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United States District Court, N.D. California.

SAN FRANCISCO NAACP, et al., Plaintiffs,
v.
SAN FRANCISCO UNIFIED SCHOOL DISTRICT, et al., Defendants.

No. C–78–1445 WHO. | July 22, 1993.

Opinion

MEMORANDUM DECISION AND ORDER

ORRICK, District Judge.

***1** This action to desegregate the San Francisco United School District ("SFUSD") was filed in 1978 by the National Association for the Advancement of Colored People ("NAACP") against the SFUSD, its board members, and its Superintendent (hereinafter collectively referred to as the SFUSD), and the California State Board of Education, its members, the State Superintendent of Public Instruction, and the State Department of Education (hereinafter collectively referred to as "State"). At the time of the lawsuit, African American students were 24 percent of the student population in the SFUSD, the largest nonwhite group. After numerous pretrial hearings, but before the case reached trial, the parties entered into a Consent Decree, which was filed on May 20, 1983. The Consent Decree recognized nine racial/ethnic groups within the school district, and mandated that regular schools must enroll no fewer than four groups, with no more than 45 percent of the enrollment from any one group, and that alternative schools must enroll no more than 40 percent of their students from one group.

The Consent Decree relied on a close link between desegregation and educational improvement. It recognized that successful desegregation would require both educational change and improved education as parts of a remedy for a history of discrimination. The Consent Decree charted new territory in devising both desegregation standards for a city with an extremely complex multiracial population and far-reaching education changes, including the reconstitution of entire schools in the target area.

In July 1992, the Committee of Experts, appointed by the Court to conduct an investigation into the functioning of the Consent Decree, filed its Findings and Recommendations on Consent Decree Implementation ("Report"). The Report revealed that considerable progress had been made both in terms of complying with the desegregation standards, although those standards had not always been administered in ways that produced beneficial transfers of students, and in implementing educational reform in some of the schools, particularly those covered by the special plan for Bayview–Hunter's Point. The Report, however, called for an effort to produce more integration of an educationally beneficial sort and for an expansion of the successful reforms to other Consent Decree schools where there had been few gains for minority students. It called for more faculty integration and directed attention to work on racial equity issues within schools. The Committee of Experts also found that African American students now constitute 18.8 percent of the student population, with Chinese American students constituting 24 percent and Latino students constituting 19 percent. Based on this Report, the parties proposed amendments to the Consent Decree, which were the subject of a fairness hearing held April 8, 1993. The Court accepted the proposed amendments in an Order issued on April 29, 1993.

***2** The Committee of Experts also found that implementation of the Consent Decree had been hindered by difficulties in implementing the suggestions of the State's monitor, assigned to ensure that State funds to the SFUSD were effectively spent, and by a lack of a means of evaluating the success of Consent Decree programs. The Court adopted the Committee's findings, and, to correct the problems, appointed a Monitoring Committee. *See* Orders of Feb. 26, 1993, and Apr. 29, 1993. The Monitoring Committee is charged with ensuring that the desegregation achieved by Consent Decree implementation is maintained, providing a neutral forum for discussion of suggestions of the State's monitor, and advising the Court from an educational policy perspective on the progress toward achieving the Consent Decree goals. As the Court noted in its Order of April 29, 1993, appointing the Monitoring Committee:

> The Committee will not administer the District or assume powers belonging to the school board. It is a mechanism for assuring accountability. It will attempt to solve problems before they become severe and before there is need for the Court to consider orders assuring compliance. Its role is advisory and its aim will be to resolve as many issues as possible before they become the subject of a judicial battle.

Order at 3:22–28. The Committee has concluded its first meeting, and in light of the experience with the actual function of the Committee, the Court finds that it is more accurately termed the Consent Decree Advisory Committee ("Advisory Committee"), and, therefore, changes its name.

At the April 8, 1993, hearing, two motions to intervene in this class action also came before the Court. Multicultural Education, Training and Advocacy, Inc. ("META") has filed a motion as counsel for three organizations that include parents of Latino students,[1] the Latin American Teachers' Association ("LATA"), ten individually named Latino students and parents,[2] Chinese for Affirmative Action ("CAA"),[3] and three individually named Chinese American students and parents.[4] The California Teachers Association brought a motion as counsel for the United Educators of San Francisco ("UESF"), the bargaining representative of all certified employees and all paraprofessional employees of the SFUSD.

The NAACP and the State filed a joint brief in opposition to both motions. The SFUSD filed a brief in opposition to both motions but, after oral argument, changed its position and filed a notice of nonopposition to the motion to intervene filed by META.

II.

These motions are governed by Rule 24 of the Federal Rules of Civil Procedure:

> (a) 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 the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
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> ***3** (b) Upon timely application anyone may be permitted to intervene in an action: ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Both parties seek to intervene as of right under Rule 24(a)(2) and permissively under Rule 24(b)(2).

A.

In the Ninth Circuit, a motion to intervene as of right under Rule 24(a)(2) is evaluated using a four-part test:

> *First,* the applicant's motion must be timely; *second,* the applicant must assert an interest relating to the property or transaction which is the subject of the action; *third,* the applicant must be so situated that without intervention the disposition of the action may, as a practical matter, impair or impede its ability to protect that interest; and *fourth,* the applicant's interest must be inadequately represented by the parties to the action.

Scotts Valley Band of Pomo Indians v. United States, 921 F.2d 924, 926 (9th Cir.1990) (emphasis added).

1. *Timeliness.*

Courts consider three factors when determining whether an intervention is timely: (1) the stage of the proceedings, (2) the reason for and length of the delay, and (3) whether the parties would suffer prejudice. *United States v. State of Oregon,* 745 F.2d 550, 552 (9th Cir.1984); *Shelter Framing Corp. v. Pension Benefit Guaranty Corp.,* 705 F.2d 1502, 1508 (9th Cir.1983).

These motions coincide with the entry of these proceedings into a new phase. After numerous years of work by the parties to achieve the Consent Decree goals, the Court has received a comprehensive evaluation of the effectiveness of the efforts, and now seeks to adjust Consent Decree implementation based on the evaluation and recommendations of the Committee of Experts. This new stage in the proceedings is reflected in the amendments to the Consent Decree, which changed some portions slightly and, most important, in the creation of the Advisory Committee to address the nonlegal issue involved at the heart of this lawsuit, the education of the children of San Francisco.

Therefore, this is an appropriate stage to bring motions to intervene. These motions to intervene are similar to the motion by the State of Idaho in *State of Oregon,* 745 F.2d at 552, when it sought to intervene fifteen years after the start of litigation when the parties were considering revision. The goal of participation in future implementation is one that the District of Columbia Circuit has recognized as not likely to burden the original parties. *See Natural Resources Defense Council v. Costle,* 561 F.2d 904, 908 (D.C.Cir.1977). The nature of this new stage also means that the delay between the initiation of the lawsuit and these motions may be excusable. This new stage raises new issues of concern to the students and parents who seek to intervene. The Report highlights a definite shift in the contours of the case since its

initiation, *i.e.,* the changing demographics of San Francisco. Formal recognition of these changes makes this an appropriate time for parties seeking to represent non-African American minority students to seek intervention.

***4** The UESF seeks to intervene "for the limited purpose of proposing modifications to the Consent Decree and the proposals included in the Second Joint Report to insure the integrity of collective bargaining contracts with the District and the collective bargaining process." UESF's Mem. P. & A. at 4:7–11. It argues that its motion is timely because it sought to intervene after learning of the proposed modifications that would violate current collective bargaining contracts. The UESF argues that it was only when it considered the proposed modifications that it became aware that its interests would no longer be adequately protected by the parties, and decided that it would be an appropriate time to intervene. *Legal Aid Soc'y of Alameda County v. Dunlop,* 618 F.2d 48, 50 (9th Cir.1980). It distinguishes the issues raised by the Report from the initial Consent Decree based on the nature and quantity of proposed reconstitutions.[5] The Consent Decree called for reconstitution of six schools over ten years as a means of desegregation and improving academic performance of minority students. The proposed amendments suggest reconstitution of three schools per year with no limit on the number. Most important to the UESF, the proposed amendments call for selecting schools for reconstitution based on standardized test scores of the students, which the UESF considers punitive in that teachers will be transferred in response to the failure of their students and, by implication, their failure to educate. This type of reconstitution, the UESF argues, violates their collective bargaining agreement ("CBA").

The NAACP and the State attack the timeliness of the UESF's motion. They argue that the issues the educators raise now are the same issues they raised at the 1983 fairness hearing, when the reconstitution of schools was first proposed. While the new stage of this litigation reflects changes in the student body, and renewed attention to the methods used, there is no indication that the relationship of teachers to the Consent Decree is changing. The modifications do not appear to trigger any significant new threats to teachers that were not already present in the case. The appropriate time to bring this motion would have been in 1983, when reconstitution was first proposed. A delay of ten years renders the UESF's motion untimely.

2. *Interest.*

As quoted above, the UESF's asserted interest is in maintaining the CBA. It claims that this interest is an interest in the subject matter of this litigation. The NAACP and the State dispute this claim, arguing that an interest in teacher hiring and placement is not an interest in the desegregation of school children. The Court agrees. While the Committee of Experts defines the focus of this litigation more broadly than do the NAACP and the State, as encompassing the academic achievement of minority students as well as the desegregation of the schools, it does not include teacher hiring in the subject matter of the litigation. It is a related matter, involved tangentially, but is not an interest in the subject matter of this litigation, which is the education of school children.

***5** The interests of the META intervenors are diffuse, reflecting the omnibus nature of their motion to intervene. Within the one motion, META has packaged together (1) a Latino teachers organization, LATA, which while not a union, is comprised of individuals who are employees of SFUSD and necessarily seek educational rights of Latino students from an educator's perspective, (2) several groups that contain Latino parents in their membership, and focus on gangs, immigrant children, and drop-outs, and individually named Latino students and parents, and (3) a Chinese American group dedicated to affirmative action for Asian Americans in education and employment and individually named Chinese American students and parents. The interests mentioned by META in its moving papers all centered around "Bilingual Education and the unique needs of LEP [Limited English Proficiency] and immigrant students," which are common threads linking its disparate clients. META's Mem. P. & A. at 14:6–7. It listed thirteen concerns, six of which deal only with LEP students, two of which deal with immigrants, two of which deal with language minority parents, two of which deal with specific disadvantages faced by Latino and Chinese American students and one of which deals with a specific SFUSD policy. Specifically with regard to the Consent Decree, META questioned the usefulness of the 45 percent limit on any one ethnic group when it precludes grouping children of the same language group together for more cost-effective LEP classes, and similarly the requirement that each school have at least 10 percent of each of four different groups. In its reply brief, META included a new list of concerns, including nonbilingual issues such as availability of places for African American students in "at risk" programs, the need to address the problem of low-achieving Asian American students, the definition of underachievement, and the representation of Latino students at academic high schools.[6]

The Court notes that the subject matter of this lawsuit is the education of San Francisco's schoolchildren, in the context of historic segregation of the schools. The Consent Decree was designed to undo the segregation, and cure the lingering effects of past bad acts. The needs of immigrant and LEP students are related, but stem from different historical causes. The issue of bilingual

education is so sufficiently separate, in fact, that a separate class action was brought on behalf of the affected children, *Lau v. Nichols,* No. C–70–0627 LHB, that resulted in the issuance of a separate Consent Decree, which provides the context for such programs.[7] Most of the interests listed in META's opening brief are most accurately considered interests in the subject matter of *Lau,* not in the subject matter of this case. As further developed in their reply papers, however, each of these proposed intervenors has professed an interest in the subject matter of this litigation, the implementation and effect of the desegregation plan of the Consent Decree and the education of historically disadvantaged children.

3. *Impairment.*

***6** Perhaps the key issue in a determination of a motion to intervene as of right is the threat of impairment to the proposed intervenor's interests by denial of the motion.

This issue separates the students and parent intervenors from the teacher intervenors. Both the UESF and LATA have means of achieving their interests outside of this litigation. The UESF is the recognized bargaining unit of the San Francisco teachers and, as such, regularly negotiates a CBA with the SFUSD. At that time, the UESF can air its concerns about the interplay between the mandates of the Consent Decree and its employment contract.[8] Similarly, LATA as an organization, and its members as individuals, have power to voice their concerns regarding the education of Latino students through action within the collective bargaining process, and in the schools and classrooms where they work.

The UESF argues that it meets its burden of showing that if it is not allowed to intervene, its interest, as a practical matter, will be impaired. It claims that the proposed modifications would impair its ability to continue its current negotiations for a new CBA, because they include reconstitution of schools not specified by name or quantity. The UESF also argues that the reconstitutions, to the extend they involve involuntary transfers of teachers, and to the extent the reconstituted schools are chosen on the basis of law test scores, would violate the current CBA provision against punitive transfers. The current parties respond that the UESF has been successfully bargaining in the shadow of the Consent Decree for years, and the proposed modifications do not impede its ability to continue to do so. There is not a threat of impairment of the interests of either of the UESF or the LATA to meet the test for intervention as of right.

The threat of impairment to the various student and parent proposed intervenors is different. The interests presented in META's briefs are of two types: bilingual LEP issues and general minority student issues. The first type, while admittedly outside the interests and the expertise of NAACP counsel, is not the subject of this suit, as discussed above. The second type is the only type of interests that might be impaired. META argues that the interests of Latino and Chinese American students will be impaired if they are not allowed to intervene because their unique cultural needs will not be taken into account. As class members, Latino and Chinese Americans are already entitled to have their needs considered, and those needs have been considered, from the days during which the Consent Decree was formulated. They are two of the nine racial/ethnic classes that the original Consent Decree acknowledged and considered in its desegregation plan. As a practical matter, there has been opportunity to raise the cultural needs of Latino and Chinese American students at the two fairness hearings. While the META intervenors do not dispute the effectiveness of the past representation of their interests, they argue that as the plan enters this second stage, the refusal of the NAACP counsel to incorporate META's suggestions about the Consent Decree amendments into the NAACP's statements to the Court is an indication that their interests will be practically impaired. This issue, thus, becomes the same as the fourth prong of the intervention as a matter of right test: inadequate representation by the parties to the action.

4. *Inadequacy of Representation.*

***7** There are three factors to consider in determining whether an applicant for intervention is adequately represented by the existing parties if: (1) the present party, out of its own interests, will make all of the applicant's arguments, (2) the present party is capable of making and willing to make these arguments, and (3) the applicants would not offer any necessary element to the proceedings that the present parties would neglect. *County of Fresno v. Andrus,* 622 F.2d 436, 438–39 (9th Cir.1980).

The UESF argues that its interests are not represented by the other parties, whose focus is on the students (NAACP) and on reducing costs (SFUSD). There is little dispute that the other parties are not capable or willing to make many of the arguments raised by the teachers. The Eighth Circuit has twice allowed teacher's unions to intervene in desegregation actions because of their interest in maintaining their collective bargaining agreements. *See Little Rock Sch. Dist. v. Pulasky County Special Sch. Dist. No. 1,* 738 F.2d 82, 84 (8th Cir.1984) (remedy involved consolidation of three districts, causing a potential loss of three contracts between teachers and the districts); *Liddell v. State of Missouri,* 731 F.2d 1294, 1325 (8th Cir.1984). The Sixth Circuit has treated a union's motion to intervene as a permissive intervention rather than an

intervention as a matter of right, and denied it, finding that the teachers' interests were adequately protected by the school board. *Penick v. Columbus Educ. Ass'n,* 574 F.2d 889 (6th Cir.1978). As discussed above, the Court finds that while the UESF's interests are not represented by the parties, they are also not interests in the subject matter of the litigation, and its motion is not timely. Therefore, the UESF is not entitled to intervene as of right.

The NAACP is certainly capable of representing the interests of non-African American school children. It assumed that responsibility at the start of this litigation, and the prospective intervenors do not seriously attempt to criticize their past representation. The NAACP insists that it is capable of doing so in the future as well. The META intervenors argue that not only has the NAACP refused to incorporate META's suggestions in its filings with the Court, but that the NAACP lacks expertise in bilingual education issues. That is true, but the Court reiterates that bilingual education is the subject matter of *Lau,* not of this case. The subject matter of this case, the desegregation of the schools with respect to all races, is an interest the NAACP shares with the proposed student and parent intervenors. The achievement of the goal of improved educational performance is also shared by both these intervenors and the NAACP. The Report details how both African American and Latino students, as a group, lag behind in performance and could be better served by Consent Decree programs.

While the proposed intervenors would certainly add additional elements to the litigation, their additional bilingual expertise and cultural experience are not "necessary" elements. The NAACP has represented their interests to date, achieving desegregation for all races and ethnicities, and is willing to continue to do so. Therefore, although the motion of the META intervenors is timely, and all but the LATA have an interest in the subject matter of the suit, failure to intervene would not impair their ability to protect that interest because all minority schoolchildren are adequately represented by the current parties.

B.

***8** Permissive intervention is committed to the discretion of the trial court as long as there is a common question of fact or law between the interests of the proposed intervenors and the subject matter of the litigation. Fed.R.Civ.P. 24(b)(2). The discussion above illustrates that all proposed intervenors meet this threshold.

While the reconstitution of school staffs creates a common question of fact between the implementation of the Consent Decree and the teachers' interests, the Court declines to permit the UESF to intervene. The interests of the present parties, and of the class of children who are the heart of this litigation, would not be served by introducing the acrimony of the collective bargaining process into Consent Decree implementation. The UESF has ample opportunity to advance its interests over the bargaining table. Similarly, the LATA may work as a professional organization to bring the expertise of educators to bear on the question of education of Latino students in San Francisco, but the Court finds that the Consent Decree will be most successfully implemented if the parties are kept to the schoolchildren, and the SFUSD and the State, the entities that run their schools and budget for their education.

The hallmark of this case has been the unusually high level of cooperation between those representing the children, and those representing the schools. This cooperation has maximized the money and energy spent to achieve the goals of the litigants, and minimized the often detrimental long-term effects of pitched courtroom battle on participants who have to work together in the aftermath. The parties to date have drafted and implemented a desegregation plan that has achieved significant results in the physical desegregation of the San Francisco schools. The work of lawyers was essential in crafting and maintaining the plan.

As the case enters this new stage, however, seeking to adjust the implementation of the Consent Decree in accordance with the Committee of Experts' recommendations, the litigation is shifting to questions of educational policy, which will be investigated by a committee of nonlawyers, the Advisory Committee. The limited usefulness of the legal system at this stage is reflected by the almost *de minimis* changes that were made in the Consent Decree after the April 8, 1993, fairness hearing. The success of maintaining the desegregation achieved and increasing the educational performance of historically disadvantaged children depends not on the number of lawyers prepared to bring noncompliance issues to Court, but the effective use of Consent Decree monies in support of carefully crafted educational policies. The Advisory Committee is the key to the next phase of this litigation.

For these reasons, while the Court declines to grant permissive intervention to any party at this time, it finds that the schoolchildren of San Francisco will be well-served by the addition of the perspectives of different subgroups on the Advisory Committee. The changes promised in the amended Consent Decree are difficult and must be applied with sensitivity to the changing population of San Francisco. The most important work of the coming years will be carried out by the SFUSD and monitored by the State. The Court will be advised by the Advisory Committee. In this period, expert

understanding of the special situation of Latino and Asian students would greatly assist the work of the Advisory Committee. Therefore, the Court grants *amicus curiae* status to the following two groups of proposed intervenors: (1) Mujeres Unidas Y Activas/Coalition for Immigrant and Refugee Rights; Alianza; Padres Unidos En Contra de la Violencia; Nadia Elisabet Ortiz, Adriana Michelle Ortiz, Noemi Ortiz, Alvaro Salinas, Alberto Salinas, Susana Salinas, Ricardo Ugo Ortiz, Francisco Ortiz, Eduardo Ortiz and Maria Guadalupe Ortiz (hereinafter known as the "Latino Group"), and (2) Chinese for Affirmative Action; Wynne Wan, Jacky Wan, and Sui–Ming Wan (hereinafter known as the "Asian Group").

***9** Each group may request the Court to appoint a representative to the Advisory Committee, to be selected and appointed in the manner outlined below in Section III. The representatives of the groups shall have the same status on the Committee as the other members represented by parties. The *amici* are entitled to no other participation at this time.

The Court also recognizes that at a future time, the present parties may be incapable of representing the interests represented by the *amici curiae* groups, and those interests would be seriously impaired if the *amici curiae* were not allowed to intervene. Therefore, the motions to intervene as to the parties now made part of *amici* groups are denied without prejudice and may be brought again if the need arises.

III.

Accordingly,

IT IS HEREBY ORDERED that:

1. The Court's Order of April 30, 1993, is amended as follows:

a. On page 1, lines 20–21, the words "Monitoring Committee" are replaced with "Consent Decree Advisory Committee."

b. On page 1, line 25, the words "monitoring process is" are replaced with the words "procedures are."

c. On page 2, the paragraph beginning "The parties," lines 6–8, is deleted and replaced by: "The parties have not been able, in spite of repeated requests from the Court, to agree on a means of implementing the Committee's recommendation that the monitoring by the State be augmented. Because a neutral expert body to oversee the implementation of the monitor's suggestions, the use of Consent Decree funds, and the evaluation of Consent Decree programs is essential."

d. On page 3, the following paragraph is added at line 22:

> 12. The Committee shall review all drafts of its communications to the Court with the parties prior to their formal transmittal to the Court. Unless otherwise agreed to by the parties, all written comments of the parties about any communication of the Committee shall be submitted to the Court together with the communication.

e. On page 4, the final paragraph, lines 13–18, is deleted and replaced with the following language:

> The purpose of this Order is not to increase the authority of the Court over the District, but to diminish the necessity for formal court action while assuring evaluation of program effectiveness, compliance, and prompt resolution of disputes. If all parties act in good faith, this mechanism should produce a better record of effective program evaluation, compliance, and fewer conflict brought to the Court.

2. The motion to intervene by the UESF is DENIED with prejudice.

3. The motion to intervene by META is DENIED with prejudice as to the LATA, and without prejudice as to Mujeres Unidas Y Activas/Coalition for Immigrant and Refugee Rights; Alianza; Padres Unidos En Contra de la Violencia; Nadia Elizabet Ortiz, Adriana Michelle Ortiz, Noemi Ortiz, Alvaro Salinas, Alberto Salinas, Susana Salinas, Ricardo Ugo Ortiz, Francisco Ortiz, Eduardo Ortiz; Maria Guadalupe Ortiz; Chinese for Affirmative Action; Wynne Wan, Jacky Wan, and Sui–Ming Wan.

***10** 4. The Latino Group and the Asian Group are separately granted *amicus curiae* status, and if they so choose, are each entitled to a representative on the Advisory Committee, to be selected as described below.

5. Each *amicus* group may submit the names and qualifications of three nominees to the Court. Recognizing that each *amicus* group came to the Court seeking to represent disparate interests, the nominees shall be selected in consultation with all elements of the communities that they will represent, and shall be capable of representing the cultural heritage and interests of all

those elements, to the extent possible. That is, the nominees of the Latino group shall be selected after consultation with LEP, bilingual, immigrant and nonimmigrant segments of the Latino community, among others, and the Asian group nominees shall be selected after consultation with LEP, bilingual, immigrant and nonimmigrant segments of the Asian community, among others.

The Court may select one person from each list of nominees to serve on the Advisory Committee, unless the Court deems the entire list unacceptable. If the list is unacceptable to the Court, the parties shall submit a new list of three nominees. The new members of the Committee shall have the same role and powers as the existing members, and be bound by the prior orders of this Court regarding the Advisory Committee.

Footnotes

1 The organizations are:

(a) Mujeres Unidas Y Activas/Coalition for Immigrant and Refugee Rights, an association of immigrant Latina women, some of whom are parents of SFUSD students.

(b) Alianza, a Latino community group interested in gang prevention in the schools. Its membership includes immigrant families who have children in SFUSD.

(c) Padres Unidos En Contra de la Violencia, a group of Latino parents concerned about students who drop out.

2 Nadia Elisabet Ortiz, Adriana Michelle Ortiz, Noemi Ortiz, Alvaro Salinas, Alberto Salinas, Susana Salinas, Ricardo Ugo Ortiz, Francisco Ortiz, Eduardo Ortiz, and Maria Guadalupe Ortiz.

3 CAA also retained separate counsel. CAA is a community organization concerned with the promotion of equal opportunities in employment and education for Asian Americans, some members of which are parents of students in the SFUSD.

4 Wynne Wan, Jacky Wan, and Sui–Ming Wan.

5 Reconstitutions involve declaring all staff positions vacant and involuntarily transferring staff.

6 META also lists other barriers to immigrant students that range from culture shock and war trauma, to hate crimes and “negative street culture.” META’s Response at 16, n. 15.

7 *See Bradley v. Milliken,* 620 F.2d 1141 (6th Cir.1980), in which the Sixth Circuit refused to order the intervention of groups seeking to protect the interests of Latino children in bilingual education in a desegregation case.

8 As currently worded, the CBA in Article XXXVII deals with the Consent Decree. The teachers agreed that “the staffing of personnel at those schools impacted by the Consent Decree shall be in accordance with a plan developed pursuant to the Consent Decree to successfully implement the approved educational programs for the students.” This provision, like all others, is up for renegotiation.