

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LEON W. BRADLEY, JR., et al.,

Plaintiffs,

vs.

PINELLAS COUNTY SCHOOL BOARD,
et al.,

Defendants.

REC.
SEP 1
ATTORNEY'S OFFICE
CASE NO. 64-98-CIV-T-238

**AMENDED ORDER GRANTING UNITARY STATUS
IN THE AREAS OF FACILITIES AND RESOURCES,
TRANSPORTATION, AND ADMINISTRATIVE STAFF ASSIGNMENT**

Before the Court is the parties' stipulation for Unitary Status in the areas of Facilities and Resources, Transportation, and Administrative Staff Assignment. The parties stipulate that both the PINELLAS COUNTY SCHOOL BOARD (the School Board) and the other defendants, through their actions and by their agreement to the provisions of this Order, have eliminated the vestiges of discrimination from the dual school system formerly operated in Pinellas County in the areas of facilities and resources, transportation, and administrative staff assignment and have attained unitary status in those areas.

Accordingly, the Court adjudges (1) that the Defendants shall comply in each of the areas of Facilities and Resources, Transportation, and Administrative Staff Assignment with the provisions of this order, (2) that this Court withdraws supervisory jurisdiction in the areas of Facilities and Resources, Transportation, and Administrative Staff Assignment, and (3) that

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all previous orders to the extent that they are applicable to Facilities and Resources, Transportation, or Administrative Staff are vacated, except the "Final Order" of July 23, 1971, as amended, which remains in full force and effect in all respects consistent with this Order.

A. FACILITIES AND RESOURCES

The School Board shall build three new elementary schools or their equivalent in south Pinellas County, south of Central Avenue and east of 58th Street South. For purposes of assessing good faith compliance with this Order, the capacity for approximately 2,587 student stations is the equivalent of three new elementary schools. The School Board may comply with this Order by constructing new schools, by adding new student stations to existing facilities, or by replacing existing facilities with new and expanded ones.

The School Board shall build one new middle school in south Pinellas County, south of Central Avenue and east of 58th Street South with at least approximately 1,000 student stations. The School Board shall also add 600 high school student stations, including those stations being converted for high school program use at Pinellas Technical Education Center (PTEC).

For purposes of assessing compliance with this Order, both the new schools and their equivalent and student stations shall mean permanent facilities. Portable and temporary classrooms are not counted.

The School Board shall remodel Gibbs High School in a manner equivalent in quality to the renovations at Boca Ciega, Seminole, and Clearwater High Schools. Expansions or

additions shall be equivalent in quality to those at Dunedin, Dixie Hollins, and Northeast High Schools.

The new construction of the aforementioned schools and student stations shall be completed within the time set forth below and measured from the day after this Order. The School Board will use its best efforts to satisfy applicable time limits. The following milestones shall be utilized to measure compliance with this Order.

PROJECT IDENTIFICATION--from the pupil assignment data, project scopes and locations are defined.

PROPERTY ACQUISITION--property purchases are targeted based upon identified projects and required locations. This will occur either by negotiation with property owners or by eminent domain or both.

FUNDING/BUDGETING--funding for the identified projects is budgeted within the District's Capital Outlay Plan and state mandated five-year Work Plan or other allowed sources of revenue. This activity may occur concurrently with property acquisitions.

DESIGN AND PROFESSIONAL--selection and negotiation with a design professional(s) for the identified and budgeted projects, which are contingent on the criteria for site selection and acquisition.

DESIGN--the facilities are programmed and designed producing the necessary documents from which to build.

CONSTRUCT--the new or expanded facilities are constructed or remodeled. Because the scope and type of construction to be undertaken will vary by specific project, the following measures of compliance apply:

New Elementary

Activity	Minimum Time In Months	Maximum Time In Months
Project Identification	4	6
Property Acquisition	14	18
Funding/Budgeting	0	0
Design Professional	3	6
Design	7	12
Construct	14	15
Total Time in Months*	42	57

New Elementary with Increased Stations at Existing Elementary Site

Activity	Minimum Time In Months	Maximum Time In Months
Project Identification	4	6
Property Acquisition	14	18
Funding/Budgeting	0	0
Design Professional	3	6
Design	7	12
Construct / Demo	17	18
Total Time in Months*	45	60

Existing Elementary with Increased Stations Added

Activity	Minimum Time In Months	Maximum Time In Months
Project Identification	4	6
Property Acquisition	14	18
Funding/Budgeting	0	0
Design Professional	3	6
Design	7	12
Construct / Demo	16	18
Total Time in Months*	44	60

New Middle

Activity	Minimum Time in Months	Maximum Time in Months
Project Identification	4	6
Property Acquisition	14	18
Funding/Budgeting	0	0
Design Professional	3	6
Design	7	12
Construct	16	18
Total Time in Months*	44	60

Additions (PTEC), Remodel & Renovate High School (Gibbs)

Activity	Minimum Time in Months	Maximum Time in Months
Project Identification	4	6
Property Acquisition	0	0
Funding/Budgeting	12	12
Design Professional	3	6
Design	12	14
Construct	20	24
Total Time in Months*	51	62

*The time estimates can be extended accordingly if property acquisition requires the exercise of eminent domain.

If unforeseen problems with site acquisition or construction necessary to operation of the new facilities or their equivalent occur, compliance with this Order will be assessed in accordance with the premise that best efforts to comply are the essence of the parties' agreement. Therefore, failure to strictly comply with the time lines shall not constitute conclusively evidence of a violation of this Order. Failure to timely comply, however, shifts

to the School Board the burden of presenting prima facie evidence of a good faith attempt to comply accompanied by extenuating or tolling circumstances.

The School Board shall report to Plaintiffs' counsel the completion of each milestone. Upon Identification of each project, the School Board shall report the completion of each milestone for each project on a project-by-project basis. The estimated time for completion of each milestone shall be measured from the completion of the previous milestone for that project. The estimated time for completion of Project Identification shall begin on the date of this Order. When the estimated time for completion is "0", the time for completion of that milestone will be the same time as the previously listed milestone measured in the same manner as that previously listed milestone. The estimated time for completion of each milestone shall be the minimum time in months listed for each milestone for each type of project. For these purposes, any time less than one month shall be rounded down. (In other words, every day in a month must have elapsed before a month is counted as elapsed.)

For each project, the School Board shall report to Plaintiffs' counsel within two weeks after the minimum date for completion of any milestone whether that milestone has been completed within the time allotted and, if not completed, the reason or reasons for such failure to complete and the estimated additional time the School Board anticipates before completion of that milestone for that project. Plaintiffs may obtain additional information from the School Board regarding non-completion by a request for information, either orally or in writing to the School Board, and the School Board shall provide the information requested. This process shall apply to any original times for completion or any extended times for completion as determined by the applicable procedure in this Order.

For any milestone other than property acquisition, Plaintiffs may agree to the additional time estimated by the School Board for completion of such milestone so long as the estimated time for completion is not more than the maximum time in months listed for that milestone for that type of project. These same rules apply to Property Acquisition unless the cause of delay involves an action in eminent domain or a public referendum, in which case Plaintiffs can agree to an extension of time for completion of Property Acquisition for that project in deference to the reasonably diligent pursuit of the action by the School Board (subject to control by the Circuit Court in Pinellas County) or the anticipated vote (subject to control by electoral authorities) or other extraordinary delay not attributable to the fault of the School Board.

Within four weeks of receiving notice from the School Board, the plaintiffs shall notify the School Board of their decision respecting agreement to any extension requested. Plaintiffs shall not unreasonably withhold agreement to any extension. In the event an extension is not agreed or a further extension requested by the School Board, the parties shall engage in the Alternative Dispute Resolution Procedure described in this Order.

Any extension of time obtained either by agreement or by the Alternative Dispute Resolution Procedure shall not require notice to the class or any determination of fairness regarding the attainment and maintenance of a unitary school system with regard to facilities and resources. In the event an extension of time is not obtained by agreement or by the Alternative Dispute Resolution Procedure or the School Board has not completed any milestone for any particular project within the extended time, the occurrence of that event shall create a rebuttable presumption that the School Board has not acted in good faith and

has not used its best efforts, and the burden of proof, accordingly, shifts to the School Board to disprove the existence of bad faith under the circumstances by a preponderance of the evidence.

The School Board shall make additions and renovations to existing facilities (including the new facilities once they have been built) in a non-discriminatory manner. Similarly, the School Board shall provide other resources, such as textbooks, computers, libraries, athletic facilities, and special education in a non-discriminatory manner so that, in accordance with state and federal law, the allocation of funding for black students shall not be systematically less than that for white students.

Upon the establishment of the District Monitoring and Advisory Committee (DMAC), the School Board shall submit its five-year work plan to DMAC for review within sufficient time to allow DMAC to provide the School Board with its recommendation(s) on the work plan before the School Board's consideration of that five-year work plan. "Sufficient time" in this context shall be not less than thirty (30) days before the hearing at which the School Board considers the plan. The School Board shall otherwise comply with the provisions of this Order relating to DMAC and its consideration of facilities and resources.

Supervisory jurisdiction over the area of facilities and resources is hereby withdrawn and all prior orders to the extent they are applicable to facilities and resources are hereby vacated.

B. TRANSPORTATION

The parties agree (1) that unitary status has been achieved in transportation and (2) that any disparities in the number of students transported or the length of those transportation routes result only from facilities issues. The parties agree that any issues regarding activity buses relate to the areas of extracurricular activities or student assignment, both of which are unresolved. The Court orders, therefore, that the School Board has achieved unitary status with regard to transportation. The School Board shall continue to make transportation equally available to all students without regard to race (which the School Board believes is a mere continuation of current policy and practice).

The School Board shall report at least annually to DMAC as provided and comply with the provisions of this Order relating to DMAC and its consideration of transportation. Supervisory jurisdiction of this Court over the area of transportation is hereby withdrawn and all prior Orders to the extent they are applicable to transportation are vacated.

C. ADMINISTRATIVE STAFF ASSIGNMENT

The parties have agree that an administrative staff that is diverse and representative is educationally desirable for all students. The parties agree that with respect to the administrative staff, the results achieved under the prior orders of this Court, together with the commitment the Defendants have made to continue their efforts so as to assure a similar level of diversity in administrative staff in the future, demonstrate good faith compliance with the previous orders of this Court and attainment of unitary status. The School Board shall continue the minority career development conference and the minority leadership training program.

The School Board shall demonstrate its continued support of minority administrative staff assignment, including efforts to maintain the distribution of administrative staff at all school levels and in central administration and in the general geographic apportionment that is at least as equitable as levels that existed in the 1998-99 school year. To support these efforts, the School Board shall provide for the continuation of special programs, such as Leadership 2000, that foster development of minority leaders. At least annually, reports concerning these efforts shall be given to DMAC in compliance with the provisions of this Order relating to DMAC in its consideration of administrative staff. The supervisory jurisdiction of the Court over administrative staff assignment is withdrawn and all prior Orders to the extent they are applicable to administrative staff assignment are vacated.

D. DISTRICT MONITORING AND ADVISORY COMMITTEE

The School Board is accountable to the community for establishing and maintaining a unitary school system, i.e., a system free from the vestiges of the formerly dual school system in the areas of relative quality of education, student assignment, faculty assignment, administrative staff assignment, facilities and resource allocation, transportation, and extracurricular activities. To assess and advise the School Board concerning these goals, the parties agree and the Court orders that there shall be a committee whose members are appointed by several groups who have a recognized interest in the operation of the unitary school system. The committee will offer recommendations to the School Board concerning issues of equity, diversity, and the school district's achievement and maintenance of a unitary school system.

Pursuant to the rule and the Administrative Procedure Act (APA), the School Board shall establish and maintain by School Board policy a district monitoring and advisory committee in accordance with this Order. For the first ten (10) years after the date of this Order, the policy may be amended only after negotiations with the Plaintiffs. On those amendments for which there is no agreement, the matter shall be submitted to the Alternative Dispute Resolution Procedure agreed upon by the parties and ordered by this Court. The School Board shall also comply with the rule amendment procedures of the APA for all amendments but shall not modify agreements reached or results obtained through the Alternative Dispute Resolution Procedure concerning the Rule. After the ten years have elapsed, the School Board may amend the Rule on DMAC as recommended by DMAC. Upon establishment of the committee, the Biracial Advisory Committee (BRAC) previously ordered by this Court in Orders of April 15, 1971, and July 23, 1971, as amended, shall continue in operation for a period of three months and shall assist and advise DMAC as well as perform its other functions. After that time, BRAC shall cease existence and operation.

Should an initial or subsequent organization from which DMAC membership is to be appointed cease to exist, the designation of a successor organization, if not designated by agreement, shall be subject to the Alternative Dispute Resolution Procedure.

The School Board shall adopt the following as a rule:

DISTRICT MONITORING AND ADVISORY COMMITTEE (DMAC)

Philosophy

The School Board believes that in order for the school system to gain and maintain the trust of the community, it must be accountable to the community for maintaining a unitary school system free from the vestiges of the formerly segregated school system in the areas of relative quality of education, student assignment, faculty assignment, administrative staff

assignment, facilities and resource allocation, transportation, and extracurricular activities. To facilitate the accountability, there should be a committee whose members are appointed by various groups that have a recognized interest in the operation of the unitary school system. The committee will monitor the school district's achievement and maintenance of a unitary school system and make recommendations to the School Board concerning maintenance of a unitary school system, equity, and diversity.

Creation, Membership and Date of Establishment

The School Board establishes the District Monitoring and Advisory Committee (DMAC) consisting of 14 members appointed as hereinafter provided.

The organizations listed immediately below shall appoint two members each. If one of these organizations ceases to exist or becomes inactive or unrepresentative of the intended constituency another organization shall be substituted. The determination of whether an organization becomes inactive or unrepresentative of the intended constituency shall initially be made by DMAC. Any organization determined by DMAC to have become inactive or unrepresentative of the intended constituency shall have the right to object. Should DMAC make such a determination, DMAC shall inform the School Board of its determination and of any objections received by DMAC. Whether such organization has objected to DMAC or not, that organization may register objections with the School Board. The School Board shall then make a determination of whether any such organization has become inactive or unrepresentative of the intended constituency. Should the School Board determine that any organization has become inactive or become unrepresentative of the intended constituency, that determination may be challenged by invoking the Alternative Dispute Resolution Process through Plaintiff's counsel. If a final determination is made in this process that one of the organizations has become inactive or unrepresentative of the intended constituency, then the School Board will designate another group after considering recommendations provided by the remaining DMAC membership. If there are objections to the group designated by the School Board, those objections shall be determined subject to the Alternative Dispute Resolution Procedures.

The School Board of Pinellas County, Florida;
NAACP North;
NAACP South;
Pinellas County Council of PTAs;
Pinellas SAC Association, Inc.;
Pinellas Classroom Teachers Association (PCTA); and
Pinellas Administrators Association (PAA)

Each appointing authority, by an essentially elective and publicly disclosed mechanism (e.g., either election or appointment by an elected officer or other elected authority) consistent with the bylaws or governing rules of each organization, shall appoint one black member and one non-black member.

The effective date of the establishment of DMAC shall be within 90 days of the entry of the Court Order that establishes DMAC.

Libson

The School Board shall provide a School Board Member to attend each meeting of DMAC and to act as School Board Libson.

The Superintendent shall appoint a Libson to DMAC who shall be responsible for providing clerical assistance and supplies necessary for the operation of DMAC.

The district Libson shall attend all committee meetings and will coordinate the appearance of other staff as deemed appropriate by the Superintendent or upon request of the committee as may be reasonable.

Term of Membership

Each appointing authority shall appoint one member for an initial term of two years and one member for an initial term of four years. All subsequent appointments shall be for a term of four years except that any appointment to fill a vacancy that has occurred prior to the expiration of the term shall be for the expiration of that term.

The Chair shall remove any member for non-attendance in violation of duly adopted bylaws of DMAC. Prompt and regular attendance is essential to membership on DMAC.

Open Government Laws

DMAC, as a committee created by the School Board for purposes of advising the School Board, is subject to the Government in the Sunshine Law (Section 286.011) and Florida's Public Records Act (Chapter 119). All meetings of DMAC shall be open to the public and shall be properly noticed to members of the public. Minutes are required for each meeting. The minutes of each meeting and any written reports, recommendations, or any other records of DMAC shall be open to public inspection.

In accord with the scheduled agenda, DMAC shall provide a reasonable opportunity at each of its meetings for members of the public to address DMAC. This provision shall not apply to any joint workshop with the School Board or to any subcommittee meeting. DMAC shall announce to the public before receiving public input that DMAC does not receive and act on any individual complaints or requests and does not act as an appellate body to review any decision of the district or school administrators. DMAC shall also inform the public before receiving input that it acts as a monitoring and advisory committee concerning the achievement and maintenance of a unitary school system.

Meetings

The first meeting of DMAC shall be within 120 days of the entry of the Court Order that establishes DMAC.

DMAC shall meet at least four times a year and may set additional meetings as necessary. At the initial meeting of DMAC, the dates of the

remaining three meetings of the first year of operation shall be set. Thereafter, DMAC shall set the dates of the minimum four meetings for the subsequent year at the last meeting of each year.

Additional meetings may be set by a majority vote of the committee at any meeting of the committee or special meetings may be called by the chairperson upon a minimum of 15 days written notice to the membership.

Officers

DMAC shall annually elect a chairperson, vice-chairperson, and secretary from among the membership of the committee.

Quorum

DMAC cannot take any action or carry on a meeting in the absence of a quorum. A quorum at any meeting of DMAC shall consist of attendance by two-thirds (2/3) of the membership (that is, ten of the fourteen) or more. The vote of the majority of the members present at a meeting at which a quorum is present is necessary for the adoption of any matter voted on by DMAC.

Training

The School Board and the NAACP North and South shall provide training for all new members of DMAC concerning the history of desegregation, the definition and achievement of unitary status, and the functions and purposes of DMAC. Appointees must attend and receive training to assume membership in DMAC.

Meeting Space

The School Board will provide adequate and dignified meeting space for DMAC at the administration building (or another place, if agreed by DMAC). All meetings for the transaction of business shall occur in Pinellas County.

Bylaws

DMAC may adopt such bylaws and rules of operation as may be necessary for the efficient performance of its functions including the receipt of public comments. Any such bylaws and rules must be consistent with the provisions of this rule and approved by the School Board pursuant to the provisions of the APA.

The bylaws shall provide for the appointment of subcommittees if deemed appropriate by DMAC.

Responsibilities of DMAC

DMAC shall function as an advisory body to the School Board with respect to the matters set forth in this rule.

Education, Information, and Advice

At least annually, beginning for the school year 1999-2000, the Superintendent or designee(s) will file a report and make a presentation to DMAC on what the school district prescribed and implemented with respect to the Plan addressing student achievement, student discipline, and assignment of students to programs developed pursuant to the stipulation between the Defendants (the School Board, and others) and the Plaintiff class dated June 18, 1998, that was filed in Bradley, et al v. Pinellas County School Board.

The Superintendent's report to DMAC shall include the following:

Whether the school district has implemented the Plan in good faith

What results the school district has achieved with the Plan in effect. Such report shall contain but not be limited to data in detail disaggregated by race and sex with regard to grades, scores on standardized tests, drop-out rates, graduation rates, expulsions, suspensions both in-school and out-of-school, and assignment to special programs or classes. Special programs or classes shall include all programs or classes designed to assist students who appear to need special or additional help, all programs or classes designed for students who appear to be advanced, and all programs or classes designed to provide specialized training.

Whether such implementation has succeeded in addressing, in a substantial and meaningful way, the issues of student achievement, student discipline, and assignment of students to programs.

What changes have been made to the Plan to improve it.

Whether continued good-faith implementation of the Plan offers a realistic promise of achieving the goals described in the June 18, 1998, stipulation.

DMAC will receive the reports and presentations from the Superintendent or designee(s) and will review the information, distinguish areas of greater and lesser progress, and advise the School Board on practicable means and measures to obtain further success in the three areas (student achievement, student assignment, and student discipline) identified in the stipulation of June 18, 1998.

Facilities and Resources

Prior to School Board consideration, the Superintendent or designee(s) will present to DMAC the proposed five-year Work Plan for facilities in sufficient time to allow DMAC to provide the School Board its recommendations on the work plan. "Sufficient time" in this context shall be not less than thirty (30) days prior to the hearing at which the School Board considers the plan.

DMAC will review the work plan to determine if additions and renovations to existing facilities are being made in a non-discriminatory manner and will make its recommendations to the School Board in any areas of concern.

The Superintendent or designee(s) will present any proposed new school to DMAC in sufficient time to allow DMAC to review the proposal and make its recommendations to the School Board concerning same.

The Superintendent or designee(s) will report at least annually to DMAC on the allocation of textbooks and other resources and demonstrate to DMAC that such allocations have been made in a manner so that the allocation per weighted FTE for black students shall be at least equal to that for white students. DMAC will review the reports and information and shall advise the Board regarding the allocation of such resources.

Until construction is complete, the Superintendent or a designee(s) will report at least four times annually on the school district's progress toward building the three new elementary schools or their equivalent, one new middle school or its equivalent, and additional student stations at the high school level in south Pinellas County south of Central Avenue and east of 58th Street south. The reports shall review progress toward agreed milestones by construction project. DMAC will make recommendations to the School Board concerning the progress as it deems appropriate.

Faculty

The Superintendent or a designee(s) will present at least annually to DMAC the district's plans and information concerning recruitment, employment, and placement of black educators. The report will include the status of continuing the critical shortage classification of black educators so long as there is a significant difference between the percentage of black students and the percentage of black teachers.

DMAC will review the report and information received and identify areas of concern and make recommendations to the School Board concerning the same as appropriate.

Administrative Staff

The Superintendent or a designee(s) shall report at least annually to DMAC, demonstrating the continued support of minority administrative staff including efforts to maintain the distribution of administrative staff in all school levels and central administration, the general geographic apportionment at least as equitable as levels that existed in the 1998-99 school year, and the continuation of special programs, such as Leadership 2000, that foster development of minority leaders.

DMAC will review the report and information and identify the areas of concern and make recommendations to the School Board it deems appropriate.

Extracurricular Activities

The Superintendent or designee(s) at least annually will report to DMAC on student participation in all extracurricular activities by overall district participation and by school. Data shall be disaggregated by race and sex.

DMAC will review the report and information and determine if there are any areas of concern and make recommendations to the School Board as it deems appropriate.

Transportation

The Superintendent or a designee(s) at least annually will report to DMAC on the provision of transportation services.

DMAC will review the report and information and determine if there are any areas of concern relative to the equity of transportation services being provided to minority students and make recommendations to the School Board as it deems appropriate.

Student Assignment

The Superintendent or a designee(s) at least annually will report to DMAC concerning the development and implementation of the student assignment plan of the district. The report shall describe the racial composition of each school and the state of compliance with the relevant Order.¹ The report shall include, but not be limited to, the following:

Until a Choke Plan of Student Assignment has been adopted and implemented, such report, in addition to the racial makeup of each school, shall include identification of school assignment zones, the racial makeup of such school assignment zones, identification of any schools that need changes in school assignment zones to maintain compliance with the Court Order on student assignment, any changes proposed by the school district to student assignment zones, and data disaggregated by race on applications for Special Attendance Permits (SAPs) and on SAPs granted.

¹ Currently the relevant Court's Order is the Decree of Summary Judgment entered January 15, 1965 and implemented by the Final Order entered July 23, 1971, as amended by the Amended Judgment entered July 30, 1971; the Order of Amendment to Final Order and Amended Judgment entered May 18, 1977, including adoption by reference the Stipulation of October 27, 1976; the Order of Amendment entered November 26, 1980, including adoption by reference the Stipulation of November 19, 1980, and filed November 24, 1980; the Order entered June 3, 1982, adopting by reference the Joint Stipulation of April 28, 1982; the Order entered June 2, 1988, adopting by reference the Joint Stipulation of May 10, 1988; the Order of April 24, 1989, adopting by reference the Stipulation of April 20, 1989; the Order of February 18, 1993; the Order of November 29, 1996, adopting by reference the Joint Stipulation of November 8, 1996; the Order of May 26, 1998; and the order of January 12, 1999.

Until a Choice Plan of Student Assignment has been adopted and implemented, such report, in addition to the information required in the subsection above shall include an assessment of the progress toward adoption and implementation of a Choice Plan, including all then-current information on such issues as number of choice zones, locations of choice zone boundaries, identification of preferences for choices (such as program, sibling, diversity, proximity), definition of each preference category, determination of the operation and relationship of preference categories, determination of cross zone/SAP rules, location of zone offices for preference selection/parent-student information, determination of grandfather clauses, identification of zone councils, their make up, duties, selection and bylaws, determination of ratios to be utilized during the "Controlled Choice" phase of the plan, majority-minority transfer policies, determination of types of school programs, including "Attractor Programs", criteria for determination of under-chosen schools, determination of criteria for availability and allocation of resources to underchosen schools for improvement, determination of transportation allocation, and definition of phase-in process from "Controlled Choice" to "Clustered Choice".

Once a Choice Plan of Student Assignment is adopted, but before implementation, such report shall include a detailed description of the Choice Plan that has been adopted and details of the implementation schedule of that Choice Plan and schedule of each detailed step of implementation of each and every aspect of that Choice Plan.

Once a Choice Plan of Student Assignment has been adopted and implemented, such report shall include data disaggregated by race as to student population at each and every school; data disaggregated by race as to first choice attendance, second choice attendance, third choice attendance, and attendance other than the first three choices; data disaggregated by race for each and every school as to selections of that school as first choice, selection of that school as second choice and selection of that school as third choice; data disaggregated by races by school and disaggregated by preference as to students assigned as a result of the various student assignment preferences; identification of "Attractor Programs"; effectiveness of "Attractor Programs"; for the preceding school years, identification of underchosen schools; giving the criteria by which such schools are identified as underchosen; identification of all plans for improvement of underchosen schools, giving information on resources available and the methods of determining the availability of those resources and for all schools identified as having a student population that does not conform to the ratios in effect for any Controlled Choice year or, for any years after the last year of Controlled Choice, the ratio determined by the methodology used during that last year of Controlled Choice, and description and details of all plans in effect for bringing such schools in conformance with said ratios. It is understood that, after Controlled Choice is no longer in effect and ratios will not be mandatory, diversity of student population at each and every school shall remain a valid and preeminent goal.

DMAC will review the report and information and determine if there are any areas of concern and make recommendations to the School Board as it deems appropriate.

Reports, Recommendations, and Comments from DMAC

All reports, recommendations, and comments from the committee to the School Board shall be in writing. Such reports, recommendations, and comments shall be forwarded to the Superintendent for review by the Superintendent and transmittal to the School Board within two (2) weeks of receipt.

Any member of DMAC who disagrees with a written report, recommendation, or comment of DMAC shall be permitted to append a signed statement setting forth the basis for such disagreement.

Nothing shall prevent DMAC from presenting a consolidated report on two or more areas identified above.

Nothing shall preclude oral presentations to the Board by DMAC.

Responsibilities of the Superintendent

The Superintendent shall respond as promptly as practicable to all requests for information from DMAC and shall make appropriate staff available for appearance at DMAC meetings to discuss matters coming before the committee. It shall provide DMAC such clerical and other assistance as may reasonably be required for DMAC's timely discharge of its responsibilities.

The Superintendent shall review each report, recommendation, or comment forwarded by DMAC and shall make recommendations to the School Board within 30 days of receipt for action on the report, recommendation, or comment of DMAC.

The Superintendent shall provide DMAC with a copy of the Superintendent's recommendation for action by the School Board and notify DMAC when the School Board will consider and act upon the Superintendent's recommendations.

Nothing shall prevent the Superintendent from presenting a consolidated report on two or more areas identified above.

Responsibilities of the School Board

The School Board shall review each report, recommendation or comment of DMAC and the subsequent recommendation of the Superintendent concerning same and take such action and provide such response as the School Board deems appropriate.

E. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

For the expeditious resolution of any disputes regarding the interpretation or implementation of this Order, including the School Board's compliance with this Order, an alternative dispute resolution technique is in the best interest of the public and the parties.

If Plaintiffs' counsel justifiably asserts that a legitimate dispute concerning the implementation of this Order exists, counsel shall promptly give written notice of such dispute to the School Board by service upon the School Board Attorney. The notice shall include a reference to all specific provisions of the Order that are involved; a statement of specific facts, circumstances, and arguments supporting the position of the Plaintiffs; and a statement of the remedial action sought by the Plaintiffs.

Within five (5) school district working days after receipt of such notice, the School Board Attorney shall initiate informal discussions between the parties in an attempt to resolve the issue. Associated with this shall be an attempt to clarify the dispute and its basis, to exchange relevant documents and information, and to conduct any necessary informal meetings. Time frames involved in the informal stages of this dispute resolution procedure may be extended by mutual agreement of the parties. Should the matter be clarified or the issues involved resolved, the parties shall reduce to writing any agreements or understandings reached through informal discussion.

Should the dispute or any substantial portion of the dispute remain unresolved following informal discussions, Plaintiffs' counsel shall notify the School Board Attorney in writing that further action is needed to resolve the dispute and shall submit written notice of unresolved portions of the dispute. The original notice of the dispute may be confirmed as

the written basis if the dispute persists, or such notice may be amended to clarify remaining unresolved portions of the dispute using the same format as required above.

Upon receipt of notice of unresolved issues in the dispute, the School Board Attorney shall respond in writing within twenty (20) days (as computed under federal procedural rules). Counsel shall include in the response a statement of facts and arguments upon which reliance is placed for support of the School Board's position. Thereafter, the parties shall use the services of a Mediator to attempt to resolve the dispute. If the parties fail to select a mediator by agreement for submission to the Court for approval, within fifteen (15) days of service of the School Board's response, the parties shall each select three (3) qualified nominees for the Mediator. The Mediators shall be identified within the geographic area of the Middle District of Florida. The parties shall each submit the three (3) names to the other party for consideration and attempt to agree upon a mutually acceptable Mediator within five (5) district working days. If the parties fail to select a Mediator from among the six (6) names selected by the parties, the parties shall select a Mediator within one (1) week, using an alternative striking method from an alphabetical listing of the recommended Mediators. Plaintiffs' counsel shall strike first. Compensation of the Mediator will be paid by the School Board at the then-prevailing rate. If the parties fail to select a Mediator for submission to the Court for approval, they shall request that the Court appoint a Mediator. The Court shall provide an opportunity for comment by the parties concerning the Mediator or Mediators whom the Court is considering. All appointments of a Mediator shall occur in accordance with this procedure, i.e., beginning with the parties' attempt to themselves select a Mediator. No dispute shall be presented for resolution in accordance with the following paragraphs until

the Mediator has reported to the Court that good faith efforts to resolve the outstanding dispute failed.

If good faith efforts to resolve the matter through mediation fail, the Mediator shall provide to the parties written notice of impasse. Any party may file a motion with the Court, including a supporting legal memorandum in compliance with the Local Rules of the United States District Court for the Middle District of Florida, requesting resolution of the dispute or issues of non-compliance. The scope of such motion shall be limited to any outstanding dispute raised in the initial notice of dispute or modification of that notice as provided herein. The Court will appoint a Special Master. Each of the parties may offer not more than three suggestions. Choices for a Special Master shall not be geographically limited. Compensation for the Special Master shall be promptly paid by the School Board. The Special Master shall proceed in accordance with Rule 53, Federal Rules of Civil Procedure, and witnesses may be procured as provided in Rule 53.

The Special Master's report shall be final and conclusive unless objections are timely interposed in the manner contemplated by Rule 53(e)(2), Federal Rules of Civil Procedure. If any party objects in the manner required by the Rule, the District Court shall proceed to decide the matter.

In the remote event that a dispute arises after entry of this Order concerning any one of the three subjects with respect to which this order withdraws supervisory jurisdiction and, consequent upon the failure of the parties to resolve the dispute through the DMAC and mediation, a Special Master or the Court must intervene in the dispute, recognizing the indicated failing of the intended mechanisms of dispute avoidance and conciliation, the Court

or the Court's delegate may permanently or temporarily supplement the DMAC by adding a non-voting chairperson, compensated by the School Board at the then-current prevailing rate of a professional mediator, to replace the then-existing Chairperson of DMAC as Chairperson only (i.e., the then-existing Chairperson retains DMAC membership but loses the Chair and will resume the Chair at the conclusion of the new Chairperson's term) and by also permanently or temporarily adding up to four neutral DMAC members-at-large in order to stabilize and enhance the effectiveness of the DMAC. Terms and qualifications for members appointed under this provision shall be the same as for any other members of DMAC such that DMAC shall continue to have membership of at least 50% black voting members.

F. CONCLUSION

The Court extends sincere and respectful compliments to those who have participated in and otherwise contributed to the agreement that creates and enlivens this Order and to the underlying and enabling educational and community circumstances, which evidence a wholesome and progressive spirit among those interested in and vitally affected by the direction of this lawsuit and its resolution. (Perhaps the Superintendent is among the most deserving of those who warrant special recognition for outstanding dedication to a just and durable conclusion. Others, including Peter J. Grilli and the parties' counsel, deserve special recognition also.)

The Court declined acceptance of an earlier proposal because the putative agreement (or, rather, the specific terms of the putative agreement) was largely illusory. The word "agreement," while not wholly inapplicable, was decidedly optimistic as a description of the earlier paper. It lacked substance in many, if not most, key respects. The new agreement

is clearly superior and more tangible, including specific requirements, times until completion, methods of dispute resolution, and the like. Perhaps most importantly, the new agreement, now transformed into an order of the Court, arises from a process that maximizes the opportunity of the citizens of Pinellas County to enjoy a conclusion to this litigation in an agreed manner, in the near future, and without the unwanted specter of contentious litigation. With the continued exertions and commitments of those most directly influencing the course of events, this action can achieve a relatively expedited, salutary, and final disposition.

ORDERED in Tampa, Florida, on August 30th, 1999.

Steven D. Merryday
Steven D. Merryday
UNITED STATES DISTRICT JUDGE