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United States District Court, N.D. Illinois, Western Division.

PEOPLE WHO CARE, et al., Plaintiffs,
v.
ROCKFORD BOARD OF EDUCATION SCHOOL DISTRICT NO. 205, Defendant,
and
Rockford Education Association, Rockford Building Maintenance Association, and Education Office Personnel Association,
Intervenor–Defendants.

No. 89 C 20168. | June 7, 1996.

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Opinion

COMPREHENSIVE REMEDIAL ORDER

MAHONEY, United States Magistrate Judge.

***1** School desegregation lawsuits are divided into two distinct and separate phases: first, a finding of intentional discrimination and, second, formulating a remedy that is designed to undo the harm inflicted upon the affected schoolchildren. The present case is at stage two; in 1993 and 1994 the Rockford Board of Education was found liable of intentional discrimination against African–American and Hispanic students for a period extending well over two decades.[1] The Magistrate Judge has reviewed this court's Report and Recommendation to Judge Stanley J. Roszkowski and, also, Judge Roszkowski's Order. A review of those documents causes the Magistrate to clearly recall the evidence and testimony of the liability hearing. The evidence consisted of approximately 40 witnesses producing over 3,500 pages of testimony in the twenty-four days of trial. In addition, the court considered 150 depositions submitted in lieu of live testimony and literally thousands of pages of exhibits. In the end, the Rockford School District was found guilty of intentional discrimination against minority schoolchildren. The present order is targeted at providing an adequate remedy for the still lingering effects of that discrimination.

I. Introduction

The city of Rockford is located in the northwest part of Illinois, approximately 90 miles west of Chicago. From the 1990 census, Rockford's 1990 population was 139,426, making Rockford the second most populated city in Illinois. In 1990, 28.4% of Rockford's population was minority.[2] For convenience and statistical analysis,

the City of Rockford and the Rockford School District have been divided into four "quadrants" that are based on geographic dividers. The Rock River, which runs north/south, divides Rockford east and west. There is some dispute whether Auburn Street or State Street, both running east/west, is the appropriate divider of Rockford north and south.[3]

For the 1994–95 school year, the Rockford School District ("District" or "RSD") had an enrollment of approximately 26,370 students in grades K through 12.[4] For 1994–95, the total minority enrollment of students in the entire district was 34.9%.[5] For the 1994–95 school year, the RSD had a total of 15,446 elementary students (grades K through sixth) enrolled in 39 elementary schools. The racial composition of the District's elementary level students was 63.7% White and 36.3% minority. In 1994–95, 76.3% of the elementary students that resided in the Southwest Quadrant were minority. For the year 1994–95, approximately 70% of the minority elementary students lived west of the Rock River and approximately 60% of the minority elementary school students lived in one of the city's four quadrants—the Southwest.

For the 1994–95 school year, the RSD had 4,044 students enrolled in grades 7–8 in the District's four middle schools. The racial composition of the District's middle school students was 64.9% White and 35.1% minority. For the 1994–95 school year, 6,744 students attended the RSD's four public high schools.[6] The racial composition of the District's high school students was 68.3% White and 31.7% minority. The enrollment at Page Park, a special education K–12 school, was 136 students. The following chart summarizes the above statistics:

***2** The present Comprehensive Remedial Order is targeted at ending the intentional discrimination in the Rockford School District, eradicating the vestiges of the intentional discrimination and providing all of the students in the RSD the opportunity for an equal education, as mandated by the Fourteenth Amendment of the U.S. Constitution.

A. Procedural History

The People Who Care lawsuit was filed on May 11, 1989. Plaintiffs filed the suit in response to the 1989 Reorganization Plan of the RSD. The suit alleged that the District had historically engaged in a pattern of intentional discrimination against Black and Hispanic schoolchildren. On July 7, 1989, District Court Judge Stanley J. Roszkowski entered the First Interim Order in this case. Essentially, the order dealt with the 1989 Plan, modifying it in some respects and dismantling it in other respects.

On April 21, 1991, the court entered the Second Interim Order, which embodied an agreement reached by Plaintiffs and Defendant. The Second Interim Order was more comprehensive in its remedial measures than the First, but left unresolved Plaintiffs' underlying liability claim.[8] On June 29, 1992, Judge Roszkowski referred certain matters to the Magistrate Judge for ruling. Then, by order dated September 8, 1992, Judge Roszkowski transferred all matters currently pending to the Magistrate Judge. This order was pursuant to Local Rule 1.71(c)(4) of the General Rules of the Northern District of Illinois and 28 U.S.C. § 636(a)–(c).

Judge Roszkowski reiterated the referral on April 8, 1993, pursuant to 28 U.S.C. § 636(b)(1)(C). The Magistrate conducted the liability hearing in April of 1993, consisting of twenty-four days of trial. Pursuant to an agreement between the parties, dated May 5, 1993 (the "May 5th Agreement"), all parties stipulated that the Magistrate would make a Report and Recommendation to Judge Roszkowski, who would then rule upon the permanent injunction and liability issues.[9]

On November 3, 1993, the Magistrate issued his Report and Recommendation recommending that the District be found liable for violating the Fourteenth Amendment and that the district court enter a permanent injunction against the RSD. All parties filed objections to the Report and Recommendation and on February 18, 1994, Judge Roszkowski entered an order granting the requested injunctive relief and affirming the liability findings of the Magistrate in most respects.[10] In that order, Judge Roszkowski referred all present and future remedial matters, which includes the issue of unitary status, to the Magistrate pursuant to 28 U.S.C. § 636(c)(1) and (c)(3). *See People Who Care,* 851 F.Supp. at 934.

Since the time of the permanent injunction, the parties and the court-appointed Master, Dr. Eugene Eubanks, have worked on developing a comprehensive remedial plan. On February 1, 1995, the Magistrate ordered the Master to submit a proposed Comprehensive Remedial Order ("CRO") to the court by August 4, 1995. The Master submitted his proposed CRO to the court on August 6, 1995. All parties commented on the proposed remedial objectives of the Master and in turn, submitted preliminary findings of fact and conclusions of law regarding the remedial objectives at issue. The CRO hearings commenced on October 16, 1995.

B. Outline

***3** Upon completion of each segment of the CRO hearings, the court will enter a remedial order dealing with the proposed remedial objectives raised in the Master's proposed plan. The Master's proposed plan has no less than twenty-nine categories of objectives: (1) desegregated schools; (2) within school integration; (3)

ability grouping; (4) extra-curricular activities; (5) human relations program; (6) discipline code; (7) curriculum and instruction; (8) special education; (9) community education; (10) early childhood education; (11) magnet schools; (12) bilingual education; (13) school-based planning; (14) research and development; (15) staff development; (16) student participation and performance; (17) student assignment; (18) implementation and monitoring; (19) organizational structure of the administration; (20) transportation; (21) personnel department; (22) actions by District administration and board; (23) disposition/acquisition of facilities; (24) alteration of District boundaries; (25) racial incidents; (26) facilities and equipment; (27) affirmative action; (28) desegregation of teaching staff; and (29) funding and budgeting. The court has added a final category: financial impact.

Because of the number and complexity of the issues involved in formulating the CRO, the Magistrate has essentially divided the CRO hearing into three areas: (1) Educational Components/Stipulated Areas; (2) Student Assignment/Related Issues; and (3) Faculty Assignment, Student Achievement and other issues. The first portion of the trial ran from October 16 through October 31, 1995. The second portion ran from November 27 through December 22, 1995. The final portion of the trial is scheduled to run from February 22 through March 21, 1996. Because of the RSD's need to implement many of the court ordered remedies for the 1996–97 school year, the Magistrate has decided to issue the CRO in separate segments. Delivering the opinion in this manner will effectively allow the Rockford School District to begin implementation of ordered remedies much sooner than if the court delivered the opinion in its entirety upon completion of the hearings.

This first segment of the CRO will deal with fourteen of the thirty objectives that are either educational components or stipulated areas: ability grouping, the human relations program, curriculum and instruction, community education, early childhood education, bilingual education, research and development, staff development, student participation and performance, transportation, disposition/acquisition of facilities, alteration of District boundaries, racial incidents and funding/budgeting. The first segment begins with a brief overview of the law of remedying intentional discrimination and guidelines for the court to follow in developing a comprehensive remedial plan. The second segment of the CRO will deal with student assignment. Finally, the third segment will deal with minority hiring and desegregation of the teaching staff, participation and performance (student achievement) and the remaining twelve areas.

CRO: SEGMENT ONE

[Dated January 26, 1996]

II. Supreme Court Precedent in Formulating Remedial Decrees

***4** The Magistrate and District Court Judge in this case both found that the Rockford School Board had consistently and intentionally discriminated against minority school children over the past two decades. Given this finding, the school board is "charged with the affirmative duty to take whatever steps" are necessary to convert to a unitary system in which racial discrimination is eliminated root and branch. *Green v. County Sch. Bd. of New Kent County,* 391 U.S. 430, 437–38 (1968). The main objective of a remedial decree is to "effectuate a transition to a racially nondiscriminatory school system." *Green,* 391 U.S. at 436. Ultimately, the offending school district has the burden to put forth a plan that "promises realistically to work, and promises realistically to work now." *Green* 391 U.S. at 439.

Starting with *Brown v. Board of Educ.,* 349 U.S. 294 (1955) ("*Brown II* "), the Supreme Court has consistently held that a district court must be guided by equitable principles in formulating an appropriate remedial decree. In *Brown II,* the Court stated, "Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power." *Brown II,* 349 U.S. at 300. In applying the principles of equity, a district court must focus on the following three factors: one, that the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violations; two, that the decree must be "designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct' "; and three, that consideration must be given to the interests of state and local authorities in managing their own affairs. *Milliken v. Bradley,* 433 U.S. 267, 280–81 (1977) ("*Milliken II* ") (quoting *Milliken v. Bradley,* 418 U.S. 717, 746 (1974) ("*Milliken I* ")).

Traditionally, once a segregated, dual school system has been found to exist, a critical beginning point in a remedial decree is student assignment patterns. The district court must focus on the degree of racial imbalance in the school district, by comparing the ratio of minority to majority students in the school district as a whole to the racial composition of students in individual schools. *Freeman v. Pitts,* 503 U.S. 467, 474 (1992). In addition to student assignment patterns, a district court is directed to look at the following components in formulating a

remedial decree: faculty, staff, transportation, extracurricular activities, facilities and the quality of overall education offered to the student population as a whole.[11] These "Green factors" are a starting point, and are not meant to be an exhaustive list. *See Milliken II,* 433 U.S. at 283 ("[D]iscriminatory student assignment policies can themselves manifest and breed other inequalities built into a dual system founded on racial discrimination. Federal courts need not, and cannot, close their eyes to inequalities, shown by the record, which flow from a longstanding segregated system.").[12]

***5** In addition to focusing on the *Green* factors, a district court must be careful in a remedial order to "eliminate from the public schools all vestiges" of the intentional discrimination. *Swann,* 402 U.S. at 15. In *Milliken II,* the Court stated that an appropriate remedy is one that is "tailored to cure the 'condition that offends the Constitution.' " *Milliken II,* 433 U.S. at 282 (quoting *Milliken I,* 418 U.S. at 738). At issue in *Milliken II* were four educational components that were part of the district court's remedial order: remedial reading programs, in-service training for teachers and administrators, guidance and counseling programs and revised testing procedures. The Supreme Court found that these educational components were an appropriate remedy, as they were tailored to the constitutional violation.

In 1992, the Supreme Court in *Freeman* stated, "The *Green* factors are a measure of the racial identifiability of schools in a system that is not in compliance with *Brown,* and we instructed the District Courts to fashion remedies that address all these components of elementary and secondary school systems." *Freeman,* 503 U.S. at 486. Further, the Court stated that while "[t]he vestiges of segregation that are the concern of the law in a school case may be subtle and intangible," they must "be so real that they have a causal link to the de jure violation being remedied." *Freeman,* 503 U.S. at 496.[13]

At some point, it is imperative that the federal courts relinquish control over the school district to the local authorities. The Supreme Court stated the proper test for "unitary" status is "whether the Board ha[s] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." *Dowell,* 498 U.S. at 249–50. In *Dowell,* the Supreme Court noted that, "[f]rom the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination." *Dowell,* 498 U.S. at 247. A return to local control over education is necessary to "allow[ ] citizens to participate in decisionmaking, and [to] allow [ ] innovation so that school programs can fit local needs." *Dowell,* 498 U.S. at 248. *See also Brown II,* 349 U.S. at 299 ("School authorities have the primary responsibility for elucidating, assessing, and solving these [varied local school] problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.").

On the other hand, "A district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future." *Dowell,* 498 U.S. at 249. Therefore, the Magistrate will carefully monitor the progress of the Rockford School District in eliminating, root and branch, all the vestiges of the intentional discrimination against minority school children. Upon a showing that the District has complied in good faith with the directives of this court and that the vestiges of the prior discrimination have been eliminated to the extent practicable, supervisory control of the school district will be returned to local authorities.

***6** In summary, the Magistrate will utilize the flexible equitable power of the federal courts in fashioning remedies that are linked to the constitutional violations found in this case. Three considerations are of the utmost importance: one, the nature of any desegregation remedy is to be determined by the nature and scope of the constitutional violation (the remedy must relate to the discriminatory act); two, the court must restore the victims of the discriminatory conduct to the position they would have occupied but for the discrimination; and three, that local autonomy is a vital national tradition and the court must strive to restore local control of the school system.

The Magistrate notes that, in the final analysis, this court's remedial focus must be both flexible and practical, reconciling both public and private needs. A remedial order must afford a school district a "precise statement" of its obligations and the Magistrate will attempt to formulate a remedial decree that will realistically work now for all the concerned parties in this case.

III. Educational Components/Stipulated Areas

On November 27, 1995, the parties filed with the court a stipulation concerning their positions on fourteen of the thirty remedial areas. Testimony and evidence related to the first segment of the opinion were completed in November 1995. The educational components consisted of portions of the Master's proposed CRO that were, to some extent, agreed upon by all parties. By order dated November 29, 1995, all parties were given until December 13, 1995, to submit Findings of Fact and Conclusions of Law relating to these uncontested issues. This order was subsequently modified, and all parties provided their submissions to the court by December 20, 1995.

A. Ability Grouping

The first remedial objective concerns ability grouping. The court-appointed Master, Dr. Eugene Eubanks, has proposed that the District not engage in any tracking which produces racially identifiable compositions. Ability grouping is, however, appropriate for the provision of academic and social support to minority students who needed assistance. Master's Ex. 1 at 22–23 (Proposed Comprehensive Remedial Plan) (hereinafter "Proposed Plan"). The Master's recommendation to prohibit tracking stems directly from the findings in the Report and Recommendation. The findings were that the RSD's tracking practices were not supported by any trustworthy academic theory, and instead, the tracking system was used to intentionally segregate White students from Black students. *See People Who Care,* 851 F.Supp. at 941–45.

Ability grouping or tracking was the most egregious and blatant form of intentional discrimination against minority schoolchildren. Track enrollments in the Rockford schools were racially identifiable. For example, African–American and Hispanic students were consistently enrolled in disproportionate numbers in the lower track, while White students, at all grade levels, were disproportionately assigned to the high ability tracks. *People Who Care,* 851 F.Supp. at 942. Once placed in a lower track, it was often difficult, if not impossible, to change into a higher track. Perhaps what was most troubling to the court is that many minority students who scored well above the national mean on tests were intentionally put in racially identifiable low ability tracks, while low or average scoring White students were often placed in disproportionately White higher tracks. *Id.* at 949, 959–60. The court found that minority students scoring at the 99 percentile were placed in the basic tracks and White students at the 50 percentile were placed in the honors tracks.

***7** While proposing that tracking be discontinued, the Master does propose that certain gifted programs be allowed to continue. Dr. Eubanks recommended that the gifted programs be permitted to operate as "stand alone" programs. Tr. 1636. He placed two conditions on the retention of the gifted programs: (1) that there must be clear, objective entry guidelines and (2) that there must be a minimum percentage of minority participation. Proposed Plan at 23.[14]

The Master further noted several programs in place since 1989 that made supplementary resources available for appropriate academic and social support so that students could effectively participate in classes in a non-ability group setting. Proposed Plan at 24. The Master recommended that these programs, including the early childhood education, Success for All, Reading Recovery and other programs, be continued as a part of the CRO to remove the vestiges created by a student placement system that intentionally discriminated against minorities by placing them in lower tracks. At trial, Dr. Eubanks testified that these programs were essential if ability groups were to be discontinued. CRO Transcript (hereinafter "Tr.") at 1638. In other words, the continuation of these programs would be necessary to assure that the once-tracked minority students could be "full participants and [would] perform at an acceptable level" in their regular classes. Tr. 1638.

The court accepts a portion of the Master's proposed remedial recommendation under ability grouping. In light of this court's detailed findings concerning the abuse of ability grouping in the past, ability grouping and/or tracking will no longer be allowed in the Rockford schools. The exception suggested by the Master for gifted programs is not approved by the court at this time due to the possibility of continued unlawful tracking by the District.[15] The court will revisit the issue of gifted programs later in the opinion.

Regarding the supplemental programs proposed by the Master, the court notes that six of the suggested programs, early childhood education, staff development, human relations programs, multi-cultural education programs, curriculum and pedagogical development programs and transportation, are distinct categories and will be dealt with separately in this segment of the opinion. The other recommended supplemental programs include the ADK, Success for All, Reading Recovery, Saturday Academy, summer school programs, tutorial activities and high order thinking programs. The Master recommended that these programs be continued so as to provide additional assistance to assure that students can perform in the regular classes.

In the instant case, the Magistrate specifically approves of the supplemental programs aimed at assuring that all students will be able to meaningfully participate in a non-ability group setting. *See Milliken II,* 433 U.S. at 287 (holding that educational components are an important feature of a remedial plan). The programs in the instant case are directly related to the findings by this court that the grouping and tracking of minorities denied Black and Hispanic students an equal educational opportunity and often locked minorities into lower performing tracks. *People Who Care,* 851 F.Supp. at 1000; 851 F.Supp. at 999, 1005 (findings in the Report and Recommendation concerning lesser educational opportunities for Black and Hispanic students). In addition, findings were made concerning the racial isolation of students, the stigmatization of minority students as inferior and the failure of the school system to remedy differences in achievement among racial groups. *Id.* at 947–48, 914–15, 999.[16] The court holds that the ADK, Success for All, Reading Recovery, Saturday Academy, summer school programs, tutorial activities and high order thinking programs are all tailored to the constitutional violation and the vestiges found in the discriminatory use of ability

groups and tracking. Therefore, the Magistrate orders these supplemental programs to be continued as part of the CRO, subject to financial restraints as will be discussed in other portions of this opinion.[17]

B. Human Relations Program

***8** The Master's proposed CRO contains a recommendation for a human relations program ("HRP"). This program is to "foster the educational, attitudinal, and developmental progress of school staff, students, and other appropriate target groups in support of desegregation and educational equity." Proposed Plan at 32. The program shall focus on awareness and sensitivity to cultural differences and similarities, equity in discipline and school rules, and improved educational outcomes for minority students. *Id.* Because school districts that implement desegregation plans often face major obstacles such as getting the community and the district employees to accept the fact that discrimination has occurred, the program is essential to effectively implement a desegregation plan. Dr. Eubanks testified, "There is a need in Rockford for continuing education on the part of persons ... to accept [ ] ... the fact that this district did engage in intentional segregation and discrimination against minority children and that indeed we need to make changes, but not only do we need to make changes, we need to work with persons so that they appreciate the need to make changes and [that] they have [the] ... knowledge, understanding and ability to make those particular changes." Tr. 1647–48.

The court agrees with the Master that an effective HRP is essential to the success of any desegregation plan. Given this court's findings that the Rockford Board of Education intentionally discriminated against its minority students for over twenty years, a human relations program will be crucial in gaining district-wide support for the CRO. The Report and Recommendation is replete with examples of failed attempts at desegregation because of the lack of understanding cultural differences. *See, e.g., People Who Care,* 851 F.Supp. at 947–48 (tracking kept in place in one instance because dismantling it would upset teaching staff); 851 F.Supp. at 1004 (finding that administration staff was "uncomfortable" with new presence of Black children in school). The court also finds it significant that in the Master's vast desegregation experience, spanning over 25 years, human relations programs have been essential in other cities having desegregation plans including Detroit, Michigan, Milwaukee, Wisconsin, Kansas City, Missouri, and Mobile, Alabama. Tr. 1649.

Therefore, the court orders that the District develop an HRP that targets administrators, teaching staff, parents, the general community and "all persons that have involvement and interaction within the context of the Rockford School District." Tr. 1648. Ultimately, this program will help bring about necessary changes relative to community and staff expectations and will increase the quick acceptance and understanding of a multi-racial student program. Tr. 1647–48. In short, the HRP is essential so that the CRO "promises realistically to work, and promises realistically to work now." *Green,* 391 U.S. at 439; *see also Armstrong v. Board of Sch. Directors of Milwaukee,* 616 F.2d 305, 311–12 (7th Cir.1980) (wherein the Seventh Circuit approved of a settlement agreement in a desegregation case that required a human relations program).[18] As in all areas of the CRO, the HRP is subject to funding restraints.

C. Curriculum and Instruction

***9** The Master's proposed plan contains a provision for curricula offerings "which ensure equity and compensation in learning opportunities and outcomes for minority students, and which also ensure the meaningful and effective advancement of their social development." Proposed Plan at 39. The proposed curricula offerings would be governed by the following standards: (1) the offerings should continue to be revised in compliance with national and state standards, with a focus on multi-cultural education and high order thinking skills; (2) all students are required to complete mathematics through geometry and science through chemistry; (3) enhanced meaningful staff development, focusing on multi-cultural development and high order thinking skills, should continue and be consistent with the recommendations of the Southwest Regional Educational Lab; (4) supplementary programs for enhanced instructional time targeted at minority students, including tutoring, double period scheduling of core courses, summer school programs, learning centers, before and after school programs, mentoring, and Saturday Academies, shall be put in place to improve educational outcomes; and (5) the standard for compliance for the RSD is that these programs be provided to all minority students, based on need, in order to reduce any achievement gaps. Proposed Plan at 39–40; Tr. 1657–59.[19] The programs and activities should be continued as long as they are effective and are needed to provide equitable performance outcomes for minority students. Proposed Plan at 40; Tr. 1659.

There are two principal sets of objections to the Master's recommendation relating to curriculum offerings. First, Intervenor–Defendants object to any reference to the Southwest Regional Educational Lab. While the Master considers the Lab to have done a credible job in the past in aiding the continual development process, Intervenor–Defendants object to Dr. Harriet Doss–Willis and the entire Southwest Regional Educational Lab, stating that they "should be fired immediately." Intervenor–Defendants' Response to Proposed Plan at 4. Intervenor–Defendants support a revised curricula using in-house expertise and the programs suggested by the

Master. *Id.*

The second set of objections to the Master's recommendation concerning curriculum offerings comes from Plaintiffs. First, Plaintiffs contend that the present level of funding for curriculum spending should be increased. Plaintiffs' Response to Proposed Plan at 12. Second, Plaintiffs disagree that the duration of the curriculum remedies should be measured by the Master's two stated standards: (1) whether District personnel have had an opportunity to learn and implement the new strategies; and (2) whether the programs are effective and are needed to provide equitable performance outcomes for minority students. Plaintiffs maintain that the measuring tool should not be when the staff have had the "opportunity" to change discriminatory practices and attitudes, but rather, when District personnel have actually changed those attitudes. Furthermore, Plaintiffs maintain that the educational remedies should be continued until all vestiges and effects of segregation and discrimination have been eradicated root and branch in all areas of the CRO. Plaintiffs' Response to Proposed Plan at 12–13.[20]

***10** The Magistrate concurs with and adopts the Master's proposal regarding curriculum and instruction as follows. The proposed curriculum offerings shall be governed by the following standards: (1) all students are required to complete mathematics through geometry and science through chemistry; (2) supplementary programs (as suggested by the Master) targeted at minority students shall be put in place; and (3) enhanced meaningful staff development, focusing on multi-cultural development and high order thinking skills, should continue and be consistent with the recommendations of the Southwest Regional Educational Lab. As in previous sections, this court's findings with respect to tracking and ability grouping without question support these proposed curriculum offerings. The findings of this court with respect to tracking and ability grouping include the finding that once minority students got placed in a lower track, they tended to stay there, which had a tremendous detrimental impact on educational opportunities for minorities. *See People Who Care,* 851 F.Supp. at 946–47, 1000; Tr. 1660. The court has not followed the proposal for a mandated multi-cultural curriculum, because the Magistrate is unable to relate the concept to any liability finding. The only liability findings concerning multi-culturalism related to District staff and faculty training. Programs addressing these findings are included in the CRO.

As to other aspects of the curricula proposal, the court accepts the Master's recommendation to have curriculum audits, because they will be effective in determining whether such programs have indeed been put in place and to what extent they are working. *See* Tr. 1706 (the CRO contemplates an ongoing process of reviewing, refining, improving and exchanging programs in light of experience). In fact, the Magistrate orders that a system of continual reviewing and refining be established for all educational components of the CRO. This process will weed out ineffective programs to make place for those that are the most useful. This is an important check on the use of scarce tort fund dollars in remedying the past discrimination in the RSD. These programs are to be funded as approved by the court and shall continue as long as they are effective and necessary.[21]

D. Community Education, Involvement and Support

The Master's proposed plan calls for community education, involvement and support for the RSD and providing equity for minority students in the RSD. This proposal requires that the District "ensure substantial community and parental involvement in the desegregation and schooling process particularly as such participation relates to minority parents and the minority community." Proposed Plan at 44. The District is required to ensure that parents have meaningful access to District processes, operations, information and programs. A special emphasis is to be placed on District staff and administrators to aggressively provide for the participation of minority parents. *Id.* The community education program is essential to the CRO because "[i]nformation and understanding of the desegregation process and positive constructive discourse on issues of desegregation and equity are a necessity in effectively implementing a desegregation plan." *Id.* at 46.

***11** Two standards are proposed to guide the community education program. First, the RSD shall provide for parental aides, community grants, mentoring programs, and linkages with the business community, colleges, social services agencies, park district, civil rights organizations, health services, the criminal justice system and the media. Second, these linkages to community groups shall be established for specific desegregative functions and shall be coordinated by the RSD's central administration, parent centers and/or at the building level. Proposed Plan at 44; Tr. 1655.

As part of its effort, it is recommended that the District should be required to publish a biannual report card to the community on desegregation and equity. Expanded communication with PTOs and other parent groups should be made a goal. In addition, the District should continue its promotion of desegregation plans to the press and to continue to market magnet schools, parent information centers and parent aides. Tr. 1655.

The Master noted that, presently, the District has components in place to achieve most of these objectives. For example, community grants, a parent center, parent aides in school and public relations programs have proven to be valuable in informing and garnering community

support for interim desegregative remedial programs. The Master noted, however, that what is missing is a cohesive and comprehensive plan tying all of these programs together. Proposed Plan at 45; Tr. 1652–53. Specifically, the Master proposed that the Office of the Associate Superintendent for Education and Equity, complimented by the Office of Public Relations, should be charged with the responsibility to develop the comprehensive plan to rally the schools and entire community in support of the CRO. Tr. 1656. The Master predicted that additional costs associated with developing a comprehensive plan should not exceed $50,000.00. To achieve compliance with implementing this program, the RSD must document whether it has developed a coherent and comprehensive community education program that promotes desegregation and equity for minority children. Proposed Plan at 46.

The Master's proposal concerning community education is uncontested but for two exceptions. First, the parties are not in agreement concerning the projected $50,000.00 in additional costs. Both the Master and the parties recognized that budget concerns need further planning. Therefore, the $50,000.00 shall serve as a preliminary estimate of costs, but shall be neither a ceiling nor a floor for the actual costs developed after additional planning. Parties Stipulation on Uncontested Areas at 3. The other area of disagreement is the standard to measure the District's compliance with this remedial component. Plaintiffs object to the Master's proposed standard—whether the District has developed such a plan—and contend that the true measure should be whether the District has developed a plan that has met the Master's stated objectives. *Id.* Defendant disagrees with Plaintiffs' proposed standard. Similar to the curricula proposal, the Master takes the position that this aspect of the remedy should continue as long as it is needed.[22]

***12** The court adopts the portion of the Master's proposed community education objective requiring the District to ensure substantial community and parental involvement in the desegregation process, particularly as the participation relates to minority parents and the minority community. In addition, the court agrees that the RSD should be required to provide for parental aides and mentoring programs. This portion of the Master's proposed remedy is directly related to the liability findings made by this court. In numerous instances, the RSD failed to respond to concerns expressed by minority parents and the minority community. *See* Plaintiffs' Proposed Findings on Uncontested Areas at 13. The court also notes with importance the Master's finding that the exclusion of minority parents from the educational process has had detrimental effects on the achievement of minority students. *See* Master's 10th Quarterly Report at 4 (effective parental involvement of minority parents is a major factor in improving minority student achievement); Master's 11th Quarterly Report at 49 (increased minority parent involvement will improve academic outcomes for minority students); Master's 14th Quarterly Report at 76 (parent center at Roosevelt showed promise to increase parental involvement and increase minority student performance).

In addition, the Magistrate is well aware that for a desegregation plan to work effectively, the community must be adequately informed of the plan. *See, e.g., People Who Care,* 851 F.Supp. at 1064 (District made an inadequate attempt to involve teachers, parents or the community in the development of the Focus Center Programs and the general lack of community understanding about Focus Centers led to their failure). The Master's proposal takes into account the importance of a well-informed community in the process of desegregation. Community education programs have been implemented in similar cases and are essential in developing a plan that promises to realistically work now. *See Bradley v. Milliken,* 402 F.Supp. 1096, 1118 (E.D.Mich.1975).

The court disagrees, however, with the Master's proposal that the RSD provide community grants and linkages with the business community, colleges, social services agencies, park district, civil rights organizations, health services, the criminal justice system and the media. These portions of the Master's proposal simply do not meet the standard recently reiterated by the Supreme Court: a remedial decree " 'must directly address and relate to the constitutional violation itself.' " *Jenkins III,* 115 S.Ct. at 2049 (quoting *Milliken v. Bradley,* 433 U.S. at 281–82). While a well-informed community is desirable to garner support for a desegregation plan, it does not follow that the Master's proposals concerning community grants, etc. are reachable by a federal court in an intentional discrimination case. The reason is simple—by requiring these latter programs, the court will have almost entirely left the realm of education. These areas were not part of the liability findings and do not relate to any vestiges of intentional discrimination. This is a court order to correct intentional discrimination; it is not to be the "Great Society" revisited. These types of programs are not approved at this time and will only be approved after a specific showing of their relationship to intentional discrimination.[23]

E. Early Childhood Education

***13** The Master's proposed plan contains a recommendation for Early Childhood Education ("ECE") programs. The Master noted that in the liability opinion the Magistrate found that tracking and ability grouping led to the placement of minority students in classes that did not provide the same educational opportunities as did the placement of majority students. The Master further noted that RSD data indicated substantially lower

achievement in the C.8. (predominantly minority) schools when compared with C.9. (predominantly majority schools) or when compared to the District as a whole. The Master then concluded that "The longstanding policies and procedures of segregation in the Rockford School District have contributed to lower achievement in these schools and, over time, have contributed to poor readiness skills on the part of students entering these C.8. schools." Proposed Plan at 46.

The ECE programs have an objective to maximize readiness for minority students so that these students could take full advantage of a non-discriminatory school system and its educational programs. The Master based his recommendation on a large body of scholarly evidence that demonstrates that early childhood programs can improve school performance. Proposed Plan at 47 n. 4. *See also* Tr. at 1640–42.

The ECE program, as proposed, is to be guided by four standards. First, a parent education program should be established to help parents understand the social and physical development of their children. Second, the program should be a "developmentally appropriate" pre-school program for all three and four year olds. Third, an inter-agency coordination program should be designed to address health, nutrition, child care and social service programs to improve the readiness of school children in the C.8. attendance zones. Finally, the ECE program should include a program for before and after school care for elementary age children in the C.8. attendance zones. Proposed Plan at 47.

While testifying about this aspect of his proposed Plan, the Magistrate questioned Dr. Eubanks about the necessity of the ECE as it related to any group that was discriminated against in the present lawsuit. Tr. 1642–43. It is undisputed that the three and four year olds that would benefit from the ECE were not even born when the lawsuit was initiated in 1989. The Master responded by stating the ECE was a key provision in any student assignment plan. If, for example, a controlled choice plan or a mandatory assignment plan required a student to transfer from school A to B, then the ECE would help to make sure that a C.8. youngster transferring to a C.9. school would be "ready" to take advantage of the educational programs. Tr. 1643. In the Master's opinion, it would be a "cruel hoax" to implement a student assignment plan and not provide the complementary instructional support that is necessary for the students to participate in the program. Tr. 1644.

For the same reasons as not allowing the community grants, the Magistrate rejects the notion that an Early Childhood Education program should be included in the CRO. In the first instance, the proposal is not linked to discrimination against any group that was affected by the District's conduct. Moreover, the programs that are continued under ability grouping, such as ADK, Success for All, Reading Recovery, Saturday Academy, summer school programs, tutorial activities and high order thinking programs, are specifically designed to help students take advantage of the educational opportunities available in the desegregated school system. The Magistrate is aware of the fact that some of these programs may help children who were not victims of any discrimination, such as a minority child who transfers in from another school district. There is a point, however, when a program that is justified because it may help minority students achieve a level playing field in a desegregated school system exceeds the equitable power instilled in the federal courts to remedy prior intentional discrimination. The ECE program reaches that point. The Master's justification for the ECE program would equally lend itself to supporting *any* program that was shown to help minority participation in the school system. This is beyond the scope of this court's remedial powers; the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation and the remedial decree must be "designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.' " *Milliken II,* 433 U.S. at 280–81.

***14** In support of the ECE, the Master states that:

> It is essential to provide educational opportunities to the offspring of those denied such opportunities to insure the required community interaction of such programs....
>
> ....
>
> Early childhood development in education produces meaningful involvement of parents at the early age which transcends into enhanced educational opportunities in the later years. The best time to involve parents in the education of their children is when the children are very young, pre-kindergarten. The Early Childhood Education Program integrally involves parents in the education process.
>
> ....
>
> Parents that initiate this process at an early stage with their children become more comfortable with the school district, and those persons will have a sustained involvement in the education of their children.

Master's Proposed Findings on the Uncontested Areas at 4–6.

The court does not dispute that the ECE would be beneficial to students entering the public school system. In fact, the court strongly urges the District to continue the program because of its proven educational benefits.

The problem, however, is that by ordering such a remedial program, the court will go beyond the scope of its equitable powers. The ability of parents to "understand the social and physical development of their children" is an external factor beyond the control of the RSD and cannot be ordered by this court as part of the CRO. *See Jenkins v. Missouri,* 115 S.Ct. 2038, 2055–56 (1995).[24]

F. Bilingual Education

The Master has proposed that the District shall ensure that the effects of the educational inequities with regard to Hispanic students, including bilingual students, are eliminated to the extent practicable. The Bilingual Education Program ("BEP") is to remedy the unlawful segregation of Hispanic students and to provide equity for Hispanic and bilingual students. The BEP is to be guided by five standards: (1) Hispanic students in the BEP shall not be mandatorily reassigned while White student participation in desegregation programs is voluntary; (2) Bilingual programs shall be located in appropriate places within the Hispanic community; (3) Bilingual programs shall not be moved as a desegregation device to put individual schools in compliance with racial composition guidelines; (4) alternatives to full day classes must be provided as an option for eligible children, so that bilingual students are not isolated for the entire day; and (5) the transportation of bilingual students shall be of the same quality as transportation for other students in the District. Proposed Plan at 50–51.

The Bilingual Education Program is substantially uncontested, now that the Master has withdrawn the gifted-eligibility provision. The program is contested to the extent that the impact of the program may affect the wages, hours and terms of employment for Intervenor–Defendants.

Another area of disagreement concerns the creation of the Bilingual Education Committee ("BEC"), as proposed by Dr. Eubanks. Dr. Eubanks testified that the present Hispanic Advisory Committee should be replaced by the BEC. The District opposes the BEC, maintaining that the new committee is unnecessary to effectively oversee the bilingual program. Dr. Eubanks recommended that an individual from the human resources department serve on the newly formed BEC. Tr. 1681. All parties agree that an effective bilingual plan must include one or more teachers, who should be, if possible, bilingual teachers. Parties Stipulation Concerning Uncontested Areas at 4. This would enable the BEC to identify suitable candidates to fill positions such as psychologists and teachers for the bilingual program. The BEC would be kept accountable by requiring the BEC to keep records of what occurs during the meetings. Tr. 1681.

***15** Presently, the bilingual programs are housed at Nashold and Riverdahl, which primarily conduct bilingual classes at the elementary level. Dr. Eubanks recommends a third site, at Barbour elementary, to cure the problem of inadequate space for the program. Tr. 1682. This suggestion will be discussed in another portion of the opinion. In addition, the Master recommends that multi-cultural awareness and staff development be made a part of the bilingual program. This recommendation was based on the fact that prior multi-cultural awareness programs have been aimed at the needs of African–American students, and were not responsive to the needs of Hispanic students. Tr. 1683. In addition, the program calls for a comprehensive plan for special education services for non and limited English speaking national origin minority students. The Master states that this is necessary to assure that students are not being placed in special education simply because they do not speak English.

The findings by this court that are contained in the Report and Recommendation clearly support all the objectives under the Master's proposed Bilingual Education Program. Regarding transportation, a *Green* factor that is without question a permissible remedial area, this court found that the RSD placed an unlawful transportation burden on Hispanic students by requiring the involuntary movement of bilingual students for desegregation purposes. At the same time, no involuntary transfer burdens were placed on majority students to achieve desegregation. The bilingual program was repeatedly relocated in the past, often to bring certain schools into compliance with racial composition numbers, that furthered the unlawful transportation burden on Hispanic students. Finally, bilingual students were provided transportation that was qualitatively inferior to transportation provided to other District students. *People Who Care,* 851 F.Supp. at 1192.

Beyond transportation, the RSD in the past converted the half-day pull-out bilingual program (that allowed bilingual students to interact with the general school population) to a whole-day program that completely and unlawfully segregated the bilingual students from the rest of the school. Bilingual students were "steered" towards easier and less beneficial classes by English speaking counselors. In addition, bilingual students were provided with inferior educational services and curricula than were provided to White students. Finally, the RSD failed to identify potential non and limited English speaking students for the bilingual program and failed to provide meaningful special education services to non and limited English speaking students. *People Who Care,* 851 F.Supp. at 1192; *see generally* Plaintiffs' Proposed Findings Concerning Uncontested Areas at 17–24 (discussing Report and Recommendation findings of intentional discrimination and vestiges).

Given these findings in the Report and Recommendation

which were specifically adopted by Judge Roszkowski, the court hereby orders the Master's proposed Bilingual Education Program to be implemented in its entirety, subject to the stipulations and the proposal for a third site at Barbour. The court accepts the Master's recommendation to implement a Bilingual Education Committee in place of the existing Hispanic Advisory Council. From his testimony, which is uncontested, there has not been a single year where all the necessary psychologist and teacher positions have been filled. Tr. 1680. As to the other components of the Bilingual Education proposal, the Magistrate holds that all of these programs are appropriate under *Milliken II* as necessary educational components to remedy victims of past segregation or are expressly contemplated remedial areas under *Green.*[25]

G. Research, Development and Evaluation of the CRO

***16** The Master's Proposed plan calls for a "full-scale and comprehensive research, development, and evaluation unit" in the RSD. Research, development and evaluation services are "vitally important" for successful implementation of the remedial plan. Proposed Plan at 81. The Master notes that accurate, timely and user-friendly data relative to minority student participation and performance is required if the schools are to achieve and maintain equitable desegregation. In essence, this aspect of the plan is for "formative evaluation"—"what is taking place, how is it taking place, why it is taking place, [and] what changes need to take place." Tr. 1663. Specifically, this portion of the Master's Proposed Plan calls for the collection and dissemination of three types of data: (1) data related to student performance and participation broken down by racial/ethnic and economic background; (2) data related to classroom and schools that provides direct and practical assistance in planning and delivering instructional improvements; and (3) data that is needed to coordinate and harmonize major instructional interventions. Proposed Plan at 82.

The staffing, consultant services and funding necessary for the Evaluation and Assessment Office should be reviewed by the newly appointed Director of Research and Evaluation to determine if there are adequate personnel in place to carry out the goals of this section of the plan. By September 1 of each school year, the Director of Research and Evaluation, working with District staff and external consultants, will prepare a year end report on the progress of the RSD in meeting participation and performance standards as set forth in the court's CRO. Proposed Plan at 83.

The court agrees with the parties' stipulation that successful implementation of desegregation activities requires the collection and utilization of meaningful data in which both the District and the faculty become aware of actual problems in the classroom and curricula, as well as at other levels of instruction in the District. Per *Green, Swann* and *Freeman,* a district court is to devise a remedy that is sufficiently broad and must promise to work realistically. Obviously, some implemented programs may not work as intended. The constant process of research, development and evaluation will be critical in making the CRO an efficient and cost-effective remedial program. *See Liddell v. State of Missouri,* 731 F.2d 1294, 1317 (8th Cir.1984) (holding that desegregation and long-range planning programs serve important compensatory and remedial objectives). As in all sections of the CRO, this program is to be funded subject to financial restraints.

H. Staff Development

The Master's Proposed Plan calls for a continuing, comprehensive staff development program for teachers, administrators and staff. The Staff Development Program is to address the findings of the court of intentional discrimination: education deficiencies in programs for minority students, student tracking/ability grouping, and segregation of students by race. Proposed Plan at 83. The Master testified that a large body of research indicates that staff development is a prerequisite for the successful implementation of a desegregation plan. Tr. 1669–70. The program is directed at remedying educational deficiencies for minority children in curricula, extra-curricular activities, pedagogical approaches, multi-culturalism and climate in schools throughout the District. *Id.*[26]

***17** The District's current staff development programs include some 17 activities and recommendations. Essentially, the Master's proposed Staff Development Plan suggests a coherent and comprehensive method of looking at the staff development programs that are currently embodied in the District's Comprehensive Multi–Year Remedial Plan. In particular, the Master recommends that a committee of principals and implementers should prepare a report suggesting recommended changes in District staff development plans. Second, a revised plan incorporating modifications made by RSD personnel should be submitted to the Planning and Implementation Committee ("PIC") and the Master. Proposed Plan at 84; Tr. 1669–71.[27]

The court hereby adopts the recommendations of the Master regarding the Staff Development Program. Administrators, faculty, and other staff all require orientation and training for desegregation. *See, e.g., Evans v. Buchanan,* 447 F.Supp. 982, 1015 (D.Del), *aff'd,* 582 F.2d 750, 770 (3d Cir.1978); *Bradley v. Milliken,* 402 F.Supp. 1096, 1118 (E.D.Mich.1975) ("In a system undergoing desegregation, teachers will require orientation and training for desegregation."). As indicated in several quarterly reports to this court, the staff in the

District's schools must have sufficient training and skills to effectively teach and educate students, especially in light of the prior discrimination in Rockford. Teachers and staff accustomed to virtually one-race schools will need a special emphasis in the area of culturally diverse behavior and learning patterns. *See* Master's 5th Quarterly Report at 2 (training of faculty and staff needed to address problems of within school segregation); Master's 14th Quarterly Report at 69, 72, 110 (stressing the need for additional training in the area of culturally diverse behavior and learning patterns). In the present case, the Staff Development Program is not at all unlike the in-service training program that was expressly approved of as a necessary educational component by the Supreme Court in *Milliken II. See Milliken II,* 433 U.S. at 287. Consequently, the Master's Proposed Staff Development Program is ordered as a component of the CRO.

I. Participation and Performance of Minority Students

The Master has proposed that the "participation and performance of minority students in the District shall reflect equitable outcomes when compared with other students in the District." Proposed Plan at 84. The District will be required to take all practical steps to ensure that minority students attain performance outcomes comparable to other students in the District in the area of achievement, attendance, grades, graduation rates, drop-out rates, discipline referrals, discipline sanctions and other appropriate performance measures. *Id.*

At the present time, the court does not have enough evidence to render a decision on these issues. The parties have merely stipulated that the District will continue to "support the identification and implementation of research-based programs which have demonstrated the ability to improve minority student achievement and to close the achievement gap between majority and minority students." Defendant's Amended Response to Master's Proposed Plan at 10. In other words, the stipulation does not concern the heart of the Master's proposal, that success in this area be determined by qualitative measures. Tr. 1685–86. This issue, Student Achievement, is scheduled for segment three of the CRO, to be released in Spring of 1996.[28]

J. Transportation and Desegregation of Schools

***18** The Master has made recommendations concerning transportation and desegregation of schools. The liability findings concerning inequitable transportation are too numerous to recount in this space.[29] What is disturbing is that the District continues to operate a school system where transportation is mandatory for minority students to attend secondary schools, outside their neighborhood, while no mandatory transportation burden is placed on majority students. Proposed Plan at 126. Through the 1989 Reorganization Plan, the District actually created a greater transportation burden on minority students than had previously existed. *Id.*

The Master's transportation proposal has four principal objectives. First, the District shall not place disparate transportation burdens on minority students compared to other students and shall not confer transportation benefits on majority students as compared to minority students. Second, the District shall ensure that transportation is provided equitably to all students, in order that minority students are able to fully participate in extra-curricular activities without significant hardships. Third, the District shall provide free transportation to students making desegregative transfers under a student assignment program, to students participating in extra-curricular activities, and to other students and parents engaged in desegregation activities. Fourth, to help ensure that minority students do not continue to suffer transportation burdens, the quantity of facilities, in terms of student and program capacity, that is placed by the RSD in minority neighborhoods shall, in comparison to the rest of the District, correspond to the relative proportion of students at that grade level who reside in the minority neighborhoods. Proposed Plan at 126–27.

The Master's proposal was agreed upon except to the extent that Intervenor–Defendants state that, "There should be no imposed disparate transportation burdens placed upon any group of students. The flawed Alves, et al., recommendations should not be adopted as part of the remedy." Intervenor–Defendants Response to Master's Proposed Plan at 10. In essence, the Court understands Intervenor–Defendants' objection to concern any link the transportation remedy has to controlled choice, a student assignment program that they oppose.

The Magistrate accepts, adopts and orders the first three of the Master's recommendations regarding transportation and desegregation of schools. Transportation is one of the *Green* factors and the Constitution requires that transportation be provided to all students in an equitable fashion, regardless if for regular classes, desegregative purposes or extra-curricular activities. The fourth objective may have a possible impact on placement and quantity of facilities and will be handled elsewhere in the opinion.[30]

K. Disposition or Acquisition of Facilities

In his Proposed Plan, the Master noted that the disposition and/or acquisition of a facility can be used by a school district either to enhance desegregation or promote resegregation. One only needs to remember the closing of West High School to recall a recent example in Rockford. Therefore, the Master has proposed that any disposition or

acquisition of a facility must be used to enhance desegregation efforts. A requirement in the CRO is that the District shall not dispose of or acquire a facility without the concurrence of the PIC, the Master, and if necessary, the court. Proposed Plan at 136.

***19** The Magistrate is mindful of the Supreme Court's admonition in *Swann:*

> [I]n devising remedies where legally imposed segregation has been established, it is the responsibility of the local authorities and district court to see to it that future school construction and abandonment ... do not serve to perpetuate or reestablish the dual system....

Swann v. Charlotte–Mecklenburg Bd. of Educ., 402 U.S. 1, 21 (1971). The Master's uncontested proposal is reasonable and is within the remedial power of this court; therefore, the disposition or acquisition of facilities proposal is ordered as part of the CRO. The Magistrate further orders that no construction of a facility shall occur without prior court approval.[31]

L. Alteration of School District Boundaries

The Master has recommended that the RSD shall be precluded from altering the District's boundaries through detachment, annexation, division, dissolution or any combination of these methods unless any such proposed action advances desegregation efforts. The court must explicitly determine and rule that any proposed action advances desegregation efforts and provides enhanced equity for minority students in the RSD. Proposed Plan at 137. The Master stated that this requirement is necessary for the CRO because, historically, school districts engaged in desegregation plans across the country attempted to alter boundaries to create separate enclaves for majority and/or minority students. Tr. 1673. In fact, the Second Interim Order details how this was attempted in Rockford, after the filing of the present lawsuit. Tr. 1674; Proposed Plan at 136. The Master's recommendation would simply preclude the RSD from carving the school district up into separate majority and minority school districts.

The Magistrate fully adopts the Master's proposal concerning any actions related to the alteration of school boundaries. The Report and Recommendation specifically lists examples of the RSD gerrymandering attendance boundaries in order to isolate minority students. Even without these findings, the Master's proposed remedy is appropriate. The Supreme Court has specifically held that a district under a desegregation plan may not create new districts to carve out "safe havens" for White students, because the creation of such districts impedes desegregation efforts. *United States v. Scotland Neck City Bd. of Educ.,* 407 U.S. 484, 490 (1972). Accordingly, the Master's proposal is hereby adopted by the court as a necessary part of the CRO.

M. Racial Incidents, Discrimination, Harassment or Inequity

The Master included in his plan a proposal concerning racial incidents that involve discrimination, harassment or inequity. Since these incidents impede efforts to successfully implement a desegregation plan, the Master recommended that the RSD take all practicable steps to preclude and minimize the effects of racial incidents involving discrimination, harassment or inequity. Proposed Plan at 137.

***20** The proposal calls for the District to review and, if appropriate, modify, an enforceable discipline policy on racial incidents. The policy shall require the District to investigate any racial discrimination or harassment by any employee or student directed at any student, parent, or employee and apply appropriate sanctions. In addition, the policy shall be applied to any school-related incident which the District has the capability to remedy. The policy shall provide for a complaint process and the policy shall be widely disseminated by the District to employees and students. The policy shall explicitly contain a provision that enjoins the District and its agents from harassing or retaliating against any member of the plaintiff class in pursuit of implementing the CRO. Finally, the District shall inform, on a quarterly basis, the Master, Plaintiffs and Intervenor–Defendants of any investigations pursued, findings made, and, if appropriate, sanctions imposed. Proposed Plan at 137–38; Tr. 1674–76.

The stipulation provides that the basis for this remedy is Section G.9 of the Second Interim Order and the existing complaint policy and procedures thereunder.[32] The stipulation further provides that all parties will have access to documents concerning implementation of this aspect of the remedy. Parties' Stipulation on Uncontested Areas at 5.

The Magistrate hereby adopts the Master's recommendation concerning racial incidents. No racial incidents will be allowed to impede desegregation efforts. A complaint policy and procedure, as contained in the Second Interim Order, will insure that the District does not apply the code in a discriminatory manner. In addition, the standards proposed by the Master provide that the policy is fully understood by administrators, faculty, students and parents. The racial incidents policy is reasonable and necessary for successful implementation

of the CRO. *See, e.g., Evans,* 582 F.2d at 772 (school board required to "develop a code of rights and responsibilities regarding such issues as student conduct and suspension and expulsion, and to insure administration of the code in an unbiased manner").

N. Funding/Budgeting

Under this objective, the Master has proposed that developing a yearly budget for the CRO remedies be continued as outlined in the May 5th Agreement. Under that agreement, the Master works with the Planning and Implementation Committee (PIC) during mid-Winter prior to the next school year.[33] The Master noted that the process has worked successfully for the past two years, during which time a tort budget was developed and presented to the court without involving any dispute resolution. Because of its success, the Master has recommended that this policy continue. Proposed Plan at 150–51.

The Magistrate adopts the proposed funding mechanism for the CRO. A remedial order requires sufficient funding for its programs and input from a variety of sources assures that remedial dollars will be spent wisely and efficiently. If the PIC ceases to exist, it will be the responsibility of its successor, such as the Master aided by a citizen advisory board, to develop the budget. The court, however, will have the final say on approving the budget.

CONCLUSION: SEGMENT ONE

***21** This segment of the opinion has dealt with fourteen of the thirty remedial objectives for the CRO: ability grouping, the human relations program, curriculum and instruction, community education, early childhood education, bilingual education, research and development, staff development, student participation and performance, transportation, disposition/acquisition of facilities, alteration of District boundaries, racial incidents and funding/budgeting. The Magistrate hereby orders and directs the Rockford School District to begin immediate implementation of the fourteen remedial areas as discussed in this opinion.

SEGMENT TWO[34]

[Dated February 2, 1996]

IV. Student Assignment

Like many urban school districts across the country, the Rockford School District ("RSD" or "District") has been undergoing demographic changes. In 1980, the RSD had a total student population of 31,952 and the percentage of White students was 76%. 1994–95 Fall Housing Report at Tables C.7–C.11. By the 1994–95 school year, the total student population had dropped to 26,370 and the district wide percentage of White students had fallen to 65%. This segment of the opinion will deal with student assignment issues and will tackle the difficult task of developing a workable remedy that assigns students to the RSD's public schools in a constitutional fashion. This remedy, like all remedies in the CRO, must relate to and address the liability findings of intentional discrimination that are contained in the 1993 Report and Recommendation and 1994 Order by Judge Roszkowski adopting the student assignment findings. This segment will have four sections: A. Report and Recommendation Liability Findings; B. RSD Desegregation Efforts from 1989 through 1994; C. Proposed Remedies for Student Assignment; and D. Student Assignment Remedy.

A. Report and Recommendation Liability Findings

ELEMENTARY AND SECONDARY SCHOOLS

The instances of intentional discrimination found in the Report and Recommendation are numerous and space does not permit a detailed review here. For purposes of a constitutional student assignment remedy for both elementary and secondary schools, the RSD must correct the vestiges of intentional discrimination as detailed in the Report and Recommendation. While not an exhaustive list, the RSD must address the following findings of the court with respect to student assignment. The court found that the RSD engaged in a pattern of unlawful acts and omissions that caused the segregation of its schools, including: the gerrymandering of school attendance area boundaries in order to create and maintain a separate school system based upon race; the manipulation of secondary school feeder patterns in order to maintain segregation; maintaining an open enrollment policy that primarily benefitted White students with voluntary alternative programs and burdened minority students through mandatory one-way busing; the building of new schools in locations so as to promote and retain segregation; the closing of schools and the reassignment of the affected students in such a way that White students went to racially identifiable White schools and Black students attended racially identifiable minority schools; the manipulation of school capacities in order to racially isolate students; and the policy of permitting special transfers to students in order to avoid attending predominantly African–American schools. *See People Who Care,* 851 F.Supp. at 1079–81.

***22** In addition, throughout the 1970s and 1980s, the RSD was aware of desegregation proposals that would have brought about the "swift integration" of the District. They were all rejected. Similar to the current trends in the 1990s, the programs initiated in the 1980s burdened minority students to the benefit of White students. *Id.* at 1081.[35] Accordingly, any student assignment plan must address all of these identified areas in order to be an acceptable remedy for the constitutional violations. Tr. 25.[36]

B. RSD Desegregation Efforts from 1989 through 1994

A student assignment plan must take into account the liability findings and current vestiges of intentional discrimination. An important starting point for the court is to analyze student assignment patterns in the RSD since 1989. This section will track the progress of desegregation from 1989 through 1994 by grade configuration: elementary schools and secondary (middle and high) schools.

ELEMENTARY SCHOOLS

For student assignment at the elementary level, the vestiges that remain of the intentional discrimination are complex in nature and, at times, interrelated. For these reasons, the section on elementary schools will be discussed in six parts: (1) desegregation progress from 1989 through 1994; (2) the Southwest Quadrant capacity problem; (3) how partial desegregation was achieved; (4) the use of magnet schools; (5) present desegregation methods; and (6) conclusion.

1. Desegregation Progress From 1989 through 1994

For the 1989–90 school year, there was a total of 15,171 students enrolled in the RSD's 36 elementary schools.[37] 1989–90 Fall Housing Report. The elementary student population reflected a racial composition of 29.5% minority students. Master's Ex. 7 (Table E1 from Master's Ex. 6). 24 schools were racially identifiable—11 racially identifiable minority (African–American and/or Hispanic) schools and 13 racially identifiable majority (White) schools.[38]

By the 1994–95 school year, there was a total of 15,473 elementary students, and the number of elementary schools had increased to 39. The racial composition of the elementary students had changed to 63.7% White and 36.3% minority. The number of racially identifiable schools had been reduced by the year 1994–95. In 1994–95, a racially identifiable minority school included any school that was greater than 51.3% minority (36.3% plus 15%); similarly, a racially identifiable majority school included any elementary school that had greater than 78.7% White (63.7% plus 15%) enrollment. By the 1994–95 school year, the number of racially identifiable schools had changed for the better to 12: 7 racially identifiable minority and 5 racially identifiable majority. Master's Ex. 7; Tr. 54–55.[39] Table 1 lists the elementary schools and their racial composition for 1989–90 and 1994–95. Maps 1 and 2 show, respectively, the racially identifiable schools for 1989–90 and 1994–95.[40]

[Editor's Note: Maps 1 and 2 are not reproducible.]

Table 1[41]

	1989–90		1994–95	
School	**% White**	**% Minority**	**% White**	**% Minority**
Barbour	25.7	74.3 m	20.2	79.8 m
Beyer	55.1	44.9 m	60.6	39.4
Bloom	95.1 w	4.9	68.4	31.6

Brookview	87.6 w	12.4	74.7	25.3
Carlson	82.2	17.8	71.7	28.3
Cherry Valley	92.6 w	7.4	93.9 w	6.1
Church	18.9	81.1 m	closed	
Conklin	71.2	28.8	62.9	37.1
Dennis	42.4	57.6 m	37.8	62.2 m
Ellis	6.4	93.6 m	16.9	83.1 m
Fairview	69.4	30.6	closed	
Froberg	95.9 w	4.1	83.2 w	16.8
Gregory	85.2	14.8	75.1	24.9
Haskell	29.8	70.2 m	17.3	82.7 m
Hillman	85.6 w	14.4	71.6	28.4
Jackson	73.5	26.5	66.4	33.6
Johnson	86.7 w	13.3	77.9	22.1
King	52.2	47.8 m	43.7	56.3 m
Kishwaukee	53.8	46.2 m	55.5	44.5
Lathrop	64.5	35.5	62.2	37.8
Lewis Lemon	not open		46.9	53.1
Marsh	not open		74.3	25.7
McIntosh	36.4	63.6 m	38.7	61.3 m
Nashold	52.4	47.6 m	52.4	47.6

Nelson	86.3 w	13.7	78.4	21.6
New Milford	96.3 w	3.7	92.3 w	7.7
Riverdahl	not open		48.7	51.3
Rock River	66.9	33.1	62.5	37.5
Rolling Green	78.1	21.9	76.5	23.5
Sci/Tech Adad.	not open		48.8	51.2
Spring Creek	92.7 w	7.3	74.9	25.1
Stiles	28.2	71.8 m	40.3	59.7 m
Summerdale	62.9	37.1	65.4	34.6
Thompson	92.0 w	8.0	80.2 w	19.8
Walker	71.8	28.2	75.1	24.9
Washington	56.9	43.1	54.1	45.9
Welsh	84.1	15.9	70.9	29.1
Westview	66.9	33.1	68.4	31.6
West CAPA	90.8 w	9.2	75.2	24.8
Whitehead	89.3 w	10.7	72.2	27.8
White Swan	94.1 w	5.9	79.1 w	20.9

w = racially identifiable White

m = racially identifiable Minority

***23** Table 1 demonstrates that on the elementary school level, the RSD has made improvements in desegregating its schools.[42] A close look at how this level of desegregation was accomplished, however, reveals two disturbing facts: One, by and large, the burden of desegregation falls directly on the RSD's minority student population; and, two, the RSD appears to be intentionally discriminating against minority students.

As Map 1 demonstrates, in 1989–90, with the exception of three racially identifiable schools that were only slightly imbalanced (Nashold, Kishwaukee and Beyer), the District's eight most racially identifiable minority schools were located west of the Rock River in the Southwest Quadrant. And, with the exception of the gifted CAPA program for grades 4 through 6 at West Middle School, all of the District's 13 racially identifiable White elementary schools were east of the river. Master's Ex. 6 at 10, 55.[43] Although the number of racially identifiable schools dropped from 24 in 1989, to 12 in 1994, Map 2 demonstrates that the geographic and historical distribution of racially identifiable White and minority schools has not changed in response to interim orders. Master's Ex. 6 at 10–11. In other words, the racially identifiable minority schools are still in the Southwest Quadrant and the racially identifiable White schools remain east of the Rock River. This is a pattern that has existed for decades and is a pattern which the RSD has been found to have intentionally maintained for decades. A constitutional student assignment policy must, to the extent practicable, bring the remaining twelve racially identifiable schools within 15 percentage points of the elementary minority student population.

2. The Southwest Quadrant Capacity Problem

The RSD presently utilizes attendance zones[44] to assign the vast majority of its elementary students. Presently, the RSD has 35 elementary schools that are being operated as attendance zone schools.[45] Thirteen of these elementary schools have attendance areas west of the river and twenty-two elementary schools have attendance areas on the east side of the river. For the 1994–95 school year, a total of 10,283 elementary students (66.5%) attended their residence-zone school. 79% of the District's White elementary students attended their residence-zone school, as compared to 44% of the RSD's minority students. Tr. 229. In short, under the present configuration of the RSD's elementary schools, a significantly greater proportion of White students attend neighborhood schools than minority students. Master's Ex. 6 at 13. The question that must be answered is why?

In 1994–95, the RSD had a total capacity of 15,979 elementary students in the 35 attendance zone schools. Master's Exhibit 6 at 56–57. The capacity breaks down as follows: SW Quadrant, 3,036; NW Quadrant, 2,318; NE Quadrant, 4,218; and SE Quadrant, 6,407. While the SW Quadrant has capacity for 3,036 students, some 4,272 elementary students reside in the SW Quadrant, meaning that approximately 1,236 elementary students residing in the Southwest Quadrant are displaced—they cannot attend their neighborhood school if they want to. Tr. 61–62.

***24** Take, for example, a student who is assigned to and resides in the Ellis School attendance zone. The Ellis School attendance zone has 916 resident students but only has capacity for 422, less than 50% of the resident students. This gives a parent of a student in the Ellis attendance zone certain choices. Obviously, a certain number of students can actually attend Ellis School. Since more than half of Ellis School parents do not have this option, a parent might then choose to have his or her K through 6 student attend one of the adjoining or nearby attendance zones. An important observation, however, makes this second option not an option at all: all of the attendance zones adjacent to Ellis School are also over capacity. In the same way that there is no room at Ellis for the student; likewise, the parent cannot send his or her child to an adjoining attendance zone school because there is no room.

Ellis School is just an example; in fact, this problem burdens the entire Southwest Quadrant, which has an elementary resident student population that is 76.3% minority. The Southwest Quadrant has 140.7% resident utilization—meaning, the SW Quadrant has 40.7% more elementary resident students than available seats. Table 2 shows the capacity, number of resident students, percent resident minority and percent resident utilization for the city's four quadrants.

Table 2

Quadrant	Capacity	# resident students	% resident minority	% resident utilization
Southwest	3,036	4,272	76.3	140.7
Northwest	2,318	2,181	24.9	94.1
Northeast	4,218	3,242	12.3	76.9
Southeast	6,407	5,766	17.7	90.0

Therefore, Table 2 makes it clear that students living east of the Rock River (who are predominantly White) may attend their residential attendance zones, if they so choose. This same opportunity is not afforded to elementary students that live in the Southwest Quadrant (who are overwhelmingly minority). The Magistrate concludes that the Southwest Quadrant is the only sector of the City that lacks sufficient space to accommodate its resident students in their neighborhood attendance zones. *See* Master's Ex. 6 at 17. The lack of capacity problem has, in part, led to over 2,000 minority students transferring out of the SW Quadrant to attend elementary schools in 1994–95. *Id.* at 17–18, 56.

The Magistrate finds that the racial disparities in student access to elementary schools continue as a result of the District's discriminatory closing of several Southwest Quadrant schools in the 1970s and 1980s. *See* Master's Ex. 6 at 19; Tr. 230. The Magistrate concludes, therefore, that the capacity shortage in the Southwest Quadrant of some 1,200 seats is a vestige of the intentional discrimination of the RSD. In addition, the present attendance zone student assignment policy continues to contribute to segregative student enrollments and has a discriminatory impact. Tr. 81. The capacity problem, which lingers as a vestige of intentional discrimination, must be addressed in a constitutional student assignment policy.

3. How Partial Desegregation was Achieved

***25** The question of how the District has achieved some desegregation from 1989 through 1994 still has not been answered. Unfortunately for Rockford's minority elementary student population, the answer lies in the Southwest Quadrant's capacity problem. As will be seen, the RSD has actually had an incentive to keep the SW Quadrant at a level of significant under-capacity—because by doing so, some 2,000 elementary students per year (most of whom are minority) are compelled to ride buses far outside their attendance zone. In short, it is apparent that the RSD has been attempting to desegregate its schools by maintaining and preserving the capacity shortage in the Southwest Quadrant.

In reality, the Rockford School District has already selected its method of desegregation: the busing of students. Student transportation by yellow buses is a fact of life in Rockford. For the 1994–95 school year, with no court-ordered student assignment plan in place, approximately 7,969 or 51% of the elementary students were transported to their schools. Master's Ex. 6 at 27. The problem with the District's present student assignment plan, however, is that it does not apply the "remedy" in a non-discriminatory fashion. To start, almost 60% of the District's minority elementary students ride a bus, as compared to roughly 50% of the District's White elementary students. Master's Ex. 6 at 27. In the Southwest Quadrant alone, approximately 1,957 of the minority elementary students were transported in 1994–95, a significant number of whom were transported outside their attendance zones. Master's Ex. 6 at E.5.

Further, the data shows that, by and large, only the transportation of minority students had any significant desegregative effect. For example, approximately 17% of the District's transported White elementary students had a positive effect on desegregation, as compared to at least 50% of the transported minority students. The vast majority of White students who are transported, travel to their attendance zone school or to other schools on the east side of the river. *See* Master's Ex. 6 at 28.

In addition, the pattern of integration transfers reveals disparate transportation burdens. In 1994–95, for example, 1,041 elementary students were granted "integration" transfers. Of those transfers, 1,007 were minority and only 34 were White. Master's Ex. 6 at 24.

Therefore, 1,007 minority elementary students are bused each and every day to "integrate" the Rockford public school system. Only 34 White students share this burden. Tr. 73.[46]

In the Magistrate's opinion, these 1,000 plus minority transfers can hardly be called "voluntary." Four reasons can be advanced why a parent would place his or her child on a bus to be transferred out of that child's attendance zone. First, a parent may believe in integrated schools as desirable so that children can, at an early age, interact with children of different races and backgrounds. This noble reason for transferring a child is based on a belief that children who get to know and associate with each other, will, in the future, be able to live in peace together. A second reason would be the belief that your attendance zone school is not as "good" a school as the school to which your child will be bused. A parent would, therefore, be sending his or her child to a better educational experience. A third reason would be an attractive magnet program at the school to which your child is being transferred. Currently, however, there are no magnet programs that would attract minority children to the east side of the river. Rather, all of the magnet programs are on the west side of the river. The fourth and last reason for a child to leave his or her attendance zone would be that the school district had mandatorily reassigned the child.

***26** Therefore, for minority children, the only applicable reasons are numbers one, two and four. Although reason one is noble, it does not explain the vast number of transfers out of the SW Quadrant. That leaves reasons two and four. The problem with the second reason is that it is perhaps in the District's interest to make sure that the Southwest Quadrant elementary schools are perceived as being not as "good" as the other elementary schools in the district. The present system utilized by the RSD arguably fosters the perception in the minority community that their child will be better off if the child is bused to the other (White) side of town. In other words, the student assignment program for minority elementary students is aided (the court hopes unintentionally) by low performance levels at SW Quadrant schools, when in fact, the School Board should be encouraged to increase the performance level of those schools. Consequently, any student assignment plan must encourage the RSD to improve the achievement levels of the west side schools.

The fourth reason, that the child is mandatorily reassigned, is a problem because it encourages the RSD to maintain the shortage of seats in the SW Quadrant. If there is no room for a child in his or her attendance zone, the child can then be mandatorily reassigned, notwithstanding that this may be labeled a "voluntary integration transfer" by the RSD. The court cannot allow the RSD to achieve levels of desegregation solely by the displacement of minority elementary students. The Magistrate finds, therefore, that the pattern of "voluntary"[47] transfers for purposes of integration further demonstrates that the RSD has placed the burden of desegregation on the District's minority students.

4. The Use of Magnet Schools

One of the components of the present effort by the RSD to numerically desegregate its elementary schools is the use of the magnet school. Since 1989–90, the RSD has built three elementary magnet schools: Lewis Lemon, the Rockford Science and Technology Academy ("RSTA") and Washington. In 1994–95, these three schools had a combined enrollment of 1,409 students. Master's Ex. 6 at 24. The magnets enrolled a total of 813 White students, 400 from the west side and 413 from the east side. This data supports the notion that White students will voluntarily enroll in west side schools if there is an educationally attractive program. The magnet programs are classified by this court as a success. They provide an excellent educational opportunity for both the minority and majority students and do help desegregate the elementary population.[48]

5. Present Desegregation Methods: Voluntary for White Students, Mandatory for Minority Students

Observing how the seven elementary schools changed from racially identifiable White in 1989, to "integrated" in 1994, illustrates the RSD's current method of desegregating the elementary schools. Bloom school, for example, before transfers were considered, had 13 minority students out of 282 in 1994–95. 1994–95 Fall Housing Report at Table E.2. Bloom school received 90 White transfers and 156 minority transfers, to arrive at a total of 525 students. Thus, before the transfers, Bloom school was 95.4% White. After the transfers, which were over 60% minority, Bloom school was no longer racially identifiable White, with 68.4% White and 31.6% minority. Table 3 summarizes this data for the seven elementary schools that changed from racially identifiable White to "integrated."

Table 3

School	Pre–T % White[49]	W–Transfers[50]	M–Transfers[51]	Post–T % White[52]
Bloom	95.4	90	153	68.4
Spr. Creek	85.9	−31	52	74.9
Whitehead	79.5	−49	26	72.2
Brookview	90.6	−24	80	74.7
Johnson	88.8	4	56	77.9
Nelson	81.1	−70	0	78.4
Hillman	79.3	−6	46	71.6

***27** Table 3 demonstrates the dual nature of the RSD's present desegregation efforts. First, through voluntary programs, White elementary students have left racially identifiable east side schools and have entered magnets, gifted programs or alternative programs. Second, partly because of under capacity, many minority students have had no choice but to enroll in these east side schools, thereby achieving some levels of numeric integration. The conclusion is simple and inescapable: the system is presently voluntary for White elementary students and mandatory for minority elementary students.[53]

6. Conclusion: Elementary Schools

In summary, Rockford has achieved some statistical improvement in the area of student assignment in its elementary schools. This section has shown, however, that the current methods of desegregation in Rockford are essentially voluntary for Whites and mandatory for children of color. Beyond being unfair, this pattern effectively continues the RSD's policy of unlawfully discriminating against Black and Hispanic schoolchildren. Specifically, the student assignment plan in this school district must address three problems at the elementary level. One, the lack of (or under) capacity in the SW Quadrant. Two, the assignment plan must not engage in intentional discrimination and the unequal transportation burdens on minority schoolchildren must be removed. Three, the assignment plan must correct the previous intentional discrimination of the RSD in the student assignment area, as delineated in section IV.A. of this segment of the opinion. A constitutional student assignment plan must, to the extent practicable, bring all elementary schools to plus or minus 15% of the racial composition of the District's elementary student population. This court will not endorse any plan which is voluntary for the White elementary students of the city of Rockford, while being a mandatory reassignment plan for the minority students.

SECONDARY SCHOOLS

For the most part, the most severe constitutional violations and vestiges concern the elementary students in the RSD. Nonetheless, a constitutional student assignment plan at the secondary level must address three problems in addition to correcting the previously mentioned vestiges of the intentional discrimination (see *supra* section IV.A.): (1) the lack of capacity; (2) unequal transportation burdens; and (3) disparity in facilities.

1. Secondary School Enrollment and Capacity

For 1994–95, there were 4,044 students enrolled in the RSD's middle schools (grades 7–8) and 6,744 high school students (grades 9–12).[54] Of the 10,788[55] seventh through twelfth graders, 3,586, or 33% were minority students. Of

the 6,744 high school students, 2,145, or 31.7% were minority. In terms of secondary student enrollment by residence, 2,267, or 35% of all high school students resided west of the Rock River and 64% of the minority high school students resided on the west side of the Rock River. For the 1,404 African–American RSD high school students, 77% resided on the west side. Master's Ex. 6 at 30.

***28** Given that minority students in grades seven through twelve are heavily concentrated on the west side, the problem with the District's present student assignment policy is that only two of the eight secondary facilities, West Middle School and Auburn High School, are located on the west side. Master's Ex. 6 at 32. Half of the secondary students who are African–American or Hispanic and who live west of the river attend one of these two west side secondary schools. The other half are bused across the river to mandatory assignments in east side secondary schools. Therefore, the Magistrate concludes that the southwest and northwest quadrants are "supply side" locales that provide minority students to balance east side schools. *See* Master's Ex. 6 at 33.

The problem at the secondary level, as with elementary schools, is lack of capacity. Table 4 shows the 1994–95 capacity for the RSD's four high schools.

Table 4

High School	Capacity
Auburn	1,635
East	2,070
Guilford	2,020
Jefferson	2,380

The problem becomes apparent when considering that of the 6,744 high school students, approximately 2,267 reside west of the Rock River. With Auburn High School as the only "local" facility, that translates into 139% utilization, or 39% over capacity. By contrast, the remaining 4,477 high school students live east of the river, with capacity in the three high schools at 6,470. This results in a comfortable utilization rate of 69%.

The problem is not helped by the existence of two specialized programs housed at Auburn High School: the Creative and Performing Arts Program ("CAPA") and the Centralized Gifted Program (the "Academy"). These two "stand alone" programs have a total enrollment of 500 to 600 individuals, a significant percentage of whom are White students, many of whom are from the east side of the river.[56] Thus, the specialty programs at Auburn High are predominantly White and function to bring the school into compliance with the district wide percentage of minority/majority students. Tr. 353.

Whether the specialty programs constitute within school

segregation is not relevant with regard to student assignment. For this part of the opinion, the court will assume that these programs will be allowed to continue. The problem, however, is that at Auburn High, the specialty programs take up approximately 550 seats, when there is already a capacity problem west of the river. After subtracting those seats from Auburn's total capacity of 1,635, the utilization rate soars to 209%.[57] If these high school specialty programs are allowed to continue, they must be housed at another location.

2. Unequal Transportation Burdens

As might be expected, similar to the problems existing in the elementary schools, the lack of secondary facilities on the west side has led to inequitable transportation burdens. One stark example is that 58% of African–American students are bused from west of the river to east side secondary schools, while only 8% of White students on the east side are bused across the river. Master's Ex. 6 at 34.

***29** There are essentially three categories of secondary school transportation. First, 25% of all secondary student transportation includes students (mostly minority) that are bused from west to east to achieve racial balance in east side schools. Second, a mere 8% of the total transportation is for east side White students to attend west side specialty programs. Third, the remaining 67% of secondary student transportation has little or no effect on desegregation. Master's Ex. 6 at 34. No White students from grades seven through twelve, except for those few attending specialty programs, travel from east of the Rock River to schools on the west side. Master's Ex. 6 at 32; Tr. 349. The Magistrate finds that minority secondary students, especially African–American students, bear an extremely disproportionate share of the transportation burden. Tr. 350.[58]

Therefore, the first problem that exists in the secondary schools is the lack of seats (capacity) west of the river which inevitably causes the second problem, the disparate transportation burdens. Given that minority students are heavily concentrated on the west side of the river and only two of the eight secondary facilities are west of the river, it should be no surprise that from 1989 through 1994, RSD minority secondary students were bused across the river to schools that were 30 to 60 minutes away from their homes. Master's Ex. 6 at 32. In contrast, very few east side White students cross the river and those that do are-enrolled in specialty programs.[59]

3. Disparity in Facilities

The third major problem that exists in the secondary schools (beyond capacity and transportation) is the condition of the existing facilities. Not only must west side minority students deal with a lack of capacity problem, the middle school which they attend in the greatest percentage, West Middle School, is inferior to the other middle schools in space, physical condition and equipment. The facility deficiencies are too many to address here, but the inadequacies contained in the report by Dr. James Heald must be addressed in any constitutional student assignment plan. *See also* Tr. 355–359 (structural deficiencies at West Middle School and Auburn High School).[60]

4. Conclusion: Secondary Schools

In conclusion, the RSD must correct the intentional discrimination as detailed in the Report and Recommendation, as stated in section IV.A. of this segment of the opinion. More specifically, a constitutional student assignment plan must correct the following inequities: the west side capacity situation (both middle and high school), transportation burdens and quality of facilities. The court cannot endorse a student assignment remedy that does not address the inequalities in each of these areas. Finally, as with elementary student assignment, the student assignment plan for secondary students must assign students to each secondary school so that each school is within 15 percentage points of the district wide percentage of majority/minority secondary students.[61]

C. Proposed Remedies for Student Assignment

During the CRO hearings, the Magistrate considers there to have been four proposed solutions to the student assignment problems in the RSD: controlled choice (option A), controlled choice with magnets (option B), mandatory reassignment and maintaining the present, misnomered "voluntary" plan. The court has already rejected the status quo.

***30** That leaves the controlled choice options and mandatory reassignment. According to the evidence at trial, controlled choice was fully supported by the Rockford School Board ("RSB") by a 7 to 0 vote before the CRO hearings commenced. According to Dr. Ronald Epps, the Superintendent of the Rockford School District, the RSD supported controlled choice as the "best means for desegregat[ion]" as early as January 6, 1995. Tr. 3699–3700. In addition, the RSD repeated its position in favor of controlled choice (option A) in its amended response to the Master's proposed CRO, filed in August of 1995.

The CRO hearings commenced on October 16, 1995. Testimony and evidence relating to student assignment was taken in the first segment of the trial, from October

16 through October 31, 1995. Additional testimony and evidence on student assignment was taken during the week of December 18, 1995. During this time period, from October 16 to December 21, 1995, the RSD presented its position to the court on student assignment: option A of controlled choice. This was no surprise, as the RSD had supported this remedy for approximately one full year. On December 22, 1995, all evidence on student assignment was closed.

Within the last few days, on January 26, 1996, the RSD filed a motion to reopen the evidence on student assignment. The motion states that on November 7, 1995, midway through the hearings, a school board election took place, and four new members were elected to the RSB. The motion further states that on January 9, 1995, the newly elected RSB voted to rescind the action of the previous board, relative to its support for controlled choice. The RSD now wants to submit a new plan to the court.

It is the obligation of this court to fashion a remedy that places this school district in compliance with the Fourteenth Amendment of the United States Constitution. The rights guaranteed by the Fourteenth amendment may not be revoked by a community at a school board election.

There is always the possibility, however, that a new plan could be developed that addresses all of the liability findings, ends intentional discrimination and corrects the vestiges of past discrimination.[62] The Board claims a new and improved plan. The court is willing to listen. A word of caution, however, is in order. If the school board does not demonstrate the determination to implement an effective plan to eliminate the vestiges of intentional discrimination in the student assignment area, the court will establish a mechanism to do so.

For now, however, the motion of the RSD is GRANTED to the following extent. The RSD will be given fourteen (14) days to present in writing a detailed student assignment plan that addresses each and every one of the constitutional violations discussed in this segment of the opinion. The plan must correct the acts of intentional discrimination and the results or vestiges of those acts of intentional discrimination as detailed in the Report and Recommendation. All parties are given seven days thereafter to respond. There will be no extensions of this schedule, for any reason. The plan submitted by the RSD will be considered along with the controlled choice options and mandatory reassignment plan when the court orders a remedy in the conclusion of this segment of the opinion. The court is in no need of further testimony. After receipt of the plan and comments by the parties, the court will complete Sections C, Proposed Remedies for Student Assignment and D, Student Assignment Remedy.

SEGMENT TWO[63]

[Dated March 12, 1996]

IV. Student Assignment (continued)

C. Proposed Remedies for Student Assignment (continued)

***31** On February 2, 1996, this court entered the first part of segment two of the CRO. At that time, the court considered a motion by the District to reopen proofs on student assignment because the Rockford School Board ("RSB") had changed its position on controlled choice. The Magistrate granted the RSD's motion and allowed the Board to file a new student assignment plan by February 16, 1996. On February 13, 1996, the District filed a motion for leave to withdraw its motion to reopen proofs on student assignment. In that motion, Defendant detailed that on February 9, 1996, the Board met to consider its efforts at developing an alternative plan, determined that an alternative plan was not feasible, and therefore, voted by four to three to switch again and support controlled choice Option A. Defendant's Motion for Leave to Withdraw Motion to Reopen Proofs at 5–6. Defendant's motion is GRANTED; accordingly, there is no alternative plan from the RSD.

Consequently, there are three proposed remedies for the constitutional violations discussed in Sections A and B of this segment of the opinion: a mandatory assignment plan ("MAP"), controlled choice Option A and controlled choice Option B. A possible "fourth" alternative, the status quo, has already been rejected by this court in Sections B and C of this segment. This section will detail the elements of these three plans, and, in Section D, the court will order a student assignment remedy.

1. Mandatory Assignment Plan

The MAP has a primary focus on the distribution of students in a racially equitable manner. Master's Ex. 46 at 2. The MAP is designed to systematically assign students to all RSD schools according to racial/ethnic classifications. The MAP would end the practice of minority students alone being mandatorily reassigned. (*See supra* p. 64); Master's Ex. 45 at 3.

At the elementary school level, the building blocks of the MAP are "geocodes." Geocodes are census tract or subtract groupings of residential blocks. Under the MAP, all RSD elementary schools would be assigned students

by geocode unit clusters. Geocodes would be aggregated in clusters that are within the fifteen points of the district wide percentage of minority elementary students. Master's Ex. 45 at 4. At the elementary level, the MAP's first objective is to desegregate the remaining seven SW Quadrant racially identifiable minority schools. As planned, the MAP would be immediately successful in numerically desegregating all of the former racially identifiable minority schools in the SW Quadrant. Master's Ex. 45 at 12. Included in the MAP proposal is that the Cherry Valley and New Milford Schools be closed. Closing these two schools would serve to minimize overall transportation distances because these schools lie on the outskirts of the District. Master's Ex. 45 at 13; Tr. 3081. Finally, the assignment methods of the MAP would eventually equalize transportation burdens. Master's Ex. 45 at 13.

***32** In addition to numerical desegregation at the elementary level, the MAP has certain recommendations concerning facilities and equipment. For example, the MAP recommends that both Barbour and Ellis be replaced by new K–8 elementary schools, each with a capacity for 550 elementary and 260 middle school students. Master's Ex. 45 at 26; Master's Ex. 46 at 4; Tr. 3082. In addition, the MAP suggests that the elementary Gifted and CAPA programs be moved to Wilson (Rockford Science & Technology Academy (RSTA)) within a K–8 grade structure.

The MAP also contains recommendations at the secondary school level. In contrast to the plus or minus 15% guideline for the elementary schools, the MAP proposes that all secondary schools be within 5% of the district wide average. Master's Ex. 45 at 17. The MAP proposes that RSD have five middle schools: Eisenhower, Flinn, Lincoln, a reopened Kennedy and a new nature magnet middle school in the SW Quadrant. The addition of the new magnet would alleviate west side capacity shortages.

The four non-magnet middle schools would be assigned students from designated elementary "feeder" schools. Master's Ex. 45 at 20. Wherever practicable under the MAP, middle school facilities would be assigned students from elementary schools that were proximate to each middle school in order to minimize transportation. At the middle school level, the MAP would reconfigure the middle school grades to 6–8 instead of 7–8. The addition of sixth graders would be absorbed by the additional magnet school and the 6–8 grade seats at Barbour, Ellis and Wilson. Master's Ex. 46 at 4.

The RSD would continue to have four high schools: Auburn, Guilford, Jefferson and a new West/East High School. The MAP recommends that the facility at West be replaced because repairing, renovating and maintaining the existing facility would not be cost-effective. Therefore, a new West/East High School is recommended to be built in the SW Quadrant which would absorb the former East High School students. The new school in the SW Quadrant would equalize capacity relative to resident enrollment, thereby equalizing transportation burdens. Master's Ex. 46 at 3.[64]

Similar to the middle schools, the four high schools would have feeder patterns from the District's elementary schools. Thus, the MAP provides some degree of stability and continuity, as a parent would know from a child's elementary assignment both the assigned middle and high school. Master's Ex. 45 at 34; Tr. 3075. The MAP would also equalize some of the transportation burdens outlined in the previous section: for the first time, majority students would be required to take buses across the Rock River to attend west side secondary schools. Tr. 3076.

The MAP provides for an implementation structure to carry out the plan. The structure would require organizational and administrative changes in the District in order to carry out the educational purposes of the plan. Tr. 3070. A Desegregation Office would be established, headed by a person jointly responsible to the court and the school board. Tr. 3087. Additionally, a parent information center would be essential so that parents could be informed about various components of the plan. Master's Ex. 45 at 38; Tr. 3082.

***33** The MAP is projected to have a one-time construction/renovation cost in the amount of $72,865,125. In addition, there would be a one-time implementation cost of $1,025,270. Finally, the annual operating cost of implementing the MAP would be approximately $3,108,650. Therefore, the MAP would cost the RSD nearly $74 million in one-time charges and an additional $3 million per year in annual operating costs. Master's Ex. 50A; Tr. 3197–3234.

2. Controlled Choice Option A

A second student assignment plan is controlled choice. There are two controlled choice plans before the court. The District supports controlled choice with no capital improvements (Option A). The Master and Plaintiffs support controlled choice with capital improvements, commonly referred to as magnet multipliers or Option B. The two alternatives will be discussed as separate plans.[65]

a. Concepts of Controlled Choice

Under controlled choice, all racial groups are guaranteed proportional access to all schools and programs of choice so that all schools will have a student body reflective of the District as a whole. Tr. 112–15, 1345–46. Controlled choice is essentially a voluntary plan combined with a

mandatory back-up. Tr. 241. The plan is voluntary to the extent that any parent in the District is given the freedom to choose schools at all grade levels so long as these choices result in the District's schools being within fifteen percentage points of the district wide average of minority students. The testimony is that 80 to 90% of parents will receive their first, second or third choice.[66] The system has a mandatory component to the extent that parents' choices result in schools that would not be within these racial/ethnic guidelines. Tr. 241.

An important precept of controlled choice is that all students are to be assigned schools within the plan's racial fairness guidelines. These guidelines direct that "non-magnet" elementary and middle schools will be considered "desegregated" if the school's racial composition is within fifteen points of the district wide percentage of minority[67] students at that grade configuration. Tr. 114–15. Therefore, district wide minority/majority ratios at the three grade configurations, elementary, middle and high schools, will be important in determining whether a school is within the racial fairness guidelines.[68] Furthermore, the plan calls for all available space or unused classroom seats in each school and program of choice to be allocated to majority and African–American and/or Hispanic students on the basis of their proportion in the District at each *grade level.* Master's Ex. 14 at 21. This provision would guarantee equal access to all schools and programs of choice to both majority and minority students. This requirement would also facilitate within-school desegregation by grade, program and classroom. *Id.*

b. The Mechanics of Controlled Choice

The mechanics of the controlled choice plan are the same for all grade levels. All parents are allowed to select the schools and programs by their own rank-order preference. Master's Ex. 14 at 23; Tr. 101–02. Some students, however, would be exempt from assignment via controlled choice. First, students already enrolled in the District's schools would be allowed to remain at their presently assigned school until completion of the school's highest grade. Tr. 92–93. This is the "grandfather" clause.[69] A second exception is for sibling assignments. Students who already have a brother or sister in their first choice school will be assigned to that school, if the parents so choose. Tr. 116–17. A third exception is for proximity. A student whose home address is within 1.5 miles of their first-choice school would be assigned to that school before other applicants of the same racial group who do not meet the 1.5 mile radius qualification. Master's Ex. 14 at 26. Random lottery assignment would be used in the event that the number of non-sibling applicants is greater than the number of available seats for majority and/or minority students. *Id.*[70]

***34** Under the controlled choice plan, there inevitably will be "over-chosen" schools. An over-chosen school is one where the number of majority or minority applicants is greater than the number of available seats for that racial group. In the event that a student cannot be assigned to his or her first-choice school, the student would be assigned to the second-choice school, racial fairness guidelines permitting.[71] In the event that a student cannot be assigned to a rank-ordered school of choice, the student would be administratively assigned to the school that is closest to his or her home. Master's Ex. 14 at 27.

Just as there will be over-chosen schools, it is likely that some schools will be "under-chosen." Under or "least" chosen schools will be identified by the Director of Desegregation and will be targeted for improvement and/or educational enhancements to make the school more "attractive" to parents and the student body. Tr. 128–29, 761. In a similar fashion, regularly over-chosen schools will be identified and efforts will be made to isolate the attractive elements of those schools and reproduce the features in under-chosen schools. Master's Ex. 14 at 30; Tr. 127–28.

Another consideration is that controlled choice is scheduled to be phased in. The mechanics of controlled choice would only apply to students entering kindergarten, seventh (sixth grade with a grade reconfiguration) and ninth grades. Master's Ex. 14 at 51–52. In addition, controlled choice would apply to students transferring to the RSD and entering the school system for the first time as well as to students not electing to remain at their "grandfathered" school. The Master proposes that controlled choice would place all schools within the racial fairness guidelines by 1998–99. Master's Ex. 1 at 2.

c. Controlled Choice by Grade Configuration

The controlled choice plan, although constant in its fundamentals, varies slightly by grade configuration.[72] A district that encompasses approximately 168 square miles requires that limits be placed on elementary school choices. Therefore, at the elementary school level, controlled choice divides the District into three geographic attendance areas: the Northeast, Southeast and West Zones. Tr. 95–97. Each east side zone would have a similar proportion of resident African–American and Hispanic students of about 20%. The West Zone would have 59% resident minority students. Master's Ex. 14 at 12–13.

The controlled choice NE Zone is proposed to contain ten elementary schools: Jackson, Johnson, Gregory, Kishwaukee, Bloom, Brookview, Carlson, Nelson, Marsh and Spring Creek. The SE Zone is proposed to contain the following twelve elementary schools: Beyer, Rock River,

New Milford, White Swan, Froberg, Thompson, Hillman, Rolling Green, Whitehead, Riverdahl, Nashold and Cherry Valley. Master's Ex. 14 at 11. The West Zone is to contain seventeen elementary schools, including thirteen non-magnet schools: Barbour, Conklin, King, Summerdale, Westview, Lathrop, Walker, Welsh, Stiles, Haskell, McIntosh, Ellis and Dennis. The three magnet schools are Lewis Lemon, Wilson (RSTA) and Washington.

***35** As proposed, the three zones in controlled choice all have sufficient capacity for resident students. The two east zones each have a K–6 elementary student population of approximately 4,500 students, with capacity in each zone approximately at 5,300 students. The West Zone has a resident elementary student population of 6,453 students and a capacity for 7,262 students. Master's Ex. 14 at Table E2. Thus, the two east side zones have approximately 85% utilization rate and the West Zone has an 88% utilization rate.[73]

At the elementary school level, the West Zone residents would have a choice of all 39 district wide schools. NE Zone students could choose one of the ten schools in their zone or one of the seventeen West Zone schools. Likewise, SE Zone students could chose one of the twelve schools in their zone or one of the seventeen West Zone schools.[74] Under this configuration, all elementary students would have access to at least 27 schools of choice. The group of schools available to parents residing in each zone would include both schools that are close to home and other schools and programs that are educationally desirable. Master's Ex. 14 at 15.

The controlled choice plan incorporates the District's three elementary magnet schools. Since the three magnets are located in the West Zone, they would be available choices for all RSD parents. Although the magnet schools and alternative programs would all be subject to racial fairness guidelines, the appropriate standard is a point of debate. The planning team suggests that the magnet schools must be within fifteen points of the district wide percentage of minority elementary students. Master's Ex. 14 at 22, 25. The Master, however, proposed in his CRO that the full-site elementary magnet schools should not exceed 15% of the district wide minority student percentage and should have a floor of at least 40% of the minority student population at the entry levels of these schools. The floor is designed to ensure that minority students enjoy the full benefits of the magnet schools at ensuing grade levels. Master's Findings of Fact on Student Assignment at 29. Plaintiffs, in contrast, call for a floor equal to the district wide percentage of minority elementary students at the entry level and *all* grade levels. Plaintiffs' Amended Findings of Fact on Student Assignment at 30.

Secondary schools would also be assigned students via controlled choice. As proposed, all middle and high schools would be district wide schools of choice, meaning that every student could choose among these schools. The secondary schools would be subject to the same racial fairness guidelines, with the added requirement that high schools have at least 25% combined African–American and Hispanic students.

d. The Administrative Structure of Controlled Choice

There are essentially two proposals concerning oversight of the controlled choice plan. The planning team recommends that a Department of Desegregation be established that would consolidate all organizational and administrative agencies in the RSD. The Department would have the responsibility for implementing all aspects of controlled choice. Master's Ex. 14 at 17.

***36** The planning team proposes that the Department be headed by a Director of Desegregation, a position which must be approved by the court. The Director would oversee the implementation of all administrative and school improvement aspects of the plan. Master's Ex. 14 at 16. The Director of Desegregation would be directly accountable to the court-appointed Master, Dr. Eubanks. Tr. 199–204. The Director would also be accountable to the school board and should be a member of the Superintendent's cabinet. The Director would be responsible for organizing the District to support the effective implementation of controlled choice. The Director would be required to make quarterly reports on the status of implementation to the court-appointed Master, Superintendent, school board and the parties in the case. Master's Ex. 14 at 17.

The District disagrees with the proposed administration of controlled choice in certain respects. First, the District maintains that the Director of Desegregation should be selected by the Superintendent, not the court. The District agrees that the Director is to oversee and supervise the implementation of controlled choice and apparently agrees that the Director would be responsible to the court-appointed Master. Defendant's Findings of Fact on Student Assignment at 29. The Magistrate notes that Defendant's position appears to have changed. At trial, Superintendent Dr. Ronald Epps testified that he should be in charge of overseeing the implementation of the plan. Dr. Epps argued for a "shared" responsibility between the District and the Master, with Superintendent Epps in control and ultimately responsible to the court.

Another administrative component of controlled choice is parent information centers. The plan calls for the District to establish at least three parent information centers and that one center be located in each attendance zone. The centers are to be staffed with full-time administrators accountable to the Director of Desegregation. In addition,

the centers would have a staff comprised of parent liaisons reflecting the racial and linguistic diversity of the RSD. Master's Ex. 14 at 18. The centers are to provide parents with information relating to school selection and the variety of programs in the RSD. Tr. 103, 738.

e. Projected Cost of Controlled Choice

The projected cost of implementing the mechanics of controlled choice was not fully developed at trial. At a bare minimum, there would be expenses for parent information centers and transportation. These two costs are estimated to be $133,000 in one-time costs and approximately $1 million per year in operating costs. *See* Master's Ex. 49B. However, the court notes that additional costs—not estimated—may be necessary for the Department of Desegregation and implementation personnel.

3. Controlled Choice Option B

In addition to the mechanical elements of Option A, Option B of controlled choice proposes the following: (a) the addition of magnet schools and programs; (b) a change in the RSD's grade configurations; and (c) facility repairs and improvements. For purposes of clarity, these issues will be discussed separately. Finally, subsection (d) will address the projected costs of controlled choice Option B.

a. Magnet "Multipliers"

***37** The three existing magnet schools in Rockford have been a success in attracting majority east side students to schools west of the Rock River. Magnets enlarge the range of educational opportunities available to students in the District and can attract students from diverse parts of the city. Tr. 76–77. Accordingly, Option B seeks to expand on this success by creating additional magnets and "magnetizing" existing schools. Master's Ex. 14 at 30–31; Tr. 783–84. Option B calls for magnet schools and/or programs at all grade configurations.

At the elementary school level, twelve magnet schools and/or programs are proposed. First, the plan proposes four K–8 magnet schools: (1) Barbour, (2) Ellis, (3) Washington and (4) Wilson (RSTA). Barbour would become a Bicultural/Hispanic Magnet School and Ellis would become the Extended Day Magnet in the Arts. Master's Ex. 14 at 32.[75] Washington would become the site for a K–8 Communication Arts Magnet Program and Wilson School would become a K–8 Science and Technology Magnet. These magnets would, in addition to offering unique educational opportunities, serve to desegregate formerly minority racially identifiable schools and, in turn, would alleviate SW Quadrant capacity problems.

Option B also calls for four specialized programs to be housed in certain elementary schools to aid desegregation efforts. First, the Montessori Program[76] in grades pre K–5 is to be housed at Haskell Elementary School.[77] The relocation would be beneficial in desegregating Haskell. Second, Lathrop is scheduled for a new magnet program to be developed by the District officials. Third, King elementary is proposed to become the grades 1–5 site for the Centralized Gifted Program currently based at both King and Washington Schools. Fourth, the plan calls for Haight Elementary School to become the site for the first age group half of the students in the Personalized Education Model ("PEM") magnet school.[78]

Finally, Option B proposes that Lewis Lemon continue as a magnet and that three schools develop magnet themes: (1) McIntosh Elementary School should become the K–5 component of the Science and Technology Magnet in collaboration with Wilson and Auburn Schools;[79] and (2, 3) Dennis and Stiles Elementary Schools would each develop magnet themes. Master's Ex. 14 at 33.

At the middle school level, additional schools are proposed to handle the proposed grade reconfiguration to grades 6–8 (discussed in the following subsection). Option B proposes that West Middle School be rebuilt and become a health and medical careers magnet. Furthermore, the plan proposes that Kennedy School be reopened and a new nature magnet middle school be created in the SW Quadrant. Additional middle school space would exist in the four K–8 magnet schools already mentioned: Barbour, Ellis, Washington and Wilson. Master's Ex. 14 at 36.

At the high school level, the planning team recommended that each of the existing four high schools, Auburn, East, Guilford and Jefferson, should develop magnet programs instead of operating as traditional comprehensive high schools. Auburn is proposed to have a science magnet theme to collaborate with McIntosh and Wilson Schools; East would have a comprehensive arts program; Guilford would have a magnet theme to be developed through controlled choice; and Jefferson would become a technology academy. Master's Ex. 14 at 37–39. In addition, the new West Middle School is proposed to house a 400 seat high school facility to complement the middle school's health and medical careers magnet. *Id.* at 35, 38.[80]

b. Changing the Existing Grade Configurations

***38** Presently, the RSD's elementary schools house grades K–6 and the middle schools contain grades 7–8. Option B proposes that these grade configurations be

changed so that the elementary and middle schools would, respectively, be aligned grades K–5 and 6–8. Master's Ex. 14 at 34; Tr. 98, 1342. The change is to contribute to racial desegregation in several ways. Most noteworthy is that the elimination of grade 6 from existing elementary schools will greatly improve the capacity problem in the SW Quadrant by creating additional space. Master's Ex. 14 at 14; Tr. 216, 1230–31. In addition, the planning team suggests that the three years of continuity would be beneficial to minority students. Master's Ex. 14 at 34; Tr. 366–68, 392–95, 1346–47.

c. Facility Improvements and Repairs

Option B proposes certain recommendations for facility additions, improvements and repairs. Under the controlled choice plan, schools with inferior facilities and equipment would receive attention at the beginning of the plan so that they will be both educationally attractive and effective. Tr. 132–33, 780. The facility additions to alleviate capacity have already been discussed.[81] A second area addresses changes in existing facilities. Because of dilapidated conditions, it is recommended that the current facilities at Barbour, Ellis and West be replaced. At the high school level, it is recommended that Auburn be fundamentally renovated, reequipped and upgraded in all of its facilities and equipment. Master's Ex. 14 at 37; Tr. 355–56. A third area addressed is facility improvements, including improvements in library media centers, science labs, art and music rooms, technical education facilities and existing school sites. *Id.* Finally, disparities in equipment, materials and supplies in the SW Quadrant schools would be remedied to correct historical inequities. Tr. 1359.

d. Projected Cost of Controlled Choice Option B

The various elements of the full controlled choice remedy (Option B) carry price tags. In total, there is a projected one-time cost of $77 million for controlled choice Option B. In addition, the plan would cost over $6 million per year to operate. The projected costs are described in detail on Master's Ex. 49B, reproduced on the following page in its entirety.[82]

D. Student Assignment Remedy

In the present case, both the Magistrate and Judge Roszkowski found that the RSD had engaged in an unconstitutional pattern of intentional discrimination against minority schoolchildren for decades. Regarding student assignment, the court found that the RSD engaged in a pattern of unlawful acts and omissions that caused the segregation of its schools. *See, e.g., People Who Care,* 851 F.Supp. at 1079–81.

In addition to addressing these findings, a constitutional student assignment plan must address three areas at the elementary school level: (1) the SW Quadrant capacity problem; (2) the unequal transportation burdens on minority schoolchildren; and (3) the vestiges of the previous intentional discrimination. At the secondary school level, a constitutional student assignment plan must correct the following inequities: the west side capacity situation (both middle and high school), transportation burdens and quality of facilities. *See supra* pp. 64–65, 70.

***39** In fashioning an appropriate student assignment remedy, this court will utilize traditional equitable principles. In applying these principles, the court will focus on the following three factors: one, that the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violations; two, that the decree must be "designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct' "; and three, that consideration must be given to the interests of state and local authorities in managing their own affairs. *Milliken v. Bradley,* 433 U.S. 267, 280–81 (1977) ("*Milliken II* ") (quoting *Milliken v. Bradley,* 418 U.S. 717, 746 (1974) ("*Milliken I* ")).

1. Mandatory Assignment Plan

The Magistrate rejects the MAP because it is not a suitable remedy in this case. Although there was testimony at trial that the MAP would numerically desegregate Rockford's schools, the court is concerned with more than just numbers. While mandatory plans with forced busing were utilized in the early years after *Brown I* to desegregate schools, the court finds this to be a dated approach to desegregation. On this point, the Magistrate notes the position of former Justice Powell of the Supreme Court:

> A constitutional requirement of extensive student transportation solely to achieve integration presents a vastly more complex problem. It promises, on one hand, a greater degree of actual desegregation, while it infringes on what may fairly be regarded as other important community aspirations and personal rights. Such a requirement is also likely to divert attention and resources from the foremost goal of any school system: the best quality education for all pupils. The Equal Protection Clause does, indeed, command that

> racial discrimination not be tolerated in the decisions of public school authorities. But it does not require that school authorities undertake widespread student transportation solely for the sake of maximizing integration.

Keyes v. School Dist. No. 1, Denver, Colorado, 413 U.S. 189, 242 (1973) (Powell, J., concurring/dissenting).

The MAP is being rejected for two reasons. First, the primary focus of the MAP is not where it should be. The focus should be on a high quality education for all of Rockford's schoolchildren, especially those that were the objects of discrimination. Second, there was convincing testimony that the MAP could cause a number of students to leave the District. Tr. 2324, 3171. The court wants a constitutional plan that focuses on education and helps the RSD preserve its student population.[83]

2. Student Assignment Plan

The court-ordered student assignment plan will not be identical at all grade configurations. At the elementary school level, controlled choice will be implemented along with certain capital improvements: (a) a reopened elementary school at Haight; (b) the addition of two new facilities at Barbour and Ellis, which are to become K–8 magnets; (c) the extension of the Washington and Wilson (RSTA) magnets to grades K–8;[84] and (d) the grade reconfiguration for elementary and middle schools. At the secondary school level, although the court does not order controlled choice, the student assignment plan will require that all secondary schools meet the +/− 15% standard and that all high schools have a floor of 25% African–American and Hispanic students combined. In addition, the following capital improvements are ordered: (a) a new middle school on the west side; (b) a reopened Kennedy Middle School; and (c) the housing of the CAPA and gifted programs at a different high school than Auburn, possibly at a renovated West facility.

***40** The Magistrate adopts the elements of controlled choice at the elementary level for three reasons. First, the RSD has historically used different methods and criteria in assigning elementary students to their respective schools. Minority students were not assigned by the same methods as majority students. Under controlled choice, students will be assigned through one system that treats all students equally and fairly. Second, unlike the present situation in the District, controlled choice produces an incentive to improve the schools on the west side, and particularly, in the SW Quadrant. Third, the controlled choice plan addresses the liability findings of this court.

In this subsection, the court will demonstrate how this student assignment plan addresses the problems identified in Section IV.B. of this opinion: (a) that the RSD assigned students to schools in an unconstitutional manner; (b) that the RSD intentionally created a capacity shortage for elementary students in the SW Quadrant; and (c) that the RSD intentionally created capacity and facility disparities at the secondary school level.[85]

a. Unequal Student Assignment Practices

The mechanical elements of controlled choice are ordered for the RSD's elementary schools because they directly address the following liability findings: that the RSD gerrymandered school attendance area boundaries in order to create and maintain a separate school system based upon race; that the RSD manipulated secondary school feeder patterns in order to maintain segregation; that the RSD maintained an open enrollment policy that primarily benefitted White students with voluntary alternative programs and burdened minority students through mandatory one-way busing; that the RSD closed schools and reassigned the affected students in such a way that White students went to racially identifiable White schools and Black students attended racially identifiable minority schools; and that the RSD permitted special transfers to students in order to avoid attending predominantly African–American schools. *See People Who Care,* 851 F.Supp. at 1079–81.

The mechanics of controlled choice address these findings because all students will be treated equally. Specifically, the plan's racial fairness guidelines mandate that all elementary schools must be within fifteen points of the district wide percentage of minority elementary students.[86] The +/− 15% standard is flexible, allows for changing demographics and has been approved by other district courts implementing student assignment plans. *See, e.g., Coalition to Save Our Children v. State Bd. of Educ. of Delaware,* 757 F.Supp. 328, 351 (D.Del.1991). In addition to equal treatment, there was voluminous testimony at trial on the benefits of an integrated educational environment.[87]

Furthermore, the Magistrate orders the following controlled choice concepts as detailed in Section IV.C. of this opinion: (1) parents are to select the schools and programs they want their children to attend by their own rank-order preference; (2) controlled choice will be grandfathered;[88] (3) sibling and proximity preferences[89] will be honored, racial fairness guidelines permitting;[90] (4) voluntary transfers will be permitted to any student so long as the desired school can handle the transfer within the plan's racial fairness guidelines; (5) students whose primary language is not English and who are eligible for bilingual education will be assigned to a school that provides these services; and (6) special education students will be assigned to a school providing the necessary

services.

***41** The Magistrate accepts the recommendation that for controlled choice at the elementary level, the District be divided into three geographical attendance zones as detailed in Section IV.C.2.c. of this opinion. *See also* Master's Ex. 14 at 9–15. The three zone model treats all students fairly and provides all students a wide range of schools of choice. Students in the West Zone can choose among all of the RSD's elementary schools, while students in the NE and SE Zones will be restricted to schools in their zone, as well as West Zone schools.[91] The three zone model is supported by the RSD's large geographic size and number of elementary schools, allows for flexibility in population movement and promises to make controlled choice manageable. The three zone model also addresses a liability finding in that the West Zone partially alleviates SW Quadrant capacity shortage by combining all of the elementary schools in the SW and NW Quadrants into the new West Zone. Master's Ex. 14 at 13; Tr. 772. In addition, the plan provides all students with a minimum of 27 schools of choice. Master's Ex. 14 at 15. Since the racial composition of the NE and SE zones are nearly identical, there is no desegregative purpose for allowing interzone assignments between the two. Tr. 100–01.[92]

The Magistrate agrees with the recommendation that controlled choice be phased in, and accordingly, only those students entering kindergarten will be affected commencing with the 1997–98 school year.[93] The RSD is ordered to assign elementary students in this fashion until all elementary schools, to the extent practicable, fall within the plan's racial fairness guidelines. Master's Ex. 1 at 1–2.[94] At that point, assuming compliance with respect to middle and high schools, the District would have made great strides towards unitary status in this area.

The final element of controlled choice is the administrative structure. The Director of Desegregation will manage the newly created Department of Desegregation. The establishment of the Department as well as the selection of the Director are the joint responsibility of the RSD Superintendent and the Master. *See* Tr. 204, 750. If they cannot agree, the court will intervene. The Director cannot be fired except by agreement between the Superintendent and the Master or by the court. The Superintendent will be in charge of the day to day operations and the Master is to monitor the program. The Director and Superintendent shall be directly responsible to the court to carry out this court's orders. The Director and Superintendent are ordered to implement the student assignment plan immediately.

The Department of Desegregation is to consolidate all organizational and administrative agencies in the RSD. Ultimately, the Department will have the responsibility for implementing all aspects of the student assignment plan, both at the elementary and secondary schools. Lastly, the specific guidelines concerning the duties of the Director and the role of the Department, as described in Master's Ex. 14 at 17–18, 30, 50–61, are adopted by the court, except to the extent that these guidelines may be inconsistent with this opinion.

***42** The court specifically rejects the District's position that the newly created administrative structure is unnecessary. The District argues that the Department of Desegregation is unnecessary because the District has already started to implement certain aspects of controlled choice, has shown a commitment to controlled choice and is ready and capable of implementing the plan on its own. *See* Tr. 3288, 3666–67, 3289. Ironically, the Rockford School Board itself has supplied the best reason not to give the District control: the District is unable to consistently support remedies in this case. The Board went from supporting controlled choice by a 7–0 vote, before the CRO hearings began, to changing its mind against the plan mid-trial. The recent vote to support controlled choice is of little comfort. It is evident to the court that this school board is not uniformly committed to this method of desegregating its schools. The Magistrate, of course, hopes this will change. For now, control will rest with the Master and Superintendent.

The Magistrate further orders that the RSD develop and implement parent information centers, consistent with Master's Ex. 14. The number and location of centers is to be established through the Department of Desegregation. The centers are to be staffed with a full-time administrator, accountable to the Director of Desegregation. In addition, the centers must contain a staff comprised of parent liaisons, reflecting the racial and linguistic diversity of the RSD. Master's Ex. 14 at 18. The uncontroverted testimony at trial was that the success of controlled choice in different school districts across the country was dependent upon parents receiving accurate information on the plan. These centers aid parents in understanding how controlled choice functions, coordinate parental visits to schools and provide current information to parents on all available educational opportunities in the RSD.[95]

The court does not order controlled choice to be implemented at all grade configurations. As detailed in Section IV.B. of this opinion, by far the largest problem with respect to student assignment in the RSD concerns elementary schools. Currently, the RSD has eleven racially identifiable elementary schools and no racially identifiable middle or high schools. Therefore, the mechanics of controlled choice are ordered for the RSD's elementary schools. The racial fairness guidelines will apply to the RSD's middle and high schools; each school must be within 15% of the district wide average of minority students for that grade configuration. For the RSD's high schools, there must be a minimum of 25%

minority enrollment in each school.[96] The District may, at this time, choose its own assignment practices for these schools. The District may choose controlled choice, a feeder pattern or assignment zones as long as all middle and high schools are within the racial fairness guidelines each school year starting with 1996–97. The student assignment plan at the secondary school level is to be implemented by the Director of Desegregation.

b. The SW Quadrant Capacity Problem

***43** The Magistrate rejects the RSD's position that the mechanics of controlled choice alone would be a constitutional student assignment plan for the RSD's elementary schools.[97] The student assignment plan must address the vestiges of the intentional discrimination. Option A, by only looking at numbers, does not correct two symbiotic liability findings: structural displacement (under-capacity) and inequitable transportation burdens. Tr. 1332, 3109.[98] The ordered elements of Option B, on the other hand, with new schools and programs, address these findings.

The adopted components of Option B address the SW Quadrant capacity problems (detailed in Section IV.B.) in three distinct ways. First, the proposed grade reconfiguration will add seats to the existing elementary schools. Second, Option B adds new facilities to the SW Quadrant. Third, the three zone model itself evenly distributes capacity and resident enrollment for the RSD elementary students.

The court adopts the recommendation for, and orders the change in, grade configurations. Normally, the court would consider this decision to be a local governmental function. In the present case, however, the change directly addresses liability findings. The RSD will be required as soon as is practicable to realign its elementary and middle schools to K–5 and 6–8. The change to K–5 directly addresses the 1,200 seat under-capacity problem when examining the immediate consequences of the grade reconfiguration. Namely, the pool of SW Quadrant elementary students will shrink when the sixth grade is combined into the middle schools. In 1994–95 there were 4,272 resident K–6 students in the SW Quadrant. K–6 contains seven grade levels, so roughly $^1/_7$ of the 4,272 (or approximately 600) SW Quadrant K–6 students are sixth graders. Therefore, the Magistrate estimates that the need for 600 seats will be eliminated in the SW Quadrant by placing these sixth graders in middle schools. Thus, the grade reconfiguration itself has a tremendous impact on the SW Quadrant structural displacement problem.

The capacity problem is further addressed by the K–8 magnets at Barbour and Ellis and the K–5 magnet at Haight, which will add a net gain of over 200 elementary seats in or near the SW Quadrant.[99] Master's Ex. 14 at 13–14. In addition, the SW Quadrant capacity shortage is further alleviated when considering that several hundred SW Quadrant resident students attend one of the three existing magnet schools. *See* 1995–96 Fall Housing Report at Table E.5. Therefore, the court rejects Plaintiffs' request for an additional 500 student magnet school in the SW Quadrant.

The capacity problem and inequitable transportation burdens are interrelated: once the capacity problem is addressed, inequities in transportation burdens will vanish. Tr. 68 (SW Quadrant structural displacement leads to inequitable transportation burdens). In addition, under controlled choice, all students will have equal access to schools close to their homes and will fairly share the transportation burdens of education.

***44** Thus far, capacity has been discussed in terms of correcting the minority student displacement vestige in the SW Quadrant. It cannot be forgotten, however, that controlled choice has three zones to consider. With the new magnets and the grade reconfiguration, the zone capacity and enrollment break down as follows. The West Zone will have capacity for 7,473 K–5 students and a resident student population of 5,529. This correlates to a 74% resident utilization rate. The SE Zone will have capacity for 5,360 K–5 students, and a resident student population of 3,878, with a corresponding 72% utilization rate. The NE Zone will have capacity for 5,243 K–5 students, and a resident student population of 3,278, with a corresponding 62.5% utilization rate. Master's Ex. 14 at Tables E1, E2.

Therefore, capacity is equalized under the three zone model: the NE Zone has 26% of the RSD's elementary students and 29% of the available seats; the SE Zone has 31% of the RSD's elementary students and 30% of the available seats; and, the West Zone has 43% of the RSD's elementary students and 41% of the available seats. Master's Ex. 14 at Tables E1, E2. Thus, capacity is distributed evenly in the three zone model; moreover, these capacities allow for equal access to schools for both minority and majority students.

Defendant takes the position that the grade reconfiguration, as well as the new magnets, are not needed. Dr. Heald testified on behalf of Defendant that under the three zone approach, the elementary schools could remain K–6 and there would still be enough capacity in each zone. Dr. Heald testified that in order to operate efficiently, a school should operate at approximately 85% capacity. Tr. 563–64. Dr. Heald testified that the enrollment, capacity and utilization of the three zones as they currently exist (with K–6 elementary schools) are as follows: the NE Zone has 4,543 students and a capacity of 5,242 for a utilization rate of 86.7%; the SE Zone has 4,862 students and a capacity of 5,360 for a utilization rate of 90.7%; and the

West Zone has a 6,066 students and a capacity of 7,412 for a utilization rate of 81.8%. Defendant's Heald Ex. 4. Essentially, the District argues that these numbers justify controlled choice without reconfiguring the grades or adding new schools.

The court rejects the District's position. First, while the new zones would have similar utilization rates, the District's proposal does nothing to correct the vestiges of the intentional discrimination. Namely, that through school closings and openings over the past 20 years, the minority students residing in the SW Quadrant have been mandatorily bused out of their neighborhoods due to insufficient capacity. Under the District's proposal there is no equal opportunity and access. In effect, a significant portion of these SW Quadrant students will be forced to attend schools away from their homes. In short, the court agrees with the recommendation of the planning team that for controlled choice to be equitable, all capacities must be relatively equalized. Tr. 226–28. The West Zone with a grade K–6 configuration appears equal on the surface, but it leaves unresolved the capacity shortage and consequent transportation inequities for the RSD's principal victims of intentional discrimination: minority schoolchildren living in the southwest portion of the city. *See* Master's Ex. 1 at 127; Tr. 166–67, 230–235, 461.[100]

***45** In addition, Dr. Heald testified that if the District switched to K–5, there would be no need to add the additional Option B magnet schools because the percent utilization for each zone would remain low at 70 to 80%. Defendant's Heald Ex. 11. This proposal is rejected because it ignores that the Option B components, e.g. new K–8 schools at Barbour, Ellis, Washington and Wilson, are essential for three reasons.

First, the Report and Recommendation contains findings that schools such as Barbour and Ellis were left in disrepair while other elementary schools were not. Barbour and Ellis are structurally inferior facilities when compared to other RSD elementary schools. Tr. 1285. Second, for controlled choice to work, these schools must be made "attractive"; therefore, they require immediate attention and magnetization at the beginning of the implementation of controlled choice. Tr. 780–84. Barbour and Ellis, both historically racially identifiable minority, will now be attractive to students district wide because of their unique themes. Barbour will be the permanent site for the Bicultural/Hispanic bilingual magnet program. This directly addresses the liability finding that the RSD's Hispanic students were constantly moved from school to school. Ellis is proposed to become the Extended Day Magnet Program in the Arts, a recommendation that makes sense to the court.[101] Third, since the middle school grades are being reconfigured, more capacity is needed district wide for grades 6–8. Barbour, Ellis, Washington and Wilson as K–8 schools add to middle grade capacity overall, and specifically, add middle grade capacity where it is needed the most, on the west side. For these reasons, Barbour and Ellis are ordered to be replaced with the K–8 magnets and Washington and Wilson are to be extended to K–8 programs.[102]

c. Secondary School Capacity and Facilities

Middle and High School Capacity

The grade reconfiguration which alleviates capacity problems at the elementary level creates a capacity shortage at the existing middle schools. For this reason, more capacity is needed and the Magistrate specifically adopts the proposal to reopen Kennedy and build one new middle school in or near the SW Quadrant. For reasons that will be discussed, the court rejects the proposal for a second new west side middle school (commonly referred to as the new West Middle School). Under the court's scenario, the RSD will have five 6–8 middle schools, two on the west side (in addition to the 6–8 seats available at Barbour, Ellis, Washington and Wilson) and three on the east side.

The planning team sought to significantly reduce capacities at the existing middle schools to allow for smaller classrooms. Tr. 392–93. Under the planning team's scenario, the total capacity for the middle schools, including the existing three east side schools, two new west side schools, a reopened Kennedy, and the 6–8 seats at K–8 schools, would be approximately 6,065. Master's Ex. 14 at 44. The planned capacity was approximately 795 for each full middle school. The court notes, however, that enrollment for grades 6–8 was approximately 5,731 for 1995–96.[103] 1995–96 Fall Housing Report at Table B.1. Using the 85% capacity benchmark, there is a need for at least 6,700 capacity, if the smaller school model of 795 students is used. Therefore, the planning team's proposal for smaller schools is not feasible from a capacity standpoint, even if the second new west side middle school is considered.

***46** If the middle schools remain somewhat larger, there would be enough middle school capacity, without the second new west side middle school. The three east side middle schools, Eisenhower, Flinn and Lincoln, have a combined capacity for 3,931 students. Master's Ex. 14 at 44. Dr. Heald, however, testified that the combined capacity is 3,637. Defendant's Heald Ex. 12. The new west side middle school is planned for 1,170 capacity (*see* Master's Ex. 49B), Kennedy is projected to have 996 capacity (*see* Defendant's Heald Ex. 12) and 1,295 6–8 seats will be available at the K–8 magnets. The total middle school capacity, without the second west side middle school, is 7,098. With the 5,731 students, this results in a utilization rate of 81%.[104] Therefore, the proposal for a second new west side middle school is rejected. The space is not needed. In addition, the court

notes that there will be 3,465 middle school seats west of the river and 3,637 seats east of the river. Therefore, the capacity problem identified in Section IV.B. of this opinion is resolved, and in turn, the transportation inequities will have been resolved.[105]

Finally, the court notes that the new west side middle school is targeted to have a nature magnet theme. While this may be a good suggestion, the Magistrate finds it unnecessary for the court to order a particular theme. This decision will be made with the help of the community, parents, teachers and administrators. After this input, the District and the Master are to agree upon a theme for the new middle school, if a theme is considered necessary.

At the high school level, the Magistrate has previously discussed the Centralized Gifted Program (the "Academy") and CAPA and, for purposes of this section, assumes that they will continue in the RSD. However, in terms of location, there is no room for them at Auburn. These stand alone programs could be housed at a renovated West High School. The court realizes that these two programs could not possibly fully utilize this large facility. However, perhaps the District could use the balance of the space at the West facility to house office space, storage or other educational programs. These two programs at the West facility would add 550 high school seats to the west side. By taking these programs out of Auburn, the full capacity of that school can be utilized. The high school capacity situation would change as follows.

Table 1

High School	Capacity
Auburn	1,635
East	2,070
Guilford	2,020
Jefferson	2,380
West (CAPA and Academy)	550

Accordingly, the court finds that this would make substantial progress in equalizing capacity for west side high school students. For 1994–95, there were 6,744 high

school students and approximately 2,267 resided west of the river. There would now be 2,185 seats west of the river which would result in a utilization rate of 104%. Although this is not very close to the 69% utilization rate east of the river, it demonstrates substantial improvement.

***47** The court notes that Plaintiffs are calling for the creation of the West/East High School to be placed on the west side. This would add approximately 1,300 seats to the West Side, but would subtract 2,070 from the east side by closing East. The west side would have a utilization rate of 77% (2,267 students divided by 2,935 seats) and the east side would have a utilization rate of 102% (4,477 students divided by 4,400 seats) for the east side. This seems lopsided as well. In short, there is no simple solution to the problem, even by spending additional dollars. Therefore, the court will not order a new West/East High School to be built. At the high school level, the capacity problem may be addressed by removing the CAPA and Academy programs from Auburn and placing them at a renovated West.[106]

Middle and High School Facilities

The court notes that the planning team has made several recommendations concerning facility renovation and improvement for district wide schools. To some extent, these recommendations have been addressed with the building of a new Barbour, Ellis and a middle school, a reopened Kennedy and the closing of West as a middle school. However, several millions of dollars in facility improvements have been requested. In the Magistrate's opinion, this is not a problem unique to Rockford; in fact, this is a problem facing many school districts throughout the country. The parties must look to the Illinois legislature, not to this court, to solve many of these problems.

The Magistrate reads a financial component into the "practicable" standard for desegregation remedies. Practicable means workable and feasible. The capital improvements ordered by this court, including the new Barbour and Ellis, the new magnet at Haight, the new middle school, a reopened Kennedy, and the consolidation of the CAPA and Academy programs at West, will cost approximately $48,002,831.[107] Master's Ex. 49B; Defendant's Motion to Reopen Proofs on Student Assignment, Ex. C at 8 ($7.5 million to renovate West). These remedies will be paid through the tort fund.

While the court will more fully expound on the finances of the District and the limitations on the tort funds in the next segment of this opinion, for now, this court cannot consider tort fund dollars to be an unlimited source of revenue for this school district. However, the lack of tort dollars does not completely excuse the District from funding necessary facility improvements. The District's annual operating budget is in the millions of dollars. The court notes that if there was no *People Who Care* lawsuit, the District would still have an obligation to repair facilities in poor condition and provide equipment. In other words, the District has a responsibility to implement facility repairs and provide equipment to all students in the District. The District is hereby ordered to provide reasonable and necessary facility improvements to the extent practicable. *See* Tr. 1359.

Student Assignment Plan—Summary

***48** The student assignment plan as ordered by this court specifically addresses the liability findings contained in the Report and Recommendation and the liability order by Judge Roszkowski. The mechanics of controlled choice will only apply to elementary students. The three zone model with the +/− 15% racial fairness guidelines at the elementary level will end practices such as gerrymandering of attendance areas that result in racially identifiable schools. In addition, the grade reconfiguration as well as creation of the new Barbour, Ellis and Haight magnet schools, will help resolve the elementary structural displacement problem, which will in turn equalize transportation burdens.

At the secondary school level, all schools are to be within the +/− 15% guideline, in addition to the 25% floor for high schools. The addition of a new middle school and a reopened Kennedy will ease the west side capacity shortage and transportation inequities. The housing of the high school CAPA and Academy programs at a renovated West would make strides in equalizing high school capacities relative to resident enrollment.

The brand new Barbour and Ellis, the new magnet middle school and the renovation at West will be a serious step forward in equalizing facility conditions. All told, student assignment programs ordered in this opinion will cost approximately $48 million. The District, however, may be held responsible for other reasonable and practicable facility and equipment improvements to be paid by the District's other funds during the pendency of court supervision. Finally, only the Option B components specifically addressed in this opinion are ordered to be implemented at this time.

CONCLUSION

The Rockford School District is hereby ordered to immediately begin the implementation of the student assignment plan, as detailed by the court in this opinion.

STUDENT ASSIGNMENT PLAN—ADDENDUM

[Dated May 17, 1996]

In the student assignment remedy portion of the CRO, this court did not definitively decide on the use of the West facility, currently hosting CAPA grades 4–8, Gifted grades 7–8 and a middle school for grades 7–8. Because of high school capacity problems west of the river, the court suggested that perhaps West could be reopened to host the high school Gifted and CAPA programs currently housed at Auburn. The court's proposal would have accomplished two very important goals. First, by taking the specialty programs out of Auburn, the westside would have one full comprehensive high school, in comparison to the three east of the river. Second, westside high school capacity would increase from 1,635 to 2,185 seats, decreasing the westside high school capacity utilization rate from 139% to 104%. An additional benefit the court mentioned, is that removing the specialty programs from Auburn would alleviate the many concerns of the court with within school segregation problems.

The court, however, did not order this use for the West facility because it was not proposed by any party at trial and the financial information on the cost of renovating West to house these two programs was sketchy at best. The Rockford School Board provided the only estimate of the price tag—$7.5 million. Defendant's Motion to Reopen Proofs on Student Assignment, Ex. C at 8. Concerned about the efficient use of dollars in this case and the relatively untested nature of the court's proposal, the Magistrate desired a dialog with the Rockford School Board on the use of the West facility. On March 12, 1996, the court asked the Board to study this proposal "from an educational and economic point of view" and report to the court within thirty days. CRO (segment two) at 112 n. 106.

The Board's Response

***49** The Board filed its response on April 13, 1996. Surprisingly, the Board addressed only one of the court's two inquiries. Absolutely no economic data was provided concerning the cost for the court's proposal, or other alternatives, such as converting West into a true comprehensive high school. The District did consider the use of West from an educational point of view, albeit in a manner not anticipated by the court. The District proposed that West be opened to house 1,200 students: 650 middle school seats for the grades 6–8 Gifted and CAPA programs and 550 seats for a "comprehensive" high school. Under the District's proposal, the high school Gifted and CAPA programs would remain at Auburn.

Before discussing the District's suggested use of West, the Court will discuss two related proposals by the District. First, the court notes that the Board voted in favor of implementing controlled choice at the secondary level and developing themes for the District's middle and high schools. The court approves this proposal, as it will ensure that the racial fairness guidelines of the student assignment plan are met at the secondary schools. The second proposal is actually a request from the District for a one year extension until the 1997–98 school year, to comply with the racial fairness guidelines at the secondary schools. The apparent basis for this proposal is the decision to implement controlled choice at the secondary schools. The court rejects this request. As Plaintiffs point out, all of the District's middle and high schools currently meet the +/− 15% racial fairness guidelines, and all high schools except Guilford meet the 25% minimum minority enrollment standard. Accordingly, the court has the utmost confidence that the District will be able to meet these two requirements for the 1996–97 school year.

The court now turns to the District's proposed use of the West facility. The District responded to the court's invitation for a dialog with what is really a motion to reconsider this court's student assignment remedy for the RSD's middle schools. The District's position is that 650 additional middle school seats are needed at West in order to facilitate the grade configuration change. Essentially, the District states that this court erred when considering (1) the future enrollment for grades 6–8 and (2) the planned or actual capacities at what will be the District's five middle schools.

The court rejects the District's proposed use of West for a compelling reason: by leaving the Gifted and CAPA programs at Auburn, the District's proposal does not provide for a full comprehensive high school on the westside. This was the underlying motivation for the Court's proposed use of West. While the District refers to its suggested 550 seat component at West as a "comprehensive" high school, it is simply another specialty program. "Comprehensive," in the court's view, means a full, regular high school comparable in enrollment with the eastside high schools. The District's proposal does increase westside high school capacity, but, in doing so, takes away what to the court would be a very significant accomplishment—finally providing westside high school students with a comprehensive high school. Accordingly, the District's proposed use of West is rejected.[108]

Three Options for the Future Use of West

***50** Left for the court to decide, therefore, is the future use of West. In analyzing this issue, the court has considered three options for West, each with its share of

advantages and disadvantages. These three options demonstrate that there is no simple solution in deciding the future use of the West facility.

Option One

The first option is to make West a comprehensive high school. Under this scenario, the Gifted and CAPA programs would remain at Auburn.[109] There are at least three benefits to this option. First, reopening West as a full comprehensive high school most directly addresses the liability findings of this court concerning the closing of West in 1989, and establishes a comprehensive high school on the westside. The closing of West in 1989 in many ways precipitated this lawsuit; reopening West, therefore, would be neatly tailored to this liability finding. Second, if West had approximately 1,000 high school seats, then the District would have 2,635 westside high school seats. As there are 2,267 westside high school students, this option would result in a westside utilization rate of 86%. The third benefit of this option is that by leaving the Gifted and CAPA programs at Auburn, there would be less overall disruption in the movement of students.

Option one, unfortunately, has its drawbacks, and the major one is money. The District has not provided the court any additional financial information concerning renovating West or the additional annual operating cost for operating the facility. The court utilized the District's $7.5 million figure in segment two and assumes that renovating West into a full high school may cost additional dollars. The court, however, does not have solid information. In addition, the court is aware that this option would mean five high schools for the District. This may be an inefficient use of money and space.[110]

Option Two

A second option is essentially the court's suggestion in the CRO. West would be reopened for the high school components of the Gifted and CAPA programs, with the use of the remainder of the building to be determined at a later date. The benefits of this option have been already stated in the CRO. First, 550 westside high school seats would be added, decreasing the current utilization rate of 139% to 104%. Although this is an improvement over the current capacity situation, opening West as a full comprehensive high school does much better in terms of capacity. Second, option two would solve many of the within school segregation problems at Auburn. Lastly, a benefit to this plan is that the District would not be running five full-enrollment high schools.

This proposal has drawbacks as well. First, it may be an inefficient use of money to spend $7.5 million on 550 students. Second, this proposal would disrupt the students in these programs at Auburn when they would be forced to move to West. Third, the court questions whether this proposal has an inherent flaw in overlooking that the CAPA students at Auburn utilize the comprehensive core courses in English, math, etc. at that school. If CAPA were moved to West, there would be no comprehensive core courses for these students to utilize.[111] Lastly, the cost of maintaining a stand alone Gifted program at West may be prohibitive.

Option Three

***51** A third option is that the District move the Gifted and CAPA programs to East and simply close the West facility. There are three benefits to this proposal. First, closing West may make fiscal sense, if it is, indeed, inefficient to spend millions of dollars on West's restoration and annual operating costs. Second, Auburn, which is currently almost 60% minority if the specialty programs are excluded, would become truly integrated. Third, the remedy would occur much more quickly than with the first two options, because no renovation would be required.

There are drawbacks to this option as well. First, although Auburn would be a full comprehensive high school on the westside, there would be only 1,635 westside seats, which results in a utilization rate of 139%, the worst of the three options. Second, closing the West facility would do nothing to address the 1989 closing of West High School.

Conclusion

The above discussion concerning the use of West underscores the difficult nature of the problem. The first option, perhaps, best addresses the liability findings of this court. It was no doubt a bad decision to close West High School in 1989. However, the current circumstances in the District may make the decision to reopen West a bad decision in 1996. A logical and perhaps necessary consequence of reopening West is that one eastside high school would eventually close because five high schools may not be needed in the District. If one eastside high school did close, the District would remain with four high schools and the Gifted and CAPA programs could remain at Auburn. In the end, the decision to spend millions of dollars to open a school that may not be needed and may result in the closing of one eastside high school is not a decision the court should make.

The court concludes, therefore, that, at this time, this decision is more properly in front of the Rockford School Board which is in the best position to weigh the alternatives and plan the future of West. The court encourages the Rockford School Board to give

consideration to the many issues concerning West raised in this opinion. At this time, the court will decide only the following. The District is hereby ordered to develop by April 1, 1997, a comprehensive plan for the future of West that is acceptable to the court. If the District fails to do so, the RSD will be ordered to move the Gifted and CAPA programs to East High School by the start of the 1997–98 school year.

SEGMENT THREE

[Dated May 28, 1996]

V. Faculty Hiring and Placement

In his proposed comprehensive remedial order, the Master's recommendations regarding the RSD faculty fall into three categories: the personnel department, affirmative action and the desegregation of teaching staff. *See* Master's Ex. 1 at 127, 140, 147; CRO (segment one) at 7. In the court's opinion, these three areas overlap and will be discussed under two categories: A. Faculty Hiring and B. Faculty Placement.

A. Faculty Hiring

***52** In 1973, the RSD set a goal to hire at least 15% minority faculty. Master's Ex. 1 at 140.[112] For some twenty-three years, the RSD has been unsuccessful in achieving this goal. From 1974 to 1992, minority certified staff ranged from approximately 6 to 7%. Master's Ex. 1 at 140–41.[113] In 1994–95, there were approximately 7.8% minority teachers (Master's Ex. 1 at 141) and in 1995–96, the percentage rose to 8.7%. Defendant's Harezlak Ex. 2, 1995–96 Data at 1. In short, the District has not met the 15% standard and, in fact, has only recently been able to achieve approximately one-half of its long-stated goal.[114]

As with the other CRO remedies, the court will begin its analysis of the faculty hiring issue by reviewing the liability findings. Judge Roszkowski affirmed the Magistrate's holding that the RSD intentionally discriminated against minorities in the hiring and promotion of teachers and staff. *People Who Care,* 851 F.Supp. at 923–24, 1130. The disproportionately low minority hiring was found to be intentional for at least two reasons: one, the evidence of overall discrimination in other areas of the school system provided an inference of intentional discrimination; and two, the RSD's failure to hire minority staff, despite their own hiring goals and affirmative action obligations. *Id.* at 1130.[115]

The present, task, therefore, is for the court to remedy these findings of intentional discrimination that, as one vestige, has left the RSD with 8.7% minority teachers in 1995–96. Before addressing the appropriate remedy for these violations, a word is, perhaps, in order on the need for a remedy at all in this area. One might argue that the discrimination against minority teachers in hiring has had no demonstrable effect on the minority schoolchildren. A remedy is necessary, however, because the schoolchildren have a right to be in a school district that is free from all forms of discrimination.

The task remaining, consequently, is to fashion an appropriate remedy. Using the Supreme Court's guidance in *Milliken II,* the nature of the remedy in this instance will be determined by the scope of the constitutional violations and must be designed to restore the victims of the discriminatory conduct to the position they would have occupied but for the discrimination. *Milliken II,* 433 U.S. at 280–81. The violation in this case was the discrimination in hiring and recruitment of minority teachers and the victims are the schoolchildren in the RSD. The remedy, therefore, must somehow provide the victims with a minority faculty in a percentage that would be in place had there been no discrimination.

What this percentage is, of course, is the source of disagreement between the parties. The Master, for example, has proposed that the District be ordered, as part of the CRO, to achieve a minority faculty of at least 15% by the 1997–98 school year. Master's Ex. 1 at 127. The Master's recommendation of 15% is based on several factors, including the District's prior goal of 15% minority faculty and the District's ability in recent years to hire an average of 16.8% minority faculty for new teacher vacancies.[116] In addition, it is the Master's opinion that a higher percentage of minority teachers is needed to facilitate the court's student assignment remedy of controlled choice, to effectuate educational remedies and to positively influence minority student achievement. Tr. 1956.

***53** The District, on the other hand, argues that the percentage of minority faculty must be determined by the relevant labor market, citing *Hazlewood Sch. Dist. v. United States,* 433 U.S. 299 (1977); *Wygant v. Jackson Bd. of Educ.,* 476 U.S. 267 (1986); and *Keyes v. School Dist. No. 1, Denver, Colorado,* 902 F.Supp. 1274 (D.Colo.1995). Plaintiffs and the Master counter with *Morgan v. Kerrigan,* 530 F.2d 431 (1st Cir.1976), contending that a strict labor market analysis is not needed in the present case. In the alternative, Plaintiffs and the Master contend that if a strict labor market analysis is utilized under *Wygant* and *Hazlewood,* the relevant labor market for minority teachers in this case supports the 15% hiring recommendation of the Master.

In *Hazlewood,* the Attorney General filed suit alleging that the Hazlewood school district in St. Louis County,

Missouri had engaged in a pattern and practice of employment discrimination in violation of Title VII of the Civil Rights Act of 1964. After a trial, the district court ruled in favor of the defendants, finding unpersuasive the government's statistics revealing a small percentage of African–American teachers compared to the percentage of African–American pupils in the school district. *Hazlewood,* 433 U.S. at 304. The court of appeals for the Eighth Circuit reversed, finding the district court's comparison of African–American teachers to African–American students irrelevant. In the appellate court's view, the proper comparison was between African–American teachers in the district and the African–American teachers in the relevant labor market area. The Eighth Circuit selected St. Louis county and St. Louis city as the relevant area, which, according to 1970 census figures, revealed a labor force of 15.4% African–American teachers. Because the district's faculty was approximately 1 to 2% African–American, the Eighth Circuit held that the statistical disparity constituted a prima facie case of a pattern or practice of racial discrimination. *Hazlewood,* 433 U.S. at 305.

On review, the Supreme Court reversed. The Court held that the court of appeals was correct in its determination that in employment discrimination cases, the proper comparison is between the racial composition of the district's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market. *Hazlewood,* 433 U.S. at 308. The Court held that the Eighth Circuit erred, however, when it substituted its judgment for that of the district court in defining the relevant labor market and when the court of appeals failed to consider whether the prima facie statistical evidence had been adequately rebutted. *Hazlewood,* 433 U.S. at 309. The case was remanded to the district court for further findings on the relevant labor market.

In *Wygant,* at issue was an agreement between the school board and the teachers' union that essentially granted minority teachers preferential status in lay-offs. When nonminority teachers that had more seniority than the protected minority teachers were laid off, the nonminority teachers contended they were unconstitutionally laid off because of their race. *Wygant,* 476 U.S. at 272. The Court ultimately held that the lay-off provision was unconstitutional. The board provided the following rationale for the provision: it was an attempt to remedy societal discrimination by providing role models for minority schoolchildren. The Court rejected this rationale and held that before racial classifications of that nature could be used, there needed to be a showing of prior discrimination by the governmental unit. *Wygant,* 476 U.S. at 274. The Court, citing *Hazlewood,* added that the proper comparison for determining the existence of actual discrimination is between the racial composition of the district's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market. *Id.* at 275.

***54** Unlike *Hazlewood* and *Wygant,* the *Keyes* decision, which was at the district court level, dealt with the issue of faculty hiring in the context of a school desegregation case. In *Keyes,* the school district was found guilty of intentional race discrimination from 1960 through 1969. At issue in 1995 was the district's unitary status motion to terminate the court's jurisdiction over the school district. With respect to the faculty issue, the district court noted that there was no allegation or finding in the case of intentional discrimination in the hiring of faculty. Nonetheless, in 1974 the court ordered the implementation of a program to recruit minority teachers. The program ordered the district to achieve a goal of having Black and Hispanic teachers reflect the ratio of Black and Hispanic students in the district. After the Supreme Court's 1986 decision in *Wygant,* however, the district court vacated the 1974 order and the district's recruitment goal was modified to comparing the district's faculty to the racial composition in the available labor pool. *Keyes,* 902 F.Supp. at 1296.

In determining whether the school district had met the labor force goal, the *Keyes* court focused on the state of Colorado as the relevant labor market. For African–American teachers, the court noted that the Colorado labor pool was approximately 2.5% and the district's percentage of African–American teachers over the past eight years had ranged from 8 to 13%. Similarly, for Hispanics, the Colorado labor pool ranged from 6 to 7% and the district's percentage of Hispanic teachers ranged from 10 to 13%. Relying on these statistics and the district's efforts at recruiting minority faculty, the district court held that the school district had met or exceeded the relevant labor market pool for minority teachers and was not required to achieve higher percentages. *Keyes,* 902 F.Supp. at 1299.

The district court rejected the plaintiffs' contention that the district should have been required to meet its loftier affirmative action goals that were based on the percentage of minority students in the district. The proper inquiry, the court explained, was whether the district had met the available labor force goal. *Keyes,* 902 F.Supp. at 1297. In addition, the court rejected the plaintiffs' contention that the labor pool should be defined by focusing on large urban districts that could have "70 percent or more minority students." This notion was rejected because the plaintiffs failed to provide any evidence to suggest that the labor pools in outside markets were different from those discussed by the court. *Keyes,* 902 F.Supp. at 1298. The court held that the school district's efforts at out-of-state recruitment, recruitment at colleges producing high percentages of minority teachers and various in-state recruitment techniques were sufficiently adequate, in light of the fact that the district had met or exceeded the available labor pool. *Keyes,* 902 F.Supp. at 1298–99.

***55** The case cited by Plaintiffs and the Master, *Morgan v. Kerrigan,* 530 F.2d 431 (1st Cir.1976) involved the school desegregation case in Boston, Massachusetts. In *Morgan,* the lawsuit resulted in a finding of intentional discrimination in several areas, including in the hiring and recruitment of African–American teachers. In *Morgan,* the intervening teachers' union challenged a district court order that required the school district to hire one African–American teacher for every White teacher until 20% of the faculty was African–American. The 20% figure was selected by the district court because it represented the percentage of Blacks in the Boston population. *Morgan,* 530 F.2d at 432.

On appeal, the teachers' union argued that the appropriate comparison was not to minorities in the general population but, rather, to the labor pool of the college graduates in the Boston area. The First Circuit rejected the position of the teachers' union. Citing the U.S. Supreme Court decisions in *Green* and *Swann,* the court of appeals stated:

> This argument fundamentally misapprehends the nature of this case. The plaintiffs are not the black teachers or would-be teachers who have been discriminated against because of their race. The district court's examination of the School Committee's recruitment, hiring, transfer and promotion policies was undertaken to determine whether those policies violated the rights of black Boston public school children. It is the rights of those children that the order in issue is intended to protect.

Morgan, 530 F.2d at 432.

The First Circuit noted that the 20% goal was supported by other cases where the courts had resorted to gross population ratios for remedial purposes. Ultimately, the court held that if the appropriate comparison pool was recent college graduates, the union failed to provide sufficient evidence to demonstrate that the percentage of recent African–American college graduates was lower than the percentage of African–Americans in the Boston population. *Morgan,* 530 F.2d at 433–34.

In analyzing the present case, the Magistrate first notes that this is not an employment discrimination case but, rather, is a school desegregation case with a component of intentional discrimination against minorities in hiring and recruitment. Therefore, the *Hazlewood* and *Wygant* decisions regarding relevant labor market analysis are not completely on point. Unlike *Wygant,* there has been a finding in this case of intentional discrimination. This finding was affirmed by Judge Roszkowski and was not appealed by any party.

The court agrees with the observation of the First Circuit Court of Appeals in *Morgan* that, in a desegregation case, the remedial order seeks to protect the rights of the affected schoolchildren and, therefore, a strict labor market analysis as utilized in employment cases may not be necessary. On the other hand, there must be some benchmark to measure the scope of the remedy. The court will not order the District to hire minority teachers at an arbitrary percentage in order to provide role models. However, as stated by Justice O'Connor in her concurrence in *Wygant,* the rejected role model theory is quite different from the important governmental interest in promoting racial diversity among the faculty. *Wygant,* 476 U.S. at 288 n. * (O'Connor, J., concurring). This cogent observation gets the Magistrate no further; the question remains—how diverse does the faculty have to be? The answer, and the appropriate benchmark comparison, must lie in the percentage of minority teachers in the relevant labor market. Following *Milliken II,* this percentage most accurately reflects what the minority faculty ratio would have been in the absence of the discrimination that occurred.

***56** The "relevant labor market" for teachers is far from an unambiguous term. In a national economy, school districts as well as other employers hire and recruit employees on a broad national level. In addition, as of August 1995, there are approximately 38 states that have reciprocity with Illinois as far as teacher certification. Tr. 2191. These economic realities cause the Magistrate to reject the relevant labor pool as being local, i.e. the two closest counties, where the percentage of minority teachers hovers around 4%. Plaintiff's Ex. 210 at Table 2.[117]

In the present case, there are principally two expert witnesses on the subject of the relevant labor pool for teachers available to the RSD. Dr. LaLonde testified on behalf of Plaintiffs. In his report, Dr. LaLonde utilized the percentages of minority teachers by region reported below in Table 1.[118]

In addition to these figures, Dr. LaLonde worked with a stipulated database that reflects the flow of applicants for teaching positions in the RSD, reported below in Table 2.

Table 2

Residence of Applicant By Region	Percentage Applying to the Rockford School Dist.
National (excluding six state area and Illinois)	32.3%
Six State Area	17.7%
State of Illinois (excluding Chicago area, Chicago and Rockford)	6.5%
Chicago area (excluding city of Chicago)	14.3%
Chicago	2.4%

Rockford	26.9%[119]

Utilizing this data, Dr. LaLonde concluded that the RSD could achieve 20% minority faculty if the District felt this percentage was educationally productive. In his opinion, the 20% figure could be achieved over time if the District increased recruiting expenditures, improved working conditions, provided non-salary incentives and, perhaps, provided higher salaries. Plaintiffs' Ex. 210 at 2. Although Dr. LaLonde stated that a goal of 20% would be within the District's reach, his ultimate conclusion was that the size and scope of the RSD's labor market for teachers depended on the willingness and availability of qualified teachers to relocate to Rockford. *Id.* at 7. As such, the availability of minority teachers "can not be described simply by a single number." Plaintiffs' Ex. 210 at 5.

Therefore, according to Dr. LaLonde, the availability of teachers for the RSD depends on the willingness of applicants to relocate to Rockford and the efforts made by the RSD to attract qualified applicants. *Id.* at 6. The data listed in Table 2, above, was significant to Dr. LaLonde in reaching his conclusion and underscored two points. First, the RSD's teacher labor market is clearly not local; rather, the RSD attracts applicants on a nationwide basis. Second, although Chicago has the largest concentration of minority teachers in the Midwest, the District attracts very few applicants from that city. Plaintiffs' Ex. 210 at 10.

***57** In Dr. LaLonde's opinion, if the District expanded its recruiting efforts to cover the 21 counties in northern Illinois, he would expect the District's minority new hires to mirror that of the 21 county percentage, or 19%. However, since 93% of all minority teachers in northern Illinois are in Chicago, reaching this 19% figure necessarily depended on successful Chicago recruiting. Plaintiffs' Ex. 210 at 15. If Rockford successfully recruited from all of Illinois, Dr. LaLonde would expect new hires to be approximately 15% (see Table 1). Particularly important to Dr. LaLonde was that over the last three years, the RSD has been able to recruit an average of 16.8% minority hires. This fact, along with the influx of applicants from across the nation, led Dr. LaLonde to conclude, "The [District's] labor market for teachers is to some degree something that it chooses so as to reflect its educational objectives." *Id.* at 1.

Defendant's expert, Dr. Freeman, reached a different conclusion. First, Dr. Freeman noted the percentage of minority teachers in the regional labor markets listed below in Table 3.[120]

Next, Dr. Freeman calculated a "weighted availability." In essence, this weighted availability took into account the percentage of applicants from these six regions (in Table 3). For example, although Cook county has 32.4% minority teachers, the District is only receiving 2.4% of its applicants from this area (Table 2, above). Therefore, from Chicago, the RSD can expect .78% of its applicants to be minority (32.4% times 2.4%). When all the geographic areas are similarly weighted by their applicant flow into the RSD, Dr. Freeman arrived at her conclusion that the available labor pool for teachers is 9.4% minority. Freeman Dep. Ex. 8 at 4, Exhibit 7. Given the 8.7% minority faculty currently present in the District, Defendant argues that the RSD has a minority faculty approximating the available labor pool and, therefore, no remedy is needed.

In analyzing this problem, the Magistrate notes two major drawbacks with Dr. Freeman's approach. First, the RSD employs one-half the teachers in the Rockford area and has discriminated against minorities in hiring and recruitment for several years. Therefore, the approximately 4% minority faculty in the area utilized by Dr. Freeman in her weighted approach is likely to be unreliable.

Second, Dr. Freeman treats the applicant flow as a static variable. The data in Table 2, however, is only a snapshot in time of applicants from the 1994–95 school year. The applicant flow could change significantly from the figures used in Dr. Freeman's analysis. For reasons that will be more fully discussed under the faculty placement section, the collective bargaining agreement and the District's hiring round placement system have a negative impact on the District's potential to successfully recruit minority teachers. Plaintiffs' Ex. 210 at 10, 22; Master's Ex. 1 at 146; Tr. 2185–93; Tr. 3396–97; Tr. 3462–63, 3551; Tr. 3609–10; Tr. 4014–15.[121] Thus, for example, if these impediments were removed, one would expect greater success in recruiting from places like Chicago, the Midwest and other U.S. geographic locations.[122] Once recruiting is more successful, one would expect an increase in the applicant flow from these areas above the 1994–95 figures.[123]

The major difference between Drs. LaLonde and Freeman can be said in one word—Chicago. In the Magistrate's opinion, Defendant has unfairly seized upon Rockford's relative lack of success in recruiting from Chicago. Statistics, unfortunately, are subject to manipulation. When Chicago—which is only 90 miles from

Rockford—is carved out of the labor pool, the percent of potential minority faculty drops significantly. This is not warranted. The word may be out that Rockford is not hiring minorities. People sometimes do not apply for jobs that they know they have little or no chance of getting. Who knows what effect this may have had on deterring applicants.

***58** The Magistrate, however, will not base the faculty hiring remedy on speculation. The minority faculty labor pool in Illinois is 15%. Plaintiff's Ex. 210 at Table 2. The court notes that the court in *Keyes* chose the state of Colorado as the relevant labor market. If the Magistrate did so here, then the relevant labor market would be 15%, which equals the figure selected by the Master. Choosing Illinois as the relevant labor market, however, ignores that approximately 50% of the RSD's applications are from outside the state. Teachers, especially minority teachers, are a commodity in the national economy, and the relevant labor market needs to reflect this reality.

The court adopts the following analysis in reaching the relevant labor market for minority teachers in the RSD. As stated, the labor pool in Illinois is 15%. The minority faculty labor pool outside Illinois, i.e., the United States, is 12%. Plaintiff's Ex. 210 at Table 2. Although the stipulated applicant flow data has some limitations, the Magistrate will use this data because it is the best estimate available that reflects the RSD's labor pool for minority faculty on a national level. Using Dr. Freeman's statistics, approximately 50% of the RSD's teacher applicants are from outside Illinois and 50% are from the state of Illinois. Utilizing the corresponding percentages of minority faculty in these two geographic regions (12% and 15%), a weighted availability reveals that the relevant labor market pool for teachers in the RSD is 13.5% minority ((50% times 12%) plus (50% times 15%)). This is the percentage of minority faculty that would be present in the RSD but for the discrimination in hiring and recruitment. The RSD is ordered, therefore, to achieve a faculty of at least 13.5% minority teachers in each grade configuration (elementary, middle and high schools) as soon as practicable.

A closely related problem to minority faculty hiring is the potentiality for reduction in force (RIF) lay-offs. When, for example, the District is successful in meeting the 13.5% minority faculty requirement, a problem will exist if the District is forced to lay off teachers for economic reasons. By the terms of the collective bargaining agreement ("contract") the District has with Defendant–Intervenors ("REA"), the teachers with the least seniority in the District are the first to go. Plaintiffs' Ex. 61 at 20. In other words, all the success in hiring new minority recruits may be wiped out if these teachers are the first to go in a "last in, first out" RIF situation.

These lay-off provisions could be a significant setback to the progress of the RSD in achieving a racially diverse faculty. A natural and direct consequence of the District's hiring discrimination is that all of the recently hired and all of the newly hired minority faculty to correct this discrimination will have significantly less seniority that nonminority teachers. Because these minority teachers will have been the "last in," they will also be the first to go.

***59** The court orders, therefore, that in any RIF situation, the District's post-RIF minority faculty ratio must approximately equal the pre-RIF ratio. The court realizes that this could result in the lay-off of teachers with more seniority than certain minority teachers not being laid off. This provision, however, serves the compelling goals of preserving the racial diversity of the RSD faculty and facilitating the remedy for the unlawful discrimination in this case. The court also realizes that this lay-off provision is race-conscious. The intentional discrimination in this case, however, requires race-conscious remedies in some instances. Accordingly, the *Wygant* decision is inapposite because it dealt with a voluntary affirmative action program where there had not been a finding of prior intentional discrimination. *See, e.g., Morgan v. O'Bryant,* 671 F.2d 23, 25 (1st Cir.1982) (upholding a similar lay-off provision, stating, "[These provisions] were necessary to safeguard the progress toward desegregation painstakingly achieved over the last seven years. Without them, the percentage of blacks would have fallen almost to its level nearly a decade ago....").

B. Faculty Placement

If the RSD's faculty were evenly distributed, there would be no issue concerning faculty placement. Analyzing the current distribution, however, quickly demonstrates the problem in the RSD.

For the 1995–96 school year, there were a total of 994 teachers and 97 minority school teachers in the RSD's 39 elementary schools. Plaintiffs' Ex. 190. By terms of the Second Interim Order, the District's elementary schools were classified as C.8. and C.9. The C.8. schools are generally west of the river and include the District's six racially identifiable minority schools. Conversely, the C.9. schools are generally east of the river and include the District's five racially identifiable White schools. Unfortunately, the District's elementary schools are racially identifiable by faculty as well as by students. Particularly telling is that of the twenty-one C.9. elementary schools, eight schools have no minority teachers, eleven schools have only one minority teacher and the remaining two schools each have two minority teachers. Plaintiffs' Ex. 190. Of the fourteen C.8. schools, three schools have one minority teacher, three schools have three minority teachers, five schools have four or five minority teachers, one school has seven and the

remaining two schools which host bilingual programs, have twenty-six minority teachers between them. *Id.*[124]

This data demonstrates that the RSD's minority faculty is unevenly distributed.[125] Unfortunately, this means that most of the RSD's eastside elementary schools are racially identifiable White merely by looking at the constitution of the school's faculty. When the District is successful in obtaining 13.5% minority faculty, there will be approximately 134 minority teachers in the elementary schools. If the current placement methods remain the same, a greater disparity in the disproportion of minority teachers in west side schools may occur.

***60** In most areas in the CRO, the Magistrate has started the discussion of a particular remedial area with the Master's recommendations. The recommendations, however, have little meaning unless the District's current teacher placement system is first understood. For this reason, the Magistrate will begin this section with a discussion of current teacher placement methods in the RSD.

The placement methods currently utilized in the District are difficult to understand and at times seem convoluted. No business expecting to survive in a competitive market place could be run in the same fashion. The court understands, however, that this system is the result of collective bargaining and both parties to the contract seem satisfied with the system. Days were spent in trial explaining the placement system and an additional thousand pages of deposition transcripts were submitted, thankfully, in lieu of live testimony. What follows is this court's understanding of the process, summarized and brutally simplified to the extent possible.

Current Faculty Placement in the RSD

Bob Corder, Vice–President of the REA, was very helpful to the court in understanding the placement process. The placement process does not begin until there is a vacancy to be filled. Vacancies arise in several different ways—from the District creating new positions to teachers leaving the District or retiring. Once a vacancy is filled by an incumbent teacher, that teacher's former position becomes a vacancy to be filled. And so on. This process was described at trial as the "domino" effect.

Sometime during the school year, the RSD administrators, usually the principals, determine the number of allocations needed for each school for the following year. Tr. 3748. If a principal knows there is going to be a vacancy for the next year, she notifies the human resources department which, in turn, publicizes the vacancy in the school buildings and in the job vacancy newsletter, the *Communicator*. Tr. 3712; 3854. The vacancies are to remain open for at least ten days. Plaintiffs' Ex. 61 at 15. Typically, the first "round" of vacancies is published in the *Communicator* in late April of a particular school year (Tr. 3717), although Mr. Harezlak, the Assistant Superintendent of Human Resources, testified that these allocations should be known as early as February or March. Tr. 3412.

It is a requirement that all vacancies be filled within thirty days of the last publication. Plaintiffs' Ex. 61 at 17. During this time period, incumbent teachers (as well as new hires) can apply for a vacancy by filling out an application. Tr. 3712. Human resources then generates a computerized list of applicants for each vacancy; the applicants appear on the list in order by years of seniority. Tr. 3712–13. The principals receive these lists and then submit a written recommendation for hire.[126] Tr. 3713. For each round there is a placement day, when RSD administrators and REA representatives meet at human resources. Typically, the first placement day each year occurs in mid to late May. Tr. 3716.

***61** If more than one applicant has applied for a position, the applicant "best qualified," based upon relevant certification, education and training, shall be appointed to the vacancy. Plaintiffs' Ex. 61 at 18. Although the contract does not weight these three criteria, in practice, they are weighted in that order. Tr. 3898–99. If the qualifications are substantially equal, the most senior applicant is to be appointed to the vacancy. Plaintiffs' Ex. 61 at 18.

At placement day, the selection process begins by looking at the most senior applicant for a vacancy and the principal's selection. If the principal has chosen the most senior applicant, that person is assigned the position. Tr. 3713–14. In practice, the most senior applicant gets the position 50% of the time. Tr. 3792. In Mr. Harezlak's opinion, the current practice in the RSD is to primarily look at seniority in filling positions. Tr. 3376. If the principal does select the most senior applicant, a rationale for the decision is not required and there is never a dispute over who is the most qualified. Tr. 3902–03. In short, a principal can avoid controversy merely be selecting the most senior applicant. Tr. 4025.

If the principal has not selected the most senior applicant, the human resource administrator and the union's representative will look at the principal's rationale for not choosing the most senior applicant. Tr. 3714. The rationale must be based on the relevant certification, education and training required for the position, as contained in the advertisement for the vacancy. Tr. 3727. In practice, most rationales are not challenged. Tr. 3742. A challenged rationale may lead to a grievance process. If a rationale is accepted and the most senior applicant is not selected for a position, the placement administrator and the union's representative look to the next senior applicant. This process continues until the position is

staffed.[127]

What has been described thus far is the first round, usually starting in April and completed by May. A necessary consequence of the first round is that the teachers filling the first round vacancies in turn, themselves, leave vacancies. There is no provision in the contract specifying the number of transfers a teacher can seek per year, the number of rounds per year or the number of placement days. Each round, however, lasts about one month from posting, although the time period is lessened the closer the round is to the start of the school year. Tr. 3715–16. In 1995–96, for example, there were 129 vacancies filled in the first five rounds. Underscoring the number of internal transfers of teachers is that, of the 129 vacancies, only six were filled by new hires. Tr. 3923. A result of the round system starting late and allowing limitless transfers is that, as a practical consideration, new hires often do not get a chance at the vacancies until the last rounds, usually at the end of summer.[128] Tr. 4014.

Two Consequences of the Placement System

***62** It has become clear to the Magistrate that the perceived most desirable teaching positions in the District are in the C.9. schools. *See* Tr. 1809–10; 3444. At the beginning of the school year, for example, the number of vacancies in C.8. schools far outweighs those in C.9. schools. Tr. 1978. Thus, at the end of the rounds, the desirable positions in C.9. schools have been filled, leaving vacancies in the C.8. schools. In 1995–96, hiring round five was advertised on August 29, 1995, and of the thirty non-magnet vacancies (both full and part-time positions), twenty-eight were in the C.8. schools. Defendant–Intervenors' Corder. Ex. 12. A direct result of the contract is that a disproportionate percentage of faculty filling those C.8. positions are minority teachers. Tr. 3442–45.

The most direct way the contract produces this result stems from the seniority and training provisions. Because of the intentional discrimination in hiring, newly hired minority teachers as well as the minority hires in recent years will have much less seniority and training than the incumbent majority teachers. Therefore, in the opening rounds in which most of the C.9. positions are filled, the minority new hires most likely will not have the training for a position that is advertised. In recent years, for example, "intense" training, particular to Rockford, is often listed in the job descriptions, placing minority new hires at a distinct disadvantage. Tr. 3440–41. If a minority new hire does apply for a vacancy for which she is equally qualified in terms of certification, education and training, chances are that the vacancy will go to an incumbent teacher that has more seniority.

The problem with this scenario is that the recent minority new hires, as well as the future new hires as a result of the CRO, are minority teachers that the District should have hired over the past twenty years. They are being hired now as a remedy. Unfortunately, they have little or no seniority, have little localized training because they are new to the District and, therefore, cannot compete for the perceived desirable positions. Tr. 2193; 3899–3900, 3992–94. A direct result is that most new hire minority teachers are placed in August or September in positions for which there is usually not much competition from incumbents. Tr. 3592. In short, the incumbent teachers have already filled most of the C.9. positions, leaving C.8. vacancies for minority new hires. The immediate result is the disproportionate percentage of minority faculty in C.8. schools.

The second effect of the present placement system is the burden it places on the RSD's ability to recruit and hire minority teachers. Since minority teachers are a treasured commodity in the national labor market, successful recruiting is necessary in early Spring. The problem in recruiting, however, is that the potential minority new hires cannot be guaranteed where they will be working or what they will be teaching at the time of recruitment. This uncertainty often deters the potential new hires who end up at other school districts that can offer more reliable placement.[129]

***63** Over the last several years, the District developed a "surplussing" system where it would offer a minority recruit a contract in the Spring, although the exact placement would not be known until late in the round system at the end of Summer. Tr. 2173–74. As stated above, however, although these surplussed teachers can compete in every round of the placement system, as a practical matter, they have to wait for the final rounds to successfully fill a vacancy because they have no localized training and no seniority. Therefore, Mr. Creighton's testimony that he has been more successful in placing minority new hires in C.8. schools than C.9. schools comes as little surprise. Tr. 2184. In 1994, in fact, of the twelve minority new hires at the elementary level, eleven went to C.8. schools. Tr. 1829.

In sum, the present placement system has two detrimental effects on the District's progress in diversifying its faculty. The collective bargaining agreement unquestionably favors the incumbent teachers in placement. As the C.9. positions are perceived as the most desirable, a natural consequence is that a disproportionate amount of majority teachers occupy those positions. If there had been a level playing field for the last twenty years, more minority teachers would have been hired and would have acquired seniority and training. Because they have only recently been hired in greater percentages means that they cannot successfully compete for the C.9. positions. As a result, the RSD's faculty has become

racially identifiable. The second effect of the contract and the placement system is the impediment they impose on minority recruitment and hiring. The contract, therefore, impedes hiring, recruitment and placement which unquestionably hinders the District's ability to diversify its staff. Tr. 1751; 2193; 3561; 3602–03.

The Master's Recommendations

The Master has essentially two recommendations on faculty placement. The first recommendation addresses the round system problem by starting the process earlier. Under the Master's proposal, the RSD would be required to determine the number of allocations for the next year by January 15th. The round system would then begin, with the same publication requirements. By May 30th, the District and the REA would be required to complete three rounds of placement, with the most qualified applicant receiving the position under the current terms of the contract. Between June 1st and June 30th, the RSD would place any surplussed or RIF'd employee in any appropriate vacancy. After June 30th, the RSD would be able to directly place, without regard to seniority, any newly employed minority elementary teachers in C.9. vacancies until the individual schools were within +/− 15% of the districtwide percentage of minority faculty. *See* Master's Ex. 1 at 132–33.

The Master's second faculty placement recommendation concerns the retention of specially trained teachers at C.8. schools and schools with more than 33% minority students. Teachers with specialized training are critical at these schools in order to improve the academic performance of the students and aid overall desegregation efforts. Master's Ex. 1 at 129. Essentially, the Master wants to preserve the number of specially trained teachers at these schools by assuring that if teachers leave these schools, they are replaced by teachers with similar training. *Id.* Further protection is sought in that teachers at these schools who have the specialized training are not to be surplussed or RIF'd. *Id.* at 128. In addition, the Master would require that a sufficient number of teachers with specialized training are, in the future, assigned to C.8. schools. *Id.* at 129.

The Liability Findings

***64** To be consistent, the court will begin its analysis with an overview of the liability findings with regard to faculty placement. In the report and recommendation, the Magistrate concluded that the RSD violated the constitutional rights of Plaintiffs through the intentional assignment of a disproportionate percentage of minority teachers, principals and custodial/clerical staff to schools with a high percentage of minority students. Conversely, majority staff (both certified and non-certified) were disproportionately assigned to schools with a high percentage of majority students. *People Who Care,* 851 F.Supp. at 1153.

Judge Roszkowski reversed these findings because Plaintiffs failed to establish that the statistical disparities contributed to the intentional discrimination against minority students. Judge Roszkowski stated:

> Although the data does indicate a disparity in the distribution of District staff, the plaintiffs have not established that this was caused with intent to discriminate against students. As the defendant-intervenors point out, the District was under certain obligations through collective bargaining agreements with District employees. These agreements gave teachers rights in their assignment based upon seniority and qualifications.... In cases where applicants had substantially equal qualifications, the selection was then based on seniority.

People Who Care, 851 F.Supp. at 924.

Faculty Assignment Remedy

Intervenor–Defendants cling to Judge Roszkowski's decision regarding placement and argue that any provision in the CRO disrupting the current placement system is unwarranted. The issue boils down to whether, notwithstanding Judge Roszkowski's findings, this court is able to disrupt the collective bargaining agreement that, in the court's view, has unquestionably led to a racially identifiable faculty in the District. In the Magistrate's view, the answer is yes, for two very good reasons.

The first reason is grounded in the liability findings concerning faculty hiring. From *Brown II* in 1955 to *Jenkins III* in 1995, the Supreme Court has been consistent in its mandate that the vestiges of intentional discrimination must be eliminated root and branch. The liability finding of concern here is that the RSD intentionally discriminated against minorities in hiring and recruiting over the past twenty years. A direct vestige of this discrimination is that newly hired minority teachers will not have the seniority they would have had but for the discrimination. In a placement system with a presumption that the most senior applicant for a vacancy receives the position, a direct and immediate consequence of the intentional discrimination is that, in the twenty-one C.9. schools that consist of predominantly majority students, nineteen of those schools have one or zero

minority faculty members.[130]

The second reason is just as obvious: what sense does it make to racially balance the schools under the student assignment plan if the faculty remains racially identifiable? The efforts at desegregation through controlled choice will be severely undermined if a school remains racially identifiable by looking at its faculty. The language from the Supreme Court in *Freeman,* quoted at page 11 of the CRO, bears repeating here, "The *Green* factors are a measure of the racial identifiability of schools in a system that is not in compliance with *Brown,* and we instructed the District Courts to fashion remedies that address all these components of elementary and secondary school systems." *Freeman,* 503 U.S. at 486. With respect to faculty, the Court stated:

> ***65** We have long recognized that the *Green* factors may be related or interdependent. Two or more *Green* factors may be intertwined or synergistic in their relation, so that a constitutional violation in one area cannot be eliminated unless the judicial remedy addresses other matters as well. We have observed, for example, that student segregation and faculty segregation are often related problems.

Freeman, 503 U.S. at 497.

Freeman requires, therefore, that this court address the faculty placement system that, in its present state, maintains a racially identifiable faculty. Desegregating the faculty is essential to facilitating the student assignment remedy. A remedial order that only partially addresses the full list of *Green* factors would inherently be insufficient. Ultimately, it would be illogical to desegregate the Rockford public school system in some areas, only to leave the faculty segregated. Accordingly, the RSD is hereby ordered to desegregate its faculty as soon as is practicable.[131]

The court now turns to fashioning a remedy in this area. The court has considered the recommendations of the Master and finds them to be insufficient. While the proposal to hasten the round system would help minority recruiting, it would accomplish little in terms of desegregating the faculty. Direct placement of newly hired minority teachers after June 30th would be ineffective if the majority of vacancies were in C.8. schools.

It is time for the Rockford School Board to regain its control over the faculty hiring and placement process. Accordingly, in order to desegregate its faculty, the District will now have the power and ability, through this order, to directly place a minority teacher in *any* arising vacancy for which he or she is qualified. The District will not be required to place every minority new hire or an arbitrary percentage of minority new hires in C.9. vacancies. Rather, the District is to use direct placement to desegregate the faculty in a timely fashion. The court orders the following procedure for direct placement. For any vacancy arising before July 1st, the RSD, when notified of the vacancy, shall be given twenty-one days to directly place either a qualified minority new hire or a qualified minority incumbent willing to leave their former position. If the District does not fill the position with direct placement, then the vacancy shall be advertised and filled in the normal procedure. The twenty-one day period will be shortened as the school year approaches. Therefore, for vacancies arising after July 1st, the RSD shall be given fourteen days to fill the position before it is advertised; for vacancies arising after August 1st, the time period for direct placement will be seven days.[132]

This faculty placement provision serves two purposes. First, it will enable the District to desegregate its faculty. Because the provision applies to the earliest known vacancies as well as the late summer vacancies, the District will have the opportunity to directly place minority faculty into many more C.9. positions than with the Master's proposal. Second, the District's recruiting efforts will be enhanced. With this system in place, the District's recruiter will be able to guarantee positions to minority recruits in early Spring. This will undoubtedly make the District more competitive in recruitment and will serve the RSD in meeting the 13.5% minority faculty mandate. The court recalls the testimony of Mr. Creighton who stated that with direct placement, he would have been able to hire more minority teachers. Tr. 2192.

***66** At the elementary level, the court orders that no school exceed the percentage of the RSD's elementary minority faculty by 5%. Currently, the RSD has 97 minority teachers at the elementary level, out of 994 total elementary teachers. However, this includes 26 Hispanic teachers in the bilingual programs that will be exempt from the placement provisions.[133] This results in a total of 71 minority teachers for 37 elementary schools. The adjusted percentage of elementary minority faculty in the RSD (without the bilingual teachers) is 7.3% (71 divided by 968). Therefore, presently, the District cannot have more than 12.3% minority faculty at any elementary school. The ceiling will naturally change from year to year as the RSD progresses toward a 13.5% minority faculty. The effect of the ceiling is that a large percentage of minority faculty in the C.8. schools may move to other schools in the District. A floor requirement at this point would be too inflexible, given the low number of minority elementary teachers compared to the number of elementary schools. When the District does reach 13.5%

elementary minority faculty, the court may consider a +/− 5% standard for elementary schools.[134]

Middle and high schools, however, will be held to the +/− 5% standard, both presently, and after the 13.5% minority faculty requirement is met because the fifty-five minority teachers at the eight secondary schools allow for sufficient flexibility. As the District is to accomplish these requirements by vacancy filling only, the court realizes that it may be problematic to reach these goals in the first year of implementation. In addition, the court notes that the current high school faculty is 7% minority and the +/− 5% standard allows high schools to have as low as 2% minority faculty. This problem will disappear, however, when the District progresses to 13.5% minority faculty at the high school level with deliberate speed.

The court rejects the Master's second recommendation concerning the retention of faculty with specialized training at C.8. schools. This proposal is inconsistent with the spirit of the CRO. With controlled choice in full operation, the C.8. and C.9. distinctions will be rendered obsolete. This School Board will be forced to treat the District as one entity, instead of the C.8./C.9. or west/east distinctions. Under controlled choice, every elementary school will range from approximately 21 to 51% minority students; consequently, the need for teachers with specialized training may exist at any one of the RSD's elementary schools. The court orders, therefore, that the District staff schools with these teachers, as appropriate.[135] Any part of the collective bargaining agreement between the RSD and the REA which would prevent this section of the CRO from being implemented is hereby enjoined.[136]

SEGMENT THREE—CONTINUED

[Dated June 7, 1996]

VI. Student Achievement

In his proposed remedial order, the Master made recommendations under "Participation and Performance of Minority Students in the RSD." CRO (segment one) at 7. The recommendations concerned the areas of student achievement, attendance, grades, graduation rates, drop-out rates and discipline. Master's Ex. 1 at 84–85. These recommendations, except for discipline, will be discussed under the category "Student Achievement" in this section. Discipline referrals and sanctions will be discussed in Section VII.

***67** In segment one of this opinion, the court noted the parties' stipulation that the District will continue to "support the identification and implementation of research-based programs which have demonstrated the ability to improve minority student achievement and to close the achievement gap between majority and minority students." See CRO (segment one) at 39. The Master, however, has proposed quantitative measures to gauge the efforts of the RSD in ensuring that minority students attain performance outcomes comparable to other students in the District, in the area of student achievement. The court will begin this section with a brief review of the liability findings.

Liability Findings

In the report and recommendation, the Magistrate found that there were significant and long lasting disparities between the achievement levels of minority students as compared to majority students, particularly as measured by standardized test scores. *People Who Care,* 851 F.Supp. at 1033–36. The court concluded that the District's student assignment practices led to the "continued racial isolation of minority students in the Southwest Quadrant [which] had severe negative effects on the students' education." *Id.* at 1061. In addition to the RSD's unlawful segregation through student assignment practices, a second causative factor related to minority student achievement was the District's discriminatory tracking practices, where minority students were often placed in lower achieving tracks because of their race. *Id.* at 999. Lastly, the court found a strong correlation between the facility disparities west of the river and poor student achievement. *Id.* at 1033. These findings were not disturbed by Judge Roszkowski.

Achievement Disparities

Unfortunately, the statistical disparities continued throughout the 1990s. In 1991 and 1992, for example, the achievement scores of the RSD's White students were more than twice that of the District's African–American students. Plaintiffs' Findings of Fact on Educational Remedies at 97. Majority students scored at the 58th percentile on national tests whereas African–American students performed at the 27th percentile. *Id.* At the District's secondary schools in 1992, the disparities between White and African–American students in reading comprehension ranged from a low of 17 percentile points at Flinn, to a high of 44 percentile points at Eisenhower. In math, the disparities ranged from a low of 18 percentile points at West, to a high of 49 percentile points at Eisenhower. *See* Master's 4th Quarterly Report at 20–21. These gaps continued in 1993 and 1994. Master's 8th Quarterly Report at 17; Master's 13th Quarterly Report at 81–108.

The Master's Recommendations

The Master proposed the following standards to govern the RSD's progress in achieving equitable outcomes. First, the present disparity in performance on standardized tests would be required to be reduced by five percentile points each successive school year until equitable outcomes in standardized testing were achieved and maintained.[137] Second, the Master proposed that 90% of minority students must be within one year of the national norm on the Degrees of Reading Power Test by 1997. Third, the disparity in attendance, drop-out and graduation rates would be required to be reduced each year by 20% of the difference between majority and minority students until equity was achieved and maintained. Master's Ex. 1 at 85–86.[138]

***68** In the Master's opinion, equitable outcomes in these areas can be achieved by remedying the prior discrimination, providing additional classes and tutoring, providing additional learning opportunities outside normal school hours and improving staff training and development. Master's Ex. 1 at 89.[139] In the Master's opinion, the use of outcome measures is appropriate because they contribute to the speed and efficiency of the remedy and provide definitive criteria for the District to follow. Tr. 4831, 4883–84.

The Experts

There was no shortage of experts available to testify on student achievement issues. Dr. Crain testified, on behalf of Plaintiffs, regarding the achievement disparities. The 1995 data, utilized by Dr. Crain and other experts, is displayed below in a chart reproduced from Master's Ex. 1 at 90.

1995 Reading and Mathematics Scores in Normal Curve Equivalents for Grades 3 through 8, and 10, and Subsidized Lunch Status.[140]

Grade	Subsidized Lunch	Reading		Mathematics	
	Status	**Afr/Am**	**Non–Min**	**Afr/Am**	**Non–Min**
3	Free	33.5	44.1	33.2	43.9
	Regular	36.9	56.6	37.2	49.5
4	Free	30.0	41.6	32.8	43.4
	Regular	35.8	56.9	38.0	56.3
5	Free	32.5	44.2	32.0	44.1
	Regular	39.7	55.2	37.1	56.7

6	Free	33.7	45.4	34.0	45.3
	Regular	38.7	57.7	39.5	58.4
7	Free	33.2	36.7	30.8	45.5
	Regular	35.9	55.2	32.9	52.2
8	Free	31.2	40.0	26.1	35.1
	Regular	32.6	52.7	28.5	49.4
10	Free	29.8	45.1	30.9	46.0
	Regular	37.7	55.3	35.1	56.8

Dr. Crain concluded that, with respect to reading scores, there was an average gap of 10.5 normal curve equivalents ("NCEs") between African–American and White students in the free lunch category.[141] In the regular lunch category, the average gap was 18.9 NCEs. Tr. 4334. With respect to math scores, the average gaps were 10.4 and 20.2 for free lunch and regular lunch, respectively. Tr. 4334. Similar disparities existed between White and Hispanic test scores. Tr. 4332. In Dr. Crain's opinion, the disparities were statistically significant—there is only one chance in 10,000 that these results could have occurred by accident. Tr. 4331. Dr. Crain's conclusions on the existing disparities were essentially undisputed by all parties' experts. The areas of disagreement, rather, are what caused these disparities and to what extent the District should be held responsible for assuring quantitative or equitable outcomes.

Dr. Crain testified regarding these latter issues as well. In Dr. Crain's opinion, the segregation of students by race, on its own, has had a direct negative impact on achievement for the RSD's minority students from the late 1950's to the present. Tr. 4281.[142] Dr. Crain estimated that the effects of segregation produced a tangible loss in the order of 3/10 to 4/10 of a standard deviation in minority student achievement. Tr. 4279. Dr. Crain stated that this loss could be recouped by desegregating students starting at kindergarten or first grade. Tr. 4279.

***69** Dr. Crain further testified that, apart from segregation, discrimination in educational practices has had a detrimental impact on minority student achievement. For example, the RSD's discriminatory use of tracking denied minorities equal academic preparation. Plaintiffs' Ex. 208 at 7–8. Once in the lower tracks, students received less teaching, had less homework assigned, became alienated, had higher delinquency problems and were less likely to attend college. Tr. 4282, 4301; *see also* CRO (segment two) at 98 n. 87.

Dr. Crain also testified regarding the multi-generational effects of school segregation and educational discrimination. In the multi-generational theory, the first generation is directly discriminated against by a school district. In the RSD's case, school segregation and discriminatory tracking have had direct negative effects on the educational attainment of the first generation. As discussed, low educational attainment means lower graduation rates, less college attendance and fewer years of college attended. In addition, school segregation and tracking affect the first generation by instilling feelings of inferiority and minority alienation. Tr. 4289–90. Minority students learn to avoid and withdraw from interracial relationships, are less likely to attend desegregated colleges and fail to develop social networks that serve as

an entrance into society's mainstream. Plaintiffs' Ex. 208 at 14, 17–18; Tr. 4290–91, 4293–94. As a result, Dr. Crain testified that members of the first generation are more likely to end up in segregated housing, to work in segregated employment, have low socio-economic status and to be victims of employment discrimination. Plaintiffs' Ex. 208 at 15–17, 20–21; Tr. 4295; Tr. 4297–98.

In turn, the second generation of children are directly and adversely affected by the discrimination lodged against their parents. These children, Dr. Crain testified, are likely to grow up in an area of concentrated poverty and have low wage parents who do not foster the educational development of their children. Tr. 4302–08. Growing up in a concentrated area of poverty negatively affects student achievement, because these areas have higher numbers of single parent households and potentially less parental involvement in education. Tr. 4303–06. Consequently, in a child's developmental years prior to entering kindergarten, factors such as neighborhood poverty, single parenting, low socio-economic status and poor cognitive development at home, all serve to lower a child's ability to achieve future academic success. Tr. 4307, 4325. Therefore, these children are at a disadvantage when entering school. If a school district is still discriminating when these children enter school, the second generation faces yet another obstacle and, inevitably, the cycle will repeat itself.[143]

Ultimately, Dr. Crain concluded that if the RSD had not engaged in any form of discrimination from 1959 to the present, there would be no performance gaps between minority and majority students. Tr. 4326. Dr. Crain proposed as a remedy that the District take all practical steps to ensure that minority students attain performance outcomes comparable to other students in the RSD in the areas of achievement, attendance, grades, graduation rates and drop-out rates. Tr. 4341. Dr. Crain supported the Master's proposal that the District be required to reduce the achievement gaps by five percentiles per year until equalized. Tr. 4338. Given his multi-generational theory, however, Dr. Crain testified that it would actually take a minimum of twenty-five years to eliminate the gaps. Tr. 4342.[144]

***70** Dr. Levine testified on behalf of the Master. Ultimately, he agreed with the Master's recommendation that the RSD should be required to reduce achievement gaps by five percentiles, until equitable outcomes in standardized testing are achieved and maintained. Master's Ex. 63 at 1. Dr. Levine stated that this goal is reasonable and attainable given "excellent implementation of interventions" designed to eliminate the vestiges of segregation. *Id.;* Tr. 4985. Dr. Levine stressed that it is important to specify goals when working to improve student performance. Without goals, he stated, educators have difficulty focusing on improving the performance of "laggard" groups. Master's Ex. 63 at 4; Tr. 4979–81.

Dr. Levine also testified concerning the causes of the achievement gaps between minority and majority students in the RSD. In Dr. Levine's opinion, the 1995 data demonstrates that race, ethnicity and social class are "related to" achievement. Tr. 4978. According to Dr. Levine, although approximately 23 to 30 percent of variance in achievement gaps can be explained by poverty (Tr. 4973), the amount of the present achievement gap due to the intentional discrimination is not quantifiable. The most Dr. Levine could state is that the gaps are "to some extent" a result of the intentional discrimination in the RSD. Tr. 5008. Dr. Levine stated, however, that merely integrating the classrooms could result in a gain of six NCEs. Tr. 5010.

Dr. Levine was not able to precisely quantify the causal relationship between intentional discrimination and achievement gaps, because other factors, such as segregated housing, poverty, discrimination in jobs and institutional discrimination, all affect achievement. Dr. Levine agreed with Dr. Crain, however, that these, too, are vestiges of intentional discrimination in schooling. Tr. 5021–22; Tr. 5380. In addition, Dr. Levine stated that the following are predictors of achievement: students' sense of efficacy or futility, multicultural instruction and sensitivity, personal development of students and students' responsibility for learning. Tr. 5048–49. In the final analysis, Dr. Levine concluded that a substantial portion of the racial disparity between minority and majority test scores is wrapped up in social class. Tr. 5370.

Dr. Shapiro also testified on behalf of the Master. Dr. Shapiro analyzed the same 1995 data and concluded that differences in both reading comprehension and mathematics were 20 NCEs between African–American and nonminority students. Master's Ex. 58 at 11. In Dr. Shapiro's opinion, the 20 NCE difference in student performance "may be" considered to be the measure of the performance difference attributable to the discrimination of the RSD. *Id.* at 11–12. Dr. Shapiro reviewed other 1995–96 data that expressed performance in terms of percentile scores. To some extent, socio-economic status was taken into account by comparing students on "regular" lunch. The mean nonminority percentiles in math and reading ranged from 49 to 67%; the mean African–American percentiles ranked from 15 to 31%. Dr. Shapiro stated that the approximate difference of 35 percentiles "may be" considered to be an alternative measure of the performance difference attributable to the RSD's discrimination. *Id.* at 12.[145]

Dr. Parish testified on behalf of the Master. Dr. Parish testified that the discrimination in Rockford has led to a

school and organizational culture that perceives minority students in certain ways. For example, these cultural beliefs include the notions that, in comparison to majority children, minority children are not as intelligent, have lower attention spans, are more likely to be disruptive and are more violent. In addition, these beliefs foster the notions that all minority children come from dysfunctional families, do not care about school and learning and want to only associate with other minority children. Master's Ex. 60 at 8; Tr. 4631–32.

***71** In Dr. Parish's opinion, the discrimination and the cultural belief vestiges have negatively affected minority school children's achievement. Master's Ex. 60 at 15. Dr. Parish testified that the five percentile per year reduction in the achievements gaps was a reasonable standard for the RSD, although he did state that the five percentile mark was reached after talking to professional educators "who are looking and guessing." Tr. 4666.

Dr. Butler testified on behalf of the District in two areas. First, Dr. Butler disagreed with the Master's view on the cause of achievement gaps. Dr. Butler's position is that there are several factors outside the District's control, e.g., the influences of society, local communities, families and peers, as well as individual motivation, that affect academic achievement. Defendant's Butler Ex. 2 at 6. Second, although Dr. Butler found goals and standards important in achieving success, he concluded that the Master's goals were not based on a solid research foundation and were not clearly delineated. Dr. Butler referred to the Master's suggestions to improve achievement as a "shot gun" approach, trying "a little of this, a little of that" under the belief that "anything different will be better than what currently exists." Defendant's Butler Ex. 2 at 5, 12. In his opinion, there needs to be more emphasis on the quantitative evaluation of the suggested programs, in order to monitor their success, or lack thereof, in aiding student achievement. Tr. 5234. In other words, there is no data present to aid in the determination whether the intervention programs suggested by the Master would decrease the achievement gaps over time. Tr. 5230. Ultimately, Dr. Butler reviewed the Master's proposals and stated that to, a large degree, the plan should be followed. Tr. 5234.

Dr. Hoffer also testified on behalf of the District. Dr. Hoffer essentially testified on the causal relationship between the actions and non-actions of the District and the achievement gaps. He testified along the same lines as Dr. Butler, in that there are several factors outside the District's control that affect students' performance. For example, the level of parental education and the level of parental involvement in a child's learning process are two important predictors of achievement outcomes. Tr. 5102. Dr. Hoffer's opinion is stated in his report to the court:

> The most important factor behind all of the background factors discussed here is the severity of economic circumstances that most black and low-parent-education households confront. Chronic poverty takes an enormous toll on families and the energy and resources parents bring to bear on child-rearing. Chronic poverty is much more common among black than among white households, even among parents with comparable levels of education. Thus while excellent programs such as Success for All and Reading Recovery can make significant inroads on the racial achievement gaps, the gaps are not likely to disappear until real improvements begin to become manifest in the economic bases and prospects of the black community.

***72** Defendant's Hoffer Ex. 2 at 7.

Student Achievement Remedy

The issues posed by the District's unlawful tracking practices and the historical achievement gaps in the RSD are perhaps the most complex problems facing the court in the CRO. There can be no doubt that the segregation and educational discrimination (i.e. tracking) have had a substantial negative impact on minority student achievement in this school district. There is also no doubt that, currently, achievement gaps persist in the RSD of about 35 percentiles (or 20 NCE's) for both math and reading at all grade levels. All experts would agree that the RSD's segregation, discrimination and tracking account for some percentage of these gaps. The issue to be decided, ultimately, is what percentage of the achievement gaps can be attributed to the intentional segregation and tracking practices.

The court begins its analysis with the latest pronouncement of the Supreme Court on this issue. In *Missouri v. Jenkins,* 515 U.S. 70, 115 S.Ct. 2038 (1995) (*Jenkins III*), the district court ordered the defendant to continue to fund quality education programs because student achievement levels were still at or below national norms at many grade levels. The Supreme Court rejected this standard. The Court stated that, "The basic task of the District Court is to decide whether the reduction in achievement by minority students attributable to prior de jure segregation has been remedied to the extent practicable." *Jenkins III,* 115 S.Ct. at 2055. A district court must provide a school district with a precise statement of its obligations. Concerning the issue of

student achievement, this requires the court to "identif[y] the incremental effect that segregation has had on minority student achievement." *Jenkins III,* 115 S.Ct. at 2055.

In addition, the Court noted that numerous external factors, beyond the control of the school district, affect minority student achievement. The Court stated, "So long as these external factors are not the result of segregation, they do not figure in the remedial calculus." *Jenkins III,* 115 S.Ct. at 2056. As a final comment, the Court stated that the district court should "sharply limit, if not dispense with" its reliance on outcome based achievement requirements. *Jenkins III,* 115 S.Ct. at 2055.

In this court's view, achievement gaps can be caused by many factors: poverty, social class, societal prejudice and stereotyping, to list a few. In addition, segregation and intentional discrimination in educational practices also cause these gaps. Under *Jenkins III,* it is the responsibility of this court to identify, to the extent possible, the incremental effect the RSD's intentional discrimination has had on student achievement. Drs. Crain and Levine both state that merely desegregating the classrooms in the RSD would produce a six NCE gain. The court, however, is not convinced that this result would occur. Dr. Crain testified that these were results that were expected, not guaranteed. Tr. 4380. Dr. Levine was equally unsure. Tr. 5010.

***73** In the court's opinion, identifying the incremental effect that segregation has had on student achievement is unnecessary. If the experts are correct and the segregation of students, on its own, has a detrimental impact on minority student achievement, these losses will be recouped with the court's student assignment plan that will integrate the District's classrooms. The real question to be asked is at what point has the RSD overcome its intentional educational discrimination, particularly in the area of tracking. Unlike segregation, simply doing away with tracking will not correct the harm.

Children of all races can learn equally. Therefore, there is a strong inclination to assume that any achievement gap is inherently the result of the District's discrimination. It is unthinkable to the Magistrate that bright and aspiring minority schoolchildren were intentionally placed in low performing tracks for years. Many of these children are still students in this school district. The RSD's acts of discrimination had a direct and negative impact on these students' ability to learn and perform. This impact was substantial. Plaintiffs carry the burden, however, of measuring this impact.[146]

It may well be the case that social scientists cannot precisely determine, incrementally, the causes of achievement gaps as measured by test scores. Nevertheless, the court will not allow the District to walk away from the harm it inflicted and escape from the responsibility of fixing a problem that it played a substantial role in creating. The court finds that the District's intentional discrimination was a substantial factor that proximately caused the achievement gaps. This finding warrants holding the District responsible for closing a significant portion of the gaps.

The District, however, will not be held to close 100% of the gaps. The acts of discrimination, reprehensible as they are, do not account entirely for the achievement disparities. The evidence at trial established that nationwide, in all sorts of school districts, achievement gaps exist. The undisputed evidence was that several factors outside the District's radius of influence, including poverty, societal discrimination and parental involvement, may affect student achievement.[147]

In summary, the court has decided that the District will be held to closing more than 0% but less than 100% of the achievement gaps. After considering all the evidence in this area, the court finds that, at the very least, 50% of the achievement gaps are directly attributable to the RSD's discriminatory conduct. This finding is both fair and reasonable.[148] Therefore, the court holds that the District must close the gaps by at least 50%. With the resources and programs available through the CRO, the RSD should be able to accomplish much more. In the court's view, the level of success in improving student achievement will ultimately depend on the attitude of the administration and the community and the degree of dedication of the RSD faculty. The court accepts the testimony that as a baseline comparison, these gaps are currently 35 percentiles (or 20 NCEs) across all grade levels in the District.

***74** A word needs to be said about test scores. The court heard a great deal of evidence concerning standardized tests and how those tests are normed. The Magistrate agrees with the Master's recommendation that the achievement gaps to be closed are those between majority and minority students in the RSD. This measure, as opposed to comparing Rockford to another city or the nation, keeps many factors particular to this community constant. Despite their drawbacks, standardized tests are possibly the best measure currently available to track achievement progress. After hearing all the evidence on this issue, especially Dr. Crain's testimony on the norming procedure of standardized tests, the court is not convinced that one of these tests is more appropriate than another. Therefore, the Master and the RSD administration are to agree upon an appropriate test to monitor the progress of cohort groups in the District. At this time, the court will not order the gaps to be closed by 5 percentiles per year. Instead, the District will be required to close the existing 35 percentile (or 20 NCE) gaps by 50% within four years starting with the 1997–98 school year.

The court will allow an alternative method for the District to reach partial unitary status on student achievement.[149] The Master proposed that 90% of minority students must be within one year of the national norm on the Degrees of Reading Power Test by 1997. The Magistrate has reviewed the testimony in this area and is satisfied that this test may better reflect students' achievement and progress than standardized tests. However, the Master has made this recommendation as a requirement in addition to closing the gaps. The court disagrees. The Magistrate would find it acceptable if 90% of the RSD's minority students were within one year of grade level in reading and math. This alternative method provides flexibility for the District but in no way provides the District with an easy escape through the back door. Given the present achievement levels in the District, the court would be very satisfied if this percentage of minority students were within one year of grade level.[150]

Finally, the court specifically adopts the Master's proposals for educational programs that primarily focus on the RSD's minority students. The court notes that these programs will also positively influence all students' academic achievement. The court adopts the proposals at Master's Ex. 1 at 89, 91–93. In particular, the Reading Recovery, Success for All and other higher order thinking skills programs are to be implemented by the District. Because the C.8./C.9. distinction will eventually disappear, the Master's recommendations at pp. 93 to 101 of his proposed CRO are to be targeted at any school in need of special attention.[151] Lastly, the court orders the District to provide the Master with the tools necessary to accumulate data so that quantitative evaluations of these programs can be performed to measure their effectiveness.[152]

VII. Discipline Referrals and Sanctions

***75** Discipline is an important area in running a school district. It is the responsibility of this school district to maintain a safe place for children to learn and teachers to teach. The administration of discipline, however, must be done in a fair and equitable manner. Disciplinary sanctions must relate to and correct the particular underlying behavior. This district must maintain control of its schools and its classrooms, but it also must ensure that children are disciplined only to the extent justified by their conduct. Discipline may never be used as a pretext to prevent a child from obtaining an education.

The Master's proposed CRO contains recommendations concerning discipline in the District's schools. The Master contends that the unlawful discrimination in this case has produced inequitable disparities between minority and majority schoolchildren with respect to the rates of disciplinary infractions and sanctions. Master's Ex. 1 at 37. In the Master's opinion, the discipline disparities are primarily a product of two sets of factors: one, a District staff lacking in culturally diverse training and proper organizational structure and two, the failure of the District to sufficiently engage minority students in the schooling and learning process.

The Master proposed twelve objectives aimed at reducing the disparate rates in discipline. Essentially, these objectives fall into three areas. First, the Master proposed that the District adopt a uniform discipline code that provides safety and equitable treatment for all RSD students, regardless of race or ethnicity. Second, the Master proposed that the District shall reduce any disparities in the suspension rates between majority and minority students for conduct involving disruptive behavior, insubordination or verbal abuse by 20% per year until equity is achieved and maintained.[153] Third, the Master proposed that the District shall provide enhanced counseling, multi-cultural education programs and other programs designed to respond to the loss of instructional time by minority students and designed to enhance RSD staff knowledge concerning minority students, their culture and their community. Master's Ex. 1 at 34, 37–38.

The Liability Findings

The court did not make extensive liability findings concerning the disparities in discipline, although the court did conclude that the disparities at some schools were the result of "unprepared" staff. In 1970, for example, some African–Americans students were moved from West High School to East High School as part of a feeder pattern. The all-White faculty at East perceived that these students were coming to East because West was having trouble with their African–American students. This perception resulted in the disproportionate referral of minority students for disciplinary problems. *People Who Care,* 851 F.Supp. at 1004.

The Current Disparities

Overall, in the 1994–95 school year, the data reveals that at the high school level, minority students were far more likely to receive at least one disciplinary referral. In addition, majority students were nearly twice as likely as minority students to receive no discipline referrals. Master's Ex. 58 at 4. Furthermore, of the students receiving five or more referrals, approximately 51% were minority, when the total minority high school enrollment districtwide was 32%. Master's Ex. 58 at 4. A revealing statistic comes from Jefferson: out of 293 African–American students, only 24 (8%) received no disciplinary referrals; therefore, 92% received one or more referrals, with 68% of the African–American students at Jefferson receiving five or more referrals. Tr.

4561–62.[154] The RSD has offered no satisfactory explanation for these disparities.

***76** Table 1, adapted from Master's Ex. 60 at 10, shows discipline referrals by category in the RSD's elementary schools in 1994–95, when the districtwide percentage of minority elementary students was 36.3%.[155]

The Experts

Drs. Parish, Shapiro and Butler testified concerning the disparities in discipline referrals. Dr. Parish testified that certain cultural beliefs held by the RSD staff and administration, e.g., that minority children are more likely to be disruptive, have low attention spans and are more violent, are vestiges of the intentional discrimination in this case. In turn, these beliefs play a role in the disparate rate of minority referrals. Master's Ex. 60 at 10. Tr. 4638–39. Dr. Shapiro agreed with the Master and stated that the existing disparities in discipline referrals supported the proposals of the Master. Master's Ex. 58 at 3. Dr. Butler disagreed and stated that regardless of social characteristics, the District should ensure that each and every student is treated equitably. Defendant's Butler Ex. 2 at 10. In other words, Dr. Butler does not support the proposal that certain categories of referrals be reduced by 20% each year.

Dr. Harriet Doss–Willis also testified in the area of discipline, based on her personal observations in the RSD's classrooms. Her observations support Dr. Parish's testimony concerning the cultural belief vestiges in the District. For example, some behaviors are assumed to be inappropriate when the behaviors are culturally different, which results in more frequent disciplinary referrals for African–American males. Tr. 4484–87. Dr. Willis testified that there is sometimes a presumption that if there is a disruption involving a minority student, it must be the minority student that caused the disturbance. Tr. 4511–12.

Discipline Remedy

The District must discipline all of its students fairly without regard to race or ethnicity. In the court's view, there is a vast difference between objective and subjective criteria used to discipline students. For categories of referrals that utilize objective criteria, the Magistrate accepts that there may be disparate discipline rates as long as comparable conduct receives comparable sanctions. For example, if ten weapons were brought to the Rockford schools in a given year, and six were brought by minority students and four by majority students, a disparity in discipline referrals would exist, especially in relation to percent of enrollment. This scenario poses no problems to the court, as long as the students were treated comparably.

The objective categories are the ones that are most likely to be administered fairly. A student bringing a weapon to school is objective. A staff member can look and see the weapon. If objective criteria are used for objective violations, then the fact that there is a disparate impact is simply irrelevant. In the court's view, the categories of truancy, theft or possession of stolen property, assault, possession or use of a weapon, vandalism, tardiness, forgery, gambling, alcohol/drug use and the distribution of, or use of, tobacco should implicate objective criteria for disciplinary referrals. Master's Ex. 60 at 10–11.

***77** In contrast, other categories of referrals have a subjective element. The three areas cited by the Master, disruptive behavior, insubordination and verbal abuse, are prime examples. Insubordination, for example, may involve a situation where a student does not know exactly what conduct breaches the rules of teachers from classroom to classroom. In addition, teachers, each with their individual cultural and social backgrounds, may interpret conduct and speech in different ways. When these types of subjective disciplines are administered disproportionately to minority students, as demonstrated by the Jefferson statistics, particularly in a school district that has intentionally discriminated, the court has concerns. Some of the disparities in these subjective areas are a byproduct of the intentional discrimination and are properly reachable by the CRO.

The court orders the following. The district will be required to develop, as quickly as possible, a uniform objective code of conduct for the students, teachers and parents of the Rockford School District. The code should be sufficiently detailed so that the students, teachers and parents know what type of conduct constitutes a violation in each category.[156] In addition, this code must be drafted to ensure that students of various racial and ethnic groups receive comparable discipline for comparable conduct. Disciplinary measures shall be administered fairly, impartially, and with equality. Hopefully, there will no longer be subjective criteria. If the District insists on subjective criteria, it shall be the responsibility of the District to achieve and maintain parity in discipline referrals between the majority and minority students. The court is requiring no statistical parity in discipline as long as the criteria remain objective and all students receive comparable discipline for comparable conduct.

In addition, it shall be the responsibility of the District to develop a plan to handle the high number of referrals, suspensions and "removal from classes" which are occurring in the District. When a student is not in the classroom it is impossible for that child to learn. Unfortunately, this impediment falls disproportionately on minority students. The District will have difficulty meeting the student achievement goals of the CRO if a

disproportionate number of minority students are constantly absent from class. To aid in these areas, the court orders the District to enhance its counseling approaches, develop multi-cultural educational programs and develop alternative approaches to discipline, so that there is minimum detraction from learning.

Further, the court orders that a regular audit be conducted that reports the reasons for referral, sources of referrals and other pertinent information, in order to analyze the disciplinary situations in the schools. This data shall be made available to the school staff, the parents in the community and all parties to this action. Parents must be provided access to these issues, as they often can aid the schools in handling a particular problem.

VIII. Extra–Curricular Activities

The Liability Findings

***78** The court found that minority students were not afforded an equal opportunity to participate in extra-curricular activities. Discrimination in access to transportation, for example, meant that many minority students did not have the transportation available to participate in many after-school activities. *People Who Care,* 851 F.Supp. at 1181. In addition, subjective selection criterion resulted in racial identifiability and under-representation of minorities in certain extra-curricular activities. *People Who Care,* 851 F.Supp. at 1183–84. In particular, the District intentionally discriminated against minority students with respect to cheerleading. Schools often had all-White cheerleading squads and when steps were taken to integrate the cheerleading staff, minority participants were treated differently and harassed. *People Who Care,* 851 F.Supp. at 1182–83.

The Current Disparities

In the 1994–95 school year, 55% of the extra-curricular activities reported at Auburn, East, Guilford, Jefferson, Skyview, Roosevelt, Eisenhower and Flinn were racially identifiable. Master's 14th Quarterly Report at 62. Further, 28% of those activities had no African–American participants and 45% of the reported activities had no Hispanic participants. *Id.* These disparities have existed over the years and the court adopts the historical data as contained in Plaintiffs' Findings of Fact on Educational Remedies at 49–54.

The Master's Recommendations

Originally, the Master proposed that all extra-curricular activities in the RSD have a minority student participation within a range of +/−1/8% of the percentage of minority students enrolled in a particular school; if any activity did not comply for two consecutive years, or for two out of three years, then the activity was to be cancelled. Master's Ex. 1 at 26. In his proposed CRO, however, the Master limited these two recommendations to cheerleading, because that activity involved the most explicit liability findings. Master's Ex. 1 at 26–27. Instead of the +/−15% guidelines with respect to the other activities, the Master proposed that all students have equal access and an equal opportunity to participate. *Id.* at 28–29. In addition, the Master proposed that all extra-curricular activities be regularly examined to assure that groups are not racially identifiable and that the only criteria being used are interest and merit. Lastly, the Master recommend that costs, transportation and scheduling should be monitored so as not to provide obstacles to any student seeking to participate in a particular activity. *Id.* at 29.

The Master also proposed that a student interest survey be conducted to measure interest in present and potential future activities. If the survey identified activities that were not within +/−15%, then the RSD would be required to initiate aggressive efforts in order to increase the minority students' participation. Tr. 4801; Master's Ex. 1 at 30. In addition, the Master proposed that promotional efforts be made to increase awareness and interest in the District's existing extra-curricular activities. Tr. 4800; Master's Ex. 1 at 30–32.

The Court's Remedy

***79** Extra-curricular activities play an important role in a student's educational and social development. Unfortunately, many disparities—both historically and in the present—exist in the RSD's extra-curricular activities. These disparities in minority participation in extra-curricular activities warrant a judicial remedy. Participation in extra-curricular activities has been recognized by the Supreme Court as a *Green* factor, which serves as an indicia of a segregated school system. Therefore, it is the responsibility of this court to fashion an appropriate remedy. This is particularly true where the District has not provided equal access to transportation or an equal opportunity to participate in activities over the past two decades.

It is the responsibility of this school district to broaden the horizons of the children entrusted to it and to not engage in racial stereotyping. For example, no one should stereotype and assume that African–American children do not desire to play golf or join the Physics Club, that White children do not want to play basketball or that Hispanic children have no desire to be in the Shakespeare Club. The District must be creative and imaginative in its efforts to make resources available to all students to ensure full student body participation in these activities. This may

require that the RSD consult with the park district to see that golf courses are accessible to minority students; similarly, a bilingual coach may be necessary for the Chess Club. The import here, of course, is that certain activities cannot be associated with eastside students; rather, all activities must ensure fair and equal opportunity.

The court will begin with cheerleading squads. The Magistrate will not repeat the details concerning the discrimination with respect to cheerleading squads in the District. Suffice it to say that there was intentional discrimination that must be rectified. Therefore, the court orders that the cheerleading squads in the RSD shall have a minimum minority participation equal to the minority enrollment percentage at a particular school.

The court turns to the balance of the extra-curricular activities. These activities are quickly associated with sports but, in fact, they include a multitude of opportunities for students to expand and refine their knowledge and skills. Besides the exploits of the basketball and football teams, there is an opportunity to enrich students' lives through participation in math, audio-visual and chess clubs, debate and drill teams, drama and theater troupes, student publications and community service organizations. Equal access and opportunity to participate in all extra-curricular activities is a must in any school district. Therefore, the court adopts as an objective that all extra-curricular activities shall have a minority student population within +/−15% of the percentage of minority students at each school. It is the obligation of the RSD to see that the goal is achieved to the extent practicable.

***80** The District is ordered to adhere to the following measures that will ensure that the extra-curricular goals are met. First, the RSD must provide a level playing field for participation in extra-curricular activities. Selection and participation criteria must be based on interest and merit and shall not in any way reflect the racial backgrounds of the students. Transportation must be readily available to all students participating in these activities. Costs should never be a barrier to participation—in appropriate circumstances the RSD should consider defraying and waiving costs so that all students can participate. Scheduling should be done in a manner that all students wanting to participate may be able to do so.

In addition, the District will be required to rigorously promote its extra-curricular activities, as suggested by the Master. All students shall be clearly informed of the prerequisites for each activity. Coaching and mentoring should be made available to assure the full and equal opportunity for all aspirants in a particular activity. Third, the RSD shall regularly examine the methods and criteria for recruiting and accepting students into an extra-curricular activity to assure that no group is inadequately represented because of their race. The court orders the RSD to conduct the survey recommended by the Master in order to measure students' interest in present and potentially future extra-curricular activities. The survey guidelines are contained in Master's Ex. 1 at 29–30.

Finally, the court notes that, except for cheerleading, no quotas have been established with respect to participation in extra-curricular activities. The court has entered an order that requires the District to do everything reasonable and practicable to see that all students have the opportunity to participate in all extra-curricular activities to the extent of their desires and abilities. If the District meets the +/−15% goal in all activities, unitary status in this area will be granted. If this goal is not met, unitary status may be obtained if the District sufficiently demonstrates that they have taken all necessary, responsible and even substantial measures in order to reach the established goal.

IX. Within School Segregation

Achieving racial balance in the District's elementary, middle and high schools would have little meaning if individual classes within buildings are permitted to be all African–American or all White. The Master, therefore, has proposed racial fairness guidelines at the classroom level. Within school segregation concerns one major principle: "Classes, programs, courses, curriculum, whole school activities, extracurricular programs and instructional methods within schools shall not be identifiable by the race of students." Master's Ex. 1 at 8.

Liability Findings

Within school segregation was, and to some extent, still is the most pervasive student enrollment problem in the District. Tracking was just one method the RSD utilized to segregate its students by classroom. For example, many partial-site desegregation programs were used by the RSD to numerically desegregate some schools, although the result was "virtually all-white enclaves within African–American schools." *People Who Care,* 851 F.Supp. at 1002–03, 1026. Other forms of discrimination that produced within school segregation included high status white alternative programs, low status minority alternative programs and within school segregation of bilingual students. *See People Who Care,* 851 F.Supp. at 1001–02, 1005–06, 1026.

Current Within School Segregation Problems

***81** A large percentage of the within school segregation

problems in the RSD exist at the high school level. In 1994–95, 111 high school classes out of a total 1,513 districtwide had no African–American students, approximately 7.3%. Master's Fourteenth Quarterly Report at 27. In 1994–95, 21.2% of all high school English and 35.3% of all high school math class sections were not within +/−15% of the African–American enrollment percentage. Furthermore, twenty-two classes at Auburn, six classes at East, five classes at Guilford and seven classes at Jefferson all had less than 5% minority participation. Master's Fourteenth Quarterly Report at 24–25. In addition, 75% of the music class sections at Auburn and 100% of the home economics classes at Guilford were racially identifiable minority. Plaintiffs' Findings of Facts on Educational Remedies at 29.[157]

Many of the District's high school honors classes were also racially identifiable. For the second semester of 1994–95, Auburn, East, Guilford and Jefferson had 18.8%, 10.9%, 13.4% and 41.8% of their honors courses racially identifiable, respectively. At Guilford, for example, the following honors courses had less than 10% minority enrollment: freshman and junior English, world cultures, U.S. History, economics, geometry, advanced algebra, biology, physics and science electives. Master's Ex. 56 at Table 3. These patterns existed at East and Jefferson, although to a lesser extent. *Id.*[158]

Within school segregation problems existed in the RSD's alternative programs as well. Table 1 provides the percent minority enrollment data for the Gifted and CAPA programs for the past five years.

Table 1[159]

Gifted	1991–92	1992–93	1993–94	1994–95	1995–96
*Elementary	19%	22%	21%	22%	25%
*Middle	8%	15%	16%	20%	26%
*High	8%	10%	13%	10%	10%
CAPA					
*Elementary	22%	25%	27%	23%	19%
*Middle	18%	26%	30%	29%	32%
*High	13%	17%	20%	22%	24%[160]

The Master's Recommendations

The recommendations concerning within school segregation can best be thought of as an extension of the racial fairness guidelines under the student assignment plan. Under that plan, each building in the District must be within +/−15% of the districtwide percentage of minority students at a particular grade configuration. In 1994–95, for example, with the districtwide percentage of minority elementary students at 36%, each elementary school could have a low of 21% minority students to a high of 51% minority students. The recommendations under within school segregation examine more than the racial composition of the building; in addition, they focus on the level of minority student participation in individual classrooms.

Classroom Level

With respect to classrooms, the current within school segregation guidelines under the Second Interim Order are that each class must be within +/−15% of the compliance pool. Master's Ex. 1 at 18. The "compliance pool" is defined as the total number of students who are eligible to be enrolled in each class section. The compliance pool is most often the percentage of minority students in each grade level at a school. *See, e.g.,* Master's Ex. 1 at 20. In turn, the percentage of minority students at a particular grade level in a school roughly approximates the minority enrollment in that school. Therefore, as a practical matter, each classroom must be within +/−15% of the minority population of a given school.

***82** An example illustrates the problem with the present guidelines. Currently in the District, an elementary school can have from 21% to 51% minority enrollment and remain within the racial fairness guidelines. At the classroom level, a school with 21% minority enrollment can have as low as 6% minority students (21% minus 15%), and a school with 51% minority enrollment can have 66% minority students (51% plus 15%), and both meet the within school guidelines. For a class of thirty students, this means as low as two minority students at a 21% minority school (with a 6% minority classroom), and as high as twenty students at a 51% minority school (with a 66% minority classroom). The Master views this possibility as unacceptable because it allows anywhere from two to twenty minority students in a classroom of thirty. As a solution, the Master has proposed that, at the classroom level, the range be narrowed to +/−10% at all grade configurations. Master's Ex. 1 at 8. At the elementary level, classes of thirty students could then range from three to eighteen minority students.

At the middle school level, the current classroom guidelines under the Second Interim Order are +/−15%. Master's Ex. 1 at 18. Similar to the elementary schools, this could lead to a variance of three to eighteen minority students in middle school classes across the District. Master's Ex. 1 at 19. The Master proposes that within three years, all middle school classes be within +/−10% of the total minority students in the compliance pool. *Id.* at 20.[161] The compliance pool would be the total number of minority students enrolled at each grade level in a particular building. *Id.*

At the high school level, the districtwide percentage of minority students is approximately 32%. The court has already ordered that the District's high schools have a floor of 25% minority enrollment at each school. Therefore, presently, classes at a high school could range from 10% (25% floor minus 15%) to 62% (47% ceiling plus 15%) minority students. High school classrooms of 30 students could range from three to nineteen minority students. The Master proposes, therefore, a classroom range of +/−10% of the grade level compliance pool. The classrooms would then have a range of five to seventeen minority students.[162]

Finally, the Master has made recommendations concerning minority participation in magnet schools and two specialty programs, Gifted and CAPA. In the magnet schools, the Master recommends that instead of the +/−15% controlled choice guidelines, each school have a floor of at least the minority student percentage at the appropriate grade entry level and no more that 15% above the districtwide percentage of minority students. Master's Ex. 1 at 2, 4. The magnet schools would also be subject to the +/−10% range for individual classes. The Master proposes that the Gifted and CAPA programs each have a floor of at least the minority student percentage in the District at the appropriate grade entry level and no more than 15% above the districtwide percentage of minority students. *Id.* at 6–8. The Master proposed the same +/−10% standard for individual Gifted and CAPA classes. Lastly, the Master proposed that the CAPA audition requirements be eliminated.

Within School Segregation Remedy

***83** Guidelines concerning within school segregation are essential for three reasons. First, the liability findings of this court and the current data in the District warrant racial fairness guidelines at the program and classroom level. Second, minority students must be given the same educational opportunities as majority students. Third, a student assignment plan that equally and fairly assigns students to schools would be pointless if individual classes and programs are permitted to be racially identifiable. In the court's view, the proposals in this remedial section concern four areas: (1) within school segregation in the grades K–12 classrooms; (2) honors courses and electives; (3) the Gifted and CAPA programs; and (4) exceptions to within school segregation guidelines.

1. Within School Segregation Guidelines

The court rejects the +/−15% guidelines in the Second Interim Order and the Master's +/−10% proposal. The Master's proposal would change the current guidelines, which permit classrooms of 30 students to range from two to twenty minority students, to a system that permits the classes to range from approximately three minority students to a high of fifteen to eighteen minority students. In short, the Master's proposal does not go far enough to have a measurable impact.

In the Magistrate's opinion, it would be counterproductive to the goals of the CRO to permit a westside third grade class to have sixteen minority students and an eastside third grade class to have three minority students. Therefore, the court orders all classes and programs, except as otherwise noted in this opinion, to be within +/−5% of the compliance pool. The compliance pool will be defined as the percentage of minority students at each K–12 grade level in each building. Master's Ex. 1 at 20.[163] Finally, the court notes the Master's recommendations concerning within classroom segregation via instructional methods. Tr. 4851. Once students are in the classroom, the District will not be permitted to separate students on the basis of race.[164]

2. Honors Courses and Electives—Secondary Schools

The within school segregation guidelines will apply to both "regular" and "honors" core courses. A +/−5% standard will assure sufficient minority participation in all phases of learning in the District's schools. An example illustrates the need for these guidelines. In 1995–96, Guilford had 21.7% minority students. Plaintiffs, the Master, and quite frankly the court, were disappointed to see that there were only 7% minority students in the honors junior English class at Guilford in 1995–96. The District, however, correctly pointed out that under the current standards, there is no within school segregation at Guilford, unless a class has less than 6.7% (21.7% minus 15%) minority students. As such, the junior English class at Guilford is not "racially identifiable" by current standards. The District has shown, therefore, that the current guidelines of the Second Interim Order are too generous. Under the court's guidelines, however, classes at Guilford, under the current example, would be required to have a minimum of 16.7% minority students. This is the best standard to assure sufficient minority participation in both regular and honors core courses.

***84** Core courses are different from elective courses. Because individual students choose elective courses, why should a school district be required to assure that a certain percentage of minority students participate in each elective? The court sees at least three potential problems in exempting electives from the within school segregation guidelines. First, many electives are on the continuum of courses in which minority students have been historically denied a fair chance of participation. A low level minority representation in such an elective may not be the result of student choices but may well be the result of the District's prior discrimination. Second, if electives were exempted, the possibility of course manipulation exists. Core courses not in compliance could be relabeled "electives" to avoid a violation. Third, there was testimony at the liability hearing that some guidance counseling "steered" minority students into segregated low-level electives. *People Who Care,* 851 F.Supp. at 946–48. This is part of the school culture problem related by Dr. Parish.

Nonetheless, the court will not impose guidelines in this area at this time. Racial fairness guidelines on elective courses may infringe upon all students' capabilities to enroll in the courses they desire. The District is ordered to provide fair and non-biased guidance counseling to all students. Furthermore, the RSD is enjoined from the steering of minority students to either low-level or segregated classes. At the high school level, the court has already decided that mathematics through geometry and science through chemistry are core courses. As to other curriculum, the Master is to determine which courses are considered "core" and "elective" for purposes of the within school segregation guidelines.

3. The Gifted and CAPA Programs

The Gifted and CAPA programs are forms of ability grouping. Dr. Eubanks proposed that these two programs be permitted to operate as "stand alone" programs provided the following conditions are established: (1) there must be clear and objective entry guidelines and (2) there must be a minimum percentage of minority participation. Master's Ex. 1 at 23.

With a great deal of hesitance, the court will allow the continuance of the Gifted and high school CAPA programs.[165] The court's reservations are two-fold: the historic exclusiveness of these programs and, concerning the Gifted program, the court questions the status problems associated with three class sections ("regular", "honors" and "Gifted") for each core course. Notwithstanding these reservations, the court was impressed with the testimony of Cheryl Peters, the director of these programs, and notes that the Gifted and CAPA programs are perceived by the community as important from an educational standpoint. As stand alone programs, it will be easy for the Master and the court to monitor these programs to prevent intentional discrimination.

The court orders the following. The Gifted and CAPA programs are to each have an overall student enrollment within +/−15% of the districtwide minority ratio for each grade configuration. In addition, both of these programs must have a floor of percentage not less than the percentage of minority students districtwide and not to exceed this percentage by 15 points at each grade entry level. Finally, each class within these programs must be within +/−5% of the appropriate compliance pool. The compliance pool for these programs is the percentage of minority students enrolled in the program at each grade level. The court is convinced that these guidelines will ensure sufficient minority participation in these two specialty programs, and the District is ordered to achieve compliance as soon as is practicable.

***85** The CAPA program has the additional component of audition requirements. In the report and recommendation, the court observed that audition requirements were partly responsible for CAPA grades 4–6 being 94% White. *People Who Care,* 851 F.Supp. at 1021. Accordingly, the Master has recommended that audition requirements for CAPA enrollment be eliminated.

The court disagrees for four reasons. First, auditions or not, the District will be required to achieve and maintain a minority enrollment in the program reflective (within 15%) of the minority population in the District. In addition, the floor requirement at the grade entry level will serve as an additional safeguard in assuring minority participation. Second, Ms. Peters testified that the auditions were not used as acceptance criteria but, rather, were used to measure a student's interest and potential. Tr. 961. In the court's view, measuring interest is a proper and objective use of auditions, and in the future, interest is to be the main criteria utilized for admission. Third, there was testimony at trial from the District that auditions were required to receive funding for this program. Tr. 973. Eliminating this requirement might have the effect of eliminating the program. Fourth, the court notes that in the last two years, there has been improvement in attracting minority talent to the program. In fact, additional audition rounds have been provided in recent years to attract more minority students. Tr. 968.

Although the court cannot guarantee that the Gifted and CAPA programs will continue to be handled with the same dedication and responsibility as they are handled presently, the court is convinced that the guidelines established under this order will assure sufficient minority participation in these once segregated programs. If not, the court will take swift and appropriate action.

4. Exceptions

In addition to the elective exception requested by Defendant, the District has further requested that compensatory education programs (e.g., tutorials, all-day kindergarten, Saturday Academy, Success for All, Reading Recovery, etc.) and scheduling conflict assignments be exempted from the within school segregation guidelines. The court agrees, however, with the Master's recommendation that tutorial sections, all-day kindergarten and courses posing scheduling conflicts should not be exempted. The +/−5% standard adopted by the court provides sufficient flexibility.

The Master has proposed that the Saturday Academy program be exempt from the guidelines because it is a unique program targeted at improving minority academic achievement by "encouraging and empowering the minority community" to take an active role in the schooling process. Master's Ex. 1 at 22. In the court's opinion, this rationale could apply to the Reading Recovery and Success for All programs as well. In the court's view, any remedial program that is all or mostly minority reinforces the culture of this school district that negatively stereotypes the minority student. These are exactly the cultural beliefs Dr. Parish hopes to extinguish. Therefore, the court will not exempt the Saturday Academy or other educational programs. The Master, of course, has the authority to exempt a particular class, from time to time, through his waiver powers.[166]

X. Special Education

***86** The Master's proposed CRO contains recommendations pertaining to special education. In the report and recommendation, the Magistrate found that, although nearly 100% of SW Quadrant elementary special education students were assigned to non-SW Quadrant schools, the assignment was not an act of intentional discrimination. On review, Judge Roszkowski reversed this finding and held that the assignment of special education students was intentional discrimination. He agreed, however, with the conclusion of the Magistrate that special education students should be exempt from desegregation programs. *People Who Care,* 851 F.Supp. at 929–30. Besides the finding relative to assignment, no other liability findings were made.

The Master's Recommendations

With respect to assignment, the Master observed the 1994–95 data and concluded that the RSD increased the number of available special education seats in the SW Quadrant to 41%. Consequently, the Master's recommendations in this area do not concern assignment patterns. Rather, the Master is concerned with the placement of students in special education programs. In the Master's opinion, special education placement can be another method of tracking students. Particularly troubling to the Master is that in the 1995–96 school year, RSD African–American students comprised 51.5% of the students enrolled in special education compared to the districtwide percentage of minority students of 25%. Therefore, the Master recommended that all African–American students in SCSE BD classes be reevaluated to ensure that these students were properly placed. Master's Ex. 1 at 40–43.

The Court's Remedy

The court rejects the Master's proposal in this area. The statistical data and the evidence received in regard to tracking in the RSD did not encompass special education. Special education was treated by both the Magistrate and

the District Court Judge (as well as the parties) as a separate category. The court, therefore, will not extend the tracking findings to special education. The District has already corrected the constitutional violations concerning assignment patterns, and no party proposes any further assignment or capacity remedy. Therefore, it is the order of this court that control of the special education program be returned to the RSD.

XI. Governance

One of the fundamental principles of a desegregation plan is that it must have the proper administrative structure in place in order to carry out the remedies in a prompt, effective and efficient manner. Master's Ex. 1 at 120. In his proposed CRO, the Master made structural recommendations in three areas: organizational structure of the RSD administration, implementation and monitoring and school-based planning. See CRO (segment one) at 7. These proposals all relate to governance and will be addressed in this section of the CRO.

A. The Role of The Court–Appointed Master

Starting in 1991, Dr. Eugene Eubanks has been the court-appointed Master charged with the responsibility to develop and oversee the implementation of the interim remedies in this case. Dr. Eubanks was recommended to the court by the District and has performed well in carrying out his duties. Pursuant to Federal Rule of Civil Procedure 53, the court specifically reappoints Dr. Eubanks as the Master to oversee all remedial areas of the CRO. The Master is to have the full remedial authority granted to him by this court's orders of April 24, 1991, September 17 and October 13, 1992 and May 5, 1993. In particular, the Master shall have the responsibility and authority to insure the prompt, effective and full implementation of all remedial matters in this case.[167]

All of the Master's decisions are effective immediately without Board ratification and shall be expeditiously carried out by the Superintendent and the RSD. The RSD shall continue to implement such decisions, notwithstanding the pendency of any judicial review process. All District management and staff are directed to assist and collaborate with the Master. The Master shall have the specific responsibility to develop an annual budget for all CRO remedial matters. In addition, the Master shall have the specific responsibility to oversee all capital improvements and new buildings ordered by the court. The Master's decisions are appealable to the court as indicated in previous orders and the Rules of Civil Procedure.

***87** In the court's view, it is essential that the community have an active role in public education. Therefore, the Master will be required to report to an advisory community liaison committee on a quarterly basis. This committee will serve as a forum for the Master to disseminate information and receive input from concerned citizens. The constitution of this advisory committee will be decided in the future by the court.

The court notes that the Master has made recommendations concerning potential actions of the RSD administration and Board that may impact on desegregation efforts. *See* Master's Ex. 1 at 134–36. The court agrees with the Master's proposals that actions by the Board and/or Superintendent that concern any remedial aspect of the CRO, e.g., the opening or closing of schools, grade policy, enrollment policy, curricula, assignment and placement of staff, etc., require the Master's approval.[168] This check is essential in assuring that the remedial objectives of the CRO are not adversely impacted by independent RSD administration or Board actions.

The only exception, thus far, to the Master's exclusive remedial power is in the area of administering the student assignment plan. In that plan, the court authorized the establishment of the Department of Desegregation. The court stated that the Master and the Superintendent have the "joint responsibility" to establish the Department. The Superintendent will be in charge of the day-to-day operations and the Master is to monitor the Department. "Monitor" was used in reference to running the department after it has been firmly established and operating efficiently. Until that time, the Master and the Superintendent shall have equal decision-making authority concerning the creation of the Department.

The Department of Desegregation will be subdivided as follows. The Director of Desegregation will be selected (as described in the CRO) and, in conjunction with the Superintendent, will have the responsibility to implement the student assignment remedy. A student assignment officer shall be selected and will be responsible for coordinating all aspects of the student assignment plan within the Department. In addition, the student assignment officer will be responsible for certifying all student assignments and reassignments in the RSD. An administrator will be selected for each parent information center established in the District and will report directly to The Director of Desegregation. Lastly, the Director of Transportation, who is charged with the responsibility of overseeing the safe transportation of all the students in the RSD, will report directly to The Director of Desegregation. Master's Ex. 14 at 17.

In his proposed CRO, the Master made recommendations concerning the Office of the Associate Superintendent of Education and Equity. Under the Associate Superintendent, several Directors, including the Director

of Magnet Schools and Programs, appear to have duties that directly relate to the educational and other remedies in the CRO. To the extent that these directors have duties that relate to CRO implementation, these directors are ultimately answerable to the Master. *See* Master's Ex. 1 at 122. Furthermore, any administrator holding a position in the RSD organizational structure that has CRO responsibilities is ultimately answerable to the Master, with respect to CRO implementation.[169]

B. Implementation and Monitoring

***88** The Second Interim Order established the Planning and Implementation Committee (PIC) to oversee the implementation of interim remedies in this case. Prior to the CRO hearings, the continuation of PIC in its present form was contested by the parties. After this court issued the student assignment remedy in segment two of the CRO, the Master filed a motion recommending that PIC be dissolved and, subsequently, all parties agreed to a suspension of the operation of PIC. *See* Plaintiffs' Findings' of Fact on Governance at 3. The motion stated that the Master is convinced that implementation of the CRO can occur without PIC, given the power invested in the Master under FED.R.CIV.P. 53.

In the absence of this oversight committee, the Master proposes that he will immediately begin carrying out the court's remedial objectives. In addition, the Master proposes to confer with all the parties as necessary and conduct fact-finding pursuant to Rule 53. Periodic meetings will be held, as necessary, with all parties' counsel and the Superintendent. The Master recommends that these meetings be conducted in the United States District Courthouse. Lastly, these meetings are proposed to be for fact-finding and the identification of issues, not for voting.

The court agrees with the Master's recommendation to suspend the operation of PIC. Although the court views that PIC has been successful in the past as a remedial oversight mechanism, the administrative overlay of PIC is unnecessary, given the Master's broad remedial powers under Rule 53. The Master is hereby ordered to assume all the responsibilities previously handled by PIC and to begin the implementation of the CRO remedies immediately. The Master is specifically authorized to utilize the United States District Court building when needed.

C. School–Based Planning

Thus far, governance has been described at the top level of the administration. The Master has proposed a governance structure at the school level as well. School-based planning involves the administrators and faculty at individual schools taking a proactive role in decision-making and management. Master's Ex. 1 at 78–79. In the Master's opinion, school-based planning is essential to accomplish many of the CRO remedial objectives, primarily student achievement. Tr. 4816.

School-based planning has been attempted in the District during the past two years, but the results have been disappointing. The present system involves site-based teams comprised of three to five teachers for each school. Master's Ex. 1 at 79. These teachers are elected by their peers. The problem, according to the Master, is that the principals in the District do not have accountability. Tr. 4814–15. Therefore, the Master proposes a change in the selection of teachers: an election of teachers by their peers at each school and an appointment process by principals. Tr. 4814. The Master proposes that for each elementary school, five teachers are to participate in this process. At the middle and high schools, the proposed number of teachers is seven and nine, respectively. In the Master's opinion, this system would yield better results because the principals would take a more active role and would be held responsible for their schools.

***89** At the CRO hearings, Drs. Levine, Parish and Dolan testified concerning school (or site)-based planning. Dr. Levine stated that the Master's proposal is designed to give principals greater opportunity to exercise leadership. Tr. 4997. In Dr. Levine's opinion, school-based planning will only be successful if each school has clear and achievable goals with respect to areas of improvement. This requires firm guidance and monitoring by central decision-makers. Tr. 4998. Examples of "key instructional issues" to focus on include how students are grouped, performance expectations and the administration of discipline. Tr. 5001–02.

Dr. Parish testified concerning his familiarity with the recent operation of school-based planning in the District. In his opinion, the number of teachers participating in the process needs to be expanded. The additional teachers would add faculty that were not selected by the teacher's union. Tr. 4661. Dr. Parish testified that school-based planning is vital to changing the culture in the RSD's schools. Tr. 4662.

Dr. Dolan testified on behalf of Defendant–Intervenors. Dr. Dolan described the present governance structure in the RSD schools (as well as in most school districts) as a top-down hierarchical system, starting at the central office and working its way down to the principal. Tr. 5437. The system has excellent informational flow from top levels, because the way it is designed. However, a significant drawback is very poor informational flow upwards from the faculty, students and parents. In addition, the top-down model is ineffective because it is cumbersome and does not respond quickly to changes in educational needs. Tr. 5443. Lastly, the top-down model fosters a

belief in students that they have little or no responsibility for their learning progress. Tr. 5444.

A better alternative, according to Dr. Dolan, is site-based management. In his opinion, it takes a commitment from the school board, administration, teachers' union and the community to work together and restructure themselves constantly to institute "deep changes" at the schools. Tr. 5446. A school-based planning system would start with four to five days at the beginning of each school year, collecting input and data from children, parents and teachers to evaluate various aspects of particular schools. Tr. 5449. In the end, for the schools to be successful, Dr. Dolan believes that there must be a deep, authentic and honest relationship between the students, parents, teachers and the RSD administration.

Dr. Dolan described the Master's proposal in this area as a "terrific plan." Dr. Dolan noted, however, that the proposed governance structure has a Master vested with a great deal of authority. This could cause a sense of alienation from the schooling process on the part of teachers, parents and students. Further, Dr. Dolan criticized the Master's proposal, in that it places too much emphasis on the principal's role. Instead, Dr. Dolan would center site-based management around the community and teaching staff. In his opinion, a site-based decision-making committee would be comprised of the principal, department heads, four or five elected faculty members, five to seven parents and several students, depending on the size of the school. Tr. 5458–59. This model would give these groups the motivation to make the schools much better. Tr. 5463.

***90** In the court's opinion, it will take a great deal of commitment for this District to move forward to effective site-based management. As Dr. Dolan pointed out, a school district under a desegregation remedial decree requires a certain amount of centralized decision-making, including a Master with broad remedial powers. Tr. 5476–77. Therefore, at this time, a top-down management system with the Master, Superintendent and the Board is necessary to initiate the remedial process. In the court's view, however, there is a need for an effective site-based management system in order to accomplish many of the CRO's remedial objectives. Many of the disparities in achievement, discipline and drop-out/graduation rates are problems that are best addressed by a system described by Dr. Dolan. Presently, however, the school-based planning system being operated is costing approximately $360,000 per year and in many schools has been a dismal failure. The Master's proposal—to simply add more teachers—will not make the system any better. Therefore, the court orders the parties and the Master to carefully develop a detailed school-based management plan as recommended by the experts.[170] The court will consider full implementation of such a plan in the future. The court expects a plan by January 1, 1997. For now, the present plan is scrapped.

XII. Finance

In the CRO, the court has dealt with the twenty-nine remedial objectives proposed by the Master. See CRO (segment one) at 7. On its own initiative, the court has added a final category, not suggested by the Master or any party: finance. In this section, the court has requested and received information relative to the economic condition of the District, sources of funding the CRO remedies and the financial impact on the local community.

Before discussing these issues, a word is necessary concerning the system of funding public education in Illinois. Through the use of real estate property taxes, the local governmental unit bears the major responsibility of paying for public education. The RSD is funded as follows: 61.5% local; 29.8% State of Illinois; and, 8.7% federal. Master's Ex. 53–D. The 61.5% supplied by local real estate taxes is derived as follows: 68.7% residential properties; 21.3% commercial; 9.3% industrial; .7% farm; and .1% railroad. Master's Ex. 53–E. Unfortunately, this breakdown demonstrates that the costs of remedies in this desegregation lawsuit fall disproportionately on the local homeowners in this community.[171]

In the twenty-nine remedial areas, the court has been careful to limit the remedies in this case to addressing the constitutional violations reported in the liability findings. The Magistrate has further chosen the most economical remedies which will make the victims in this case whole. For example, the educational remedies ordered in this case are necessary to compensate the victims of unconstitutional tracking. The facility construction ordered by this court directly addresses the historic discrimination against minority schoolchildren that led to significant under-capacity west of the river. In turn, these new facilities will correct the unequal transportation burden findings in the report and recommendation. The court has also chosen a reasonable student assignment plan to correct the historic patterns that have created racially identifiable schools.

***91** In other words, the court has not ordered a 2,000 square foot planetarium, a twenty-five acre farm with an air-conditioned room for 104 people or a Model United Nations. *Jenkins III,* 115 S.Ct. at 2044–45. Rather, this court has ordered narrowly tailored remedies and specifically finds that anything short of these remedies would not sufficiently correct or address the constitutional violations in this case.

It is the responsibility of the RSD to fund these remedies. The remedies to be funded in this case fall into two categories. First, under the student assignment plan, the court ordered an estimated $48 million in capital

improvements. Normally, these would be funded through bonds. Second, the court ordered various other CRO remedies including educational programs. These types of yearly programs are usually paid for through an annual levy.

The court chose Dr. Paul Schilling as its expert to examine the financial condition of the RSD. Dr. Schilling found in FY 95 that the district received approximately $140 million in regular revenues in its educational fund. Master's Ex. 55 (Tab 1) at 2. Unfortunately, the district ran a deficit of $41 million in that same fund in 1995. Tr. 4144. After looking at the overall condition of the District, the conclusion of the expert was that the district was $11.5 million in the red, not including the District's long term outstanding debt, as of June 30, 1995, of $144 million.[172] Tr. 4189, 4213; Master's Ex. 53–G. Based on his examination, it was Dr. Schilling's conclusion that the district's financial condition was "extremely precarious." Tr. 4142. While the court passes no judgment on the general economic condition of the school district, it is clear, based upon the testimony presented to the court, that the RSD does not have surplus on-hand revenues to conduct meaningful remedial programs.[173]

One method to fund the CRO remedies would be from the existing education budget of the RSD. The court could interfere in the budgeting and resource allocation process of the district in order to make remedial funds available. This would be a massive interference by the district court in the local affairs of this school district and could also, possibly, create a situation where the district would be in conflict with its contractual obligations. At this time, the court is reluctant to engage in this type of massive interference.

Historically, interim remedial measures in this case have been funded from outside sources. The first type of outside or "alternative" funding involved capital improvements. From 1991 to the present, three major capital improvements have been implemented as interim remedies: Roosevelt, Lewis Lemon and Marsh Schools. These capital improvements have been funded through issuing bonds pursuant to the Illinois Tort Immunity Act. Typically, these bonds are financed through tax levies that retire the bonds in twenty years.

In addition to capital improvements, the interim remedies in this case have required funds for annual implementation costs. All annual implementation costs have been paid through Fund 12. Table 1 shows the Fund 12 budget and expenditures for FY 92 to the present.

Table 1[174]

FY	Budgeted	Expended
	(in millions)	(in millions)
1992	$ 6.8	$ 3.8
1993	$ 9.2	$ 7.9
1994	$11.0	$10.0
1995	$20.6	$15.2
1996	$23.4	N/A

***92** Fund 12 expenditures are financed differently than capital improvements. As stated above, capital improvements are funded through bond issuances with a twenty year retirement schedule. Fund 12 expenditures are financed through annual tort property levies. Fund 12 has been created by the District and is funded through levies under the Illinois Tort Immunity Act, a practice which was recently held to be proper by District Court Judge Philip G. Reinhard. *See In the Matter of the Application of the County Collector of the County of Winnebago,* Nos. 92 C 20331, 93 C 20310, 94 C 50357 (consolidated) (N.D.Ill. filed Feb. 26, 1996) (appeal pending in the 7th Cir.Ct. of Appeals, No. 96–1716). In 1991, the tort levy was .5331. Master's Ex. 53–V. This means that for every one hundred dollars of equalized assessed value (EAV) of a home, 53.31 cents in taxes were levied to finance Fund 12. In 1991, for example, an individual with a $90,000 home, with an EAV of $30,000, would have contributed $160 to financing the interim remedies through Fund 12. By 1995, the tax levy had increased to 1.0093; the same homeowner was now paying approximately $303 to fund the annual second interim order remedies. In 1995, approximately 9% of the total real estate property taxes went to fund desegregation remedies. The balance, or 91% of the aggregate real estate taxes, funded the day-to-day operations of the RSD and other governmental units.[175]

The court is cognizant of Chief Justice Rehnquist's admonition in *Jenkins III:* "Each additional program ordered by a district court" and financed from an additional source increases the school district's dependence on court supervision. *Jenkins III,* 115 S.Ct. at 2054. Therefore, in striving to return this District to the control of local authorities, it is this court's duty to wean the District from dependence on Fund 12 (and other such funds). The court will monitor the cost-effectiveness of all CRO programs and will eliminate those programs that are either ineffective or unnecessary.

At the present, the court will set the cap on tort fund use in the amount of $25 million per year which represents the approximate yearly budget of interim remedies, plus the costs of additional CRO remedies. In 1995, the District's regular revenues in the education fund were $140 million. Master's Ex. 55 (Tab 1) at 2. Therefore, the $25 million for CRO remedies amounts to the equivalent of an 18% increase in the education fund. The $25 million per year is the current maximum amount that the CRO annual budget may be financed through tort funds. This figure will be allowed to increase by a maximum of 4% per year for four years. At that point, the court expects that the Fund 12 budget will decrease. The court reiterates that it is the responsibility of the District to fully fund all CRO remedies. If cuts become necessary, they will be in non-CRO expenditures.

Financial Impact

The court believes that the Rockford community is entitled to know the probable financial impact of the CRO remedies on individual homeowners. Dr. Schilling calculated a hypothetical for the court. An individual with a home having a fair market value of $90,000 and an EAV of $30,000 currently pays $329 in real estate taxes to fund both types of interim remedies. This $329 per year, however, will not produce $25 million per year to finance the CRO annual budget and the buildings ordered by the CRO. In fact, the current levies produce approximately $17.5 million per year. Carry-over funds are currently being used in balancing the tort budget. In order to fully fund the CRO remedies and construct the buildings ordered in the student assignment plan, the cost will be approximately $518 per year for the owners of the same $90,000 house.[176] A 4% growth rate limits the tort fund taxes to approximately twenty additional dollars per year. The court orders that after a four year period, this figure must decrease.

EPILOGUE

***93** The court, throughout this opinion, has set very specific guidelines for this district to implement the CRO. These numbers are a means to an end. The end result that the court is attempting to achieve is the quality education of all children in the Rockford School District. The numerical requirements established by the court should not be implemented by the District so as to cause any educational detriment to any child.

The RSD is directed to follow this order and its numerical requirements. However, the overriding consideration is educational soundness. Always, the RSD must do what is educationally sound for each individual student under its control. Therefore, the court specifically authorizes the Master to waive, for good reason, the percentage requirements of this order. Any requested numerical waiver should be directed to the Master, with appeal to this court.

At page one of the CRO, the court stated that there are two stages in school desegregation cases: the liability determination and the comprehensive remedial order. There are actually three. The final phase is a complete return of the school district to local authorities. This is called "unitary status" and marks the end of the district court's involvement in the local affairs of running the

school district. This order is a road map toward that unitary status.

Since 1991, this court has sat through approximately 10,000 pages of testimony, has seen literally thousands of documents and reviewed hundreds of depositions. The court has lived with this case for approximately five years. This level of involvement precipitates a few closing observations. Most city planners believe three things are necessary in order to make a community the size of Rockford vibrant. A city must have exceptional medical facilities, recreational facilities and educational institutions. Rockford has all three. However, the touchstone of a thriving community is its ability to deliver quality education to all of its children. The Rockford Public School system is a great institution. The time has come to fully share this great institution with this city's children of color. Complete success is ultimately up to the community. If this community chooses not to support the road map set down in this order, it risks losing its economic and social identity. Hopefully, this will not happen. The court has given this district a plan which is achievable. The court believes the citizens of Rockford will respond not only in a positive and determined manner, but also with a sincere desire to correct the wrongs inflicted.

Footnotes

1 The liability findings are contained in the Report and Recommendation of the Magistrate Judge, the liability order of Judge Roszkowski and the permanent injunction issued by Judge Roszkowski. *See People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205,* 851 F.Supp. 905 (N.D.Ill.1994) (containing both Judge Roszkowski's Order and the Magistrate's Report and Recommendation); *People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205,* 89 C 20168 (N.D.Ill. filed March 30, 1994).

2 "Minority" is being used here to include all non-Whites.

3 For the purposes of this opinion, however, it makes little difference.

4 The total enrollment figure does not include 1,038 pre-kindergarten students for the 1994–95 school year.

5 This figure and the figures that follow are taken from the RSD Planning Department *Fall 1994 Housing Report.* The 1994–95 Housing Report elected to use the minority classification to include African–Americans, Hispanics, Asian–Americans, Pacific Islanders and Native Americans. In the past, the court has defined "minority" to include the two plaintiff classes, African–American and Hispanics. Where possible, the court will use the all inclusive definition.

6 This figure includes 367 students attending the specialty schools of Roosevelt Alternative High and Sky View.

September 1994 RSD Student Enrollment

School	Students	Percent White	Percent Minority
Elementary	15,446	63.7	36.3
Middle	4,044	64.9	35.1
High	6,744	68.3	31.7
Page Park	136	68.4	31.6
Totals	26,370	65.1	34.9[7]

7 After the CRO hearings began, the school district made available to the court and the parties the 1995–96 Fall Housing Report. The court wants all district-wide data to be as current as possible. The updated statistics for 1994–95 are as follows:

School	Students	Percent White	Percent Minority
Elementary	15,536	64.2	35.8
Middle	4,032	65.8	34.2
High	6,670	70.8	29.2
Page Park	122	73.0	27.0
Totals	26,360	66.1	33.9

8 Certain aspects of the Second Interim Order affected the collective bargaining agreement between the District and the local teacher's union. The Rockford Education Association intervened in the case and was successful in having certain portions of the Second Interim Order stricken on appeal. *See People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205,* 961 F.2d 1335 (7th Cir.1992).

9 In the May 5th Agreement, the parties specifically consented to having the Magistrate enter a Report and Recommendation after the liability hearing and fully consented to having the Magistrate enter a remedial order. The Agreement provides as follows:

> For the past year all remedial proceedings under the Second Interim Order have been conducted by Magistrate Judge Mahoney on referral. To maintain a stable remedial framework, Plaintiffs, Defendant, and Intervenors concur and voluntarily consent that all present and future remedial matters in this case, without limitation, shall be referred to Magistrate Judge Mahoney under 28 U.S.C. 636(c)(1) and (c)(3), and under the Rules of the U.S. District Court for the Northern District of Illinois. This referral shall remain in effect for the duration of remedial proceedings in this case.

People Who Care, 89 C 20168 (N.D.Ill. filed May 5, 1993) at 5–6.

10 Judge Roszkowski disagreed with essentially three conclusions reached by the Magistrate. First, although Judge Roszkowski agreed that there was a disparity in the distribution of district staff, he was not convinced that this was caused by intentional discrimination or that the disparity showed intentional discrimination against the students. Second, although Judge Roszkowski agreed with the overall finding that there was substantial evidence of intentional discrimination on the issue of the make-up of the School Board, Judge Roszkowski rejected the Magistrate's finding that the Board deliberately gerrymandered the District in drawing the map submitted to the court. Judge Roszkowski further found that the failure to appoint minority members to the Board did not constitute intentional discrimination, as found by the Magistrate. Lastly, Judge Roszkowski overturned the Magistrate in an area where the Magistrate did not find intentional discrimination—assignment of Special Education students. Rather, Judge Roszkowski agreed with Plaintiffs that the RSD's conduct in assigning Special Education students amounted to intentional discrimination. Judge Roszkowski agreed, however, that the RSD should continue to exempt Special Education students from the desegregation programs. *People Who Care,* 89 C 20168 (N.D.Ill. filed February 18, 1994).

11 The first five of these factors have traditionally been recognized as the "*Green* factors." *See Green,* 391 U.S. at 435. The sixth factor, overall quality of education, which is sometimes included as a *Green* factor, was first recognized by the Supreme Court in *Freeman,* 503 U.S. at 473.

12 *See also Brown II,* 349 U.S. at 300–01 (A district court may consider "problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems."); *Swann v. Charlotte–Mecklenburg Bd. of Educ.,* 402 U.S. 1, 18–19 (1971) (wherein the Supreme Court stated, "In the[ ] areas [of transportation, supporting personnel, extracurricular activities, maintenance of buildings and the distribution of equipment], normal administrative practice should produce schools of like quality, facilities and staffs."); *Keyes v. School Dist. No. 1, Denver, Colorado,* 413 U.S. 189, 196 (1973) (wherein the Court stated, "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body, other factors, such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school, must be taken into consideration."); *Board of Educ. of Oklahoma City Public Schs. v. Dowell,* 498 U.S. 237, 250 (1991) (quoting *Green,* 391 U.S. at 435) ("In considering whether the vestiges of de jure segregation had been eliminated as far as practicable, the District Court should look not only at student assignments, but 'to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.' ").

13 Once a remedy is found to be necessary to cure a vestige of a constitutional violation, state law cannot be used by a school district as a defense to implementing the remedy. *See Brown II,* 349 U.S. at 301 (The district court may consider "revision of local laws and regulations ... to solv[e] the foregoing problems."); *Missouri v. Jenkins,* 495 U.S. 33, 57 (1990) ("*Jenkins II* ") ("It is therefore clear that a local government with taxing authority may be ordered to levy taxes in excess of the limit set by state statute where there is reason based in the Constitution for not observing the statutory limitation.").

14 Dr. Eubanks did not endorse the continuation of the Creative And Performing Arts program (CAPA) in its present form. The Master only endorsed CAPA to the extent that entrance requirements were dropped. Under the stipulation, the parties did not agree on entrance requirements to CAPA and other alternative programs. This issue will be decided in another segment of this opinion.

15 The question of whether tracking and/or ability grouping exists today in the RSD is more easily asked than answered. To be sure, ability grouping was already ordered to be halted as of the Second Interim Order in 1991, unless the District was able to demonstrate a sound educational and/or academic rationale for grouping. During testimony in December 1995, the Magistrate certified the following four questions to the District concerning ability groups: (1) Are there any basic classes in Rockford secondary schools?; (2) Is there any evidence of continued tracking?; (3) Does Rockford have weighted grades?; and (4) Are Academy (gifted) students included in class rank?

> Dr. Barbara Pulliam, the Associate Superintendent for Education and Equity, answered the four questions in a memorandum that was read into the record on December 21, 1995. Regarding question number one, Dr. Pulliam stated that by September of 1994, all basic classes had been eliminated. As to question two, Dr. Pulliam stated that taken as a whole, core classes were not tracked. Dr. Pulliam further stated that there is an appearance of tracking in a total of nine algebra courses offered in four schools.

Regarding the third question, Dr. Pulliam answered that as of February 22, 1994, the Board of Education voted to discontinue the practice of assigning weighted GPAs beginning with the senior class of 1998. Therefore, only the present junior and senior classes have weighted grades. Regarding the fourth question, Dr. Pulliam responded that the gifted students attending Auburn are included in class rank with all other students attending Auburn. In a follow up inquiry, Dr. Pulliam reported that of the top ten percent of Auburn's 1995 graduating class, 93% were from the Academy (gifted program). In addition, all of Auburn's Valedictorians and Salutatorians for the last five years have come from the Academy.

Plaintiffs commented on Dr. Pulliam's answers and presented the following evidence that tracking does still exist. For example, Dr. Harriet Doss–Willis, a consultant with the Southwest Regional Educational Lab hired by the RSD, reported in March 1994 that there continues to be parallel curriculum structures in place in the RSD. She states that the system "continues to look, smell, and taste like tracking, therefore it probably is tracking." Plaintiffs' Ex. 77 at 8–9. "[B]latant" examples of tracking that still existed in the high schools were the mathematics courses. Dr. Willis observed that there are courses labeled "algebra" that are "diluted" and do not contain algebra in content. Plaintiffs' Ex. 77 at 9. In addition, in 1995, Dr. Willis noted that although most of the basic courses had been removed, students were still being ability grouped within the honors courses. Indeed, the court notes that in Dr. Pulliam's memorandum, Table 3, there is a very low percentage of minority students in the geometry and advanced algebra courses in Guilford, East and Jefferson high schools. At Guilford, for example, there are 22% minority students in the regular geometry class compared to 7% minority in the honors program.

On January 5, 1996, the Master responded to Defendant's answers for the four questions. Regarding question one, the Master agreed that, as of September 1994, the use of the words "Basic Courses" to identify courses was eliminated. However, based on his quarterly reports, the Master noted in many cases, "Basic Courses" were simply retitled "Regular Courses." The net effect, the Master concluded, was that instead of having four tracks, Honors, Regular, Basic and Special Education, the District now has three tracks, Honors, Regular and Special Education. Regarding question two, the Master has responded that the RSD has not adequately responded to the court's inquiry concerning whether tracking currently exists. Namely, the Master contends that the District failed to note relevant data in the 14th Quarterly Report that contained evidence of tracking. A couple of examples are striking—there were 47 classes at Auburn that had no African–American students, there were 60 racially identifiable class sections at Guilford and 109 such class sections at Auburn. *See* Master's Response to Defendant's Memorandum at 2 (listing examples). Similar examples exist for Rockford's elementary and middle schools. Regarding questions three and four, the Master accepted the representation of the District.

In particular, the court notes the Master's conclusion, "[W]hile some progress ha[s] been made in the Rockford Public Schools relative to grouping and tracking, [it is] clear [that] patterns of continued tracking and grouping exist[ ] in a manner which reflects the vestiges of segregation and violates the Second Interim Order." Master's Response to Defendant's Memorandum at 4. That tracking and ability grouping—arguably the most severe discrimination tool of the Rockford School District—may still be in place, is extremely disheartening to the court. Before making a more specific order on the gifted programs, the Magistrate would like to see the results of Dr. Willis' January 1996 report on tracking in the RSD.

16 *See generally* Plaintiffs' Preliminary Proposed Findings of Fact at 47–51; Plaintiffs' Proposed Findings of Fact Supporting Uncontested Areas at 4–9 (discussing vestiges and factual findings contained in the Report and Recommendation).

17 A comment is in order concerning the duration of these programs. These educational components under ability grouping are to be funded as long as they are effective and necessary. These programs are not necessarily to be continued to unitary status, which encompasses the much broader standard of whether the District has, to the extent practicable, eradicated the vestiges of intentional discrimination. On the road to unitary status, some of the educational components will come and go, making way for more effective ones. Therefore, the standard—as long as they are effective and necessary—is appropriate for educational components.

18 Two portions of the Master's proposed HRP are contested. The first concerns a recommendation that the teachers and staff be compensated for participating in the program subject to the May 5th Agreement as it relates to staff development time and compensation for participation in the program. Intervenor–Defendants' stipulation provided that to the extent this program has any impact on wages, hours, terms and conditions of employment, the specific terms will be negotiated by Defendant–Intervenors and the Rockford School District. The second area of disagreement concerns the Master's recommendation that the HRP have an annual budget of at least $450,000 per year for the next three years. Proposed Plan at 33. Defendant objects to the duration and costs of the HRP. The Magistrate orders the program to be continued as long as it is effective and necessary. The cost portion of the HRP will be resolved through the budgeting process.

19 In the meantime, the Master recommends that present curriculum development activities and instructional improvement programs, such as funding for C.8. (predominantly minority) schools, magnet schools, secondary intervention programs, funding for Computer Assisted Instruction and critical thinking, funding for community schools, funding for C.9. (predominantly majority school) curriculum implementers, funding for curriculum developers, funding for assistant principals for Curriculum and Instruction, funding for curricular in-service training, funding for gifted education, and funding for comprehensive planning, should continue at the level of present funding until a curriculum audit is conducted and a new multi-cultural curriculum is established. Proposed Plan at 40.

20 Plaintiffs also seek language modeled on Section B.6.a. of the Second Interim Order that requires the District to revise curriculum programs to eliminate lower-status instructional processes and expectations provided to minority students. In addition, Plaintiffs seek broader language requiring the RSD to continually revise programs to "ensure that African–American and Hispanic students participate in courses, curriculum and instruction which are as challenging as that provided to white students...." Plaintiffs'

Response to Proposed Plan at 15–16. The court rejects these suggestions made by Plaintiff as they are redundant and already provided for in the Master's Proposed Plan.

21 The court considers the Master's language "as long as they are needed" to conform to the court's standard "effective and necessary." The court rejects Plaintiffs' proposed standard, which is a unitary status standard. As stated before, several educational components may come and go on the road to unitary status. The constant reviewing and reconsideration of the effectiveness of all of these ordered programs is an important process to ensure that court-ordered programs are not useless and wasteful.

22 Regarding the areas of disagreement, the court accepts the $50,000.00 to be a rough estimate of the costs associated with instituting a cohesive community education plan. Further guidelines on budgetary restraints will be made in following sections. Regarding the standard to apply in determining whether the District has adequately developed such a program, the standard is that these programs must be funded as long as they are both effective and necessary. Part of this analysis will necessarily involve determining whether the community education remedy has been developed and evaluating to what extent the plan has been successful in achieving its goals.

23 In *Missouri v. Jenkins,* 515 U.S. 70, 115 S.Ct. 2038 (1995) ("*Jenkins III* "), the Court cautioned that there are limits on a district court's remedial power:

> '[E]limination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of the school board authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of *Brown I* to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination.'

Jenkins III, 115 S.Ct. at 2048 (quoting *Swann v. Charlotte–Mecklenburg Bd. of Educ.,* 402 U.S. 1, 22–23 (1971)).

24 In support of the ECE, the Master also proffers the generation victim theory. The theory is that minority parents that have had children discriminated against in the past in the segregated system, may be less likely to be take an integral role in their present pre-schooler's education. In other words, the present students are considered "victims" because the parents have become disaffected as a result of a previous child in the system that actually *was* a victim of discrimination. Master's Proposed Findings on Uncontested Areas at 26. The court does not dispute the empirical evidence that parents that become involved early on in the educational process will be more comfortable with the school district and will have a sustained involvement in the education of their children. The court is unpersuaded, nonetheless, that the Master has demonstrated a sufficient nexus between the ECE program and any victim of past discrimination.

25 The BEP has seven goals that are spelled out in great detail from pages 51 through 78 of the Master's proposed plan. To the extent that these areas are stipulated to, the court hereby orders these specific provisions to be part of the BEP, subject to financial restraints.

26 The details of the plan are located in Appendix I of the Master's Proposed Plan.

27 The Master's proposed dates for the Staff Development Plan have passed. Therefore, the court orders the District to implement the Staff Development Program as soon as practicable. In addition, the stipulation contains the same proviso contained in the Human Relations Program: any impact on wages, hours, and terms and conditions of employment will be negotiated by the parties and the District does not agree to the duration of this program and its costs. In addition, both the District and Intervenor–Defendants oppose any further involvement of the PIC. Budget restraints and the PIC will be discussed in a future segment of this opinion.

28 To the extent that the Master's proposal in this area may affect staff assignment issues and the REA's collective bargaining agreement (*see* Intervenor–Defendants' Response to Master's Proposed Plan at 8–9) these issues will be discussed in subsequent sections of this opinion.

29 For instance, the RSD intentionally discriminated against minorities when it discouraged and diminished voluntary integration and created disparate integration burdens. *People Who Care,* 851 F.Supp. at 1154–55. In addition, the RSD had a longstanding practice of requiring minorities to be mandatorily assigned outside their neighborhood schools for desegregative purposes, while imposing no similar requirement on majority students. *Id.* at 926. Furthermore, mandatorily reassigned secondary students did not receive free transportation while the RSD provided free transportation for voluntary integration students who were predominantly majority. *Id.* at 1162–65. *See generally* Plaintiffs' Preliminary Findings of Fact at 186–88.

30 As to duration, the transportation objectives must be carried out, to the extent practicable, until all vestiges concerning unequal transportation burdens have been eradicated from the District.

31 The court reserves ruling on the future participation of the PIC, if any, in the proposed facility disposition process.

32 *See People Who Care,* 89 C 20168 (N.D.Ill. filed April 21, 1991) at 96–98 (Section G.9. of the Second Interim Order).

33 Although it is not stated in the stipulation by the parties, the court notes that in other areas both Defendant and Defendant–Intervenors object to the continuation of the PIC. This issue will not be addressed here and will be decided in the future.

34 Segment one of the CRO was issued on January 26, 1996. Segment two, issued on February 2, 1996, deals with student assignment. The court is issuing the CRO in segments so that the Rockford School District can begin the immediate implementation of the court-ordered remedies.

35 The discriminatory conduct of the RSD continued through the 1980s, was apparent in the 1989 Reorganization Plan and, in fact, continues today. For example, in both 1983 and 1989, the RSD approved boundary changes with respect to Dennis school that resulted in the further segregation of that school. *See People Who Care,* 851 F.Supp. at 1074. An example of a reassignment of students after a school closing that further segregated students is seen in 1989: when the Muldoon grades 4 through 6 were returned to Ellis School, the African–American student population rose from 59 to 92%. *Id.* Similar instances in the early 1980s led to the creation of racially identifiable minority schools at Haight, McIntosh and Conklin. *Id.* This pattern and practice continued throughout the 1980s. *See, e.g., People Who Care,* 851 F.Supp. at 1076–77 (discussing the effects of the 1983 school closings).

The 1989 Reorganization Plan further demonstrated the RSD's intent to racially isolate its minority elementary students. One idea in the Plan that, thankfully, never got further than the planning stage, was the notion to create mega-schools in the Southwest Quadrant. This would have, in effect, created "ghetto warehouses" for minority students. *Id.* at 1125. At the secondary level, the Plan was successful in closing West High School, the only naturally integrated high school in the RSD. *Id.*

36 The court hereby adopts and incorporates by reference the factual findings related to student assignment contained in the Report and Recommendation at 851 F.Supp. 1026–1082, 1098–1125. These findings and the continuing vestiges of the intentional discrimination must be addressed by an acceptable student assignment plan for both elementary and secondary students.

37 For all school years that are concerned in this opinion, elementary schools in the RSD housed grades K through 6.

38 "Racially identifiable" minority includes schools that were not within 15 percentage points of the district wide percentage of minority students. Therefore, a racially identifiable minority school included any school that had a minority student percentage greater that 44.5% (29.5% plus 15%). Similarly, a racially identifiable White school included any elementary school not within 15 percentage points of the district wide percentage of White students, which was 70.5%. Therefore, a racially identifiable White elementary school included any school that had a White enrollment of greater than 85.5%.

39 Table El of Master's Ex. 6 (not shown here) actually states there are 8 racially identifiable minority schools. The reason is that Table E1 includes the Lewis Lemon magnet school as racially identifiable, because it had an enrollment of 53.1% minority. The magnet schools, however, were designated to be 50–50 enrollment. For this reason, the Magistrate will not count Lewis Lemon as racially identifiable.

40 By 1995–96, the number of racially identifiable minority schools had dropped to 6: Barbour, Dennis, Ellis, Haskell, McIntosh and Riverdahl. The number of racially identifiable White schools remained constant at 5: Cherry Valley, Froberg, New Milford, West CAPA and White Swann.

41 The figures are taken from the 1989–90 and 1994–95 Fall Housing Reports. For 1989–90 and 1994–95 "minority" is defined as all non-Whites.

42 Two observations reveal that the progression from 24 to 12 racially identifiable schools is not as significant an accomplishment as it may at first seem. First, two formerly racially identifiable minority schools, Nashold and Kishwaukee, are now classified as desegregated even though the racial composition of the schools has not really changed since 1989. They are no longer racially identifiable because the district wide elementary student racial composition (which was 29.5% in 1989–90) rose to 36.3% in 1994–95, thus encompassing Nashold and Kishwaukee within the 15% parameters. These two schools, therefore, became "desegregated" with no effort from the District. Second, two formerly White identifiable schools, Johnson and Nelson, have achieved a "fragile" degree of desegregation and would become resegregated with the addition of two to three White students. Moreover, an additional ten schools that are considered desegregated could be racially identifiable with a shift of twenty or more minority or White students. Master's Ex. 6 at 11; Tr. 239–40 (although there are 26 elementary schools that are presently within the +/−15 percent guideline, only 16 of those are "stably desegregated"). By the same token, however, the court notes that two schools presently classified as racially identifiable White, White Swan and Thompson, are only a few minority students away from being classified as desegregated.

43 Map 1 does not include West CAPA, which, although a racially identifiable gifted program in 1989–90, is not a separate school facility.

44 An attendance zone policy is a residential-based, mandatory student assignment policy, where the District draws geographic attendance boundaries that are assigned to a particular school. Tr. 56–57.

45 The remaining four of the total 39 schools include three magnets that do not have attendance zones, and Page Park, a special education school that is exempted from the discussion of student assignment.

46 Particularly troubling is that for the Southwest Quadrant's seven racially identifiably minority schools, only 16 White students voluntary transferred in, while 48 White students were granted "hardship" transfers out of these minority segregated schools. Master's Ex. 6 at 24.

47 The transfers are, therefore, not truly "voluntary" when considering that the Southwest Quadrant is over capacity by 1,200 students. In other words, these students have no choice but to choose other than a neighborhood school.

48 The court notes, however, that a by-product of the magnet schools is that assigned west side majority students are also transferring to the magnet schools. In 1994–95, some 232 or 58% of west side majority students were voluntarily assigned into these magnets from schools that were racially identifiable minority. These assignments may have segregative effects because the SW Quadrant's seven racially identifiable minority schools do not presently offer an attractive alternative program to compete with the magnets. In other words, by losing these west side White elementary students, the SW Quadrant's seven racially identifiable minority schools may be becoming more segregated. *See* Master's Ex. 6 at 26.

49 Pre–T % White refers to the percentage of White students at the school before transfers are considered.

50 W–Transfers refers to the net increase or decrease in White student enrollment at a particular school after considering all transfers. A negative number means that as a result of all transfers, there was a net loss of White students.

51 M–Transfers refers to the net increase of minority student enrollment at a particular school after considering all minority transfers.

52 Post–T % White refers to the percentage of White students after considering the transfers.

53 Another unfair method to achieve statistical desegregation is simply to move an overwhelmingly minority program to a racially identifiable White school. For example, Nashold School was racially identifiable White prior to 1989–90 and, simply by moving the bilingual program to Nashold, thereby adding 201 Hispanic students, Nashold changed from 82.4% White to 52.4% White. 1994–95 Fall Housing Report at Table E.2.

54 These figures are taken from the 1994–95 Fall Housing Report (Table B.2).

55 The total number of secondary students is reported to be 10,897 in Table C.2 of the 1994–95 Fall Housing Report. The Magistrate notes that this number is inconsistent with the number in Section A of the report. Section A states that the total middle school enrollment is 4,044 and the total high school enrollment is 6,744.

56 The total enrollment figures for the two programs are taken from the 1994–95 Fall Housing Report at Table F.1. The Academy enrolled 332 students and CAPA enrolled 314 students. Added together, the total enrollment would be 646. However, since several Academy students are also in the CAPA program, the Magistrate realizes the total combined enrollment (without double counting) is probably closer to 550 students. The other west side secondary school, West Middle School, houses four specialty programs: centralized gifted, CAPA (4–6), CAPA (7–8) and Get It Together ("GIT"). The total enrollment for these programs is 604 students, 434 of which are majority or White. Master's Ex. 6 at 61.

57 This figure represents 2,267 resident west side students, divided by the 1,085 non-specialty program seats at Auburn.

58 For example, at the high school level, of the 4,123 high school students residing east of the river, no student, except for those enrolled in the Gifted and CAPA programs, crossed the river to attend high school. Master's Ex. 6 at 29–30.

59 At the middle school level, there are 4,140 students, of which approximately 2,600, or 63%, are White. Only 216, or 8%, of these White middle school students cross the Rock River from east to west, and nearly all of the 216 attend either CAPA or centralized gifted programs. Master's Ex. 6 at 32.

60 The court is aware that the condition of facilities is a separate *Green* factor from student assignment. The quality and condition of facilities becomes relevant to student assignment, however, when, as shown here, significant minority populations attend those facilities. While addressed here briefly, the quality and condition of all RSD facilities will be addressed in another section of this opinion.

61 In addition, there is agreement by the parties that a high school may not have less than a 25% enrollment of African–American

and/or Hispanic students. Without the 25% floor for high school enrollments, the permissible enrollment of minority students at individual high schools could go as low as 15%. Tr. 888. When the minority student population at a school falls this low, problems may occur relative to within school segregation.

62 The Magistrate does observe, however, that considering all the evidence that this court has heard, the likelihood of this being accomplished by pure voluntary measures seems remote. For example, Bill Trapp, the General Director of Planning for the RSD, testified that the RSD has reached a plateau in terms of the number of schools that can be desegregated. Tr. 855. Dr. Alves testified that the RSD cannot further desegregate its schools in an equitable fashion by using the existing mandatory student assignment practices, together with the limited number of transfer options. Tr. 81–2, 165. In addition, the court reminds the Board of Dr. Dentler's testimony that the use of magnet schools alone will not eradicate the vestiges of the intentional discrimination. Tr. 371. Since opening magnet schools in the Southwest Quadrant has had the effect of enrolling significant percentages of west (as well as east) side White elementary students, there may be increased racial isolation in the west side, non-magnet elementary schools. Tr. 238.

63 Segment one of the CRO was issued on January 26, 1996. Sections A and B and the beginning of Section C of segment two were issued on February 2, 1996. This portion of the opinion completes segment two which deals with student assignment and related issues, including: desegregated schools, magnet schools and the organizational structure of the administration.

64 Under the MAP, there would be a slight increase in the amount of student transportation. Currently, approximately 64% of all RSD students ride buses, and with the MAP, this could rise to 70% Master's Ex. 45 at 35. The MAP provides that there would be no cost for additional buses.

65 For convenience, the court will refer to Option A as "controlled choice." Option B contains the same functional/mechanical elements as Option A. Option B is different than Option A in that it proposes the addition of magnet schools and facility repairs/improvements that will be discussed in subsection 3.

66 *See* Master's Ex. 13 at 23; Tr. 623 (in the Lowell, Massachusetts controlled choice plan, 70% of parents received their first choice and 90% received their first or second choice); Tr. 817 (in the Cambridge, Massachusetts controlled choice plan, 80% of parents received their first, second or third choice); Tr. 922 (in the St. Lucie County, Florida controlled choice plan, 84% of parents received their first or second choice).

67 "Minority" in controlled choice is defined as African–American and Hispanic students combined. Master's Ex. 14 at 22.

68 Magnet schools and magnet programs, including alternative "school within a school" programs (e.g. gifted programs), must also meet the plus or minus 15% standard. In addition, these programs must have an entry-grade enrollment that is equal to or greater than the district wide percentage of African–American and Hispanic students for that grade, combined. Lastly, all high schools, in addition to the 15% standard, must have an enrollment that is not less than 25% Black/Hispanic students combined. Master's Ex. 14 at 22.

69 If a "grandfathered" student wishes to change schools, that student would be granted a voluntary transfer to another school so long as the selected school would remain within the racial fairness guidelines. The grandfather clause does not apply to a student who must obtain a new school assignment due to changes beyond the student's control, e.g., school closures, program relocations or changes in a school's grade structure. Master's Ex. 14 at 25.

70 Finally, voluntary transfers would be permitted to any student so long as the desired school can handle the transfer within the plan's racial fairness guidelines. Students whose primary language is not English and who are eligible for bilingual education would be assigned to a school that provides these services. Similarly, special education students would be assigned to a school providing the necessary services. Master's Ex. 14 at 28–29.

71 All students who do not receive their first-choice school would be placed on a waiting list for that school. Any student receiving a mandatory assignment would be placed on a waiting list for both the first and second-choice schools. Master's Ex. 14 at 27.

72 Controlled choice Option A leaves the elementary schools grades K–6, the middle schools grades 7–8 and high schools grades 9–12.

73 At the elementary level, capacities are to be established so that each zone is afforded its proportional share of seats at each grade level. This is to be accomplished by allocating seats based on the resident elementary school population within each zone. Master's Ex. 14 at 20.

74 Because the NE and SE Zones have essentially the same racial constitution, there would be no desegregation benefit in interzone assignments between them. Tr. 100–01.

75 At Barbour, all students would participate in a core curriculum devoted to developing proficiency in both English and Spanish as

well as building a foundational understanding of Hispanic and Latino cultures. At Ellis, the arts magnet would be open to all students having an interest in music, theater, dance and the fine arts. *See* Master's Ex. 14 at 31–32. In addition, all four K–8 magnets would be attractive as an alternative program to parents and students who preferred the continuity of grades K–8 in one school. Tr. 374–75.

76 The Montessori Program is a unique educational program that focuses attention on the whole child, considering the physical, social and emotional needs of a child in addition to intellectual needs. The program incorporates a special attitude of respect for each child that nurtures self-esteem and joy in learning for all children.

77 *But see* Plaintiffs' Findings of Fact on Student Assignment at 41. Apparently, the recommendation to house the Montessori program at Haskell has been changed because the RSD has leased St. Patrick's School to run the program. Plaintiffs request that the court order that the program be permanently located in the SW Quadrant. *Id.* The Master agrees with this proposal. Master's Findings of Facts on Student Assignment at 33.

78 The PEM is a program that concentrates on the development and education of students by using an individualized student learning approach. The program model focuses on the utilization of computers and technology to enhance comprehension, problem solving and other higher-order thinking skills.

79 At trial, the Master proposed that McIntosh become a K–2 science and technology magnet and that Wilson (the RSTA) should complement the theme and house grades 3–8. Tr. 1347–48.

80 The Master has proposed that the high school component at West should contain approximately 550 seats to provide sufficient capacity west of the river. Master's Ex. 1 at 114–15. According to the Master, this would address the liability finding of the court relative to the closing of West High School in 1989. *Id.* at 115.

81 During the presentation of the mandatory plan at trial, the members of the planning team proposed that West and East be closed and a new West/East high school be constructed in the SW Quadrant. The Master has adopted the MAP's West/East high school recommendation and has applied it to the controlled choice remedy. The Master recognizes that sufficient expert testimony supports the construction of a new West/East high school in that it would address the unconstitutional closing of West High School and is reasonable and practical. Master's Findings of Fact on Student Assignment at 35. The planning team testified that, in the long run, the construction of a West/East high school would be less expensive than renovating and maintaining the current West building and East High School. Tr. 3273–74. In addition, there would be two high schools west of the river, more fully addressing the capacity problem than the 550 seat proposal at West Middle School.

82 The court notes that two categories of projected costs are not accounted for in these totals: the costs associated with developing certain magnet themes at elementary, middle and high schools and the costs of necessary repairs/improvements in those existing elementary, middle and high school facilities west of the river. The court further notes that the Master has suggested that Roosevelt no longer should be a learning magnet. Tr. 3216. In that case, the cost of controlled choice would drop by $43,865.

Rockford Public Schools

Controlled Choice Plan—Cost Estimate Summary

Ref. No.	Title/Description	Construct/Ren Costs	plementati Costs	d. Operati Costs
HS–3	CAPA from Auburn to East	$25,000	$102,125	$0.00
Pg 38	Move the CAPA program with			
	students to East High School.			
EL–11	Expand Communication Arts at Washington	$25,000	$52,155	$0
pg 33	300 students			
EL–5	Relocate Gifted Program Into King	$25,000	$76,530	$0
pg 32	375 students			
MS–2	Relocate Gifted Program Into Flynn	$25,000	$81,565	$0
pg 35	from West 270 students			
HS–4	Relocate Gifted Program Into Gullford	$25,000	$103,635	$0
pg 39	300 students			

EL–2	Replace Barbour	$8,740,000	$137,665	$567,200
pg 31	K–8 Biling/bicult			
EL–4	Replace Ellis	$8,770,000	$137,665	$126,555
PG 32	New school for 575 students 66125sf			
EL–3	Montessori to Haskell	$10,000	$57,480	$0
pg 31	300 students pk–5			
EL–6	PEM to Haight	$2,245,931	$33,090	$241,226
pg 32				
	Staff Equipment	$0	$595,000	$0
	Balance of Schools			
EL–9	Science and Tech Magnet to Mcinstosh	$50,000	$107,580	$0
pg 32	424 students			
EL–13	Science and Tech Magnet to RSTA	$50,000	$80,255	$0
pg 33	Program contiuation of RSTA			
HS–1	Science and Tech Magnet to Auburn	$9,495,000	$267,100	$0
	1635 students			
MS–6	New Nature Middle School	$16,110,900	$204,380	$662,345
pg 35	New school for 1170 students 157,950sf			
MS–4	New West Secondary School	$15,439,613	$216,880	($164,300)
pg 35	New school for 1170 students 157,950sf			
HS–2	Health and Medical Careers at West	$5,926,813	$126,750	$357,075
MS–4	Addn West Secondary for 350 students			
g 35 & 38	Approx. 54,250sf 350 students			
MS–1	Global Studies at Eisenhower	$50,000	$179,570	$120,400
pg 34	1170 students			
HS–5	Tech Prep Program at Jefferson	$2,706,000	$199,100	$925,000
pg 39	Reopen Technical Ed building			
	at Jefferson; 400 students			
EL–10	Roosevelt Inv. Learning Magnet	$0	$43,865	$0
pg 32	146 students			
B.3.	Parent Information Centers	$16,000	$72,000	$379,800
	3 centers			
B.2.	Extended Day Kindergarten	$320,000	$98,600	$760,000
	1284 students			
B.3.	Staffing for Middle School Grade Restructuring	$0	$0	$1,380,000
	6000 students			

A–7	Transportation HS and MS lates already funded	$0	$45,000	$562,640
MS–5 pg 36	Re-open Kennedy from Facilities Plan	$4,636,000	$48,960	$416,670
	Totals	$74,691,256	$3,066,950	$6,334,611

83 A mandatory student assignment plan may be reconsidered if the RSD is unable or unwilling to successfully implement the court's remedial orders.

84 Lewis Lemon is to continue as an elementary magnet.

85 Defendant–Intervenors' expert, Dr. Rossell, testified against the controlled choice plan and in favor of maintaining the status quo. The court rejects her recommendations. Dr. Rossell essentially provided two reasons for her recommendation to maintain the current plan: (1) Rockford has already achieved a sufficient degree of desegregation, and (2) controlled choice will produce "White flight."

Dr. Rossell stated that since Rockford has 80% of its students in racially balanced schools and is less racially imbalanced than school districts across the country recently achieving unitary status, the court should allow the District to use purely voluntary means to achieve further desegregation. The court rejects this argument for three reasons. First, the court has already stated that the present level of desegregation is insufficient—the District is required to make a good faith effort to desegregate all of its schools to the extent practicable, irrespective of what other school districts have done. Second, the present level of desegregation achieved through "voluntary" measures is very unstable. 80% of the District's attendance zone elementary schools are automatically segregated at the start of each year. Controlled choice is needed to provide stability and flexibility. Third, and most importantly, the present system is voluntary for majority students alone. The court cannot endorse a student assignment plan that is voluntary for White students and mandatory for African–American and Hispanic students. Placing inequitable burdens upon minority students is nothing more than discrimination. Discrimination used to obtain integration still violates the Constitution.

Dr. Rossell's second argument in favor of maintaining the present system is that controlled choice will produce White flight. On this issue, the court notes the following. In the worst case scenario, controlled choice may produce a one-third increase in the normal decline in White student enrollment. Without any court-ordered student assignment plan in place, Rockford annually loses about 3% of its White students. Tr. 2280. The effect of controlled choice may add one-percent; therefore, the RSD might lose 4% instead of 3% of its majority students. Tr. 2589. However, controlled choice is only being ordered for the RSD's elementary students. Given that there are approximately 8,500 majority K–5 students, the 1% increase in the decline amounts to a potential loss of 85 students beyond the expected decline. In the Magistrate's opinion, any loss of students—regardless of race—due to the student assignment remedy would be unfortunate. These estimates, however, do not provide a sufficient justification to allow intentional discrimination to continue or to fail to eliminate the vestiges of the intentional discrimination. For these reasons, Dr. Rossell's recommendation that the District maintain the status quo is rejected.

86 To be clear, the court is defining minority as African–American and Hispanic students combined.

87 For example, attending desegregated schools may have a tendency to make all racial groups less prejudiced against members of other groups. Tr. 1002, 1005. Black students who attend desegregated schools may be less likely to remain in segregated settings in the future, may be more likely to attend predominantly White colleges and may be more likely to have positive interracial social and professional relationships in their adult lives. Tr. 1007–08. In addition to reducing societal prejudice, desegregated schools may have a positive influence on minority student achievement, minority graduation and drop-out rates, minority college graduation rates, minority delinquency, minority employment prospects and minority students' self-esteem. *See* Tr. 1019–30, 1050–74.

88 If a "grandfathered" student wishes to change schools, that student will be granted a voluntary transfer to another school so long as the selected school will remain within the racial fairness guidelines. In addition, the grandfather clause does not apply to a student who must obtain a new school assignment due to changes beyond the student's control, e.g., school closures, program relocations or changes in a school's grade structure.

89 The court notes that with the proximity preference, transportation distances as well as costs will be reduced. Tr. 118, 1354.

90 Random lottery assignment will be used in the event that the number of non-sibling applicants is greater than the number of available seats for majority and/or minority students.

91 All magnet schools, including the three existing elementary magnets, Lewis Lemon, Washington and Wilson, will be schools of choice for all students. All magnet schools operating in the RSD will be subject to the +/− 15% racial fairness guidelines. The +/−

15% proposal for each grade level as well the recommendation for floor percentages at entry grade levels will be decided in the within school segregation section in the third segment.

92 Another desegregative benefit of three zones as compared to the present residence attendance zone approach comes from the fact that only seven of the RSD's existing residence zone schools have resident student populations that are naturally desegregated. That correlates every year to 80% of the elementary schools initially (before "voluntary" transfers are considered) being segregated. Master's Ex. 14 at 10. In contrast, the three zone approach will keep the district from being "resegregated" each and every year.

93 In addition, controlled choice will apply to students transferring to the RSD and entering the school system for the first time as well as to students not electing to remain at their "grandfathered" school.

94 This goal of all schools being desegregated is feasible and practicable. *See* Tr. 24, 28, 32, 406, 3667, 3681–82.

95 The court notes that parent information centers have been integral in helping controlled choice programs succeed across the United States. There was abundant testimony at trial from controlled choice administrators in Cambridge and Lowell, Massachusetts and St. Lucie County, Florida. All three of these districts successfully implemented controlled choice within a few years, and all three have a stricter compliance standard (+/− 10%) than proposed in Rockford. The court also notes the following percentages of honored choices: 80% of kindergarten students in Cambridge received their first, second or third choice; 70% of the students in Lowell received their first choice and 90% of students in Lowell received their first, second or third choice; and, 90% of St. Lucie County middle school students received their first choice. *See generally* Tr. 593–626, 805–39, 913–56. In Rockford, where the compliance standard is more lenient at +/− 15%, it is projected that even higher percentages of parents and students will receive their top choices. Tr. 623, 817.

96 Without this minimum enrollment, schools could exist within the racial fairness guidelines and have as low as 15% minority enrollment at an individual high school. Tr. 888.

97 At trial, Superintendent Epps testified that the Board's support of controlled choice Option A was due to the fact that the District did not have the opportunity to fully consider Option B components. Tr. 3663–64. Dr. Epps testified that the District would act on these components after community input and additional financial data were gathered. Tr. 3664–66. The Magistrate rejects Defendant's position that the Rockford School Board did not have adequate time to consider Option B components. First, the planning team that developed controlled choice presented both options, merged as one, to the Planning and Implementation Committee (PIC). Tr. 90. This recommendation, that Option B could not be separated from Option A, was first embodied in the team's draft of Memorandum II. Memo II was submitted to the PIC on May 1, 1995. In that memo, the combination of Options A and B was considered "foundational" to a workable and acceptable remedy. Master's Ex. 13 at 2. Therefore, the District has had ample time to fully consider the separate components of Option B. The liability findings in this case occurred in 1993 and it is time to develop remedies for the plaintiff class. The Option B components are in no way underdeveloped or premature. Indeed, the planning team has taken input from parents, teachers, the community and the administration on the magnet proposals. Tr. 209–10, 389–90, 486–87, 732–733, 1372, 3688.

98 Another reason supporting the adopted components of Option B over Option A is relatively straightforward: a controlled choice plan that does not make schools educationally attractive and effective could potentially be more mandatory than voluntary. In fact, if the RSD were to only implement Option A, the planning team testified that the District would be better off with a mandatory student assignment plan. Tr. 493–94. By developing unique and attractive themes and programs under Option B, all schools are encouraged to attract students on a district wide basis. Tr. 745–46. Therefore, Option A would leave far too many schools under-chosen. As such, controlled choice (without at least some facility changes) is not a plan that promises to realistically work now in the RSD.

99 Haight is important because it adds an additional 180 seats to the west side for elementary students. Haight is not currently being used by the District and the planning team saw an opportunity to place the PEM where it would increase the number of west side elementary seats. Tr. 388–89. The 180 seats are incorporated into the 7,473 available K–5 seats at Table E.2. of Master's Ex. 14. Further, the court notes that the PEM program is targeted for Haight. While the Magistrate considers this to be a good idea, this is the type of decision to be made by local authorities in conjunction with the Master.

100 Defendant's position for maintaining the present grade structure is undermined by its motion to reopen proofs to submit an alternative plan. In that motion, the District attached the blueprint for its new plan which suggested the new K–5, 6–8 grade restructuring. Defendant's Motion to Reopen Proofs on Student Assignment, Ex. C at 6.

101 The Magistrate agrees with the recommendation of the parties to house the CAPA programs (currently at West Middle School and Washington Elementary School) at Ellis. CAPA will compliment the arts magnet program at Ellis. The court will address the admission criteria for the centralized gifted program in the next segment of the opinion in the section on within school segregation. Regarding the location of the gifted programs, the Master has proposed that the elementary centralized gifted program be housed at King and the middle school gifted program (currently at West Middle School) be housed at Flinn. The court will not make these

decisions, as they seem the type of educational decisions more appropriate for local authorities. The District and the Master are to agree on appropriate locations for these programs.

102 In its motion to reopen proofs on student assignment, Defendant specifically committed to creating magnets at Barbour and Ellis, as well as constructing two new magnet schools in the SW Quadrant. Defendant's Motion to Reopen Proofs on Student Assignment, Ex. C at 5.

103 These figures and the analysis that follows do not consider special education enrollment.

104 If Eisenhower, Flinn and Lincoln move towards the smaller 1,170 school model, the total district capacity would be 6,971 with a utilization rate of 82%.

105 Dr. Heald also testified that if the grade configuration is changed to 6–8, there exists enough capacity in the District without adding a new middle school. The court rejects this analysis because Dr. Heald did not account for capacity equity in his figures. For example, Dr. Heald admitted that in his scenario, only 17% of middle school capacity would be in the SW Quadrant. Tr. 717.

106 The court desires a dialog with the RSB on this proposed use of West High School. This use was not proposed by any party at trial, but seems to the court to be a reasonable proposal. The RSD should study this proposal from an educational and economic point of view and report a position to the court within thirty (30) days. If the RSD believes this proposal is unwise or unworkable it must indicate in which high school(s), other than Auburn, these programs are to be located. The court notes that if the stand alone programs are housed at a separate facility this would alleviate many of the within school segregation problems that have plagued these programs and have caused the court concern over their continued existence.

107 This figure does not include the costs for added transportation and parent information centers. The costs for these two areas will be presumably less than reported in Master's Ex. 49B because controlled choice will only affect elementary students. For the approximate $48 million in capital improvements, the court notes that a home owner with an assessed valuation of $90,000 will pay an additional $50 to $60 a year in property taxes to fund these expenditures. Master's Ex. 53I (extrapolation). This figure does not include the funding of other remedial programs.

108 Based on the Master's analysis of the District's proposal, at this time the court does not see a need for any middle school seats at West. *See* Master's Reply to the Board's Suggested Use of West at 5–9. Finally, the court notes that it has already been decided that the middle school CAPA program is to be absorbed into the K–8 magnet at Ellis. CRO (segment two) at 108 n. 101. Consequently, the District's proposal to house middle school CAPA at West appears to be in direct conflict with this court's previous order.

109 The court again assumes in this section that these specialty programs will continue in the RSD. The fate of the Gifted and CAPA programs will be decided in the within school segregation section.

110 The court also notes that leaving the specialty programs at Auburn leaves the potential for future within school segregation problems. Given that minimum minority enrollment will be required in these programs, however, the court might allow the programs to remain at Auburn in exchange for a full, regular high school at West.

111 The court's understanding is that the Gifted program has separate core courses that are exclusive to Gifted students.

112 To be clear, as in the student assignment section, the court is defining "minority" to include African–American and Hispanic RSD staff.

113 Certified staff refers to teachers and other certified personnel, including psychologists, nurses, librarians, etc. *See* Defendant's Harezlak Ex. 2, 1995–96 Data at 1.

114 In other staffing areas, the District has had more success. In 1995–96, for example, there were 9.7% minority certified staff. This included 37.3% minority principals in the District. Of non-certified staff, e.g. custodians, food service personnel and bus drivers, 23.3% were minority. In total, the RSD staff, both certified and non-certified, was 15.4% minority in 1995–96. Defendant's Harezlak Ex. 2, 1995–96 Data at 1. The heart of the liability findings, however, concerned RSD faculty, and for this reason, the staffing remedy will be limited to RSD teachers. Although this order does not directly affect the other certified and non-certified positions, the court will consider the District's hiring in these areas when determining unitary status.

115 On February 6, 1996, this court denied Defendant's motion to reconsider the report and recommendation liability findings which were based in part on the RSD's failure to meet its hiring goals. On February 21, 1996, the RSD renewed the motion to reconsider. To the extent that the renewed motion to reconsider seeks a reversal of this court's 1993 and 1994 liability determination, it is DENIED. The motion, however, will be considered as background material for this section.

116 This average is derived from the last three years of available hiring data for new hires in the RSD. In 1994–95, for example, the RSD hired 23.2% minority teachers for new positions. The District hired 13% and 14.3% minority new hires, respectively, for the years 1993–94 and 1992–93. Plaintiff's Ex. 210 at Table 3.

117 There is another important reason to reject the local labor market. The RSD has discriminated against minorities in its hiring practices for many years. Because the District employs one-half of the teachers in the metropolitan area, these past discriminatory practices have depressed the percentage of minority teachers in the local area below the level that it would otherwise have been. Plaintiff's Ex. 210 at 14.

118 This table is adapted from Plaintiffs' Ex. 210, Table 2.

Table 1

Region	% Minority Teachers
Rockford Area (Winnebago/Boone Counties)	4%
Northern Illinois (21 northern counties)	19%
Illinois	15%
Midwest (Illinois plus six surrounding states)	8%
Urban Fringe/Large Town	17%
United States	12%

119 This table is taken from Dr. Freeman's Dep. Ex. 8 at 2. Dr. LaLonde used the same data and reported the same percentage of applications to Rockford from the National region, six surrounding states and Rockford. Instead of breaking the rest of Illinois (excluding Rockford) into three subsets (state of Illinois, Chicago area and Cook county), Dr. LaLonde reported one percentage for the "Rest of Illinois"—23%, including 3% from Chicago. Plaintiffs' Ex. 210 at Table 1 (Applications–2). The court notes that this figure, 23%, is only at a slight variance from the sum total of Dr. Freeman's three subsets for Illinois (excluding Rockford), which add up to 23.2%.

120 This table is derived from Freeman Dep. Ex. 8 at Exhibit 5.

Table 3

Geographic Area	**% Minority Teachers**
Rockford	3.7%
Cook County (Chicago)	32.4%
Chicago Area (less Cook county)	4.7%
Illinois (less Rockford, Cook County and Chicago area)	5.9%
Six–State Area	8%

United States (less IL and 6 states) 16.1%

121 The hiring round placement system operates such that new hires cannot be definitively told during the recruiting season what and where they will be teaching. At trial, there was no dispute that this was an obstacle to the successful recruitment of minority teachers.

122 Dr. Shapiro, an expert retained by the Master, criticized Ms. Freeman's approach along the same lines. In Dr. Shapiro's view, Ms. Freeman's analysis was flawed because it failed to consider the elasticity of either the geographic representation or the ethnic composition of the applicant flow. Shapiro Dep. Ex. 1(b), Affidavit at 2–3.

123 Dr. LaLonde, for example, noted that once more minorities are successfully placed in the District, a network with contacts would likely be established in these geographic areas, thereby producing more minority recruits. Accordingly, more applicants could be expected. Plaintiffs' Ex. 210 at 12.

124 In addition, the court notes the following. Although 40% of the District's elementary faculty teach at C.8. schools, 70% of the District's minority elementary faculty teach at these schools. The District's C.9. schools utilize approximately 50% of the RSD's elementary teachers but only have 15% of the RSD's minority elementary teachers. The remaining 15% of the District's minority faculty teach at the three magnet schools.

125 As in student assignment, most of the problems with the faculty placement issue lie in the elementary schools. In 1995–96, when the districtwide percentage of minority faculty was 8.7%, the RSD's four middle schools ranged from a low of 8% minority faculty to a high of 12%. At the high school level, Auburn had 8% minority faculty, East had 11%, and both Guilford and Jefferson had 4%. Plaintiffs' Ex. 190 at 2.

126 The collective bargaining agreement requires the District to provide the three most senior applicants an opportunity to interview. Plaintiffs' Ex. 61 at 18. Although required by the contract, the interview process is seldom utilized. Tr. 3732.

127 This is actually a simplified version of the placement process. The court has described the process as position driven. However, a position driven system would look at each position and who applied for that opening. When that position was filled, the next position would similarly be filled until all positions are staffed. The process in practice is not position driven but, rather, is senior applicant driven. A list is generated of all applicants listed in order by seniority. The process begins by looking at the most senior applicant and that applicant's first choice for a vacancy. If an acceptable rationale is provided and the most senior applicant is denied the vacancy, the next step is to look at that applicant's second choice. This process continues until the most senior applicant fills a position. If no other choices are indicated, then the most senior applicant returns to his prior position. The process continues by looking at the second most senior applicant and that applicant's first choice. In reality, therefore, the process is driven much more by seniority than in the court's brief summary of the process. *See* Tr. 3714.

128 If a vacancy occurs after the eight pupil attendance day, the principal is allowed to directly place an individual for the current school year. Tr. 3753. If a RIF'd teacher applies for the position, state law mandates that, if qualified, that individual receive the position. The position is only temporary, however, and the position is advertised and filled for the next school year.

129 The court realizes, of course, that a placement system that does not provide for job security in the Spring affects the District's ability to hire new teachers, regardless of race. However, since qualified minority teachers are highly coveted by school districts across the country, minority candidates may be less inclined to commit to the RSD when they have several other offers from school districts that can guarantee specific positions. In fact, Mr. Creighton, the District's former recruitment director, could recall four to five minority recruits that he has lost because he did not have a vacancy to offer. Tr. 2189.

130 In the event that localized training is decisive in vacancy filling, the intentional discrimination in hiring and recruitment has denied minority faculty the opportunity to receive this training. For example, if a minority faculty member had been hired ten years ago instead of today, then that teacher would have at least had the chance to receive specialized training that is particular to Rockford.

131 Another reason supports desegregating the RSD's faculty. Since *Brown II,* the Supreme Court has held that revision of local laws may be necessary in addressing problems related to transportation, facilities and personnel. *Brown II,* 349 U.S. at 300–01. To the extent that the collective bargaining agreement is a binding contract under Illinois law, it will not be permitted to interfere with the U.S. constitutional requirements that every vestige of the intentional discrimination in Rockford must be eliminated.

The court further notes Plaintiffs' motion for summary judgment in this area based on *Board of Educ. of Rockford Sch. Dist. No. 205 v. Illinois Educ. Labor Relations Bd.* 165 Ill.2d 80, 649 N.E.2d 369 (Ill.1995). This case involved a grievance filed by Dr. Peter Wehrle, a tenured teacher in the RSD. Dr. Wehrle's grievance led to arbitration which resulted in a finding that the RSD had unfairly acted against him without just cause. Review of this decision ultimately reached the Illinois Supreme Court.

In the Wehrle case, the supreme court held that grievance arbitration concerning the "just cause" provision in the collective bargaining agreement was prohibited by section 10(b) of Illinois Educational Labor Relations Act ("Act"). The court held that, "[W]here a provision in a collective-bargaining agreement is in violation of, or inconsistent with, or in conflict with any Illinois statute, section 10(b) prohibits its implementation in an arbitration award." 649 N.E.2d at 372. The court held that if a provision

in a collective bargaining agreement merely supplements the Illinois School Code, without being in conflict with it, the provision would be properly arbitrable. In the Wehrle case, the arbitration based on the "just cause" portion of the contract was prohibited by section 10(b) because the provision provided a duplicate method for challenging the process for dismissal and, therefore, was "in conflict" with the Illinois School Code. 649 N.E.2d at 374.

In the present case, Plaintiffs argue that Article XII., Section D.1. and other sections of the collective bargaining agreement dealing with the vacancy advertising and filling provisions are in direct conflict with, in violation of, or inconsistent with the Illinois School Code. Article XII., Section D.1. provides that, "If more than one applicant has applied for the same vacancy, the applicant best qualified (based upon relevant certification, education and training) for that vacancy shall be appointed, and qualifications being substantially equal, seniority in the system shall control." Plaintiffs' Ex. 61 at 18. Plaintiffs contend that this provision is in conflict with sections 10–20.7, 24–1 and 24–11 of the Illinois School Code, that, in Plaintiffs' view, "expressly" grant school boards the power to appoint teachers, determine teacher qualifications and transfer teachers.

According to the Wehrle case, Plaintiffs' motion for summary judgment turns on an interpretation of whether the contested collective bargaining provisions are in conflict with, or supplement, the School Code. The court declines to make that interpretation. Although there is a case or controversy between Plaintiffs and Defendant–Intervenors in the remedial hearings, there is no case or controversy before the court concerning these provisions of the collective bargaining agreement, as was the case in the Wehrle decision. Plaintiffs' request to "obtain a ruling" is nothing more than asking this court for an advisory opinion and, therefore, presents no justiciable controversy for this court to decide. Accordingly, Plaintiffs' motion for summary judgment is DENIED.

132 Under this remedy, no teachers will be involuntarily transferred or forced out of the positions they are currently holding. Rather, equitable distribution of the RSD's faculty will occur through the vacancy filling process.

133 These teachers will be counted towards the overall 13.5% minority faculty hiring requirement.

134 When there are 13.5% minority teachers at the elementary level, the adjusted percentage of elementary minority faculty may be lower when accounting for the exempt bilingual programs currently at Nashold and Riverdahl. Barbour, which is slotted for a bicultural program, however, will not be exempt from these requirements.

135 To some extent the REA argued that certain minority teachers preferred to be in the C.8. schools because they wanted to teach minority students. The court passes no judgment on whether this is true. The court does note, however, under the racial fairness guidelines of controlled choice, a minority teacher expressing such a preference might be as equally attracted to an east side school as to a Southwest Quadrant school.

136 The court is aware that Federal Rule of Civil Procedure 65(d) has been read by the Seventh Circuit Court of Appeals to require that an injunction must be set forth in a "separate" document. *Metzl v. Leininger,* 57 F.3d 618, 619 (7th Cir.1995). In the Magistrate's view, this entire order on faculty assignment can be read as a separate document complying with *Metzl.* The opinion deals only with faculty issues and precisely details what portions of the collective bargaining agreement are enjoined: those dealing with reduction in force, faculty placement, posting, notice and applicant selection. In the event a RIF occurs, the RIF sections will be enjoined until such time that the RSD meets the requirement that the post-RIF minority percentage approximately equals the pre-RIF ratio. The sections of the contract dealing with placement, posting, notice and applicant selection are enjoined for the direct placement time periods stated in this opinion. After those time periods elapse, the contract may operate as usual.

137 Although standardized tests would be used for measuring equitable outcomes, the Master noted that the use of standardized tests has several shortcomings. First, the tests do not provide an adequate measure of progress, particularly for low achieving students who cannot read the tests. Second, standardized tests provide relatively little diagnostic information which can aid remedial instruction. Master's Ex. 1 at 101–02. The Master, therefore, recommended a battery of other tests that would concentrate on reading comprehension, the identification of students' progress and the identification of specific goals for students. *Id.* at 102.

138 The Master's proposals related to these areas, as well as discipline, are located at Master's Ex. 1 at 106–113.

139 The Master cited some eighteen improvement efforts that have been in place during the last several years, e.g., the provision of additional support personnel, the Success for All and Reading Recovery programs at C.8. schools, the expansion of after-school and summer school programs and the introduction of Higher Order Thinking Skills and other programs at several schools. The Master notes that, although the overall results to date have been somewhat disappointing, some of these programs promise to lay the groundwork for much greater success in the future. The Master proposed, therefore, that these programs be ordered as part of the CRO to hasten the goal of equitable outcomes in student achievement. *See* Master's Ex. 1 at 91–93.

In addition, the Master has proposed eight further actions that should be taken by the RSD to help improve academic performance at C.8. schools. For example, appropriate staff should be placed at C.8. schools, and the District would be required to audit the instructional and organizational arrangements, such as identifying low reading subgroups and identifying staffing inadequacies. *See* Master's Ex. 1 at 93–100. Efforts at the C.9. elementary schools and the middle and high schools would be guided by the District's Comprehensive Multi–Year Remedial Plan. *Id.* at 100–01.

140 Subsidized lunch status was used as a control factor for socio-economic status. In Illinois, students in public schools may be eligible for subsidized lunches. Eligibility for free lunch requires an annual family income (for a family of four) below $19,695. Reduced lunch eligibility requires an annual family income between $19,695 and $28,028. Tr. 4335–36.

141 NCEs are units on an equal interval scale that enable one to compare results from different standardized tests. Tr. 4366–67.

142 Dr. Crain also testified that segregated schools lead to increased delinquency, higher dropout rates and lower college attendance rates for minorities. Tr. 4279–80; Plaintiffs' Ex. 208 at 22–23.

143 Defendant's expert, Dr. Hoffer, seems to agree with Dr. Crain's generational theory. Tr. 5127–28.

144 Plaintiffs also offered Dr. Stolee on the issue of the relationship between school segregation and segregated housing patterns. Dr. Stolee concluded that, "School segregation and residential segregation are mutually dependent in Rockford, and each helps to create and strengthen the other." Plaintiffs' Ex. 219 at 10. As a result of the discrimination in this case, Dr. Stolee stated that the Southwest Quadrant schools are racially identifiable minority and have the least and poorest equipment and facilities. Incoming Whites to the community thus look elsewhere for housing. In addition, Dr. Stolee stated that the minorities affected by the discrimination tend to be less comfortable in multi-racial situations, are more likely to drop-out of school and less likely to attend college. In Dr. Stolee's opinion, this causes minorities to tend to stay in the same geographic location which leads to residential segregation. *Id.* at 10.

145 After reviewing additional data, Dr. Shapiro strengthened his opinion. Dr. Shapiro compared sixth grade reading and mathematics IGAP scores for 1993–94. He controlled for the income of the students' households and found that a disparity existed between minority and majority test scores, irrespective of the percent of low income students taking the tests. Master's Ex. 66 at 3–4; Tr. 5288. This means, for example, that a disparity existed between minority and majority students when 20% of the test takers were low income and a similar disparity existed when 80% of the test takers were low income. Furthermore, Dr. Shapiro performed a multiple regression analysis for nine predictors of achievement, *e.g.* parental involvement, mobility, attrition rate, low income, truancy rates, type of school (C.8. v. C.9.) and the racial composition of the school. Importantly, he found that none of the nine variables sufficiently explained the test score disparity, suggesting that the discrimination was responsible for 100% of the gaps. Tr. 5292.

146 Perhaps the most interesting legal point made by the experts on this issue comes from Dr. Shapiro. Dr. Shapiro stated that once intentional discrimination is established, it should be the District's burden to show that the achievement disparity is not a result of the discrimination. Tr. 4611–12. The concept of "burden shifting" is a critical issue in this case. No burden of proof is ever desirable; that is particularly true where the burden may be impossible to carry. Because of the numerous external factors that influence and affect student achievement, the Supreme Court's *Jenkins III* directive to identify the "incremental effect" of the discrimination may be inherently impossible to fulfill. Dr. Levine, for example, states that the causes of the gaps are measurable only "to some extent." Tr. 5009. An impossible burden is not at odds with the Court's obvious hesitancy towards considering student achievement at all.

Plaintiffs and the Master cite *Keyes* and *Freeman* for their burden shifting argument. In those two cases, the Supreme Court dealt with the issue of current segregation of students after a finding of prior intentional discrimination. In *Keyes,* the Court stated that, "[A]fter past intentional actions resulting in segregation have been established ... the burden becomes the school authorities' to show that the current segregation is in no way the result of those past segregative actions." *Keyes,* 413 U.S. at 211 n. 17. In *Freeman,* the Court stated, "The school district bears the burden of showing that any current imbalance is not traceable, in a proximate way, to the prior violation." *Freeman,* 503 U.S. at 494. The Court in *Keyes* and *Freeman,* however, was talking about racial imbalances in student attendance at schools, not in achievement scores. The Magistrate does not dispute the legal concept that with regard to the continued segregation of students, the burden shifts to a school district after a prior showing of intentional discrimination. The Magistrate, however, will not extend the use of "imbalances" to include disparities in achievement tests. Accordingly, the burden shifting argument is rejected.

147 The court is mindful, however, of the Court's proviso in *Jenkins III:* "So long as these external factors are not the result of segregation, they do not figure in the remedial calculus." *Jenkins III,* 115 S.Ct. at 2056. In effect, the multi-generational theory supported by Drs. Crain, Levine and Hoffer makes the argument that, in Rockford, these external factors are the result of the segregation. This theory, already rejected by the court in segment one of the CRO when dealing with the Early Childhood Education program, essentially states that *all* of the external factors that negatively impact on student achievement are the vestiges of the District's discriminatory conduct. If segregated housing causes low achievement in minority students, this was "caused" by the District. If a parent shows little interest in her child's educational development, this too is the District's fault.

This court explicitly rejects the multi-generational victim theory as a legal argument. The theory appears to be good social science but, to this court, seems bad law. The role of a district court in desegregation cases is to remedy the victims of the discrimination—it is not to engage in social engineering or to develop a new social contract. The District must be held liable for the harm it has proximately caused and no more. This court is not aware of a single Supreme Court case where the *Milliken II* standard of "victim" has been extended to subsequent generations. The multi-generational theory would take this court far outside the realm of education and far outside its equitable authority. The court is unwilling to stretch the definition of vestiges to creating new generations of victims.

148 The court notes that Dr. Levine stated that approximately 23 to 30% of the achievement gaps are due to poverty. Tr. 4973. It could be argued that the remaining gap, 70 to 77%, is due to the District's discrimination.

149 The court is aware of the testimony that the intervention programs ordered by this court may have the effect of raising all test scores in the District. In this scenario, minority achievement could increase while leaving the gap unchanged. In fact, the Magistrate hopes that all students' performance will benefit from these programs. However, one would expect the majority students' gains to plateau at some point, and, at that time, with continued success in minority student achievement, the gaps would significantly decrease. *See* Tr. 4581–82. If not, this alternate method will be more appropriate.

150 The only testimony provided on this proposal related to the Degrees of Reading Power Test. This test, or one agreed to by the Master and the RSD administration, will be used to measure the progress of the District towards meeting this requirement.

151 The Master's recommendations at pages 106 to 113 of his proposed CRO pertain to school culture and site-based management issues. Site-based management will be discussed in the Governance section of the Comprehensive Remedial Order.

152 The court realizes that the Master has made recommendations concerning disparities in grades, attendance, drop-out and graduation rates. The Master proposes that these disparities should be reduced each year by 20% of the difference between majority and minority students until equity is achieved and maintained. Master's Ex. 1 at 85–86. The data with respect to drop-out rates reveals that on average, approximately 11 to 12% of African–American and 15% of Hispanic students exit school each year compared to 7% of the majority students. Plaintiffs' Ex. 217 at 1. When following a group of high school students from freshman year to completion (a cohort analysis), approximately 46% of African–Americans and over one-half of Hispanic students did not graduate within four years compared to 29% of majority students. *Id.* at 2. The court is unwilling at this point to place quantitative outcome measures in the areas of grades, attendance, drop-out and graduation rates. In the court's view, Plaintiffs have not demonstrated a sufficient causal connection between the acts of discrimination and the disparities in these four areas. The 20% per year reduction in these areas, therefore, will be a goal, but not a requirement. The court will look at the success in reducing the disparities in these areas when revisiting these issues at a unitary status hearing.

153 The Master also made recommendations with respect to disparities in discipline sanctions. The evidence demonstrates, however, that there were only disparities in referrals. In other words, there was no evidence to suggest that majority and minority students referred for the same conduct received different punishment.

154 There are also disparities in the category of out-of-school suspensions. In sum, minority students received a disproportionate percentage of these suspensions compared to their enrollment ratio. *See* Master's Ex. 58 at 8–10.

155 The court incorporates the data from Master's Ex. 60 at 11 showing similar disparities districtwide. In addition, the court has discussed discipline disparities for 1994–95 only. Indeed, these disparities have been present since the 1970's and continue to this day. *See* Plaintiffs' Findings of Fact on Educational Remedies at 59–86.

Table 1

Category	Majority %	Minority %
Truancy	67	33
Insubordination	42	58
Disruptive behavior	49	51
Fighting	35	65
Verbal Abuse/Student	52	48
Verbal Abuse/Staff	51	49
Theft	40	60
Threatening/Student	36	64
Threatening/Staff	38	62
Physical assault/Student	39	61
Physical assault/Staff	39	61
Possession weapon	41	59
Use of weapon	37	63
Vandalism	32	68
Other	28	72

156 The court notes that as part of the CRO, the District has been ordered to implement a human relations program that will, among other things, provide multi-cultural training to RSD faculty. One intention of this program is to lessen the impact of cultural differences on discipline referrals.

157 Within school segregation problems also exist in the District's elementary and middle schools. *See* Master's Fourteenth Quarterly Report at 37–48; Plaintiffs' Findings of Fact on Educational Remedies at 35–36.

158 Dr. Willis examined this data and concluded that the freshman honors English courses, which averaged around 10% minority at the three eastside high schools, provided evidence of continued tracking in the RSD. Tr. 4472–73. Dr. Willis further noted that there are five levels of algebra offered in the District, a curriculum even she cannot understand. Tr. 4509. In Dr. Willis' opinion, the multi-tiered algebra curriculum may be working to the detriment of minority students. Tr. 4509–10. Dr. Shapiro reviewed this data as well. In his opinion, the low percentage of minority students in several high school honors sections was statistically significant. Tr. 4557–58.

159 This data is derived from Tables F.3. and F.4. of the yearly fall housing reports. Minority is defined here as including African–American and Hispanic students.

160 There are other categories of classes, programs, etc. in addition to regular and honors classes and alternative programs. Space limits the court to those discussed above. The court adopts the historical data illustrating these problems as contained in Plaintiffs' Findings of Fact on Educational Remedies at 6–38.

161 In the event that the compliance pool is less than 20% minority students, the Master proposed that the compliance range would be one-half the percentage of the minority students in the compliance pool at the low end to +10% at the high end. For example, if a middle school has a minority enrollment of 18%, then the low end would be 9% (½ of 18%) and not 8% (18% minus 10%). In addition, there are classes in the middle schools that are open to both seventh and eighth graders. For these classes, the compliance pool is proposed to be the mean percentage of minority students in the seventh and eighth grades.

162 The Master has made recommendations at the high school level regarding compliance pools that are less than 20%. As the court has ordered a floor of 25% minority students at all high schools, these proposals are moot. In addition, the court notes that the Master has exempted the bilingual, special education and other specially designated programs (namely the Saturday Academy) from the +/− 10% requirements. Master's Ex. 1 at 17. Finally, the District requested that elective courses, compensatory programs (*e.g.,* tutorials, Success for All, Reading Recovery and all-day kindergarten) and assignments resulting from scheduling conflicts be exempted from the +/− 10% standard. Tr. 4886. The Master rejected this proposal stating that the flexible 10% standard accommodated scheduling needs. The Master argued that allowing tutorial, all-day kindergarten and elective exemptions would simply continue the pattern of racially identifiable classrooms in the District. Tr. 4799.

163 The court can think of two exceptions. First, the compliance pool for any stand alone specialty program will be the percentage of minority students enrolled in the program at each grade level. Second, some schools may have classes in which more than one grade level can participate (the Master mentioned seventh and eighth graders for some middle school classes). In that situation, the compliance pool will be the weighted average of the percentage of minority students in those grade levels.

164 Because the court has selected a more stringent standard than the Master, the court sees no application for the "below 20% compliance pool" calculus using one-half of such a compliance pool as the floor. Lastly, the within school segregation guidelines are to apply to the RSD's magnet schools. In addition, because of the historical underrepresentation in many educational programs, the court accepts the Master's proposal that the magnet schools should have student populations that do not exceed the districtwide minority student percentage by more than 15% and should have a floor of at least the percentage of districtwide minority students at entry grade levels. This floor at entry grade levels will assure sufficient minority participation in subsequent grade levels; accordingly, the court rejects Plaintiffs' suggestion to require a floor at each grade level.

165 The court's understanding is that the grades 4–8 CAPA are to be "absorbed" into the Ellis K–8 arts magnet. The court assumes this means that there will be no CAPA program for these grade levels. If the court is wrong in this assumption, then the guidelines adopted for the high school component will apply equally to grades K–8 CAPA at Ellis.

166 The court accepts the Master's recommendations to exempt the bilingual and special education programs from the within school segregation guidelines. Master's Ex. 1 at 8. In addition, the court notes that the District, Plaintiffs and the Master have agreed to eliminate the Get it Together (GIT) and Career Awareness and Survival Skills (CASS) programs at the end of the 1995–96 school year. Master's Ex. 1 at 5. The court accepts and adopts this proposal.

167 The court is not creating a system-wide Master. Rather, the Master's power is limited to all remedial matters in the CRO.

168 For a more complete list, see Master's Ex. 1 at 134.

169 Lastly, the court notes that the Master has recommended a Director of Middle Schools to oversee the CRO grade restructuring and middle school capital improvements. In the court's view, it has not been sufficiently demonstrated, however, that the present organizational structure, including The Director of Desegregation, is inadequate. Therefore, this recommendation will not be ordered at this time.

170 In addition to Dr. Dolan's fine book, the court recommends that the parties, District administrators and faculty consider the works of W. Edwards Deming.

171 The court notes that the RSD has filed suit alleging that the State of Illinois was a co-conspirator in the intentional discrimination. *See Rockford Bd. of Educ. v. Illinois State Bd. of Educ.,* No. 95 C 50301 (N.D.Ill.). If that suit is successful, the State of Illinois may be partially responsible for funding the CRO remedies. Until that time, however, the cost of funding these remedies falls primarily on the shoulders of the local homeowners. Indeed, the homeowners have reacted. Between 1985 and 1990 there was an average of four to five tax protest objections filed each year. The number rose to 2,600 in 1992, and in 1994, 16,000 tax protests were filed. Tr. 4228. The court observes that the number of tax protests has risen in direct proportion to the amount of money expended by the District on interim remedies.

172 Illinois law allows a legal debt up to 13.8% of the most recent equalized valuation. In 1994 the District's EAV was $1.622 billion. Thus, the legal debt limit in 1995 was $224 million. Master's Ex. 55 (Tab 4) at 2.

173 At the court's request, Dr. Schilling compared the RSD to thirteen other large school districts in Illinois. Excluding Chicago, the RSD was third in size, eighth in equalized assessed valuation and was the second highest in total tax rates. The only school district with a higher tax rate was East St. Louis. In addition, the RSD ranked first as far as operating costs per capita, spending $6,811 per student annually. The RSD also ranked first in what is described as tuition costs per capita, spending $6,008 per student per year. Of all school districts within a thirty mile radius, the RSD was first in the total aggregate tax rate, first in the school tax rate, second in operating costs per capita and second in tuition costs per capita. Master's Ex. 55 (Tab 3) at 2.

174 Table 1 is based on Master's Ex. 53–N.

175 In 1995, the total tax rate was 11.1619 and the tort tax levy was 1.0093. Therefore, approximately 9% of property taxes levied in the county were paying for Second Interim Order desegregation programs. By comparison, in 1991, the total tax rate in this community for the public schools and all other governmental units was 10.3348. Master's Ex. 55 (Tab 2) at 11. Therefore, 5.1% (.5331 tort levy divided by 10.3348) of a local homeowner's property taxes went to Fund 12 remedies.

176 This figure is derived from Master's Ex. 53–I. The projected taxes are $500 for an annual $25 million tax levy and a $35 million bond issue. The cost of every additional $5 million capital improvements will cost the hypothetical homeowner $6. As the court has ordered approximately $50 million in capital improvements, an extra $15 million in bonding authority is needed. This corresponds to an $18 increase above the $500 figure quoted by Dr. Schilling.