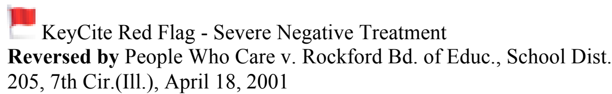
KeyCite Red Flag - Severe Negative Treatment
Reversed by People Who Care v. Rockford Bd. of Educ., School Dist. 205, 7th Cir.(Ill.), April 18, 2001
2000 WL 1855107
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois.

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. 89C20168. | Aug. 11, 2000.

Opinion

MEMORANDUM OPINION AND ORDER

MAHONEY, Magistrate J.

***1** This matter comes before the court on cross-motions by the plaintiff class and the defendant school board to modify the Comprehensive Remedial Order ("CRO")[1] in certain respects. Plaintiffs have moved for a reformulation and extension of the remedies called for in the CRO, while the Board has moved for partial unitary status and a definitive statement limiting its remaining obligations to the victims of discrimination.
The motions were tried to the bench over fifteen trial days in February and March of this year. The parties adduced testimony from more than thirty witnesses, some of whom appeared in court and others who testified by deposition. The court held the record open after trial for submission of additional deposition testimony. Post-trial briefing and the submission of additional evidence was completed on May 9, 2000.

The court has reviewed pertinent portions of the record, and has also reviewed and considered the testimony and exhibits offered at trial, the testimony offered by deposition, the stipulations made by the parties, the findings of fact and conclusions of law proposed by the parties, and all arguments offered by counsel. All counsel have aided the court and done an outstanding job. The court now enters the following findings of fact and conclusions of law, pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

INTRODUCTION

Much has transpired since entry of the CRO, four years ago. A brief overview at the outset will set the proper stage for this opinion, and certain portions of the liability findings and the CRO will be revisited in more detail below; the court must otherwise assume familiarity with the record.
The provisions of the CRO can be grouped into four broad categories: three categories setting forth the remedies themselves, and one setting forth the means of implementing them. The first category is student assignment, which encompasses both the manner in which students are assigned to school buildings and the manner in which they are transported there. The second category is educational components, which addresses the manner in which students are assigned to classrooms and the level of education which they are being provided. The third category encompasses the remaining remedies; this opinion will address only discipline and co-curricular activities. The last category concerns implementation of the remedies, addressing such issues as the financing of remedies and the role of the special master.

Liability findings underlying the remedies were interrelated, and causation was often more synergistic than linear. The remedies were accordingly structured to work together in a cohesive and integrated fashion relying, of course, upon the good faith implementation of the District and the good faith support of the Board.

Student Assignment

Discrimination in student assignment concerned two separate areas. First, the District had intentionally created and maintained segregated school buildings. The District used an attendance zone system that ostensibly assigned students to schools by their geographic location; but attendance zones for elementary schools were gerrymandered to create or preserve racially-identifiable schools, and feeder patterns into secondary buildings (middle and high school) were manipulated to perpetuate the segregation in upper-level grades. *See People Who Care v. Rockford Board of Education,* 851 F.Supp. 905, 917–19, 1026–81 (N.D.Ill.1994). This strategy helped to create and preserve racially-identifiable minority schools, mostly on the west side of town.
***2** Second, the District failed to provide sufficient building capacity in the minority neighborhoods. The southwest quadrant, which is three-quarters minority, had

3,036 elementary seats for 4,272 resident elementary students. That translates into a utilization rate[2] of 140%, or nearly three students for every two seats. The northeast quadrant, where the population was more than 85% majority, had 4,218 elementary seats available for 3,242 elementary students—one seat for every student, with almost another 1000 to spare. The following table demonstrates, by quadrant, the inverse relation between the minority population and available elementary capacity:

See Table 2, CRO at 58.[3]

Ellis School provides a stark example of how this capacity shortage affected students. The old Ellis (it has since been replaced), located in the southwest quadrant, served an attendance zone with 916 resident elementary students but only had seating capacity for 422. The remaining 494 students were physically displaced, but not to neighboring schools; those schools were also over capacity. The displaced Ellis students, and the displaced students from neighboring attendance zones, were bused as far as necessary to find seats for them.

The situation was similar at the secondary level. School closings left one middle school (West) and one high school (Auburn) operating in the northwest quadrant; there were no secondary schools at all in the southwest quadrant. Nearly two-thirds of all minority high school students lived in the northwest and southwest quadrant. Auburn had 1,635 seats for 2,267 residents, a utilization rate of 139%. The other three high schools, all in the northeast and southeast quadrants, combined to offer 6,470 seats to the remaining 4,477 students—a utilization rate of 69%, or nearly three seats for every two students.

The situation was worsened by the decision to house the District-wide Gifted and CAPA programs at Aubum. Gifted and CAPA are highly successful stand-alone programs that attract a significant voluntary enrollment of majority students from the east side; in fact, Gifted and CAPA students were the *only* east-side residents attending Aubum at the time. The programs consumed an estimated 550 seats, further reducing the available capacity for neighborhood students and raising its utilization rate to 209%—more than two students for every one seat.

From a qualitative standpoint, elementary schools in the southwest quadrant (again, there were no secondary schools) were the worst in the District. On average, they were older and less structurally sound than buildings throughout the rest of the District. Portions of some buildings, including an entire wing at Ellis, were closed off entirely, contributing to the capacity shortage.

***3** The ramifications of these capacity problems were not surprising: minority students endured grossly disproportionate transportation burdens. At the high school level, for example, 58% of all minority students were bused across the Rock River[4] from west to east, while only 8% of majority high school students were bused from east to west. Recalling that every one of those majority students had voluntarily enrolled into the Gifted or CAPA programs at Auburn, it is apparent that the system resulted in one-way mandatory busing for minority students.

The displacement problem actually resulted in a perverse form of integration. The racial balance of east-side schools improved as displaced minority students were involuntarily reassigned there. At the elementary level in 1994–95, for example, there were a total of 1041 "integration transfers" District-wide: 1007 of these transfers took minority elementary students from west to east, while only 34 took majority students from east to west. Those 1007 elementary students represented nearly 20% of the minority elementary population—one in five minority elementary students had been mandatorily reassigned to the other side of the city in order to alleviate overcrowding and to numerically integrate east-side schools. *See* CRO at 60.

The court ordered several measures to correct these inequities. First, it was clear that any long-term solution would require additional capacity in the southwest quadrant. The court ordered the replacement of two elementary buildings (Barbour and Ellis, both now K–8) and the construction of a new middle school (now known as the Rockford Environmental Science Academy, or "RESA"). These new buildings are all located in the southwest quadrant. Haight elementary school and Kennedy middle school, both northwest quadrant schools that had recently been closed, were reopened. The court also ordered a change in grade configuration: sixth-grade classes were "rolled up" into the middle schools, leaving the elementary schools with grades K—5 and the middle schools with 6—8. This helped to alleviate the capacity shortage, as the students could be more easily absorbed at the middle school level.

A revamped student assignment plan was also necessary. The court considered several options to determine which would most effectively address the capacity problems, the manipulation of attendance zones and feeder patterns, and the resulting transportation burdens. A comprehensive, mandatory reassignment plan would have been the most effective and most straightforward to implement: mandatory reassignment of every student in the District offers the greatest ability to tailor assignment patterns in a fair and equitable manner. The court rejected this approach, however, because it posed the most rigid and harsh interference with the District and its day-to-day operations.

In the end, the District itself proposed[5]—and the court adopted—a voluntary assignment plan called Controlled

Choice. Controlled Choice is designed to achieve system-wide desegregation through voluntary transfers. The former assignment system was disbanded and students are now allowed to select almost any school throughout the District.[6] Students and their parents choose the schools which they would like to attend by rank-order preference. Assignments are made on the basis of these choices, within the limits of racial fairness guidelines: incoming classes are structured to fall within +/15 percentage points of the District-wide racial makeup at that grade level. Controlled Choice thus allows parents and students, rather than the court, to be responsible for selecting schools.

***4** Controlled Choice is being phased in through a grandfathering system. Students are not uprooted from prior assignments; only students needing new school assignments (i.e., students at entry-level grades or transfer students) go through the choice process. Unfortunately, some minority students have been grandfathered into discriminatory assignments. This problem could have been addressed by implementing Controlled Choice simultaneously at all grade levels, but the District contended that the resulting system-wide disruption would have been too great. The phase-in was adopted at the District's request.

There are also educational components to Controlled Choice. A handful of schools develop magnet themes in order to attract diverse enrollment; homogenous offerings do not stimulate voluntary transfers, particularly by east-side students who are content with nearby schools. Schools which are consistently underchosen are targeted for review and improvement. Finally, minority students who were historically underserved are provided with tutoring and other supplemental programs to enable their transition into new schools.

The court declined to choose a new assignment system at the secondary level. The court required the District to meet the racial fairness guidelines, but allowed the District to determine the best means of doing so. The District ultimately proposed that Controlled Choice be implemented at the middle schools and high schools. This proposal was approved by the court.

The court also declined to order any capital projects at the high school level. Additional capacity was desirable to serve the west side, but all parties agreed that the District could not support an additional high school. Any decision to open a new high school would have necessarily involved closing another. Instead, the court generally charged the District with the responsibility of alleviating the capacity shortage at Auburn, and particularly required that the stand-alone Gifted and CAPA programs be moved to another building.

Educational Components

Discrimination in the District's educational offerings was in many ways more perverse than in student assignment. The most direct and egregious offense was "tracking." The District implemented a system of tracking courses, ostensibly to segregate students by achievement; in reality, the system was used to segregate students by race. Minority students were systematically placed into low-track courses while majority students were systematically placed into honors-level courses. Minority students with reading and math scores as high as the 99th percentile nationwide were being placed into low-track courses while majority students scoring as low as the 50th percentile were placed into honors courses. *See* 851 F.Supp. at 949, 959–60.
Worst of all, low-track enrollment was effectively self-perpetuating; the low-track curriculum did not offer the instruction or tools necessary to matriculate into higher-track courses. Once placed into low-track courses, students were generally there to stay. The combination of racially segregative tracking and a racially segregative assignment system resulted in a school system that denied equal education to minority students.

***5** Educational interventions were designed to accomplish three interrelated objectives. First, they were designed to repair the faulty education which so many minority students still in the system had received—to restore those students, so well as reasonably practicable, to the position which they would have occupied in the absence of discrimination. Second, programs were designed to help high-scoring minority students transition out of the low tracks and into more challenging courses. Finally, as mentioned above, the student assignment plan required educational programs to facilitate the transition of minority students into new schools.

Remaining Remedies

The remaining remedies that will be addressed in this opinion are student discipline and co-curricular activities. The court notes that many provisions of the CRO are not addressed in this opinion; those provisions are left undisturbed, and continue in full force and effect consistent with the law of the case.
Liability findings regarding discipline generally found disparate treatment: minority students were referred for discipline in disproportionate numbers, and the discipline which they received was disproportionately harsh. The court directed the District to develop a discipline code that was race-neutral on its face and in its operation. The court also directed the District to either eliminate subjective criteria or to equalize the frequency and severity of discipline; the Circuit Court modified this last provision, fearing that either approach would unduly limit

the discretion necessary for teachers and administrators to govern their classrooms and their schools.

Liability regarding co-curricular activities flowed largely from the inequitable provision of after-school transportation. Minority students who had been mandatorily reassigned to distant schools were not provided with the transportation necessary to participate in after-school activities. The court found specific instances of discrimination in the racial makeup of certain programs, but those findings were overturned by the Circuit Court on appeal. The court directed the District to encourage participation by all students in co-curricular activities, and also to ensure that financial barriers to participation (the District charges participating students an activity fee) did not have racially disparate impacts.

Conclusion

Four years have passed since the CRO was entered. This is an opportune time to review the progress that has been made, to consider what reasonably practicable steps remain to be taken, and to estimate how soon the court will be able to divest itself of this involvement in the District's affairs.

This timeframe turns upon two considerations. First are the needs of the remedial measures themselves: some have not yet been fully implemented, such as the student assignment plan; others have been fully implemented but are still needed, such as the educational programs.

Second is the good faith of the District and of the Board. For reasons explained below, it appears that this good faith requirement may be the determining factor in bringing this litigation to a close. The court will discuss this consideration first, as it will determine the manner and extent to which this court withdraws its jurisdiction over this case.

ACTIONS OF THE BOARD OF EDUCATION—BAD FAITH

***6** After discrimination has been found, a school board must demonstrate "its good faith commitment to the entirety of a desegregation plan." *Freeman v. Pitts,* 503 U.S. 467, 498 (1992). "A history of good faith compliance ... enables the district court to accept the school board's representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future." *Freeman,* 503 U.S. at 498. This good faith requirement helps to separate school boards that are actively battling discrimination from those that are putting on "a temporary constitutional ritual," *Morgan v. Nucci,* 831 F.2d 313, 321 (1st Cir.1987); "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," *Board of Education v. Dowell,* 498 U.S. 237, 249 (1991).

The good faith showing is also important to the community. The minority community is entitled to some assurance that their children and their children's children will not suffer the harms inflicted upon generations past. In determining whether to dissolve the decree in whole or in part, the court must consider "whether the district has demonstrated to the public and to the parents and students of the once disfavored race its good-faith commitment to the whole of the decree and to those statutes and constitutional provisions that were the predicate for judicial intervention in the first place." *Missouri v. Jenkins,* 515 U.S. 70, 71 (1995). The Board must "show its good-faith commitment to the entirety of a desegregation plan so that parents, students, and the public have assurance against further injuries or stigma." *Freeman,* 503 U.S. at 498.

Ridicule of the District and Circuit Courts: "Wacko" and "Insane"

Historically, the Rockford Board of Education has been predominantly made up of white members. That holds true today: five of the seven members currently sitting are white, while one is Hispanic and one is African–American. The most disturbing events of recent years involve members of the white majority ridiculing both the federal courts and the remedial efforts that the Board itself agreed to undertake.

The latest round of appeals resulted in opinion from the Seventh Circuit Court of Appeals rejecting a number of appeals filed by the Board. *See People Who Care v. Rockford Board of Education,* 171 F .3d 1083 (7th Cir.1999). At the time, the Circuit Court characterized certain actions of the "newly elected school board and its newly retained law firm ... [as] guerilla warfare against the very provisions of a remedial decree to which their predecessors had consented."*See* 171 F.3d at 1085.

Some Board members took those comments to heart, though perhaps not as the Circuit Court intended. At least one member of the sitting majority, David Strommer, publicly declared himself "proud" to be a "guerilla warrior" fighting against a decree which was not to his liking:

> ***7** "Guerrilla warfare doesn't mean you're on the wrong side of the fence. We're standing up for what's right. America ... is not a dictatorship run by judges. I'll be proud to call myself a guerrilla warrior."—Mr. Strommer, March 25, 1999 (PX 35; Strommer 925–28).[7]

Other previous public comments from Mr. Strommer have included the following:

> "We're mortgaging our future and our kids and our city just to satisfy the whims of a few minorities.... We've got people who've come into our country, crossed our borders and expect the general populous [sic] to support them. I say, 'Hell no." '—Mr. Strommer, December 9, 1996 (Strommer 948; PX 38).

> Judge Mahoney is a "wacko" and "insane," and the CRO is "extreme overkill"—Mr. Strommer, December 9, 1996 (Strommer 947; PX 38).

Several other prominent examples arose out of the "Rally for Rockford." This rally, held in February 1998, featured guest speakers and audience members addressing this litigation and issues tangential to it. Testimony at trial indicated that the event was organized by Thomas Fleming, a co-founder of an organization called the League of the South. The League of the South, according to the testimony, is an organization that advocates the rights of individual States to secede from the Union and seeks to resurrect a Southern Anglo–Celtic culture. (Delugas 604–06; Epps 1757–58; Strommer 959–61).

Board President Patricia Delugas, Vice President Theodore Biondo, and member Mr. Strommer, all members of the white majority, were featured guests at this rally. Ms. Delugas and Mr. Strommer testified at trial that they had received personal pleas from the head of the local chapter of the NAACP alerting them to Mr. Fleming's associations and urging them not to attend. (Delugas 605, Strommer 959–61). They did attend, however, and together with Mr. Biondo appeared on the dais with Mr. Fleming himself.[8] A videotape of the rally was submitted into evidence (DX 358), and reveals that each of these three Board members—after being introduced in their official capacities—gave rousing speeches before a raucous crowd. Excerpts from Ms. Delugas and Mr. Strommer include the following:

> "The Rockford School District was found guilty of discrimination. False!"—Ms. Delugas.

> "The school board is recalcitrant and lawless. False! If you answered 'true,' you ... need to be de-programmed."—Ms. Delugas.

> "Magistrate Mahoney's opinions are the law of the land. False!"—Ms. Delugas.

> "Neighborhood schools are illegal and inherently racist. False! If you answered 'true,' you're a graduate of the Stanley J. Roszkowski School of Constitutional Law."—Ms. Delugas.

> "Rockford is a city held captive by judicial tyranny."—Mr. Strommer.

> "Rockford has a king—P. Michael Mahoney, who has his general. General Eubanks[9] and his occupation army are quartered in our community."—Mr. Strommer.

See DX 358 (Video); PX 29 (Transcribed).

***8** Statements such as these speak for themselves. They do not show the court, much less the minority community, a good faith commitment to the decree or the principles underlying it.

Abdication of Board Function

The public statements of the Board members have been backed up by their actions. Their actions have demonstrated a refusal to participate meaningfully in the litigation, an outright abdication of their legal function, and efforts to derail the remedial process.

Refusal to Participate in Formulating Remedial Plan or Annual Budgets

The first obligation of a school district that has been found liable for discrimination is to come forward with a plan to remedy the effects of that discrimination. *See Green v. School Board, New Kent County,* 391 U.S. 430, 438–39 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now").
This court followed *Green* by charging the District with the initial responsibility of proposing a remedial plan. This approach served several objectives. First, it minimized judicial intrusion into local affairs. Second, it preserved judicial resources by leaving the court out of educational debates. Third, it offered some promise of a superior plan, as the District itself sits in the best position to integrate remedial objectives into its overall educational mission.

These efforts went for naught. Despite the extension of deadlines, the District failed to ever come forward with a remedial plan. The initial task ultimately fell to the special master. The District then joined the process and agreed to many of the remedies before later challenging them in the Circuit Court.

The Board has taken the same approach to the annual budgeting process, which involves an extensive review of expenditures for the remedial programs. District staff, as opposed to Board members, have cooperated extensively with the master in this process; the former superintendent, Dr. Ronald Epps, was particularly helpful in developing

the annual budgets. The support ends there, however; as the Circuit Court noted in its most recent opinion, the Board's approach to budgeting consisted of taking "pot shots" at the budget proposed by the master. *See* 171 F.3d at 1087. That observation has held true every year.

Refusal to Enter Tax Levies

Once each annual budget has been finalized, monies to fund that budget must be identified. This court declined to order the use of any particular funding source in the CRO. The court instead noted that the District was responsible for funding the remedies, and left the details of that endeavor to the District. CRO at 210–14.
The Board responded by proposing that the annual costs of CRO implementation be paid by entering levies each year pursuant to the Illinois Local Governmental and Governmental Employees Immunity Act, 745 ILCS 10/1–101 *et seq.* (the "Tort Immunity Act"). This proposal proved controversial, and spawned satellite litigation that has subsequently wound through both the federal and state courts. *See In re Consolidated Objections to Tax Levies of School Dist. No. 205,* 306 Ill.App.3d. 1104 (2nd Dist.1999); *In re Application of County Collector,* 96 F.3d 890 (7th Cir.1996); *and In re Application of County Collector,* 918 F.Supp. 235 (N.D.Ill.1990).

***9** The court approved the proposal because it appeared then—and appears now—to be the least intrusive means of funding the remedial measures. It should be noted that alternative funding sources have been identified for certain expenses; capital improvements, for example, have been funded by Certificates of Participation ("COPs"), which are debt instruments similar to bonds. The Tort Immunity Act has been identified and utilized only as a funding source for year-to-year expenses. The Board has never come forward to propose an alternative.

The annual entry of levies has generally not gone well. The first difficulties arose in December 1996. Three pertinent levies were before the Board at its meeting on December 10 of that year. The first was a levy that would generate income sufficient to retire the COPs over their lifetime; this levy was a prerequisite to actually issuing the COPs, which had not yet been done. The second was a lease levy, which would raise funds to lease educational space. The third was the annual levy for funding programs through the Tort Immunity Act. All three levies had been ordered by the court, but all three failed that night: one on a deadlocked 3–3 vote (one sitting member was absent from the meeting) and the others for lack of a second.

The levy resolutions themselves had been prepared by the law firm of Scariano, Kula, Ellch & Himes, then counsel to the Board. Ms. Delugas requested that the Scariano firm revise the resolutions to reflect, among other things, that the levies had been ordered by the court without regard for the feelings of voters or of the Board. The Board acceded to counsel's insistence that an additional revision excusing the Board from voting on the levies altogether could not be inserted; but this accession came only after a failed motion (made by Mr. Neblock and seconded by Ms. Delugas) to terminate employment of the Scariano firm.

Following this board meeting, the Scariano firm and in-house Board counsel, Mr. William Quinlan, filed a status report with the court. *See* Docket 2494 (December 16, 1996). The report is striking for both its candor and its implications. In addition to recounting the events of the December 10 meeting, the report states that, "[i]n sum, the Scariano Law Firm and William J. Quinlan can no longer report to the Court with any certainty that the Board of Education will take the actions necessary to implement the CRO and subsequent orders entered by this Court." Status Report at 1–2.

The levies came up again for vote at the Board meeting of December 17, 1996. The levy resolutions had been amended to include clauses reading as follows: "the Board of Education does adopt this levy under compulsion of Court order and subject to any appeals process available to the Board of Education including the Board's pending appeal from the December 6, 1996 Order to the United States Court of Appeals from the Seventh Circuit." (PX 33 at Bates Stamp 7832). The levies were approved in this form.

***10** Both the Scariano firm and Mr. Quinlan were later terminated. Dr. Epps, who was intimately familiar with the Board in general and with these proceedings in particular, testified that the Scariano firm was terminated because the Board majority believed that the firm "[was] not effectively representing them and their wishes"; the Board majority wanted to pursue "litigation objectives relative to stopping ... the sale of the COPs," while the Scariano firm's objective was "implementing the [court's] order." (Epps 1734–35).

The next year brought a different course of events. After a hearing to set the 1997–98 expenditure plan, the court directed the Board to propose a means for funding the expenditures. The Board's report "assume[d] that this Court can and will enter" an order directing the Board to levy under the Tort Immunity Act, but stopped short of either espousing that approach or proposing any other. *See* Docket 2781 (September 24, 1997).

Plaintiffs moved for entry of a revenue generation order, but the court initially denied the motion. Noting the "responsibility of the District to fully fund all CRO remedies," the court concluded that "the court cannot be expected to continuously spoon-feed the RSD regarding

every aspect of CRO implementation," and that "the RSD should require decreasing involvement from the court, rather than increasing involvement and continuous direction." *See* Docket 2844 (December 8, 1997).

The Board persisted in refusing to either enter the levy or propose alternative funding. The court ultimately directed that the levy be entered, issuing an order that ran against each Board member in his or her "official capacity." The levy was entered, but three individual members—Mr. Biondo, Ms. Delugas, and Mr. Strommer—sought to personally intervene into the litigation. Docket 2881 (12–22–97). That attempt was denied by both this court and by the Circuit Court. Docket 3009 (5–7–98); 171 F.3d at 1088–90.

Finally, 1998 brought a third scenario. The Board entered into a stipulation in September 1998 indicating, among other things, that it was willing to close its schools rather than levy under the Tort Immunity Act:

> 2.7.[10] The "FY 99 Unfunded CRO Costs"... total approximately $24,678,507.
>
> 3.4. The Board has been unable to develop an alternative plan to simultaneously fund the FY 99 CRO Expenditure Plan and the regular operations of the school system.
>
> > 5. The Rockford Board of Education will not voluntarily use the tort immunity levy to generate revenue for the FY 99 CRO expenditure plan or COPs debt service payment.
> >
> > 5.3. In the absence of some form of a levy to raise revenues to pay for the FY 99 CRO Expenditure Plan as ordered by the Court, RSD would most likely be incapable of sustaining its operations through the second half of FY 99 ....
>
> *See* Plaintiffs' Motion for Revenue Generation Order, Exhibit E, Docket 3116 (September 16, 1998). The District made no funding motion under *Missouri v. Jenkins.* The court again directed each member of the Board, in his or her "official capacity," to take sufficient steps to enter a levy to fund the unfunded portion of the FY 99 expenditure plan. *See* Docket 3144 (October 28, 1998), *and* Docket 3154 (November 6, 1998).

***11** The white majority of the Board refused to follow the order, having developed a new litigation strategy. The first hint of the strategy came when the Board contended that no portion of the FY 99 expenditure was "unfunded," despite contrary stipulations by the Board and findings of fact by this court. *See* Docket 3209 (December 16, 1998). The Board majority was hoping, first, that the Circuit Court would invalidate about half of the expenditures called for in the FY 99 expenditure plan. (Epps 1769). The board members then hoped to fund the remaining programs by raising the general education levy through public referendum. (Epps 1769). This strategy was never proposed to the court, and it carried substantial risk. State law required that the Tort Immunity levy be entered on or before December 29, 1998; but argument before the Circuit Court was not scheduled until the following February and the referendum could not be placed upon a ballot until April.

Indeed, the strategy failed. The Circuit Court rejected the Board's appeals in a decision handed down March 19, 1999, finding neither an "alternative budget figure ... from which the funding of the improper programs had been subtracted" nor "any crisp, quantitative sense of what [the Board's] own preferred mode of compliance would look like." *See* 171 F.3d at 1087–88. The referendum was defeated at the polls a few weeks later. (Epps 1735).

On April 15, 1999, Plaintiffs moved this court to enjoin the state law deadline for entering a Tort Immunity levy (the county still had time to include a levy in that year's property tax assessment). *See* Docket 3281 (April 15, 1999). The court denied that motion, placing the responsibility for a funding solution where it belonged: on the District's own shoulders. *See* Docket 3290 (April 15, 1999). The District made its own motion on April 26, requesting that the court enjoin the state-law deadline. That motion was allowed the same day and the levy was ultimately entered successfully.

The court was neither eager nor pleased to take so drastic a step. The court is striving to extricate itself from local affairs, but episodes like this only complicate and deepen the court's involvement. The exigency here was entirely of the Board's own making; only its unilateral defiance of funding orders entered the previous Fall made court action necessary. Nevertheless, at least one individual who was then a member of the Board majority maintained as recently as February of this year that the Board had never been ordered to enter a levy at all: "During the course of the four years [that I was a Board member], I don't think the magistrate actually ever ordered us to [levy]." (Neblock 793). Such denial, which is simply inaccurate, is indicative of the battles which the court has been forced to fight to fund the remedial programs of the CRO.

Refusal to Authorize Remedial Expenditures

Once an annual budget and funding source are in place, day-to-day implementation of the programs requires day-to-day expenditures. The Board has often dragged its feet in approving expenditures, delaying their votes or refusing to vote altogether.

***12** Judge Roszkowski first encountered such resistance after entering the First and Second Interim Orders. Judge Roszkowski appointed a special master (the same master now overseeing implementation of the CRO) to counter those tactics, directing that expenditures approved by the master be made even while Board approval was still pending. This allowed the master to begin implementing remedies without Board interference.

State law still requires that the expenditures be approved by the Board, but recently the Board has withheld its approval altogether. CRO expenditures were originally included among other day-to-day expenditures for approval, but the Board has altered that process. (Epps 1716–20). CRO expenditures are now singled out and receive neither review nor a vote; believing themselves powerless to disapprove of the expenditures, the Board majority has consistently refused to take any action upon them at all. (Strommer 850) ("voting for something that the board has no control over is rather nonsensical.").

The tragedy here is opportunity lost; the Board could demonstrate a commitment to the remedial programs by an affirmative vote. The expenditures are still being made, and the programs are still being run; the Board's stance is largely symbolic. That stance betrays the Board's lack of commitment to the remedial process and objectives embodied in the CRO.

Moreover, the Board's actions have concrete effects upon the programs. Inaction speaks as loudly as action, and inaction such as this affects the morale of good and dedicated people in the schools who are trying to deliver the educational remedies. (Orfield 2212–13, 2262). The District's own employees testified that the perception of Board opposition to the programs impairs their implementation. (Dimke 369–71; Epps 1707–1709; Swanson 1594–97). Dr. Epps felt compelled to choose between implementing the CRO and keeping his job. (Epps 1708–10).

Conclusion

In the shadow of this record, the Board now seeks credit for the very progress that has been made without its aid and, at times, in the face of its active opposition. The Board claims a right to conduct "guerrilla warfare" under the First Amendment, as if finding " 'bad faith' would ... undermine the very principles of freedom upon which this nation was founded." Defendants' Proposed Findings of Fact and Conclusions of Law at 183. Eloquence cannot disguise the fallacy in suggesting that the First Amendment secures both a freedom to speak and immunity from the consequences that speech may bring; the former is as true as the latter is false. More fundamentally, the Board fails to acknowledge that its consistent course of *conduct* has left this court without any rational basis for finding good-faith support of the remedial process. In many ways, this litigation was brought about by years, decades, and generations of District actions taken without regard for consequences to the minority community; further disregard by the District for the consequences of its actions is hardly the road towards resolution of this matter.

***13** The court is anxious to bring this litigation to a close, but something more must certainly be expected of the Board. The court's experience in this case and the evidence admitted at trial make one proposition exceedingly clear: This Board, at this time, cannot be fully trusted with the constitutional welfare of the minority students committed to its care.

That said, there are certain areas—outlined below—where the court's work is complete. The court will accordingly relieve the District of further affirmative obligations with respect to those areas and return control of their day-to-day operations to the District; but, in light of the concerns expressed here, the special master will retain a monitoring function with respect to those areas, and the court will retain jurisdiction to redress any discrimination which might recur. *See Freeman,* 503 U.S. at 498 (court may withdraw level of supervision incrementally consistent with underlying remedial purposes). This approach will provide the Board with abundant opportunities to prove its constitutional mettle.

MODIFICATIONS TO THE CRO

The court's involvement in this case has always been driven by three primary considerations. First, the court has a constitutional obligation to eradicate the vestiges of discrimination to the extent reasonably practicable and to return the minority students of Rockford to the position which they would have occupied in the absence of past discrimination. Second, the nature of the remedies must be tailored to the nature and scope of the constitutional violation. Third, the court is striving to return control of the District to local authorities as soon as possible. *Milliken v. Bradley,* 433 U.S. 267, 280–81 (1977). Education is inherently a function of local government and is, perhaps, the last and most jealously guarded bastion of State sovereignty.. With those guiding principles in mind, the court will review the progress towards those goals and determine what reasonably practicable measures remain to be taken.

I. Facilities, Student Assignment, and Transportation

The interrelated problems regarding facilities, student

assignment, and transportation stem primarily from the capacity shortage in minority communities: structural displacement forced minority students to accept one-way busing to distant schools. The court will thus begin by reviewing the present capacity situation and its implications for transportation and assignment.

1. Facilities

The need for capital improvements was driven first by the southwest capacity problem; additional capacity was needed in the quadrant to alleviate the overcrowding and transportation burdens suffered by those students. On the qualitative side, capital improvements were necessary to bring buildings in predominately minority areas of the city up to par with buildings throughout the rest of the District.
Three new buildings have been built in the southwest quadrant. Barbour and Ellis, both formerly K–6 elementary schools, were each razed and replaced with K–8 buildings. The new Barbour houses a bilingual/bicultural magnet, while Ellis has been developed as a performing arts magnet. The third new building is the Rockford Environmental Sciences Academy ("RESA"), a 6–8 facility developed as an environmental science magnet. (Olson 445–49).

***14** Two schools in the northwest quadrant have been reopened. Kennedy Middle School was reopened as a comprehensive 6–8 middle school, and Haight Elementary School was reopened as a K–6 Montessori program. (Olson 442–43). Other projects include air conditioning at Haskell, where a year-round calendar has been implemented, and computer labs to support the technology focus at the Rockford Science and Technology Academy ("RSTA"). (Olson 442–46).

These projects have satisfied the capital improvements contemplated by the CRO at the elementary and middle school levels. James Olson, who is the General Director of Operations for the District and whose judgment carries great weight with the court, testified that the buildings in the northwest and southwest quadrants are now qualitatively superior to buildings in the northeast and southeast quadrants. (Olson 467). The court can thus discern no reason to pursue further capital improvements at the elementary or middle school level.

Utilization problems persist at the high school level, however. The closing of West High School in 1989 left west side students with only one local high school (Auburn), and the subsequent reopening of West as a middle school failed to address that problem. Auburn offers only 1,635 seats to the 2,643 high school students residing west of the Rock River. The Gifted and CAPA programs are still located at Auburn, where they consume about one-third of the seats that could otherwise go to west-side students seeking to enroll in traditional comprehensive classes.

These problems have been largely cured by the implementation of Controlled Choice. First choice rates—the percentage of students receiving their first choice of schools—have consistently been very high at each of the four high schools, at times reaching 100%. Thus, even though the distribution of capacity is not proportional to the geographic distribution of students, the distribution of capacity does comport very well with student demand. The court thus sees no pressing reason to increase capacity at Auburn.

In particular, the court sees no need to relocate either the Gifted or CAPA programs out of Auburn, as originally contemplated in the CRO. The District has agreed to fill its stand-alone Gifted program with at least the same proportion of minority students found in the general student population; thus, although the Gifted program consumes seats at Auburn, it does not impact the overall desegregation. CAPA does not share that distinction, but Auburn has been able to meet its student demand even with CAPA present in the building.

A residual transportation burden does remain for the high school students. The disproportionate geographic distribution of high school seats forces minority students to travel, on average, longer distances to school. A similar residual burden is noted later in this opinion with respect to elementary students, but the burden is much less troubling at the high school level; high school students can endure transportation much more easily than kindergarten students. The court concludes that this burden is too small to justify further measures to improve capacity at the high school level.

***15** Capital improvements are needed at Auburn. With the agreement of the parties and the master, the court earlier released 5.1 million dollars of carryover funds to make renovations at Auburn. Those funds were released in advance of this opinion so that work could commence during these summer months. The project is currently being overseen jointly by Mr. Olson and Dr. Eubanks. The court is confident that they will make the best possible use of those funds.

The court does not foresee further capital improvements at the high school level, but this conclusion comes with a significant caveat. The resident utilization rate at Auburn remains high and the situation is only acceptable because Controlled Choice has resulted in proportional student demand for each of the District's high schools. If some change should upset that balance—changes in choice rates, for example, or replacement of Controlled Choice with a mandatory assignment system—then additional measures might be necessary and justified.

2. Assignment Plan

Controlled Choice was first implemented for the 1997–98 school year. At the District's request, it was implemented only at "entry-level" grades—students who had already been assigned to a school building were allowed to progress through the highest grade offered at that building. This results in a phase-in of the remedy as those entry-level students matriculate into higher grades each year. Choice could have been implemented simultaneously at all grade levels, but the prospect of reassigning 27,000 students through a new and unfamiliar system was an administrative nightmare.
By 1999–2000, choice had progressed into grades K–2, 6–8, and 9–11; grades 3–5 and 12 remained bound, for the most part, to prior segregative assignments. Some progress has been made in those non-choice grades, as new students transferring into the District (a total of about 2,000 students each year) and intra-District transfers have been subject to the racial fairness guidelines at all grade levels; but that does not change the fact that the Class of 2000 just graduated high school without ever participating in the assignment remedy, nor does it change that fact that next year's fourth- and fifth-grade students are still honoring assignments made under the former discriminatory system. Choice will not be fully operational until 2002–03.

The Board contends that three years of choice have been sufficient, and wishes to dismantle the plan now in favor of an unspecified alternative. The Board cites progress already made in desegregating the schools and in making capital improvements in the southwest quadrant to support its request, notwithstanding its own opposition to those very initiatives. The Board has developed an analysis which purports to show that the southwest quadrant now has sufficient capacity for all of its resident elementary students. (DX 161; Trapp 23–35). The crux of this analysis lies in converting every last elementary building on the west side—including the Gifted program at King—into comprehensive elementary classrooms. (Trapp 131–32).

***16** This analysis, however, does not consider all of the liability findings that the student assignment remedy was designed to address. In fact, it raises more questions than it answers. What attendance zones would be used by a new assignment plan? The attendance zones used in this analysis were specifically found to have been gerrymandered for purposes of artificially segregating schools in the District. *See* 851 F.Supp. at 917–19, 1026–81. Dr. Eubanks determined that a return to the former attendance zones would resegregate 20 of the 35 elementary schools overnight. (Eubanks 2733; CEX 10).

What would become of the magnet programs that have been developed? The Board's plan would convert all of the magnet schools into comprehensive elementary schools. Destruction of the programs which are just taking root would not only be a monumental waste of time, money, and effort, but would impair the remedial purposes that those same programs continue to serve. Would the magnet programs be relocated to east side schools? That might resegregate the schools even further, for the magnets were deliberately located on the west side to attract voluntary desegregative transfers by majority students.

What class sizes would such a system yield? The capital improvements ordered by the court were designed to alleviate overcrowding, but those improvements addressed only a minimum of needs. It appears that the Board's plan would yield west-side elementary schools with utilization rates of nearly 100% and east-side schools with utilization rates comfortably below that level; and that says nothing of the high school capacity problem that would return if Auburn were to revert to an attendance zone facility.

Finally, what of the fourth- and fifth-graders who have not yet participated in the assignment remedy? The District's own phase-in process has forced them to wait until sixth grade in order to participate in choice. The Board is content to leave them without a remedy. Even their own expert disagrees here. Dr. David Armor would continue choice at this time in order to eradicate the last discriminatory assignments at the elementary level. (Armor 991–95).

The court has never expected any remedy to be perfect, least of all the assignment remedy; some students have had to wait years to participate in the choice process. That imperfection is the result of the year-by-year phase-in process. It is important to remember that the choice plan itself and the phase-in approach were initially proposed by the District; the Board cannot now be heard to argue that it is impracticable to see that phase-in through to the end.

The Board is trying to dismantle its own plan before it is even fully implemented. Even the success of the plan cannot justify such a result. If it could, a mandatory assignment plan could be adopted and abandoned after only one year; surely that is not the case.

The difficulty lies in confusion of independent obligations regarding implementation and duration. Clearly, the District is on course to satisfy that provision of the CRO requiring *implementation* of Controlled Choice as of the 2002–03 school year; but that says nothing of the *duration* for which the plan should operate. If mere implementation satisfied durational requirements, then litigation such as this would achieve no more than a fleeting snapshot of equal protection. The moment of full

implementation transcends neither the vestiges of discrimination past nor the potential for discrimination in the future.

***17** The difficult task is determining a duration of the plan that will address remaining vestiges of discrimination to the extent reasonably practicable. The court has used the following chart in approaching this task:

	ELEMENTARY SCHOOLS							MIDDLE SCHOOLS			HIGH SCHOOLS		
	K	1	2	3	4	5	6	7	8	9	10	11	12
1997—98	K							7		9			
1998—99	K	K						7	7	9	9		
1999—00	K	K	K				6	7	7	7	9	9	
2000—01	K	K	K	K			6	6	7	7	7	9	9
2001—02	K	K	K	K	K		6	6	6	7	7	7	9
2002—03	K	K	K	K	K	K	6	6	6	6	7	7	7
2003—04	K	K	K	K	K	K	K	6	6	6	6	7	7
2004—05	K	K	K	K	K	K	K	K	6	6	6	6	7
2005—06	K	K	K	K	K	K	K	K	K	6	6	6	6
2006—07	K	K	K	K	K	K	K	K	K	K	6	6	6
2007—08	K	K	K	K	K	K	K	K	K	K	K	6	6
2008—09	K	K	K	K	K	K	K	K	K	K	K	K	6
2009—10	K	K	K	K	K	K	K	K	K	K	K	K	K

A few words of explanation regarding the chart are in order. The columns of the chart represent grade levels, and the rows represent school years. The chart begins with the 1997–98 school year, the first year that Controlled Choice was implemented. For each school year, reading across, the chart indicates which grade levels have been affected by Controlled Choice and what school year those students first exercised choice. Thus, for the 2000–01 school year that is about to start, students in grades K–3 will have first exercised choice in kindergarten; students in grades 4–5 will not have exercised choice at all; students in grades 6–7 will have first exercised choice in grade 6; and so forth. Note the change in middle school configuration effective with the 1999–00 school year.

Students entering the fourth grade this Fall are the last class of students still honoring discriminatory assignments. Full implementation of the plan would give these students their first opportunity to participate in choice when they enter sixth grade in 2002–03. If those students are to be assured that they will not suffer from another discriminatory assignment, then the assignment plan should remain in place until they enter high school in 2005–06.

That would be a duration of nine years—less than one generation of students, but enough to see the students who suffered from prior discriminatory assignments enter middle schools and high schools of their choice. The first Controlled Choice kindergarten class will be in eighth grade.

The court concludes that Controlled Choice should remain operational until 2005–06. After that time, assuming good faith by the Board between now and then, the court should be in a position to return day-to-day control of student assignment to the District. The court reiterates that it is now, and has always been, willing to consider alternative student assignment plans from the parties. The court even delayed part of the CRO when the Board hoped to propose a new plan at the eleventh hour. *See* CRO at 71–73 ("The Board claims a new and improved plan. The court is willing to listen."). Any alternative plan, however, must be sufficiently developed so that the court and the parties can assess its impact upon student assignment, transportation, and other desegregation objectives. Changes to the student assignment system entail great disruption to the District's operations and cannot be taken lightly.

3. Transportation

***18** Transportation problems arose in two contexts. First, the southwest quadrant capacity problem created additional transportation burdens for the minority students concentrated there; if the schools are not brought to the children, the children must be brought to the schools. Second, minority students did not have equal access to after-school transportation. Many minority students were unable to take advantage of after-school tutoring and co-curricular activities.

The first problem has been largely cured by the conversion to choice-based assignments and the increased capacity in the southwest quadrant. Choice tends to equalize transportation burdens by mobilizing students of all races District-wide. Choice also ensures that, to some degree, transportation burdens are being voluntarily assumed by students; the former attendance zone system resulted in mandatory one-way busing for minority students.

The average travel time for students who travel to school has been equalized for all students: majority students travel an average of 22 minutes, and minority students travel an average of 22 minutes. (Armor 1022–23; DX 187). A residual burden remains, however; though the average travel time is uniform, the number of students traveling long distances to school is not. Dr. Armor testified that nearly 1 in 3 majority elementary students (30%) lives within 1.5 miles of his or her school, while the same is true for only 1 in 5 minority elementary students (19%). The same pattern holds true in the middle schools (17% of majority students, 13% of minority students) and the high schools (18% of majority students, 11% of minority students). (DX 184; Armor 1020–21). Though these travel burdens depend upon students' individual choice of schools, there is a relation to the disproportional allocation of seating capacity throughout the District; majority students, on average, still have more schools closer to home from which to choose.

The court is not aware of reasonably practicable means to further equalize these transportation burdens at this time. Additional construction in minority communities would improve the situation, but not well enough to justify the expense.

The after-school transportation problem has been resolved. After-school transportation which is provided is apportioned throughout the District and among students on an equal basis. (Creighton 301–02). Again, the conversion to choice-based student assignments has played an important role in resolving this problem: not only has equalizing the racial makeup of the District's schools equalized access to resources such as after-school transportation, but the element of choice in making assignments ensures that some of the transportation burdens remaining have been voluntarily assumed.

There is no need for further changes in the provision of transportation. The court thus returns day-to-day responsibility for transportation to the District, but charges the master to monitor the transportation system.

II. Educational Components

***19** Educational components are a vital part of the CRO for three reasons. First, supplemental programs are needed to counter the discrimination which minority students had suffered; those students still in the system are entitled to a better education than they have received.

Second, some transitional programs are needed to desegregate classrooms throughout the District. This is particularly true where the discriminatory use of tracking had wrongfully placed many high-scoring minority students into low-track courses. Minority students cannot be expected to thrive in mainstream classrooms without assistance to ease their transition. (Orfield 2207).

Finally, both transitional and magnet programs are needed to support the student assignment plan. Transitional programs help minority students take advantage of the new assignment plan; in the words of the master, it would be a "cruel hoax" to desegregate the schools without helping minority students transition into the schools from which they had formerly been excluded. *See* CRO at 30. Magnet programs are an integral part of the plan itself; they are used to break down racially-identifiable schools by encouraging voluntary desegregative transfers. *See* CRO at 87.

1. Supplemental Programs

The overriding justification for supplemental programs is the deficient education which many minority students had received. Discriminatory assignments, inadequate facilities, and classroom segregation had combined to deny minority students a full and equal educational opportunity.
A number of programs have been implemented to address these shortcomings. The programs are, on the whole, well-established and well-respected in the educational community. Success for All ("SFA") is an intensive literacy program at the elementary schools that was originally developed at Johns Hopkins University. SFA provides students with 90 minutes of specialized reading instruction each day, and then builds upon that instruction through tutoring and family involvement. The program has been phased in throughout the District and is currently operating in ten elementary schools. The first schools came online in the 1992–93 school year, and the most recent school came online during this past school year, 1999–2000. SFA has been well received and is considered a success. (Dimke 340–345; Swanson 1578–1600).

Reading Recovery is another literacy program. Overseen in the United States by the Ohio State University, Reading Recovery targets the lowest 20% of the first grade population. Those students receive about 60 sessions of one-on-one tutoring with a specialized teacher. Reading Recovery and its Spanish equivalent, Descrubiendo la Lectura, have also been phased in over the last several years; some schools implemented the programs as early as 1994–95, and others have implemented as recently as 1999–2000. Though full implementation has been hampered by lack of funds, these programs are also widely regarded as a success. (Dimke 345–46, Ragagli 1612–13).

***20** Other programs are designed to prevent deficiencies at the earliest stages of education. Early Childhood Education ("ECE") was implemented after remand from the Circuit Court, see 111 F.3d at 539, and has been integrated with Head Start and other State-funded programs for preschool students. These programs serve a total of about 1400 four-year-olds who qualify under State guidelines for preschool services. (Dimke 347). All–Day Kindergarten provides a full-day, rather than half-day, placement for kindergarten students. The District's kindergarten offerings currently include 93 all-day and 17 half-day sections; the all-day sections are consistently overchosen by incoming students. (Dimke 346–47).

The CRO supports two types of programs in the secondary schools. The first are magnet programs, which provide specialized education in a variety of disciplines; their curricula are discussed in greater detail below. Five magnet programs are currently operating in the middle schools. There are no CRO-supported magnets currently operating at the high school level, but there are plans to complement the science and technology programs at McIntosh (K–2) and RSTA (3–8) with a similar program at Auburn High School.

The CRO also supports traditional tutoring and summer school programs in the secondary schools. Middle school tutoring is funded entirely through the CRO. High school students with one course failure are enrolled into summer school; students with two or more failures are enrolled into the Saturday Academy. (Dimke 349).

These supplemental programs are serving the students well; the primary debate concerns their duration. Resolution of that debate turns largely upon the relation that these programs bear to classroom desegregation and the student assignment plan.

2. Within–School Desegregation

Within-school desegregation measures the degree to which students within a school are segregated into different classrooms. Classroom segregation resulted largely from the use of tracking, a practice which this court initially forbade outright; on appeal, the Circuit Court held that the District need not abandon tracking if it could develop "objective and nonracist" criteria to govern admission into upper-level courses. *See* 111 F.3d at 536.
The District rejected that option on remand. Rather than develop and apply "objective and nonracist" criteria, the District opted for a numerical standard in both the elementary and secondary schools. The District specifically stipulated that a standard of +/12 percentage points would provide the latitude necessary to desegregate all of its core courses (within-school requirements do not apply to elective courses). The court adopted the District's proposal.

Efforts to desegregate elementary classrooms have been very successful. In 1999–2000, 550 of 556 elementary classrooms were desegregated; the last six classrooms were, on average, out of compliance by less than one student. (Trapp 63–64; DX 141). Middle school classrooms have also been desegregated very successfully: despite isolated areas of concern (such as mathematics classes at Eisenhower, where one section had no minority enrollment at all in 1998–99), District-wide compliance stands at 94.5% for 1999–2000. (Trapp 65–66; DX 140).

***21** Compliance at the high school level is in a shambles. The District achieved very high within-school desegregation at the high school level prior to the 1997–98 school year: 86.3% compliance in 1993–94; 88.9% in 1994–95; 90.5% in 1995–96; and 88.3% in 1996–97. District-wide compliance then fell to 75.7% in

1997–98, and 57.9% in 1998–99. 100% compliance within a particular subject matter (for example, mathematics at East High School in 1995–96) was not uncommon prior to 1997–98, but has not been duplicated since then. Guilford High School alone plummeted from 78.1% overall compliance in 1996–97 to 33.1% two years later; mathematics sections at Guilford dropped nearly 75 percentage points (93.5% to 19.4%) over that same period. The following tables provide snapshots of compliance at each of the four high schools in 1996–97 and 1998–99:

Auburn	1996–97	1998–99	Guilford	1996–97	1998–99
English	98.0	74.4	English	83.6	33.3
Social Studies	94.4	57.9	Social Studies	68.0	54.5
Mathematics	91.2	58.6	Mathematics	93.5	19.4
Science	89.7	75.0	Science	62.9	31.3
Overall	94.0	69.3	Overall	78.1	33.1

East	1996–97	1998–99	Jefferson	1996–97	1998–99
English	100.0	75.0	English	80.0	59.2
Social Studies	100.0	52.0	Social Studies	94.1	80.0
Mathematics	90.2	41.7	Mathematics	82.4	72.5
Science	92.1	62.2	Science	83.3	75.0
Overall	95.7	60.0	Overall	83.2	69.3

Every single measure of within-school desegregation at every single high school declined. Modest improvement was seen in some areas in the 1999–2000 school year, but the problem is still pervasive. If there are salient, non-discriminatory variables that would explain this systematic and system-wide return to segregated classrooms, the District has not offered them.

The District contends generally that desegregation of the high schools is complicated by the flexibility given to students in selecting their own classes. This argument fails to acknowledge that desegregation requirements apply only to non-elective core courses (English, social studies, mathematics, and science) that all students are scheduled into; there is no desegregation requirement for

elective courses. The argument is undercut altogether by the District's own track record in desegregating its classrooms: 100% compliance was achieved in some core subjects as recently as 1996–97.

The differentiation between upper- and lower-level courses is also blamed for the problem. This course differentiation is a holdover from the former tracking regime, but structural barriers to courses have been removed; upper-level courses are now open enrollment and available to all students. (Miller 185–86). Minority representation in upper-level courses has increased, but is still lacking; minority students make up 37% of the high school population but only 16% of honors enrollment. (DX 208; Rossell 1213–14). In the 1999–2000 school year, 97 out of 155 high school honors courses failed to satisfy the racial fairness guidelines, all of them for want of minority students. (PX 112, 113; Oakes 1906–07).

***22** Dr. Christine Rossell testified on behalf of the District that minority students are *over*-represented in gifted courses. Her analysis was based upon minority student test scores: finding, for example, that minorities constituted only 6% of the "high scorers"[11] on standardized exams but 23% of gifted enrollment, Dr. Rossell concluded that minority students were being adequately served by upper-level courses. (Rossell 1214–15; DX 211, 212).

This analysis would be much more pertinent if the District had adopted test scores as objective and nonracist criteria to govern admission into all of its upper-level courses. The District has always passed on that option, however, choosing instead to apply numerical standards at all levels. That choice has costs and benefits; it allows the District to enroll low-scoring majority students into upper-level courses, but only on the condition that minority students are also fairly represented.

In this same regard, the District also suggests that the racial fairness guidelines be applied separately to upper-level courses; that is, that desegregation of upper-level courses be measured only against the enrollment of minority students into upper-level courses. The court rejects the suggestion for two reasons. First, it contradicts the District's own proposal to use the +/12 percentage point standard. The District represented that this standard was sufficiently flexible to desegregate its classrooms. Second, applying the same standard to all levels gives the District an incentive to encourage minority enrollment into upper-level courses—an essential element in breaking down the former tracking system.

Moreover, the court is swayed by the analysis provided by Dr. Jeannie Oakes. Dr. Oakes analyzed the enrollment of minority students into the full range of advanced classes offered by the District,[12] rather than just the Gifted program. Dr. Oakes also used "linked" data, which allows students' individual test scores to be linked to their individual course enrollments; Dr. Rossell's analysis relies upon aggregated data, which allows analysis of trends but does not recreate the experience of actual students. The linked approach provides a more accurate picture of student enrollments.

The court also notes that Dr. Oakes has concentrated upon ability grouping, tracking, and within-school integration for her entire career. Dr. Oakes has "probably published more about this topic than anyone else in the country," with more than one hundred peer-reviewed articles on ability grouping and tracking and fifty to one hundred peer-reviewed articles on within-school integration to her credit. (Oakes 1884–87). Dr. Oakes has twice been recognized by the American Educational Research Association for her work in these areas. (Oakes 1887–88). Dr. Rossell's expertise is equally impressive, but it is focused upon other areas: building-level desegregation, white flight, and bilingual education. Dr. Rossell has written an article regarding within-school integration that had been submitted for publication at the time of trial, but she had not otherwise published peer-reviewed work in this area. (Rossell 1251–58).

***23** Dr. Oakes' analysis breaks a student body into deciles of achievement according to test scores. Within each decile, Dr. Oakes compared the enrollment of majority and minority students into advanced classes.[13] This analysis revealed the following:

(PX 144; Oakes 1927–30).

This analysis reveals substantially similar enrollment patterns at either end of the spectrum: high-scoring and low-scoring students are enrolled into advanced classes at similar rates. Those students are the easy cases; battles are fought at the margin. Here, the fifth, sixth, and seventh deciles—that is, students who are on the borderline for enrolling into advanced classes—reflect the greatest racial disparities. The seventh decile, for example, reflects a differential of 9 percentage points, the highest overall; majority enrollment outpaces minority enrollment by one-third at the fifth decile. Course enrollment patterns have not yet equalized; minority students, the victims of a tracking system only recently torn down, still enroll into low-level courses in disproportionate numbers. The result is not necessarily surprising, as minority high school students received substandard education in elementary school. The infusion of student choice into the course selection process is a positive development, as are the modest improvements seen in classroom desegregation in the past year. The court expects that minority enrollment into upper-level courses will continue to improve over time as a result of the programs now in place.

The standard that is now in place was proposed by the

District itself. The District represented that +/12 percentage points was sufficiently flexible to desegregate its classrooms. The court has always been willing to consider alternatives if the District wants to rely upon objective and non-racist criteria. No matter what approach is used, however, that approach will be applied to students of every race. The court cannot sanction the application of different standards to students of different races.

The court also notes that the District has never enlisted the aid of the master or the court in resolving this problem. The CRO explicitly stated that the District should never apply classroom desegregation requirements to the educational detriment of students. *See* CRO at 198, 215. The court established a waiver system, empowering the District to apply to the master for a waiver in the event that the requirements became educationally unsound. The District never approached the master for such a waiver, even as its overall compliance at the high schools fell more than 30 percentage points in two years. (Eubanks 2766–67).

***24** Dr. Eubanks believes that the resegregation of classrooms is the result of inattention and neglect of the District's obligations. (Eubanks 2766). He believes that redoubled efforts, rather than drastic changes to either the system or to the CRO, will improve the situation. One recent change which he expects will prove helpful is the recent purchase of new course scheduling software that will better account for desegregation standards in course scheduling.

The District's own track record confirms that it can do better at the high school level; 100% compliance was achieved as recently as 1996–97. Classroom desegregation at the high school level simply must improve. The court will accept Dr. Eubanks' recommendation that present measures are adequate to address the problem, and that only effort is lacking. For want of any alternative proposal, the court reaffirms the within-school desegregation standards formerly proposed by the District and adopted by the court.

3. Support for Student Assignment Plan

Finally, educational programs support the student assignment plan. This need is two-fold. First, supplemental programs are necessary to enable minority students to participate in the plan; this need is served by many of the same programs described above, which will not be revisited here.
Second is the magnet programs, which are an integral part of the assignment plan; their variety of specialized programs encourage voluntary transfers to schools that were formerly racially-identifiable. (Orfield 2221–22). The District is currently operating 11 magnet programs:

Barbour (K–8)	—Bilingual (Spanish) and bicultural immersion
Dennis (K–5)	—Nature science
Ellis (K–8)	—Arts magnet; includes the K–8 CAPA program
Haight (K–6)	—Montessori program
Haskell (K–5)	—Year–round schooling (9 weeks on, 2 weeks off)

Lewis Lemon (K–5)	—Global studies
McIntosh (K–2)	—Science and technology
RESA (6–8)	—Environmental science
RSTA (3–8)	—Science and technology
Stiles (K–5)	—Investigative learning
Washington (K–8)	—Communications

Some magnets have only been recently implemented and require additional time to take root in the school and the student body; magnet programs generally require 4–6 years for full implementation. RESA, for example, was just opened in 1999–2000 and is entering its second year as a magnet. Barbour was magnetized in 1995–96, but it will be another three years before grandfathered non-magnet students graduate out of the building and the immersion program can be fully implemented.

The magnet programs vary in their success: Montessori is a very popular program and a desegregative success; Dennis and Stiles have had particular difficulty in attracting first-choice applications. These experiences fuel the ongoing process of identifying successful programs and underchosen schools—the former so that they may be replicated, the latter so that they may be improved. This process is an ongoing effort overseen by the master with input from the parties.

4. Conclusion

***25** The District has offered to run the educational programs for an additional two years, but the court thinks that time frame is too short to satisfy the purposes which the programs serve. The student assignment plan will remain in place until 2005–06, and segregation of high school classrooms is a continuing problem. Appropriate educational programs should continue consistent with those initiatives.

The master expects that the programs will require decreased funding over the coming years—annual

reductions of about 10%, by his projection, starting with the 2000–01 school year. This is a reasonable goal that the court expects will be obtained. This wind-down approach should allow gradual preparation for the return of student assignment and educational programs to local control after 2005–06.

The court sees no reason, however, to commit to particular programs or combinations of programs at this time. Those decisions are best made on a year-to-year basis that allows for continuing review of each program's efficacy. This is particularly true during a wind-down period, where the most educationally sound sequence for winding down or discontinuing programs might change from year to year and might not necessarily reflect the relative worth of those programs. The court, therefore, modifies the CRO to allow for the wind-down proposal by the master. The court notes that annual reductions in funding needs—assuming good faith by the District—will result in decreasing involvement by the court in funding.

III. Discipline and Co–Curricular Activities

Discipline and co-curricular activities are the last two remedial areas that the court wishes to address. These areas bear some relation to those discussed above, but they are better addressed separately.

1. ____Discipline

The CRO required the District to develop a uniform code of student conduct and to apply the code fairly, impartially, and equitably. The court has had an opportunity to review a complete copy of the District's discipline code. (DX 16). The code is thorough, well-developed, and uniform; above all, it is race-neutral. The code is printed in English, Spanish, and Laotian, and is distributed to students, teachers, administrators, and parents. (Miller 191).

Application of the code remains a concern, however. The code properly affords wide discretion to teachers and administrators, but that discretion raises the possibility of differential treatment. A complaint system is in place to review complaints of discrimination: if a complaint is not resolved on the building level, it is reviewed by the Area Superintendent who oversees that school.[14] (Miller 193–95).

Dr. Nathaniel Miller, an Area Superintendent for the last four years, testified that discriminatory application of the discipline code at the building level remains a problem. (Miller 195) ("I am not going to say [discrimination] doesn't happen on the lower level, but I am going to say that we have the review process there to catch those kinds of things before they go too far."). Dr. Miller has personally observed and corrected multiple instances where minority students have been treated unfavorably; he has found it necessary to rescind suspensions and even quash expulsion proceedings that he thought discriminatory in nature. (Miller 259–60). Overall, Dr. Miller admits to "concerns" that discipline is not being handed out fairly, and views correction of those inequities—or at least those inequities that are pursued through the complaint process—as his own responsibility. (Miller 261).

***26** The court is equally concerned by Dr. Miller's testimony. Disparate treatment is never acceptable, and students should never be left to depend upon a review process for equity. The court's contribution to remedying these problems, however, is complete. The District has adopted a race-neutral discipline code, and the court would be hard-pressed to improve upon the multi-level review process now in place. The court returns day-to-day responsibility for discipline to the District, but charges the master to continue monitoring the area.

2. ____Co–Curricular Activities

The CRO addressed two concerns regarding co-curricular activities. The first concerned transportation: minority students who had been mandatorily reassigned to distant schools were not provided with the after-school transportation necessary to participate in co-curricular activities. The second concerned participation levels; though no quantifiable thresholds were set, the CRO admonished the District to encourage co-curricular participation by all of its students, and to take steps to ensure that financial hurdles did not prevent minority students from participating.

Many of these concerns have been addressed through implementation of Controlled Choice. The activity bus problem was a consequence of mandatory assignment of minority students to distant schools. The District's activity bus is not comprehensive; at some schools, activity buses are only available 2 days out of the week. Insofar as the District's schools have been desegregated, however, the shortcomings of that system are borne equally by students of all races; the system might not be ideal, but it is not discriminatory. There is also no need for concern that racially-identifiable majority schools enjoy better co-curricular activities than racially-identifiable minority schools; Controlled Choice has nearly eliminated racially identifiable schools altogether.

Darryl Creighton, the District's Athletic Director, testified that all students are encouraged to participate in co-curricular activities. The court has no reason to believe otherwise. The District has also implemented a fund-raising program to help students to satisfy the annual

$50 activity fee.

The court finds no reason to retain control over the day-to-day administration of co-curricular activities, and returns that responsibility to the District. The master will continue a monitoring function.

IV. Finance and Administration

Finally, the court will address several issues pertaining to implementation of the remedies. The question of financial impact was raised *sua sponte* by the court, and will be updated here. The Citizens' Advisory Committee will be addressed, and the roles of the Associate Superintendent for Education and Equity and the master will be clarified.

1. Financial Impact

The court would like to re-examine the financial impact which this litigation has had upon the District and upon the community. Funding of remedies is ultimately the responsibility of the District, but the court is sensitive to financial realities and raised the issue *sua sponte* in the CRO. *See* CRO at 7, 209–214. This District has financial difficulties that predate this litigation and, unfortunately, will likely outlast it as well. The court has strived to endorse the most economical remedies that would make minority students whole.

***27** It can be difficult to delineate the costs of this lawsuit, however, because many of the obligations set forth in the CRO are obligations which the District should have been fulfilling in the course of its general operations. The obligation to provide equal transportation, for example, will not expire with this lawsuit; that cost must be absorbed by the District. The capital projects, as well, should not have required the impetus of litigation; Ellis school should have been attended to long before disrepair forced an entire wing of the building closed. In many ways, this lawsuit is correcting artificial deflations in past operating costs occasioned by the underprovision of services to minority students.

Other obligations are more compensatory in nature. Tutoring programs that help high-scoring minority students transfer out of low-track courses, for example, are designed to compensate for past deficiencies in educational services. Those temporary costs are the very costs which will now decrease from year-to-year as the short-term needs which they addressed are satisfied.

These compensatory costs are the costs which the court would like to isolate in assessing the financial impact of this lawsuit, for they are the temporary measures. Unfortunately, that breakdown is not available.[15] The accounting that is available allows the court to review the total dollars spent pursuant to the CRO. Those dollars have been accounted for in "Fund 12" as follows:

1996–97	$24,063,399	$25,555,297	$24,118,104	$1,437,193
1997–98	23,761,050	25,227,669	21,013,184	4,214,485
1998–99	21,891,224	24,569,329	23,596,038	973,291
1999–00	19,625,827	22,483,699	–	–[18]
Totals	89,341,500	97,835,994	68,727,326	

The court notes that Fund 12 has not impacted the District's general operating funds—and, more particularly, has not contributed to the accumulated deficit in the District's general operating funds. Fund 12 represents the Tort Immunity levy, which is a distinct revenue stream that would not be available to the District in the absence of litigation. Fund 12 has run a surplus every year; it is the accumulated Fund 12 surplus that was designated by the court for capital improvements at Auburn.

As noted above, the court has ordered a wind-down of the

educational programs. This wind-down will reduce the need for new funds by about 10% annually. The court anticipates future budgetary needs as follows:

Fiscal Year	Budgeted
2001	$17,550,000
2002	15,795,000
2003	14,215,000
2004	12,793,950
2005	11,514,555
2006	10,363,100[19]

The annual costs noted above do not include capital expenditures, which have been financed separately. Capital projects called for by the CRO—construction of Barbour, Ellis, and RESA; reopening of Kennedy and Haight; and renovations of other buildings—have totaled $49,624,105.[20] The court has been informed by the parties, however, that substantial grant monies may be available from the State to defray these costs. The court would be pleased by such a development and the relief which it would bring for local taxpayers.

***28** The court is aware that the District relies disproportionately upon local property taxes for funding. Dr. Paul Schilling, who acted as a court-appointed expert on the subject of finance, reported that Rockford has the third-highest effective tax rate in the State of Illinois, trailing only Cahokia and East St. Louis. (CEX 26 at 11). There was no evidence at trial that would provide a national context for Rockford's tax rate.

Dr. Schilling also broke down the local tax rates to delineate those portions attributed to the annual expenditure plans. These tax rates represent the total tax rate for "compensatory," non-"compensatory," and capital costs. This data allows calculation of the actual tax dollars paid by the owner of a $60,000 home (EAV $20,000) since 1996:

Fiscal Year	Tax Rate	Tax Dollars
1996–97	1.5017	300.34
1997–98	1.3081	261.62

1998–99	1.3359 (est.)	267.18 (est.)[21]
1999–00	–	–

This tax burden will decrease as the wind-down of programs requires decreasing funding. Grant monies from the State would also reduce the tax burden.

2. Citizens' Advisory Committee

The initial stages of implementing the CRO were aided by a Citizens' Advisory Committee. The Committee included business, religious, and community leaders representing many different parts of Rockford. The Committee has been an invaluable resource, and its members have provided dedicated and selfless service to the court, the District and, by extension, the entire city.
The court today, however, hopes to change the focus of this litigation from design and implementation of the CRO, to completion of its objectives. The court accordingly feels that this is a proper time to discontinue formal operation of the Committee. The court remains indebted to the Committee members for their service, and is certain that they will play important roles in resolving this matter by virtue of their leadership positions within the community.

3. Associate Superintendent for Education and Equity (ASEE)

The office of the ASEE was established in 1993 to oversee District implementation of remedial programs. The ASEE reports directly to the Superintendent, and works with the Area Superintendents, the General Director of Desegregation Implementation, the General Director of Curriculum and Instruction, the Director of Special Education, the General Director of Bilingual–Bicultural Education, and the Gifted program.
The office has been the subject of some experimentation. Dr. Barbara Pulliam resigned the position in December 1997 to relocate to another state. At the District's urging, the office was left vacant; the District hoped that absorbing the ASEE's responsibilities into the regular operations of the District would obviate the need for the office altogether. The court acceded to that request, and allowed the District a window of six months—beginning in August 1998—to demonstrate that the CRO could be implemented without oversight by the ASEE. The court indicated that the future of the position would hinge upon the stability of District leadership and progress made in implementing the CRO. *See* Docket No. 3093 (August 13, 1998).

***29** Both considerations later compelled the court to order the position filled. The following months saw the Board vote to replace Dr. Epps, whose personal dedication to implementing the CRO had been a primary consideration in leaving the position vacant. The Board also terminated its counsel during this time, on grounds that he had been committed to implementing the CRO rather than re-litigating it. The Fall of 1998 saw three individual members of the Board attempt to personally intervene into the litigation, as noted earlier in this opinion.

Implementation also waned. Resegregation of high school classrooms was a particular concern during this time. Dr. Epps and the master thus recommended that the ASEE be replaced, and the court agreed. *See* Docket No. 3348 (September 21, 1999). After an appropriate search, the master reports that the position has been filled. The position thus remained vacant for more than two years, but the court anticipates that the position will remain filled during these last stages of implementing the CRO. In light of the ASEE's overriding importance to successful implementation, the court further directs that she may not be relieved of her duties without concurrence of the master or the court. *See* CRO at 203–04.

4. Special Master

The special master has been the lone constant among District leadership since the CRO was entered. The school

board has seen significant turnover. The superintendent of schools left the District last Fall, and the court has learned that a permanent replacement was recently hired. The office of the ASEE was vacant for more than two years. Turnover at all levels is inevitable when operating an institution as large as the Rockford School District. The court finds no reason to conclude that the turnover seen was driven by anything other than natural political and administrative functions. Nonetheless, the turnover underscores the need for stability in the master's office. The court takes great comfort in the capability and dedication of those functionally responsible for implementing the court's orders, but no other leader in the District shares the master's depth of experience with, or comprehension of, the CRO. The court has found his services indispensable; loss of his assistance would severely hamper the remaining work to be done.

Nevertheless, the court contemplates that the master's role will diminish over time; surely it must, if the court is to extricate itself from local affairs as soon as constitutionally possible. That process has begun today, as the court has redefined the master as a monitor with respect to transportation, discipline, and co-curricular activities.

The student assignment plan will be fully operational starting in 2002–03, when today's fourth-graders reach middle school. The wind-down of educational programs will be well underway by that time. The last of the magnet programs will have been implemented, and most magnets will have been in place for the 4–6 years necessary to become fully operational. The capital project at Auburn should be complete, and the District will have had three years to demonstrate improved within-school desegregation in the high schools. In light of the progress expected by the end of the 2002–03 school year, that would be a proper time for the District to assume functional responsibility for the remaining remedial measures and for the master to assume a purely monitoring function.

***30** Continuation of the student assignment plan through 2005–06 will see today's fourth-graders enter high school, the objective identified earlier in this opinion. The magnet programs, all of which will have been online for four years or more, will have served their role supporting the assignment plan. The educational programs will have wound down to a baseline level of operation. Further involvement of the master or of the court beyond 2005–06 will be unnecessary; continuation of these initiatives will then be a question for the local community.

CONCLUSION

In consideration of the reasons stated in this opinion, the court allows each of the cross-motions in part. The CRO is hereby modified to the extent set forth in this opinion. Any provision not modified by this opinion shall continue in full force and effect, consistent with the law of the case.

Footnotes

1 The CRO was issued in six consecutively paginated portions between January and June of 1996: see Docket 1989 (January 26, 1996) (Pages 1–46), Docket 1999 (February 2, 1996) (Pages 47–73), Docket 2073 (March 12, 1996) (Pages 74–115), Docket 2170 (May 17, 1996) (Pages 116–122), Docket 2183 (May 28, 1996) (Pages 123–155), and Docket 2203 (June 7, 1996) (Pages 156–215). The CRO is reported in full at 1996 WL 364802 (N.D. Ill. June 7, 1996). Certain provisions of the CRO were modified by the Circuit Court on appeal. *People Who Care v. Rockford Board of Education,* 111 F.3d 528 (7th Cir.1997). Small modifications have also been made by this court. *See, e.g.,* Docket 3011 (May 7, 1998). Unless stated otherwise, references to "the CRO" should be understood as references to the CRO as modified.

2 The "utilization rate" is the ratio of students to seats.

Quadrant (Percentage Minority Population)	Capacity	Resident Students	Excess Seats	Utilization
Southwest (76.3%)	3036	4272	(1236)	140.7%
Northwest (24.9)	2318	2181	137	94.1
Southeast (17.7)	6407	5766	641	90.0
Northeast (12.3)	4218	3242	976	76.9

3 Citations to the CRO will reference page numbers of the court's original memorandum opinion.

4 The Rock River, running north-south through Rockford, is generally accepted to be a boundary between the west and east sides of the city.

5 The debacle surrounding this endorsement is set forth at pages 70–74 of the CRO.

6 The only limitations upon choice of schools is that northeast students cannot apply to southeast schools, and vice versa. The plan also contains subtleties such as a proximity preference and a sibling preference. A more complete description of Controlled Choice can be found at pages 78–84 of the CRO.

7 Citations to trial testimony will provide the name of the witness and pertinent page of the record. "PX" and "DX" will be used to designate Plaintiffs' and Defendant's trial exhibits, respectively.

8 The videotape of the rally reveals that Mr. Fleming, in his own speech that night, characterized the federal courts as "imperial" and the undersigned magistrate judge as a "viceroy."

9 Dr. Eugene Eubanks, of the University of Missouri at Kansas City, is the special master overseeing implementation of the CRO remedies.

10 Numerical paragraph designations have been lifted from the original document.

11 Dr. Rossell defined a "high scorer" as a student whose averaged Mathematics and Reading score was above the 85th percentile.

12 There was some disagreement between the parties as to what constituted an "advanced" course. Algebra 1–2 was a particular subject of dispute. Dr. Oakes made her definition of "advanced" contingent upon the grade level at which the course was being offered; Algebra was considered an advanced course if taken in the 9th grade, but not in the 11th or 12th. The District would reject that approach, instead defining "advanced" courses by their content alone, without respect to grade level.

The court believes that Dr. Oakes' approach is the better barometer of student enrollment patterns. Mathematics courses, in particular, are generally taught in a more rigid sequence; the grade level at which Algebra is taken reflects a student's advancement relative to cohorts in the same grade. Students who take Algebra at an early grade level will have opportunities to take even higher-level courses in later grades; the same is not true of students who do not reach Algebra until much later.

13 This analysis uses student "records" rather than students. A student record represents one student enrolled into one course; thus, one student who enrolls into four courses will generate four student records. This approach allows the analysis to account for students who take courses of different levels in different subject areas. Thus, by way of example, there are not 2,124 majority students scoring in the tenth decile; rather, majority students scoring in the highest decile enrolled into a total of 2,124 courses, 86% of which were advanced. Similarly, there were not 9 minority students scoring in the tenth decile; rather, the minority student(s) scoring in the tenth decile enrolled into a total of 9 courses, 81% of which were advanced.

Decile	**Number of Student Records in Decile (Percentage enrolled into Advanced Courses)**	
	Majority	**Minority**
Tenth (Highest)	2,124 (86%)	9 (81%)
Ninth	2,271 (74%)	227 (70%)
Eighth	2,346 (61%)	377 (59%)
Seventh	1,788 (46%)	446 (37%)
Sixth	1,819 (31%)	650 (24%)
Fifth	1,367 (20%)	667 (15%)
Fourth	1,492 (15%)	1,109 (13%)
Third	1,166 (7%)	1,103 (7%)
Second	941 (5%)	1,207 (4%)
First (Lowest)	633 (3%)	1,212 (2%)

14 The District employs two Area Superintendents, each responsible for about one-half of the District's schools.

15 A line-by-line review of each year's expenditure plan might yield an answer, but the effort—particularly if a definitive answer were to require adversary presentations—is certainly not justified.

Fiscal Year[16]	Bud geted[17]	Appropriated	Expended	Surplus

16 The last portion of the CRO was issued in June 1996, shortly before the start of the 1996–97 fiscal year on July 1, 1996. The court will therefore adopt the 1996–97 cutoff in reviewing the financial impact of the CRO. The court notes that many of the initiatives had actually commenced prior to that time, pursuant to the agreement of the District under the First and Second Interim Orders. Those efforts were taken into account by the court in fashioning the remedies called for by the CRO. See pages 209–214 of the CRO for discussion of expenditures made prior to 1996–97.

17 Appropriations each year have included some carryover of unexpended funds from the previous year; thus the differential between amounts budgeted and appropriated. Budgeted amounts thus represent new funds raised each year, and appropriations represent the total funds available

18 Final numbers for FY 2000 are not yet available.

19 The master's initial projection extended through 2004–05 (CEX 15), but the court has found that some programs will need to continue through 2005–06 in order to support the student assignment plan. The court has retained the 10% reduction factor in projecting 2005–06 budgetary needs, but notes that there has been no representation whether this is appropriate; it is possible that 2004–05 funding levels represent a bare minimum. The court will address this question with the master and the parties when the time arrives.

20 Again, the court wishes to note that the District undertook capital projects totaling $24,318,186 before the CRO was entered in 1996.

21 Final figures for 1998–99 were not available, and have been provided as estimates; figures for 1999–2000 were not available at all.