhibit 302 has tri-ethnic numerical data by high schools,

Exhibit 303 has only bi-racial percentages. The only percentages computed were Black and Anglo -- Chicanos are conspicuous by their absence. It only requires a syllogistic conclusion for the Court to find that the emphasis of Keyes has not been on Chicanos. Whatever the reasons for giving less attention to Chicanos in the presentation of evidence, relief is going to come district-wide and differential treatment at this juncture must not continue out of any established practice in Keyes. Intervenors must be allowed to fully participate in Keyes to provide equal representation to all groups. The "white parent" line of cases establish that Anglos are well represented by the School District, and no one would seriously contest the adequate representation that the Denver Black community has received from Plaintiffs Counsel, but Chicanos, likewise, must be granted adequate representation.

In the long list of present plaintiff families, there is only one Mexican family. Intervenors seek to interject participation from a large number of Chicano families from geographically diverse sections of the city and even the Chicano teacher's organization in the defendant school district.

For example, the school district and this Court are already well aware of the conflict which has arisen in this school district between Chicano and Black children. In drafting non-discriminatory discipline safeguards for integrated schools, the present plaintiffs would have the dual duty of safeguarding Black and Chicano interests when much of the conflict may occur between precisely these two groups. The courts in Trobovich and Hodgson both recognized the fundamental unfairness of dual representation to the absent group.

The present plaintiffs and their counsel are, for the most part, residents of the Park Hill area of Denver. While the city as a whole is approximately one quarter Chicano, the Park Hill area is less than ten percent Chicano. The Park Hill area is, for the most part, populated by Blacks and Anglos. Acting as co-counsel for the present plaintiffs is the NAACP legal arm, colloquially known as the "Inc. Fund." The intervenors in this

case are represented by MALDEF (Mexican American Legal Defense and Educational Fund) which is popularly regarded as the legal arm of the Chicano community. Although relations between the "Inc. Fund" and MALDEF are amicable, the Chicano community is entitled to its own representation.

Intervenors are in no way alleging that the present plaintiffs are acting in bad faith. It was precisely a "bad faith" test that the Supreme Court rejected in Trobovich. 404 U.S. at 538. The intervenors are alleging only what the Supreme Court has required: that representation may not be adequate because the present plaintiffs must fulfill a dual function.

The number of possibilities in which dual representation between competing interests would be required is virtually limitless. One need only cursorily survey student assignment, multicultural education, teacher assignment, new school construction, and inservice teacher retraining to find a wealth of situations where dual representation will be necessary.

Finally, the interest in right to counsel for the Chicano community due to dual representation is immensely greater than that of the individual union members of the United Mine Workers of America in either Trobovich or Hodgson. In both those cases the union members were represented by the Secretary of Labor - a member of the Executive Branch bound by law to neutrality in favor of justice. The Secretary was enforcing the law in both Trobovich and Hodgson and the courts in each refused to find "bad faith" on the Secretary's part but in both Trobovich and Hodgson the courts nonetheless found inadequate representation because of the dual role the Secretary was forced to play. Here there is no government enforcing the law with a mythical bind to neutrality. Here there is an adversary setting with private counsel for plaintiff's representing individuals not the United States. There is no pretense that a governmental body is represented by the plaintiffs - it is discriminatory state action in

Denver about which the plaintiffs complain. The interest in intervention because of a possibility of inadequate representation due to dual functions is much stronger in Keyes than it was in Trobovich or Hodgson. Representation is inadequate for the Chicano community in Denver because the present plaintiffs must serve "two distinct interests, which are related, but not identical." 404 U.S. at 538.

In summary, it is clear that the "white-parent" line of cases is inapplicable to Chicanos. It is also clear that Trobovich and Dowell mandate the application of a liberal intervention standard to petitioners. Finally, using the test employed in Trobovich and Hodgson, it is evident that Chicanos may not be adequately represented in Keyes primarily because the relief they would ask for is different from that the current plaintiffs have focused upon and because of the dual representation required of the current plaintiffs. The intervenors have met at least the minimal showing that they may not be adequately represented required in Trobovich and have thus demonstrated inadequate representation for purposes of Rule 24(a)(2). Therefore, petitioners should be granted intervention of right, especially since their petition is timely made.

D. Application Is Timely Made

At first blush it might appear that the petition for intervention comes four and one-half years after the petitioners learned of their interest in Keyes. However, the date from which timeliness should toll is not all that clear: a) June, 1969, the date of the original filing, or b) December 11, 1973, the date at which the court held that the entire district was dual. While June, 1969 would suffice for a wooden application of the timeliness doctrine, a closer look at Keyes would reveal the fact that until December 11, 1973, the law of de jure segregation as it was understood prior to Keyes and as the Tenth Circuit found, excluded the bulk of the Chicano population from any real effect from

Keyes. Until December 11, 1973, it could only be certain that Park Hill would be affected by Keyes and Park Hill is less than ten percent Chicano. The tolling of the timeliness doctrine should not commence at the time that a complaint that appeared to primarily effect Park Hill was filed but at the date that the petitioner's learned of their interest in Keyes - December 11, 1973, when the Court ruled that all of Denver was a dual district. It should be remembered that earlier rulings had excluded the bulk of the Chicano community from Keyes and that MALDEF did file an amicus brief to the Supreme Court in Keyes to protect Chicanos limited interest at that time. The Supreme Court ruling caused a metamorphosis in Keyes whose cycle was completed in the December, 1973 ruling by this Court. Petitioners' counsel were sitting with the plaintiffs' counsel in the Keyes hearings of December 3, 4, 5, 6, and 7 in anticipation of this Court's order of December 11, 1973. Since that time intervenor's counsel has worked diligently to provide rather extensive intervention papers in this complex case. Although the date of the tolling of the timeliness doctrine is an initial consideration, it is not controlling, because timeliness is a matter left to sound judicial discretion. See 3B J. Moore, Federal Practice ¶24.13 [1] at 24-524 (1969). The petition would be timely under either tolling date for the reasons that follow:

First, when an applicant seeks to intervene as of right, timeliness is to be more easily found than it is under mere permissive intervention. Id. at 24-522. Thus, the applicable standard for timeliness should be relaxed with regard to the instant petitioners. Cf. id.; Tennessee Coal, Iron and R. Co. v. Muscoda Local 123, 5 F.R.D. 174, 177 (N.D. Ala. 1946).

The number of years that have elapsed since the commencement of the suit should not of itself bar intervention. Id. It is of no consequence that the Keyes Court has proceeded to judgement and this petition in intervention comes for purposes of relief. See, e.g., Cascade Natural Gas Co. v.

El Paso Natural Gas Co., 386 U.S. 129 (1967) (post-judgement intervention of right allowed). The Court in Hodgson v. United Mine Workers of America, supra, reasoned that an application for intervention of right was timely even though made seven years after the suit was commenced and tried, because petitioners intervened for purposes of relief. Judge Spottswood in Hodgson cited Wolpe v. Poretsky, 144 F. 2d 505 (1944) which held that intervention ". . . may be allowed [even] after a final decree where it is necessary to preserve some right which cannot otherwise be protected." 144 F. 2d at 508.

Chicano petitioners are primarily concerned with relief in Keyes. The Chicano communities substantial interest in relief has been discussed, supra. The Keyes Court has not accepted even a preliminary desegregation plan at this time and relief has yet to be shaped. Thus, the petition is timely because it is within the ambit of the well settled rule that "[t]imeliness presents no automatic barrier to intervention in post-judgement proceedings where substantial problems in formulating relief remain to be resolved." 473 F. 2d at 129. The Court in Keyes has not yet received even preliminary plans from the parties, much less resolved the problems between the two plans, consequently, intervention should be found timely. See 3B J. Moore, Federal Practice ¶24.13 [1] at 24-527-28 (1969); Cascade Natural Gas Corp. v. El Paso Natural Gas Corp., supra; System Federation No. 91 v. Reed, 180 F. 2d 991, 998 (6th Cir. 1950).

Keeping in mind the admonition of the United States Court of Appeals in Dowell that intervention is to be "freely allowed," this Court might also find it useful to employ the additional tests set forth by the D.C. Circuit in Hodgson for judging timeliness: a) "the purpose for which intervention is sought" b) "the necessity for intervention as a means of protecting the applicant's rights" and, c) "the improbability of prejudice to those already parties in the case." 473 F. 2d

at 129.

As was discussed above, intervention for purposes of relief is timely. Intervenors have a substantial interest in the outcome of this litigation and intervention is necessary to protect the applicant's interest. The school district will be bound by this Court's order and the only avenue to challenge an unsatisfactory order would be collateral attack - a notoriously inefficient device in desegregation cases. Even a collateral attack would be questionable where, as here, there is a substantial risk of res judicata and collateral estoppel effect attaching to the Keyes judgement as to future suits by a Chicano class. Lastly, there is little chance of prejudice to the parties in the case. The defendants are already in court and have been requested to submit a plan for relief that will undoubtedly comply with the Supreme Court mandate to deal with both Chicanos and Blacks; the plaintiffs on the other hand can only be aided by Chicano intervenors in a good faith effort to fashion a plan of relief for both the Chicano and Black communities. Cf. 473 F. 2d at 129 n. 68.

For Chicanos, this suit has only recently reached the stage where Chicanos are significantly affected and the response has been swift and timely. Moreover, the special judicial solicitude for school desegregation cases extends protection from ordinary procedural technicalities whenever possible. See United States v. Georgia, 428 F. 2d 377, 378 n. 1 (5th Cir. 1970). The Tenth Circuit rule in Dowell favoring free intervention in desegregation suits is widely accepted. See, e.g., Atkins v. Board of Education, 418 F. 2d 874, 876 (4th Cir. 1969) ("Intervention in suits concerning public schools has been freely allowed."). This has especially been true where, as in Keyes, the suit is far from terminated and a plan has not even been formulated. There is a plethora of school intervention cases which makes this intervention seem early in comparison. See e.g., Pate v.

Dade County School Board, 303 F. Supp. 1068 (S.D. Fla. 1969) (intervention allowed to re-open school desegregation suit nine years after original court decree); United States v. Jefferson County Board of Education, 372 F. 2d 836, 896 (5th Cir. 1966) (intervention timely after school board submitted plan in compliance with court decree); cf. Robinson v. Shelby County Board of Education, 330 F. Supp. 837 (W.D. Tenn. 1971) (dicta) (intervention would have been timely after two district court, and one appellate court, decisions); Atkins v. Board of Education, 418 F. 2d 784 (4th Cir. 1969) (intervention timely where due to lack of funds); Ross v. Eckels, 468 F. 2d 649 (5th Cir. 1972) (lower court decision denying post-judgement intervention vacated where based on the incorrect premise that Chicanos are white).

The cases go overwhelmingly in favor of holding an intervention timely when not intended to impede desegregation. Additionally, the extreme times at which intervenors have been admitted into desegregation suits reinforces the validity of sound judicial discretion allowing intervention at any time.

Thus, timeliness is not to be perfunctorily rejected or accepted due to time elapsed, but is to be guided by the established rule: "Timeliness is to be determined from all the circumstances." NAACP v. New York, 935 S. Ct. 2591 at 2603 (1973) (post-decree intervention denied four months after initial suit initiated because rights of parties would be injured and applicants for intervention showed no injury, were adequately represented, other avenues for challenge were open, and finally a federal statute absolutely protected plaintiffs' class until 1975).

Beyond relying on sound judicial discretion and the test set forth in Hodgson, the Court may find it worthwhile to examine the two-tierred test for timeliness employed

by the Fifth Circuit in Diaz v. Southern Drilling Co., 427 F. 2d 1118, 1125-26 (5th Cir. 1970): length of time the intervenor has been cognizant of his interest and extent of delay to original parties. For purposes of the rationale underlying timeliness, the time for the tolling of the timeliness doctrine is more properly set at December 11, 1973, but even if the tolling date were June, 1969, the intervention would nonetheless comply with the first criteria set forth in Diaz. Cognizance cannot be evaluated in a vacuum and is necessarily coupled with a capability to exercise a right of intervention. Thus, intervention should be allowed in the instant case due to exceptional circumstances first, because the Chicano community has not had, until recently, the legal resources necessary to engage in litigation the scope of Keyes; second, because MALDEF is a relatively new civil rights organization and only recently elicited the technical legal skills to enter Keyes; third, the Denver MALDEF office is even newer than MALDEF as a whole and did not even exist until 1971 - two years after Keyes was instituted in June, 1969, and finally, the Denver office did not acquire staff knowledgeable about educational discrimination until late 1973. Compare Atkins v. Board of Education, 418 F. 2d 784 (4th Cir. 1969) (intervention timely where delay due to lack of funds). As to the extent of delay to the original parties, Chicano intervenors do not seek additional litigation, delay in existing relief, or implementing court orders, but only to ensure the efficacy of any proposed plan.

This argument for the timeliness of the Chicano petition for intervention of right is similarly applicable to the movants' additional petition for permissive intervention. Judicial solicitude for desegregation cases should protect Chicanos from a mechanical application of the timeliness requirements.

III. Alternatively, Petitioners Are Entitled To Permissive Intervention Because They Share A Common Interest Of Law And Fact With The Plaintiffs And Their Intervention Will Not Unduly Delay Or Prejudice The Adjudication Of The Rights Of The Original Parties.

In the unlikely contingency that this Court should deny intervention of right, it should alternatively grant permissive intervention. Similar to the requirements of Rule 24(a)(2), permissive intervenors must satisfy three tests for permissive intervention as set forth in Rule 24(b)(2): timeliness, common question of law or fact, and no undue delay to or prejudice to the original parties. Fed. R.Civ. P. 24(b)(2).

While all three criteria must be satisfied, it would seem that only timeliness warrants any lengthy discussion because the other two criteria are obviously present. Timeliness has already been discussed at some length, supra, and those same arguments are applicable to permissive intervention because of the special judicial solicitude for desegregation cases and because of the liberal rule in the Tenth Circuit. In discretionary matters such as timeliness, district courts in the Tenth Circuit are bound to a liberal construction in favor of intervention.

If the timeliness arguments, supra, are correct as the intervenors believe they are, and the remaining criteria -- common question and no undue delay -- are easily satisfied, then a denial of permissive intervention would be an abuse of discretion. See Bennett v. Madison County Board of Education, 437 F.2d 554 (Wisdom, J. dissenting) citing Nuesse v. Camp, 385 F.2d 694 (D.C. Cir. 1967).

(1) Common Question. The case at bar is among the easiest for permissive intervention: "The most obvious cases for permissive intervention, of course, is the situation where the intervenor has a claim against the defendants similar to or identical with that asserted by the plaintiff." (footnote omitted) 3B J. Moore, Federal Practice ¶ 24.01 [2] at 24-357 (1969). Where Chicano parents seek to intervene to guarantee equal educational opportunity, it is obvious that there are common questions of law

and fact between intervenors and the original plaintiffs. Whether the relief is different for Chicanos is not fatal; it is the right which the parties seek to establish that is controlling. 437 F.2d at 554 (Wisdom, J. dissenting). Here a common interest in a desegregated school system is integrally related. For example, how is a Chicano and Black school desegregated unless both groups are taken into account?

Rule 24(b)(2) does not require the showing of an interest. Rather the only showing mandated is a common question of law or fact between the petitioners in intervention and the plaintiffs. Plaintiffs and Chicano intervenors share a common goal in dismantling a dual district. See Cisneros v. Corpus Christi Independent School District, 467 F. 2d 142 (1972). Common question of law or fact has even been held to extend as far as an intervention to enforce a court's desegregation order. Williams v. Kimbrough, 295 F.Supp. 578 at 581 (W.D. La. 1969) (Madison Parish, La. School desegregation case).

Finally, both the plaintiffs' and the defendants' exhibits, this court's order, and the Supreme Court order are cogent evidence of the recognition at every stage of this litigation that Blacks and Chicanos share common questions of law and fact. Exhibits and court decisions alike often parallel Chicano and Black statistics; the Supreme Court explicitly found that Chicanos and Blacks in Denver "suffer identical discrimination in treatment." 93 S.Ct. at 2692 . The Supreme Court further found that as a matter of law "the District Court erred in separating Negroes and Hispanos for purposes of defining a segregated school. ... [W]e think petitioners are entitled to have schools with a combined predominance of Negroes and Hispanos included in the category of 'segregated' schools." Id. at 2692. For these reasons, intervenors believe that the original parties in Keyes would be collaterally estopped from challenging the existence of common questions of law and fact as between Chicanos and Blacks in the Keyes litigation.

It may be peremptorily concluded that intervenors and plaintiffs share common questions of law and fact.

(2) Undue Delay To a great extent, this test overlaps with timeliness especially in so far as that criteria was arrived at in the second test employed by the Fifth Circuit in Diaz v. Southern Drilling Co., 427 F.2d 1118 (5th Cir. 1970). An intervention at a late stage which causes undue delay or prejudice may be held to be untimely and thus barred, but even a procedurally timely action which causes undue delay or prejudice may be barred.

In the instant case there can be no undue delay where the intervenors main concern is with relief which has not yet been determined. And although attention to the intervenors' relief recommendations may cause some delay when supplementary to or in conflict with the relief sought by the plaintiffs; Judge Wisdom succinctly observed: "That additional parties always take some additional time is not a sufficient basis for denying [permissive] intervention. We must remember that it is constitutional rights that are involved here." 437 F.2d at 558 (Wisdom, J. dissenting).

Constitutional rights are of paramount importance to Chicano intervenors in Keyes. Thus, the extent of undue delay to the plaintiffs or prejudice to the defendants must be judged against this background. Where the rights involved are fundamental and protest a racial classification, the court should engage in a balancing process which would be akin to the strict scrutiny test in equal protection. Because of the great weight given to fundamental constitutional rights and the abhorance of racial classifications, all parties to the suit must sustain a great burden in opposing intervention. In an equal protection context, the burden against strict adherance to constitutional rights and the upholding of a racial classification has been affirmed by the Supreme Court only once. See Korematsu v. United States, 323 U.S. 214 (1944). A balancing test here, while not a compelling state interest test, would weigh very heavily in favor of the Chicano intervenors. Thus where constitutional rights are involved judicial deference

in modern jurisprudence has always been toward allowing a reasonable delay. Undue delay is an extremely difficult proscription to trespass in a constitutional rights setting. In any event, there should be no undue delay to the plaintiffs since the Chicano intervenors do not seek additional litigation, or a stay of existing relief, or a delay in implementing imminent court orders, but only to ensure the efficacy of any proposed plan. For the same reasons, there should be no undue delay to defendants, even though defendants would be in a weaker position for opposing intervention due to delay since they have twice sought stays of this Court's orders. But even if there were a chance of significant delay, it is reasonable and is protected by the special judicial solicitude for both cases involving constitutional rights and desegregation cases generally.

There is really no issue of undue prejudice to the rights of the original parties. The plaintiffs should be aided by the presence of intervenors who seek to inject the participation and views of the Chicano community -- Denver's largest minority group. Plaintiffs have more than once indicated a desire to involve the Chicano community in Keyes. Defendants, on the other hand, cannot be prejudiced by the intervention because they are already before the Court and will doubtless comply with both the order of this Court and the Supreme Court's opinion, and involve Chicanos in any plan designed to ensure equal educational opportunity. Whatever the chance of prejudice to the parties, this must be balanced against the gravity of the constitutional rights asserted by the intervenors, particularly the right to be free of unconstitutional racial classifications.

In summary, intervenor's are entitled to permissive intervention because there are common questions of law and fact between them and the original parties and because the intervention will not cause unreasonable delay or undue prejudice. Common questions of law and fact exist: 1) because intervenors' claim is similar to or identical with that of the plaintiffs'; 2) because

intervenors and the plaintiffs share a common goal in dismantling a dual district; and 3) because parties to Keyes are collaterally estopped from challenging the existence of common questions of law between Chicanos and Blacks in Keyes. There is no undue delay or undue prejudice to the parties because: 1) intervenors are mainly concerned with relief which has not yet been formulated; 2) the constitutional rights asserted by the intervenors far outweigh what little, if any, delay or prejudice may occur; 3) intervenors seek no additional litigation or delay of relief; 4) plaintiffs can only benefit from additional input from the Chicano community; and 5) defendants are already before the court and obligated to produce a plan guaranteeing equal educational opportunity to Chicanos.

IV. Conclusion

Intervention of right is undoubtedly the best vehicle for involving the Chicano community in Keyes. It is nearly a postulate that desegregation orders are effective when, at a minimum, the minority community members are informed, involved, and knowledgeable about lawsuits affecting them. It would be ironic indeed if Keyes, a suit brought in part to aid Chicanos were litigated to a final conclusion without the involvement of Denver's largest minority group. Intervention of right would welcome Chicano community members into Keyes on a footing which recognizes their primordial rights to equal educational opportunities. This Court and the parties can only benefit by assuming a prodigal position toward Chicano intervenors. Chicanos do not approach this Court as an untractable segment of the community resisting this Court's order, but as community members genuinely interested in the welfare of their children. Their interest is immense by any standard. It is an interest in ending a documented unequal educational opportunity. That interest will doubtless be significantly affected by this suit and may be inadequately

represented especially where plaintiffs must represent a dual interest.

Intervenors do not seek quixotic intervention which allows them the form but not the substance of intervention. It would render intervenor's rights meaningless if this Court allowed intervention to protect their rights without allowing them the means to protect those same rights. Cf. Moore at ¶24.16[4]. In its genesis, intervention was bound by the shackles of the old equity Rule 37 which provided for subordination; subordination died, but wide judicial latitude remained in its place. Cf. Moore at ¶24.16[1]. Judicial latitude severely limiting or handicapping intervenors' participation would work a grievous injury to Chicano community members. It is not the facade of participation that Chicanos seek but equal participation itself in a suit designed to bring equality. The rationale for limiting intervention has traditionally been couched in concerns for disruption of the court's proceedings - thus evolved the "white parent" line of cases, supra. That rationale is undermined when the intervenors are as interested as the plaintiffs in expeditious relief. Intervenors would be the first to oppose dilatory tactics. This case is for us, and about us - but without us. Court's have traditionally feared that a totally unencumbered intervention would result in a relitigation of prior decrees, cf. Moore at ¶24.16[5], but it is future decrees, specifically relief, that primarily concerns intervenors. If intervention is granted, intervenors will be bound by this Court's future decrees. See Moore at ¶24.16[6]. MALDEF does not wish to wrest control of this suit from anyone, least of all our friends among the plaintiffs, but intervenors do wish to effectively share in the formulation of relief. The bulk of the litigation when this Court's time might have been wasted by petty hagglings has passed - there can be nothing petty about the final order. Intervenors have already begun to work closely with the

plaintiffs and MALDEF has hired the foremost expert in the field of Chicano education, Dr. Jose Cardenas, to design an educational plan for all groups: Chicanos, Blacks and Anglos. Plaintiffs have been amicable. Cooperation between plaintiffs and intervenors might well be regarded as an auspicious sign of further cooperation.

In the interest of justice, Plaintiff-Intervenors respectfully request that this Court grant intervention as of right.

Alternatively, premises considered, Plaintiff-Intervenors respectfully request that this Court grant permissive intervention.

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDCUATIONAL FUND

VILMA S. MARTINEZ
SANFORD J. ROSEN

National Office
145 Ninth Street
San Francisco, California 94103

Paul A. Baca
PAUL A. BACA

Carlos M. Alcalá
CARLOS M. ALCALÁ

Regional Office
209 16th St., Suite 200
Denver, Colorado 80202
(303) 893-1893

ATTORNEYS FOR THE INTERVENORS