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ABSTRACT

In 1974, the Supreme Court in "Milliken v. Bradley" blocked a major effort to desegregate isolated urban areas by establishing stringent legal standards that made it very difficult for plaintiffs to include suburbs in desegregation remedies. Three years later a second Milliken decision (Milliken II) authorized lower Federal courts to order state governments to pay for curing the educational harms of racial segregation. Millions of dollars have been spent on Milliken II orders but there has been little serious study of the results. Researchers from the Harvard Project on School Desegregation examined four school districts that have implemented significant compensatory education plans in segregated schools and found that the promises of the Milliken II decision have not been fulfilled. The segregated, or resegregated schools, have usually gained only programs that the district wanted to implement anyway, and no real accountability for improvement has been required. The rights of intentionally segregated children seem to have been traded for temporary increases in district funding. The districts studied are (1) Detroit (Michigan); (2) Little Rock (Arkansas); (3) Prince George's County (Maryland); and (4) Austin (Texas). Eight charts illustrate the discussion. (SLD)

STILL SEPARATE, STILL UNEQUAL
The Limits of Millikan II's Educational Compensation Remedies

by

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with a foreword by Gary Orfield

The Harvard Project on School Desegregation
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The Harvard Project on School Desegregation is a research project including students and faculty from the Harvard Graduate School of Education, The John F. Kennedy School of Government, Harvard Law School and Harvard College. The project is directed by Dr. Gary Orfield, professor of education and social policy at the Harvard Graduate School of Education and the John F. Kennedy School of Government. Susan E. Eaton is assistant director and project editor.

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Contents

FOREWORD

Probably the most commonly asked question about school desegregation remedies, is: "Why don't we just leave everyone where they are and put the money into educational improvement?" In a sense, that is exactly what the U.S. Supreme Court decided to do in the 1970s under two key decisions that shaped the nature of desegregation in urban America. In a 5-4 vote in the 1974 Detroit case, *Milliken v. Bradley*, the Supreme Court blocked a major effort to desegregate isolated urban areas that were still racially segregated. In most of these heavily minority metropolitan communities, such as Detroit, full and lasting desegregation would have required crossing city-suburban boundary lines for the white students needed to create integration. This is because since World War II, minority students have been highly concentrated in the central cities and small parts of older suburbia and there had been a steadily increasing concentration of whites in other suburban districts. But by establishing stringent legal standards, the Supreme Court in *Milliken* made it very difficult for plaintiffs to include suburbs in desegregation remedies.

The Supreme Court's decision 20 years ago in *Milliken* ended the era of significant process in desegregation that lasted from 1964 to 1972. After 1974, in fact, there was no significant improvement in the desegregation of African American students and a major increase in the segregation of Latinos. In 1977, three years after the first *Milliken* decision, a unanimous Supreme Court in *Milliken II*, authorized lower federal courts to order state governments to pay for curing the educational harms of racial segregation. After rejecting "separate but equal" in its 1954 *Brown v. Board of Education* decision, the Court then authorized these "separate but equal" educational plans to try to equalize segregated schools and create an alternative way to cure the harms caused by the intentional segregation that had violated the U.S Constitution.

Although hundreds of millions of dollars have been spent in "Milliken II" orders in the last generation, there has been almost no serious examination of the results. Courts, however, continue to operate on the assumption that they know how to repair the effects of segregation within the very schools the *Brown* decision had described as "inherently unequal" and that once the job is done, the plans can be terminated.

To complete this report, researchers from the Harvard Project on School Desegregation examined records, visited and interviewed officials in four of the nation's school districts that have implemented significant compensatory education plans in segregated schools. Three of these plans resulted from court proceedings and the other was adopted shortly after a federal court ended supervision of a school district

In this report, Joseph Feldman, Edward Kirby and Susan E. Eaton find that the promises of the *Milliken II* decision have not been fulfilled. On close examination, it turns out that what the segregated minority schools gain in return for accepting segregation or "resegregation" is several years of programs that the school district wanted to do anyway without any requirement to show that either the children in the target schools show substantial gains or that the racial achievement gap between white and minority schools has narrowed. In fact, there is usually no serious independent monitoring of what the schools do with the money during the years they get it and no policy that guarantees help to new segregated schools that develop while the remedy is still in place.

In the cases studied here, the plaintiffs often seemed to be almost irrelevant. They were not consulted seriously about the remedy, they did not evaluate whether or not the minority children and communities actually benefitted, and the remedies were terminated without plaintiff agreement that constitutional obligations had been fulfilled. What was presented as a remedy for the harms of segregation typically did not identify those harms and did not measure whether they were cured. In the court ordered cases, the remedies were basically a result of a political battle between schools districts who were trying to get as much money as possible for their favorite programs and the state governments who were trying to spend as little as possible for as few years as possible. The victims of segregation often seemed lost in the shuffle.

The fact that the compensatory programs have been badly managed and have had limited or non-existent benefits, point to the need to reexamine the first *Milliken* decision against city-suburban desegregation. There have been successful city-suburban desegregation plans in operation for more than 20 years in a number of states. These metropolitan plans have produced much higher levels of desegregation and less loss of white enrollment than the more limited desegregation plans that affect only one central city or small, older increasingly minority sections of suburbia. For example, the two states with the highest levels of integration for African American students, Kentucky and Delaware, both have city-suburban desegregation plans in their largest metropolitan areas. There are also models of large exchanges of students between city and suburban school districts in metropolitan St. Louis, Indianapolis and Milwaukee. A frequent theme in the observations of local officials interviewed in this report is that there should have been greater efforts to produce integration and not so much reliance on educational compensation.

We also need to think much more seriously about how to get real benefits out of the Milliken II orders. If this is all that is to be offered central city minority students to make up for generations of discrimination, it is extremely important that the plans produce some real gains. Courts have to realize that making racially separate schools more equal and getting real benefits to students from groups that have historically been the victims of discrimination requires a very different and more intense kind of supervision than orders that simply transfer students from minority schools to white schools.

Many central city school districts face ongoing budget crises that force school administrators to constantly seek any possible source of funds to keep what they consider the basic essentials of their educational programs operating. If not closely supervised, new funds won in *Milliken II* orders are very likely to go to support existing staffs or the expansion of existing programs. Unless school districts face specific requirements and independent monitoring, there is a serious risk that the Milliken II money will simply be absorbed without any serious change and there will be negligible or very small gains for the children who are supposed to benefit.

If a court is going to change education for the groups subject to a long history of discrimination, it has to develop, or obtain from elsewhere, real educational expertise and require the provision of the data necessary for an independent evaluation of what is happening. Courts that operate under the assumption that the plaintiff's lawyers have either the skills or the resources to do this job are engaging in wishful thinking. Ironically, although educational remedies may seem far less obtrusive and far less likely to generate community resistance than desegregation, the court must be prepared to be much more intrusive educationally if any beneficial change is likely to occur under Milliken II programs. Ideally, of course, serious requirements, seriously enforced, would strengthen the position of educational professionals in the system who share the commitment to creating better opportunities for minority students.

There is no easy solution to the problem of separate and unequal education. Segregated education is the deeply institutionalized product of generations of discrimination operating through the schools, housing markets, and many other aspects of life. There is no quick and simple way to uproot the patterns and produce equal education. Changing the results requires a persistent commitment to change on behalf of an often powerless group of students and families. During the late 1970s and the 1980s, the false impression spread that there was a shortcut to equal education and that, with Milliken II remedies, the problems could be solved in a few years without upsetting anyone.

This report shows, however, that the problems were not solved and that the apparent conflict was lessened only by trading away the right of intentionally segregated urban children in exchange for a temporary increase in funding for the school district. After the end of this temporary period, the court or the school board announces that enough has been done, even if the racial gaps are as large as ever and the victims of discrimination lose the right to engage the court on their side.

Minority students typically have only one historic opportunity to break through local politics and obtain a plan to repair a history of unconstitutional action by local educators. Only after they prove the violations can they obtain a remedy. What has happened under *Milliken II*, however, has curtailed the rights of minority students and often awarded most of the benefits to the school district, the very institution guilty of a history of discrimination. It is as if a patient struggled hard to prove a pattern of malpractice by a hospital that seriously harmed the patient's health but then the court decided to give most of the money to the

negligent hospital. The hospital would then decide what to do and evaluate whether or not it solved the patient's problem. After a brief period, the insurance company and the hospital would report to the court that they had done enough and the court would rule that the case was over, and that the patient, and others like him, have no more rights. This would happen even if the were still very sick. This would seem a perversion of the law for an individual, but policies of this sort have been accepted with almost no analysis when applied to entire communities that have proved discrimination over generations in violation of basic guarantees of the Fourteenth Amendment.

If we were serious as a country about providing equal education for those discriminated against, this situation would be intolerable. This study suggests the need to return to the fundamental principles of the *Brown* decision that declared intentionally separate schools "unequal." The courts, the school systems and the civil rights litigators need to take their responsibilities to repair the damage done to minority children much more seriously.

Gary Orfield
April 7, 1994

EXECUTIVE SUMMARY

Since 1977, urban school districts and courts have relied increasingly on extra money and specialized educational programs to remedy the harms caused by intentional racial segregation in schools.

These educational compensation remedies are named after the 1977 Supreme Court decision, *Milliken v. Bradley* (Milliken II), which allowed for the provision of state-funded educational improvements to help redress the present-day effects of state-sanctioned racial segregation. These remedies were authorized following the Supreme Court's 1974 decision in *Milliken I*, which made it difficult to win city-suburban desegregation plans. This first decision was significant because for many predominantly minority urban districts, "metropolitan" desegregation plans that included the suburbs, carried the only real hope for creating racially integrated schools. In the aftermath of *Milliken I*, then, many critics, viewed *Milliken II's* provision of extra money and special programming as nothing more than a reinstitution of the "separate but equal" doctrine that the Court had struck down in 1954 under *Brown v. Board of Education*. Supporters, on the other hand believed that extra money and special programming of the type authorized in *Milliken II*, could adequately redress the harms of segregation and create equal schools, regardless of whether those schools were segregated.

The Harvard Project on School Desegregation report, *Still Separate, Still Unequal: The Limits of Milliken II's Educational Compensation Remedies*, suggests that the early critics were correct. This review of four school districts that use Milliken II and Milliken II-type remedies shows no evidence whatsoever that the expensive programming and extra money has redressed the harms of segregation or provided an equal educational opportunity.

The Standard of Effectiveness

In approving the Milliken II remedies, the Supreme Court ordered that the remedies should "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." In other words, the goal, in the eyes of the unanimous Supreme Court, was to eradicate educational deficits or problems that might have been caused or perpetuated by racial segregation. This report measures the results of Milliken II programs and Milliken II-type programs in four school districts against this Supreme Court standard. The school districts studied here include Detroit, Michigan; Little Rock, Arkansas; Prince George's County, Maryland; and Austin, Texas.

The findings in this report suggest that the compensatory efforts have failed to meet the Supreme Court mandate to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." In fact, it seems school officials, courts and policy makers have not even made an attempt to define or interpret the court mandate in order to help minority students in a particular school district.

Programs are often poorly designed and rarely, if ever, is there a rigorous evaluation of the programs' effect on student achievement or educational opportunity. District policy makers do follow directives that specify how long programs should last, how much money can be spent and which schools should get the money. But there is usually no identifiable, meaningful outcome at the end of this experimental strategy for equality.

The shortcomings and flaws described in this report demonstrate that educational compensation remedies should neither be *viewed as* nor *used alone as* a comprehensive remedy for either redressing the effects of segregation or for creating equal educational opportunity for disadvantaged minority students. These findings are significant because they inform the current debate about racial integration at a time when some have grown disenchanted with the policy, arguing that new programs or extra money would better solve the educational problems of disadvantaged minority students. It would be incorrect, however, to use the findings in this report to advocate for the removal of extra funds from poor, heavily minority districts. On the contrary, it may be that a combination of well-designed, well-conceived, accountable, effective educational remedies *and* racial integration is the most promising way for meeting the Supreme Court's mandate.

BACKGROUND

This brief history explains how Milliken II remedies came to be a part of the nation's educational landscape. This important historical context is necessary in order to fully understand the meaning and significance of the findings in this report.

History

Forty years ago, a unanimous Supreme Court, in *Brown v. Board of Education* declared intentionally segregated schools to be"inherently unequal." Intentional racial segregation in schools, the Court said, deprives black schoolchildren "of the equal protection of the laws guaranteed by the Fourteenth Amendment" to the U.S. Constitution. In an effort to eradicate the vestiges of segregation, lower courts and school districts, in the decades following *Brown*, began testing various methods to balance the racial composition of schools.

But this task would soon prove to be not only politically unpopular but difficult from a practical sense as well. After World War II, white families had begun to migrate to the suburbs and as this trend persisted in the 1960s and 1970s, many school districts came to enroll growing proportions of minority students. For the many school districts whose pool of white students was small and shrinking, racial integration was becoming all but impossible to achieve.

In 1973, nearly 20 years after the 1954 *Brown* decision, this trend of white flight led federal courts in Detroit, Michigan to approve a controversial desegregation remedy. The federal courts concluded that unless school official could incorporate white suburban schoolchildren into Detroit's desegregation plan, racial integration simply could not be achieved in the city over the long term. After all, the court pointed out, the city schools were already about 71.5 percent black. Concluding that "metropolitan" busing was the only logical option, the court granted the school district permission to institute a city-suburban school desegregation remedy.

However, a year later, in 1974, the Supreme Court, in *Milliken I*, overturned the lower courts' rulings to reject the metropolitan remedy 5-4. The Supreme Court opinion stated that the "scope of a desegregation remedy must be determined by the scope of the Constitutional violation." In other words, the Court said, Detroit's suburbs should not be forced to participate in a remedy unless the communities could be found guilty, themselves, of intentional

segregation or unless it could be shown that state action created the pattern of all-white suburbs and a predominantly black Detroit. The Court cited what it called the "local control" of public schools, claiming that such a "deeply rooted" tradition should not be violated for the purposes of racial integration. This ruling forced the Detroit case back to the lower federal district court which still had to find a way to remedy the intentional segregation in Detroit. Again, since it was clear that racial integration would be nearly impossible to achieve within the city over the long run, the court, for a second time, considered alternative remedies. As a result, the court approved a plan whose centerpiece was nine "educational components" intended to remedy the harmful effects of intentional racial segregation in Detroit.

In 1977, the Supreme Court, in *Milliken v. Bradley II*, approved the lower court's educational component remedy. This broadened the parameters of desegregation remedies for the nation by allowing for the provision of state-sponsored, additional monies and programming to eradicate vestiges of segregation. Since this time, patterns of residential segregation, of course, have endured, leaving many urban and older suburban school districts with small or non-existent proportions of white students. In these districts, Milliken II remedies might be the only obvious option for remedying the effects of past segregation. Increasingly, courts and school officials across the county have used Milliken II remedies to supplant rather than supplement racial integration efforts.

So, while this report concerns itself with remedies fashioned as a result of the *Milliken II* decision, it is crucial that readers consider the conclusions within the context of *Milliken I*, which impeded racial integration efforts and confined many school districts to inherently limited remedies. In that sense, the events described here, while they may be evidence of irresponsible management and inadequate evaluation on the part of policy makers, are, in the broader sense, an illustration of the devastating ramifications of the *Milliken I* decision.

FINDINGS

Findings from each school district are summarized below. Recommendations and a conclusion follow.

Detroit, Michigan

As the setting for the *Milliken II* case, Detroit was the first city to use Milliken II remedies.

In 1976, Detroit school officials and contracted professionals began setting up special educational programs in the city schools. In 1981, however, the court directed the plaintiff NAACP and the defendant school board to negotiate an agreement to end the remedies by 1989. In 1984, the court disbanded the independent Monitoring Commission that had been appointed to oversee the programs. In 1988, in accordance with the negotiated agreement, the district court relinquished all control of the city schools. The Milliken II programs and funding officially ended in 1989.

The Detroit case study illustrates how politics can interfere with effective implementation and evaluation of Milliken II remedies. The negotiated stipulation to end the case, for example, was highly politicized. The agreement did not require that officials provide

any proof or even testimony that the various programs had either reduced educational inequalities, or, as the Supreme Court demanded, restored "the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." The evidence suggests that the educational components in Detroit came to be viewed as a way for defendants to live out their temporary financial punishment for past discrimination. From this perspective, the remedies could be removed after an arbitrary number of years, regardless of whether they had done their job.

A contentious relationship between the school board and the Monitoring Commission resulted in the court's disbanding the commission in 1984. The court, it appears, essentially viewed the monitoring commission, which was appointed to keep watch on a previously discriminatory school district, to be intruding on the Detroit school board. The court did not appoint a new monitor and essentially gave oversight responsibilities to the school board and the state, the very defendants in the case.

In 1994, Detroit's schools are still intensely segregated. The district has not come close to eradicating the educational deficits that were evident 20 years ago in 1974 and that persist today. Some of those involved in the case acknowledge the current-day reality and agree that Milliken II remedies in and of themselves had little hope of truly remedying the educational problems caused or perpetuated by past segregation.

Little Rock, Arkansas

In crafting its court-supervised desegregation remedy, school officials in Little Rock, Arkansas decided to provide eight "Incentive Schools" with Milliken II relief. School officials offered two justifications for these designations. First, school officials believed the schools' geographical location would make the schools difficult to racially integrate. Second, school officials said that by giving extra money and programming to Incentive Schools, white students might choose to transfer to the schools. However, some of those involved in the Little Rock remedy openly characterized the Milliken II program as a little more than a deal that would allow them to legally avoid more aggressive measures to create integration.

The Incentive School programs were put in plan in 1989. This report finds several apparent flaws in the program. First, since the program's budget was crafted separately from the program's actual design, the district is facing financial uncertainties and is quickly using up its allocated funds with no signs of improvement. Also, there has been no systematic evaluation of the programs thus far.

The supervising federal judge in the case has found the district less than compliant in putting the Incentive School plan in place. The judge also complained that the district failed to "engage in documented, sustained and vigorous recruitment" of white students to Incentive Schools. The Incentive Schools remain highly segregated.

The Little Rock case study illustrates how unchecked planning, design and funding procedures can produce ill-conceived programs which, so far, have demonstrated little promise for restoring the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."

Prince George's County, Maryland

As part of a larger desegregation program, officials in Prince George's County provide "full" Milliken II remedies to 21 nearly all-black schools. In addition, 12 nearly all-black "interim" Milliken schools also receive extra money, but not as much as full Millikens.

The full Milliken schools were established under the 1985 court-ordered Memorandum of Understanding that was negotiated by the school board and the NAACP. (The NAACP had successfully sued the school district, which was found guilty of intentional segregation in 1972.) Under the Memorandum, school officials agreed to provide extra money to the segregated schools in exchange for the plaintiff NAACP's promise that it would not contest the racial imbalances in the schools. School officials maintain that the Milliken schools are difficult to integrate because the schools are too far from white neighborhoods.

So far, Milliken II remedies in Prince George's County show no evidence that they have met the Supreme Court mandate to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." Officials here have made some efforts at evaluation, but the evaluations and measures used are of limited value. More rigorous evaluation designs have been on the table for five years but have yet to be conducted.

Officials in Prince George's County face another dilemma. The district's growing black majority and shrinking proportion of whites is making it much more difficult to racially integrate the other non-Milliken schools. At the same time, Milliken funding is fueling a perception of inequity among parents and others who feel that the extra resources in Milliken schools is draining other schools. So, despite the lack of evidence that would show that the extra funding to Millikens has done anything to improve educational quality, school leaders are recommending a funding increase to make regular schools equal to funding received by interim Milliken schools.

It seems that by relying increasingly on extra money to create equity, school officials, perhaps unknowingly, created a dangerous precedent. As more schools grow segregated, officials may have no choice but to increase funding on unproven programs as patterns of racial isolation emerge that show no signs of reversing themselves. The Prince George's case teaches us that while educational compensation may seem more politically palatable at the outset, the remedies may very well carry unforeseen political costs.

Austin, Texas

It is common for school officials under desegregation orders to claim that they could better help disadvantaged minority students if courts were not involved in school affairs. The case study of Austin, Texas focuses attention on a district with a history of intentional segregation that was found "unitary" by a federal court and subsequently released from court oversight. "Unitary" status, in this case, implies that the district had done all it could to eradicate its previously discriminatory "dual" system that maintained identifiable "minority" schools and "white" schools.

After being released from court oversight, school officials in 1987, dismantled their

desegregation plan and returned to neighborhood schools at the elementary level, thereby creating several highly segregated schools. In turn, the school district funnelled money and special programs into some of the most intensely segregated schools, designating them as "Priority Schools." (It is important to note that Austin did not create compensatory programs under the precedent provided by Milliken II, but did so through a independently devised plan for remediation.)

The Austin study shows that releasing school districts from court control is clearly not a panacea for educational problems that stem from racial isolation or poverty. In fact, on many measures, the Priority Schools, while improving slightly over their six years in existence, are still unequal on many measures to other schools in the district.

There is a fundamental flaw in the school district's plan. While the school board's resolution promises to "provide these educational efforts for a period of five years," nothing is said about what will happen once the five years are up. The Priority Schools designations do still exist, six years after the plan was implemented. But in Austin, extra compensation for minority students hinges on political and monetary support from an elected school board whose composition can change with every election. In addition, there is no independent monitoring body that would ensure that they were benefitting minority students. The school district did appoint a Priority Schools Monitoring Committee, but the citizens committee had no professional staff, no policymaking power and was disbanded after five years.

Policy Recommendations

If the goal of Milliken II is "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct," the most important tasks are to identify educational problems and to select programs and methods that hold the most promise for correcting those problems. Courts should appoint educational experts to work with school officials and others to design such remedies.

A panel of professional independent monitors should also be appointed. Plaintiffs should always have a role in the selection of these monitors. This panel's primary responsibility should be to rigorously analyze the educational results of Milliken II programs. School officials and courts should revise and fine-tune programs based on rigorous evaluation of effects. The court should take advantage of its political insularity and should discontinue or replace ineffective programs despite resistance from school boards or community groups.

Detailed budgets should always be presented to the court, in advance. Educational programs should be designed with an eye toward allocated budgets.

CONCLUSION

Certainly there are policies and procedures that can be put in place that might improve the design, implementation, and possibly, the results of educational compensation programs. School districts and courts who use Milliken II-type programs should take those steps toward improvement.

However, the most important message is simply that there is still no proven program that can make segregated minority schools fundamentally equal to schools that enroll a racial

and economic mix. Until there is a guaranteed cure for the myriad problems that stem either from the continuing effects of intentional segregation, or from racial isolation and poverty, Milliken II-type "educational compensation" remedies, as they are currently implemented, give "separate but equal" another chance. Milliken II, though officially a "desegregation remedy," still permits school districts to relegate minority students to schools that are segregated and that have high levels of concentrated poverty. Both of these school characteristics, of course, have long been associated with low achievement.

Unfortunately, the *Milliken I* decision in 1974 constrained many school districts from achieving racial integration in their public schools. But school districts, courts and policy makers who truly want to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct" should continue to explore cooperative efforts, such as transfer programs with other school districts, to help create racial integration. It may be that some comprehensive combination of effective, accountable educational compensation remedies *and* racial integration is the best way to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."

(end executive summary)

INTRODUCTION

The Supreme Court decision in *Brown v. Board of Education*, ruling that black students in intentionally separate schools were being "deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment,"[1] triggered attempts by courts and school districts to determine how to redress the present-day effects of past segregation.[2] In the years to follow, courts and school districts focused on the arduous task of balancing the racial composition of public schools.

But by the late 1960s, urban school districts faced a trend that would make desegregation cumbersome and that would accelerate in the coming decades. White families were leaving the nation's inner cities at an accelerating rate and, by the early 1970s, this suburban migration was transforming the face of urban school districts. By this time, minority students actually constituted the majority in many urban districts. Detroit, Michigan, reviewed in this study, reflected the trend. By 1974, Detroit's schools were already about 71.5 percent black; [3] the available pool of white students was small and shrinking. In the lawsuit *Bradley v. Milliken*, federal courts had found the Detroit school board and state of Michigan guilty of intentionally segregating black students. In seeking a remedy to the constitutional violation, the court realized that unless it could incorporate the surrounding white suburbs into a desegregation plan, mandatory busing within the city would not produce the desegregation *Brown* had called for.[4] The lower federal courts, then, agreed to a proposed remedy that sought to broaden the available pool of white students through mandatory "metropolitan" busing that would include students from the surrounding, predominantly white Detroit suburbs. In 1973, The U.S. District Court for Eastern Michigan and the U.S. Court of Appeals officially granted a metropolitan remedy.

But in the first phase of this protracted legal battle (*Milliken I*, 1974), the Supreme Court overturned the lower court rulings and rejected the proposed remedy 5-4. The scope of a desegregation remedy, the opinion stated, must be determined by the scope of the Constitutional violation. In other words, suburbs could only be forced to participate if they either are guilty of causing the segregation in the first place, or if the state could be found responsible for creating the pattern of all-white suburbs and an increasingly black Detroit. The Supreme Court decision, then, implied that involving suburban whites in desegregation would be punitive to them and held that the "deeply rooted" tradition of "local control" of public

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[1] *Brown v. Board of Education*, 347 U.S. 483, at 495, 74 S.Ct 686, at 692 (1954)

[2] *Brown v. Board of Education*, 349 U.S. at 301, 75 S.Ct. 753, at 756 (1955) (Brown II)

[3] Grant, William, *The Battle to Desegregate Detroit's Schools: 1954-1977*, unpublished manuscript. On file with author.

[4] *Milliken v. Bradley*, 94 S.Ct.3112 (1974) at 3122

schools was so ingrained that it could not be violated for the purpose of racial integration.[5] The summary effect of *Milliken I* was to hinder efforts across the county for metropolitan desegregation plans. In many of the cases, it is true that the demographic patterns in the city likely occurred, at least partly, because of housing discrimination. But Justice Stewart's concurring opinion in *Milliken I* asserted that housing segregation was the product of unknowable factors.[6]

After *Milliken I*, racial integration became all but impossible to achieve within predominantly minority, low-income school districts. In most cases, however, urban school districts were not only segregated, but the segregation had also created educational deficits among black children. Once again, Detroit became the setting for a judicial landmark. If the Supreme Court would not guarantee the long-term integration that a metropolitan remedy would have ensured, the school board and the District Court reasoned, then at least the courts should guarantee that minority children in the inner city receive a quality education to remedy the educational deficits traceable to segregation. In the second phase of *Milliken v. Bradley (Milliken II, 1977)*, the Supreme Court followed this line of reasoning in allowing for the provision of additional funds to "restore the victims of discrimination to the position they would have occupied in the absence of such conduct."[7]

> "Children who have been thus educationally set apart from the larger community will inevitably acquire habits of speech, conduct, and attitudes reflecting their cultural isolation. They are likely to acquire speech habits, for example, which vary from the environment in which they must ultimately function and compete, if they are to enter and to be a part of that community...Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; the consequences linger and can be dealt with only by independent measures," the decision said.[8]

Justice Thurgood Marshall concurred:

> That the academic development of black children has been impaired by (past discrimination)is to be expected. And, therefore, that a program of remediation is necessary to supplement the primary remedy of pupil assignment is inevitable.[9]

The independent measures and program of remediation to which the opinions referred

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[5]*Milliken v. Bradley*, 94 S.Ct.3112 (1974) at 3123, 3124.

[6]*Milliken v. Bradley*, 94 S.Ct. 3122 (1974) at 3133 Footnote 2.

[7]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

[8]Id., at 287-88, 75 S.Ct. at 2761

[9]Id., at 292-93, 75 S.Ct. at 2763

meant that special compensatory education programs could be included in desegregation remedies. *Milliken II*, then, went beyond the pre-*Brown* separate but equal standard of *Plessy v. Ferguson*. No longer were school authorities required simply to equalize programs and facilities throughout the district: they could allocate special, additional educational resources to remedy the educational deficits of isolated minorities when that isolation could be traced to enforced segregation and discrimination. Perhaps the most far-reaching aspect of *Milliken II* was its declaration that states found guilty of prior discrimination would be required to pay for remedial educational programs. In *Milliken II*, the Supreme Court ordered the state of Michigan pay half the cost of four of Detroit's nine educational components. The city school board was to pay the balance.

Since 1977, school districts across the nation have used *Milliken II* provisions to install state-sponsored compensatory educational programs for minority students in racially isolated schools. A critical examination of *Milliken II* programs is necessary because since 1977, the programs have played an increasingly prominent role in desegregation remedies. This is partly because the demographic patterns evident in Detroit in 1974 have grown even more extreme. School districts in the nation's central cities and some older suburbs enroll large proportions of minority students, while surrounding suburbs remain predominantly white. As patterns of isolation persist, racial integration of the type envisioned in *Brown* has become increasingly difficult to achieve. This pattern has forced school officials and courts to rely on *Milliken II* programs to supplant rather than supplement true racial integration.

This study examines activities in four school districts to determine how and why *Milliken II* programs and Milliken II-type programs were put in place and how they were designed, funded and evaluated.

This study concludes that despite the impressive array of expensive programs, the compensatory education programs show no evidence that they have met the Supreme Court mandate to "restore victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[10] In fact, lower courts and school officials are not even making an attempt to define or interpret the court mandate in order to apply it to their particular districts. The remedial programs are often designed without a corresponding, clear educational rationale or specific goal for helping students. Rarely are the programs judged on whether they help children. In none of the districts has there been rigorous, systematic evaluation that would determine whether or not the programs are actually benefitting children. Perhaps the most troubling aspect of the Milliken II programs, however, is the apparent philosophy underlying them. It appears that despite the good intentions in many districts, the primary function of the remedies is *not* "to restore victims of discriminatory conduct to the position they would have occupied in the absence of such conduct," but, rather, to provide school districts and states a way to serve a temporary and superficial punishment for prior discrimination. District policy makers follow directives that specify how long programs should last, how much can be spent and in which schools the programs must be placed. However, rarely, if ever, is there an identifiable meaningful outcome at the end of this experimental strategy for equality. These problems might be caused at least partially by the

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[10] *Milliken II*, at 280-81 S.Ct., at 2757.

nature of past Supreme Court rulings. Specifically, in *Green v. County School Board of New Kent County*,[11] the Court set up standards - or indicators - by which to measure a school system's success at meeting Brown's mandate to create a desegregated school system.[12] The Court never established indicators by which to judge the effectiveness of compensatory education programs allowed by Milliken II. In other words, districts and courts are left with out a clear standard of success and are unfortunately left on their own to judge the programs' effectiveness.

While this paper concerns itself with remedies fashioned as a result of the *Milliken II* decision, the conclusions must be viewed within the context of *Milliken I* which essentially has confined the nation's mostly minority school districts to inherently limited desegregation remedies. In that sense, the events as described here, while they may be evidence of irresponsible management and inadequate evaluation on the part of policy makers, are, in the broader sense, evidence of the severe negative ramifications of the *Milliken I* decision. The evidence presented here suggests that the goal of racial integration should by no means be abandoned in favor of the seeming attractiveness of educational compensation remedies. The shortcomings and flaws described here demonstrate that educational compensation remedies should neither be *viewed as* nor *used alone as* an adequate way to fulfill *Brown's* mandate. These findings can inform the current debate about racial integration at a time when those who are disenchanted with the policy argue that new programs or extra money can better solve educational problems caused by past segregation or poverty. Educators, policy makers and others should consider the evidence in this report before implementing policies that would replace racial integration with a policy that relies solely on providing money or programs to racially segregated schools. And in cases where demographics and political realties make racial integration impossible to achieve, policy makers should use the recommendations offered here to at least ensure that educational compensation remedies are as accountable and effective as possible. The findings here suggest that educational compensation remedies, while perceived as less of an intrusion than mandatory reassignment plans, actually require intensive intervention and vigilant monitoring to be effective.

It would be incorrect to use the findings in this report to advocate for the removal of compensatory monies from segregated, poor school districts. On the contrary, it is highly likely that educational remedies, when they are used effectively, usually as part of a larger desegregation strategy, can be powerful tools in the effort to improve the education of minority students.

The districts studied here include: Detroit, Michigan; Little Rock, Arkansas; Prince George's County, Maryland; and Austin, Texas. Together, the districts reflect diversity of geography, urban/suburban status, size and socio-economic status of students, program design

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[11]*Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

[12]The so-called *Green* factors have become the most commonly used guide to determine whether a school district is "unitary" or desegregated. Green required that desegregation be achieved in the following areas: the student body, faculty and staff, transportation, extracurricular activities and facilities. These factors were measures of progress toward meeting the goal specified in *Green* to create a "system with out a 'white' school and 'Negro' school, but just schools."

and evaluation procedures.

The table below summarizes features of each district studied here:

FEATURES OF SELECTED SCHOOL DISTRICTS. 1993-94[13]

SCHOOL DISTRICT	ENROLLMENT	NUMBER OF SCHOOLS	PERCENT MINORITY STUDENTS
Detroit	168,956	244	92.2
Little Rock	25,813	49	65.0
Prince George's County	113,570	174	73.5
Austin	65,885	100	53.0

To complete the four case studies, the authors reviewed and analyzed court records, enrollment figures, school district records, academic papers, monitoring commission reports and media reports. Authors conducted interviews with federal judges, attorneys, school officials, school board members, principals, community activists, plaintiffs, members of oversight committees and defendants. This report should not be misconstrued as a reflection or analysis of teaching methods and classroom practice within the school districts studied. Rather, it is an analysis of the implementation and broader aggregate effects of court-ordered educational compensation remedies. The four individual case studies are followed by a summary analysis of findings and a discussion of remaining legal questions about the appropriateness of using *Milliken II* remedies alone and in place of integration as a temporary remedy for the present-day effects of past segregation. Each case study was made available to the school districts and other participants and experts prior to publication. Officials in each school district were given opportunity to respond to the findings and make corrections prior to

[13]Data collected from Board of Education offices in each selected district. Based on Fall Enrollment, 1993-94 school year.

release.[14]

DETROIT, MICHIGAN

Background and History

As the setting for the landmark *Milliken* case and then later, *Milliken II*, Detroit was the first city in which "Milliken II" remedies were implemented.[15]

Despite the lower court findings that desegregation would be impossible to achieve within the district, the Supreme Court in *Milliken I* said that the lack of evidence that suburbs or the state were responsible for demographic patterns meant that Detroit officials still could not reach across district lines for white students to integrate the city schools. Reflecting a post-World War II pattern of white suburbanization occurring across the country, Detroit's school system was 71.5 percent black by 1974. U.S. District Court Judge Robert DeMascio, in reaching the *Milliken I* decision, reviewed plans for Detroit-only desegregation remedies submitted by the plaintiff representative NAACP and the defendant Detroit School Board. DeMascio rejected the NAACP proposal that would have desegregated all schools in the city, including three all-black regions. Under this rejected proposal, the racial balance in city schools would have reflected the racial composition of the school district as a whole. DeMascio concluded that such a plan would render the entire district racially identifiable (ie: 71.5 percent black). Instead, DeMascio ordered a much less extensive student assignment plan, calling for the integration of only the district's racially identifiable white schools. This required only about 20 percent of the district's black students to be transferred. Because the court made no systemwide effort to integrate nearly all-black schools, the busing plan still left 137 of the city's 280 schools more than 90 percent black[16]

As the core of the desegregation remedy, DeMascio ordered nine "educational components" that were adopted from the defendant school board's proposed remedy. Under his plan, these components would be placed in all schools, regardless of their racial composition.[17] While most school districts have come to interpret Milliken II as a

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[14]The authors wish to acknowledge the assistance of Professor Jay Heubert of the Harvard Graduate School of Education and Attorney William Taylor of Washington, D.C. who offered critiques of drafts at various stages and provided important insight and advice.

[15]For a detailed history of the Detroit case, see Hain, Elwood, *Sealing off the city: School Desegregation in Detroit* in *Limits of Justice*, Howard Kaldoner and James Fishman (eds.,) Ballinger Publishing Co., Cambridge, Mass. 1978.

Also, Cooper, Philip, *Hard Judicial Choices: Federal District Court Judges and State and Local Officials*, Chapter 5, New York, Oxford: Oxford University Press, 1988.

[16]Hain, E. (1978) "*Sealing Off the City: School Desegregation in Detroit*," in Limits of Justice: The Court's Role in School Desegregation. eds. Kalodner, H. and Fishman, J. Ballinger Publishing Company, Cambridge, pp. 284-285.

[17]*Milliken v. Bradley*, 402 F. Supp. 1096, 1138-1145, 1977.

prescription for state supported programs solely for racially-identifiable minority schools. this was never the explicit intent of DeMascio's Detroit program. DeMascio was clear that the educational components were for all schools, whether they were segregated or integrated. A common perception of DeMascio's order, however, suggests that the educational component element was the court's attempt to make up for its inability to create numerical integration in the schools.

In Detroit, then, the court approved an educational remedy that would direct extra resources to all students - not just black students. Under the Detroit plan, there were no extra resources specifically for black students, who were, after all, the victims of segregation. Rather, resources would go to all schools, no matter their racial composition. (This is contrary to what would occur later, in other districts, that usually applied the components only to racially identifiable minority schools.) The components included a remedial reading program, a counseling and career guidance program, more testing and monitoring of student achievement, a plan to improve relations between the races in the schools and community, a new student conduct code, vocational education, extra-curricular activities and bilingual/bi-cultural and multi-cultural studies.

DeMascio ordered the state to pay half the annual cost of four of the nine components.[18] The school board would pay the balance, through its publicly funded budget and federal grants. DeMascio also appointed a citizen's monitoring commission, directed by a small professional staff, to oversee the programs and to make reports to the court, the parties in the case and the public. The court ordered that the state Superintendent of Public Instruction seek out state educational experts to:

> "collect and analyze all data...submitted and to provide sufficient staff to supervise the work of the monitoring committee."[19]

In 1977, under *Milliken II*, the Supreme Court upheld the lower court's remedy, thereby validating the concept of educational compensation as an acceptable component of a "desegregation" remedy. However, unlike its mandate in *Brown*, the Supreme Court, did not *direct* these components to be put in place. Rather, the Court *allowed* the use of educational compensation remedies. The Court did mandate the educational remedy for Detroit, but did not hold up educational compensation remedies as a mandatory blueprint for other desegregation cases:

> As part of a desegregation decree a district court can, if the record warrants, order compensatory or remedial educational programs for schoolchildren who have been subjected to past acts of de jure segregation.[20]

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[18]The state co-funded the reading, in-service training for teachers, counseling/career guidance and testing components.

[19]*Milliken v. Bradley*, 402 F.Supp. 1096, 1145, 1975.

[20]*Milliken v. Bradley*, 97 S.Ct. 2749 (1977) at 2751.

By 1981, however, six years after the components were ordered, and with no evidence that the remedies had met the required mandate to correct the deficits of minority students, the court directed defendants and plaintiffs to negotiate an agreement that would end the remedy by 1989. In 1988, after 12 years of the *Milliken II* programs, the court, in accordance with the earlier 1981 agreement between the parties in the case, relinquished control over the city schools. This meant that school officials were free to terminate the special educational programs and were now under no obligation - financial or otherwise - to provide compensation to the plaintiff class. While some programs were removed immediately, others do remain in the school system. But the most significant point is that there is no guarantee that any programs will remain in the schools as the school board is no longer under any legal obligation to keep them in place.

The experience in Detroit demonstrates how politics can hinder effective implementation and monitoring of educational components. In the broader sense, it seems the question of how programs effect students is not the primary concern of policy makers, parties to the case, and court officials. Rather, the primary questions are whether or not programs exist and how long defendants will have to pay for them. This relative inattention to student performance likely grows from viewing educational compensation as an obligation to provide temporary relief rather than a comprehensive plan to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[21]

Detroit's schools have grown even more segregated. In 1994, 92 percent of its students were members of racial or ethnic minority groups. Achievement rates are abysmal. Detroit is perhaps the clearest example of how school districts, constrained by *Milliken I*, are left with little more than an illusory remedy in *Milliken II*, which has little chance of remedying the present-day effects of prior state-sanctioned racial segregation.

Implementation

The Detroit plan was set up in the public schools by Detroit educators and subcontracted professionals such as local university officials and educational consultants. Again, the plan approved by the court had been designed primarily by school officials,who were defendants in the case, not by plaintiffs. Presumably, the court approved the educational components as programs likely to eradicate the past effects of segregation. However, it failed to articulate any clear standard, goal or measure by which to judge the educational success or failure of the components.

Stuart Rankin, assistant superintendent at the time, said the plan consisted of educational programs that the policy makers were interested in implementing anyway, with or without desegregation. In this sense, Rankin said, the remedy was not viewed primarily as an attempt to reach a legal mandate but as a way to get funding for extra programs.

> "With the education components we took the opportunity to (fund and) do the things that we wanted to do in the school system...and we didn't

[21] *Milliken II*, at 280-82, 97 S.Ct., at 2757.

expect the components would be sufficient to overcome the urban pathos in Detroit," [22]

Soon after the implementation began, events emerged that hindered the evaluation and monitoring of the educational components. First, a stipulation agreement drawn up prior to court withdrawal, required not that the educational programs actually result in enhancing educational opportunity, only that they last for the arbitrary number of years that were negotiated by parties in the case. Second, an adversarial relationship developed between the court-appointed Monitoring Commission and the school board, which effectively prevented progress and resulted in the monitoring commission being disbanded.

In response to a March, 1979 monitoring commission report that cited deficient implementation of educational components, Judge DeMascio, in September, 1979 issued a Memorandum and Order finding:

> "The Detroit Board has knowingly failed to implement the remedial programs ordered by the court in 1975. The evidence presented at the July 23, 1979 hearing on the Monitoring Commission Report fully supports our conclusion."[23]

Eleven months later, in August, 1980, the Chief Judge for the Eastern District of Michigan replaced DeMascio with a three-judge panel for reasons that were unrelated to the educational components in Detroit.[24] Following a dispute among the parties over the amount of funding for the educational components for the 1980-81 school year, the three-judge panel, chosen by lottery, immediately encouraged parties to reach a settlement to close the case and put an end to the educational components. In the words of the three-judge panel:

> "This Court directed defendants to attempt to resolve these disagreements and to develop a formula for funding and implementation of the court-ordered educational components which would be self-executing, which would establish a ceiling of the liability of defendants Milliken, et al, and which would provide for a date certain for final implementation of the educational components

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[22]Interview with Stuart Rankin, February 3, 1994.

[23]Memorandum Opinion at page 3, September 6, 1979.

[24]DeMascio's departure was prompted by what the Court of Appeals called "bitter feelings (as quoted in *Bradley v. Milliken*, 620 F2d 1143, at 1150 (6th Cir, 1980) that have developed" because of DeMascio's reluctance to respond adequately to the plaintiff NAACP's motion to desegregate three all-black regions in the city. DeMascio, in his original order, had left those school regions all-black. Although the court's order only refers to defendants, the Stipulation included all parties in the case, including the plaintiff NAACP.

For a detailed discussion of these events see Cooper, Philip, *Hard Judicial Choices*, New York, Oxford, Oxford University Press, 1988 p. 128.

and for the termination of the court-ordered funding..."[25]

In a speech at the University of Michigan in 1989, Judge Avern Cohn, the junior member of the panel of three who would oversee the case alone in its last three years, said the three-judge panel lacked "long-range" views about the Detroit remedy:

> "I'm not sure any sure any of the judges had a particular goal in mind," Cohn told the audience. "...other than to see that the Constitution's commands were observed and then to shape a proper remedy and see that the remedy was implemented or complied with. I doubt any of us were very philosophical or had any long-range views... Judges are frequently the last to know about the total environment in which a case exists. We only have, by and large, what the lawyers give us and generally in any particular case in court there is a much larger world surrounding it that we don't know very much about."[26]

Judge Cohn explained the court's reasoning for seeking an end to the case, stressing that after the implementation of the remedy, the court was not an appropriate body to manage the educational affairs of the school district:

> "The court's thinking was that courts can not perpetually keep it (school district) under its authority and it seemed to the court that it had to look to a point in time when the school district walked on its own...being free of judicial supervision..."[27]

Parties in the case followed the courts directive and negotiated an official Stipulation of the Parties. Under the stipulation, educational components would end by July 1988. The stipulation also established a payment schedule for the defendants, the State of Michigan and the Detroit Board of Education.

As Judge Cohn characterizes the agreement:

> "(The 1981 Stipulation) seemed like a fair bargain...the state would fund these components for a period of time and then the school district would be on its own... the court could not hold the state perpetually

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[25]*Milliken v. Bradley*, Stipulation of the Parties Regarding Funding And Implementation of the Court-Ordered Educational Components, Attorney Fees and Costs., U.S. District Court for the Eastern District of Michigan, Southern Division, June 29, 1981. p.2

[26]Cohn, Avern. Transcript of Address delivered at the University of Michigan, 1989. p. 6. On file with authors.

[27]Interview with U.S. District Court Judge Avern Cohn, May 30, 1993.

liable...sooner or later one expiates his or her own guilt..."[28]

But again, the Stipulation did not require that the officials provide any proof or even testimony that the various programs had either reduced educational inequalities or, as the Supreme Court demanded, restored "the victims of discrimination to the position they would have occupied in the absence of such conduct."[29] The Stipulation required only that the defendant school board and state provide annual reports about the process of implementing and operating the components.

The Stipulation Agreement itself, said Arthur Jefferson, the city school superintendent at the time, resulted not from a calculated strategy to meet the Supreme Court mandate to "restore the victims of discrimination to the position they would have occupied in the absence of such conduct,"[30] but rather, from political negotiation.

Jefferson characterized the settlement primarily as a way to retain state funding for as long as possible:

> "The Detroit Board position was that we wanted the state to pay for (*Milliken II* programs) as long as possible...It was really a political decision more than an educational decision. We wanted (to continue the funding)longer (than the state did) and we settled for 7-8 years beyond 1981...The State's position was that they wanted to cut their losses as quickly as possible."[31]

It seems the educational components in Detroit, then, came to be viewed not as an opportunity to meet the Supreme Court mandate in Milliken II, but as a way for defendants to live out their temporary financial punishment for past discrimination. In addition, the remedy also came to be viewed as a way for school administrators to get funding for programs they wanted to put in place anyway.

One of the major obstacles to implementation and evaluation of the education components in Detroit was the contentious relationship that developed between the court-appointed Monitoring Commission and the elected school board. The Monitoring Commission issued reports finding the school board deficient in its implementation of components, and the relationship between the court's Monitoring Commission and the school board soon degenerated into a bitter public contest of wills over who would establish district policy. The Monitoring Commission's charge had been to report progress and provide constructive criticism to the court and school board and the Monitoring Commission began issuing reports soon after implementation that were critical of the board's performance. The

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[28]Interview with U.S. District Court Judge Avern Cohn, May 30, 1993.

[29]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

[30]*Milliken II*, at 280-81 97 S.Ct., at 2757.

[31]Interview with Arthur Jefferson, May 5, 1993

board, in turn, would simply counter and deny the accusations.

After the three-judge panel began overseeing the case, the report-counter report pattern continued between the Monitoring Commission and the school board, squashing all hope for a constructive working relationship. In the winter of 1983, for example, the Monitoring Commission issued a report finding that the Detroit Public Schools had consistently failed to implement one of the educational components, the Uniform Code of Student Conduct.[32] The intervening defendant, the Detroit Federation of Teachers (the teacher's union), sided with the Monitoring Commission, and filed a motion "to cite the Detroit School Board for contempt for its failure to properly implement the student code of conduct component." The Detroit Board took exception to the Monitoring Commission's review and the Monitoring Commission responded "with equal vigor" to the Detroit Board.[33] The Monitoring Commission chairperson even commented to the press:

> "It's hard to accuse someone of lying...But certainly there are discrepancies that amount to serious misrepresentations."[34]

This unproductive and highly publicized relationship was part of what resulted in the Monitoring Commission's being disbanded by the three-judge panel. Originally, the court required that the Monitoring Commission operate until 1988.[35] But the court in 1984 found that the tension between the school board and the Monitoring Commission was counterproductive:

> We are of the opinion that our oversight responsibilities under the remedial orders and the manner in which courts usually operate to enforce such orders might distort the political processes which govern elected boards of education in Michigan... The environment we mentioned earlier is an inevitable result of the creation of the Monitoring Commission as an arm of the court to report on the implementation of the educational components...Certainly there could have been no expectation that the Detroit Board would always agree with the Monitoring Commission. The Detroit Board is elected by the voters of Detroit. Its responsibilities are defined by law. Under the laws of Michigan, the State Board of Education and State Superintendent have ample oversight authority. We believe that under present conditions the Monitoring Commission intrudes on the normal

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[32] Radelet, J. *Stillness in Detroit, A Perspective On Detroit's School Desegregation Court Order.* 1970-1989. page 25. A modified version of this paper was published in the *Urban Review*: 23, no.3 1991.

[33] *Bradley v. Milliken*, Memorandum Opinion and Order, 4/24/84, p. 3

[34] Spratling, Cassandra, *City Schools Report Called Inaccurate*, Detroit Free Press, July 20, 1983. p.5C

[35] *Overview of the Detroit Desegregation Case*, Detroit School District, United States District Court Monitoring Committee, p.4. June, 1984.

> processes we mentioned above. This intrusion, however necessary in the past, is no longer necessary today.[36]

Judge Cohn noted the difficulties of the heavily politicized relationship:

> The Monitoring Commission was very good in the early stages...But as the years went on, the board grew to feel that the Monitoring Commission, which was not elected and which was appointed, was usurping its (the board's) role as mandated by the state constitution and statutes as the manager of the Detroit school system. Sooner or later that kind of (tension between a) non-political body (and) a political body...(will heighten) tensions...[37]

While this order would be the subject of two subsequent appeals, it was essentially left intact until the case was closed in 1989.[38] The District Court, then, ended its oversight of the educational components because of the political obstacles it believed had emerged in the relationship between the Monitoring Commission and school board. As a result, the judges essentially passed the important responsibility of oversight to the very defendants in the case. The state, as evidenced by the Stipulation, was looking forward to freedom from financial liability. Anecdotal evidence also suggests that while the district was benefiting from state funds through the case, by 1987, it was looking forward to freedom from judicial oversight.

Between 1975 and 1984 when it was finally disbanded, the Monitoring Commission did conduct extensive evaluations about how, when and whether programs were being *implemented*. However, the Monitoring Commission was disbanded before it was even given a chance to begin a complete evaluation of *outcomes*, which would have shown whether or not the programs were increasing student achievement or even being used correctly by educators. The Commission had planned to begin such evaluations as noted in a 1984 report:

> It was projected that when the court-ordered programs were implemented then the commission would proceed to evaluate the benefits of these programs that were designed by the school system to achieve the goals ordered by the court.[39]

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[36] *Milliken v. Bradley*, Memorandum Opinion and Order, April 24, 1984, US District Court for Eastern State of Michigan, Southern Division.

[37] Interview with U.S. District Court Judge Avern Cohn, May 30, 1993.

[38] For a summary of these appeals, see, *Bradley v. Milliken*, 828 F.2d 1186 (6th Circuit, 1987).

[39] *Profiles of Detroit's High Schools: 1975-1984*, Monitoring Commission Report of the United States District Court Monitoring Commission for the Detroit School District, October 1984, Introduction, Aii. As is common in the evaluation of many remedial programs studied here, monitors often look first to evaluate implementation of programs; that is, monitors measure how the programs were set up. This type of evaluation does not measure the effect of programs on students that they are intended to benefit.

The Monitoring Commission did have a chance to review results of the high school reading component by examining test scores on the Michigan Educational Assessment Program (MEAP) and other surveys. In a 1984 report, the Monitoring Commission said rising MEAP scores did suggest some improvement. But additional Monitoring Commission evidence, including subsequent test score declines in some schools and negative reports from some school leaders, reveal the reports of success were not necessarily widespread, accurate or guaranteed to last. MEAP scores increased from 1980 to 1983 in 23 of the city's 24 high schools. But in the 1983 to 84 school year, only 12 high schools showed improvement from 1982-83 and 11 high schools reported declines.[40]

Further, with regard to the MEAP test, the Monitoring Commission identified inconsistencies in testing policies and programs. The reported percentage of students tested on the MEAP ranged from an obviously impossible high of 105 percent for one high school to a low of 60 percent for another high school. The Monitoring Commission reported that informal interviews with school personnel showed some schools to be more diligent than others in testing students who were absent on the original test day.[41]

According to the Monitoring Commission report, in only seven schools did high school English and social studies teachers surveyed in 1984 rate their own schools as improving since 1981 in the areas of reading and communication skills. Teachers in nine schools reported that their schools' efficiency in these areas was declining. According to teachers, only two high schools deserved a "B" rating in this area, thirteen deserved a grade of "C" and three high schools were rated "D" or worse.[42]

To conduct the less arduous and less meaningful monitoring of implementation, as opposed to outcome, the Monitoring Commission performed its own studies and also reviewed other studies commissioned by the school district. The Monitoring Commission's final report in 1984 found that while some components, such as reading and bilingual education complied with the court order in regard to implementation, other components, most particularly, the Uniform Code of Student Conduct, had not been implemented successfully. Monitoring Commission reports also reveal a pattern of inconsistency. In other words, some schools complied with implementation while others failed to implement programs.[43] But the Board of Education, again, countered these claims in its own status report.[44]

It is still unclear what type of evaluations were conducted by the school board and the State Superintendent of Instruction before and after the dismantling of the Monitoring Commission in 1984. Despite repeated attempts made over the course of a year, authors were

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[40]Overview and Status of the Detroit Desegregation Case, June 1984. A Monitoring Commission Report, United States District Court Monitoring Commission for the Detroit School District.

[41]Ibid.

[42]Ibid.

[43]Ibid.

[44]Ibid.

unable to obtain any additional documentation or evaluations from either the school district or the state. The court did require that yearly evaluations of components be conducted by the school board and reviewed by the state Superintendent of Instruction.[45] But Detroit Public School never produced the documents as the authors requested repeatedly over the course of a year. In any case, evaluations conducted during this time would likely not be particularly useful since the Stipulation established no standards of performance or indicators of success against which to judge the programs.

The overall effect of the educational components upon students in Detroit, then, is uncertain. No systematic evaluations of the effect of programs on students were ever conducted because the Monitoring Commission was dissolved and the court never ordered any. The panel of three judges that took the case in 1980 was reluctant to actively manage the educational components. So, it is doubtful that the court would have enforced any modification of components based on evaluation of outcomes anyway. The court, Judge Cohn said, had the power only to find defendants in contempt of court. He said the judges did not believe that using such leverage would be an effective way to trigger improvements in the school district.[46] For the court to attempt to "micromanage" the district based on independent evaluations, Cohn said, would have been counterproductive.[47]

The case was closed in February, 1989. That year, each of the parties to the case, including the plaintiff NAACP, signed the Final Judgement for Unitary Status. As a result, the Detroit Board of Education and the State of Michigan are no longer legally accountable for any lingering effects of past segregation, the current isolation or the remaining inferiorities in the city schools. While some of the educational components remain in place as of 1994, others have been removed. During their 12 years in existence, Detroit's Milliken II educational compensation remedies cost about $238 million.

In 1993, the educational deficits of Detroit students are still apparent. In the 1992-93 school year, for example, Detroit students, on average, scored well below the state average on the Michigan Educational Assessment Program. The chart below compares the percentage of students meeting the state-established "satisfactory," (sat), "moderate" (mod) and "low" (low) standards in Detroit with the average percentage of students meeting the same standards statewide. At every grade level for each subject tested, lower percentages of Detroit schoolchildren meet the satisfactory standard and a higher percentage of Detroit schoolchildren fall into the low category. The state standards correspond to the number of items correct on a given test section and vary depending upon each subject and grade level. The math and reading portions of the test for grades four & five, seven & eight and ten & eleven are presented on the following page:

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[45] *Bradley v. Milliken*, Stipulation of the Parties Regarding Funding and Implementation of the Court-Ordered Educational Components, Attorneys Fees and Costs, June 29, 1981.

[46] Ibid.

[47] Ibid.

MATH PORTION OF THE MICHIGAN EDUCATIONAL ASSESSMENT PROGRAM, DETROIT AND THE STATE AVERAGE[48]

	Grades 4 & 5	Grades 7 & 8	Grades 10 & 11
STATE OF MICHIGAN	49 % - sat 26% - mod 25 % - low	41% - sat 33% - mod 26% - low	27% - sat 31% - mod 42% - low
DETROIT	27% - sat 25% - mod 48% - low	13% - sat 29% - mod 58% - low	4% - sat 15% - mod 81% - low

READING PORTION OF THE MICHIGAN EDUCATIONAL ASSESSMENT PROGRAM, DETROIT AND STATE AVERAGE.[49]

	Grades 4 & 5	Grades 7 & 8	Grades 10 & 11
STATE OF MICHIGAN	44% - sat 17% - mod 29% - low	39% - sat 31% - mod 30% - low	43% - sat 27% - mod 30% - low
DETROIT	27% - sat 30% - mod 43% - low	16% - sat 29% - mod 56% - low	21% - sat 32% - mod 46% - low

[48]Results of the Michigan Educational Assessment Program, 1992-1993. State of Michigan Department of Education. December, 1993. pp.60 and 77. The MEAP is a criterion reference test.

[49]Ibid.

These data illustrate the lingering educational deficits among schoolchildren in Detroit. While gaps between urban districts such as Detroit and other school districts occur for a variety of complex reasons, not all of which are attributable to the public schools, this achievement gap does show that educational deficits were clearly not remedied. This gap could also be viewed as a possible byproduct of the *Milliken I* decision that closed off Detroit's schools from the suburbs, thereby limiting the district to using educational compensation remedies that simply could not overcome the effects of past segregation.

Officials involved in the Detroit case acknowledge this present-day reality. And while they stress that the extra Milliken II money and programs may have had some positive effect on students, they concede that Milliken II programs alone could never have adequately overcome the myriad problems caused by past segregation.

Former School Superintendent Arthur Jefferson, for example, stressed that any shortcomings of Milliken II programs should be seen in the context of the *Milliken I* decision, which essentially prevented the district from winning a metropolitan remedy which, he believes, held more promise for helping minority children.

> "You have to consider the situation we were in. This case, this attempt at a plan that involved the suburbs had gone to the highest judicial body in the nation and we had lost," Jefferson recalled. "...To even think that it (Milliken II programs) was going to be possible to eradicate those problems caused by segregation in a decade? That's impossible. We have to consider whether a district's programs can really overcome the effects of segregation within a segregated district...When we lost, (with *Milliken I*) of course we knew it (*Milliken II* remedies) couldn't overcome the problems the same way a metropolitan remedy would, but that's what we had to work with."[50]

Jefferson believes that the programs probably had some overall positive effect on students.

> "My feeling is that they did do some good," Jefferson said. "My feeling is that while the condition of the Detroit schools is nothing to stand up and applaud, it probably would have been worse without that (Milliken II) relief."[51]

Milliken II relief, according to Judge Cohn, was an inherently limited form of reparations that simply could not live up to the Supreme Court's expectation that remedies could return minority students to the position they would have enjoyed if racial separation and discrimination had never occurred.

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[50]Interview with Arthur Jefferson, January 19, 1994.

[51]Interview with Arthur Jefferson, January, 19, 1994.

> "These monies were insignificant when considered in light of the school district's budget and were insufficient to serve as an incentive for real change," Cohn said.[52]

Certainly, the programs cannot be blamed for the condition of the schools today. And, as Arthur Jefferson, the former superintendent argues, the programs may very well have improved the system to some degree. But clearly, *Milliken II,* in Detroit, failed to meet the Supreme Court mandate to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[53]

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[52]Personal Correspondence from Judge Avern Cohn to Edward Kirby, January 27, 1994. p. 2. On file with author.

[53]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

LITTLE ROCK, ARKANSAS

Background and History

In 1982, school officials in Little Rock, where 70 percent of the students were black, sued two nearby predominantly white school districts. In the lawsuit, Little Rock officials sought consolidation with Pulaski County Special and North Little Rock in order to create a school system that would have been 61 percent white and 39 percent black.[54] Little Rock officials considered this strategy the most effective for countering the effects of prior segregation. U.S. District Court Judge Henry Woods, in turn, approved the consolidation remedy. But the Eighth Circuit Court of Appeals, in 1985, overturned Woods, ruling that even though the constitutional violations were a result of interdistrict policies, consolidation was unnecessary. The appeals court held that each of the three districts had to devise its own remedy so that "each school will reasonably reflect the racial composition of its district."[55] In January 1989, the parties in the LRSD case finally negotiated a six-year student assignment plan that included interdistrict and magnet schools and that provided *Milliken II* relief to eight "Incentive" schools that had been difficult to integrate because of their isolated location and whose racial composition was at least 80 percent black. These schools were called "Incentive Schools" because officials believed that the special programs and extra funding would provide incentive for white students to transfer there. (Though the plan called for eight schools, six schools were originally designated and a seventh was added in 1991. One was closed at the end of the 1992-93 school year, leaving six, once again.) Under the plan, these segregated schools, which enrolled about 20 percent of the black student population, would get twice the amount of money per-student as other elementary schools, "for compensatory education and desegregation expenses."[56]

Henry Woods, the District Court Judge, acted on the recommendation of the court's Special Master Aubrey McCutcheon to reject the plan:

> Lack of detailed planning and programming for the Incentive Schools is another critical deficiency of the LRSD plan. The plan adequately explains why the Incentive Schools, but fails to explain how...Neither parents nor teachers could possibly know what to expect in the Incentive Schools from reading the plans...The availability of "double funding" is meaningless if the programs on which the money is spent

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[54]From Woods, Henry and Deere, Beth. "*Reflections on the Little Rock School Case*," Arkansas Law Journal Volume 44, Number 4, (1991).

[55]*Little Rock School District v. Pulaski County Special School District*, 778 F2d, XXX, at 435 (8th Cir. 1985)

[56]Pulaski County School Desegregation Case Settlement Agreement, March, 1989 (As Revised September 28, 1989), page 23.

are not designed and implemented to achieve educational excellence.[57]

Woods offered a more fundamental criticism:

> Approval of the LRSD long-range plan would have resulted in progressive segregation of elementary schools over a six year period.[58]

But the Court of Appeals, concluding that the Constitution does not forbid all-black schools, overruled Judge Woods and approved the district's 'Incentive School" plan in 1990. The Incentive Schools are only part of a larger desegregation strategy. To desegregate the schools, the district uses a so-called "majority to minority" transfer program that allows students to transfer across district lines to schools where their race is in the minority, so long as the transfer does not negatively affect racial balance in the sending school. This program is used in conjunction with magnet schools and several "interdistrict schools," some of which are located in the predominantly white Pulaski County school district and some of which are located in the predominantly black Little Rock district. The interdistrict schools are overseen by both the Little Rock and Pulaski County school districts and offer specialized programs similar to the magnet schools in an effort to attract a diverse student body.

The Court of Appeals expressed the hope that the *Milliken II* programs would improve the educational environment in the Incentive Schools so dramatically that white students would choose to transfer into them, thereby, creating integration.[59] The Incentive Schools were informally termed "super magnets" because they received more money than the magnet schools in the district. The school district, in turn, pledged to recruit white students to the Incentive Schools, which they hoped would be attractive because of the extra resources available for programs. Reflecting high hopes for the plan's success, the desegregation plan's "Blueprint for Excellence" promoted the following equation:

> Academic achievement is the result of commitment, high expectations, a strong belief that all children can learn, and broad-based community support. When these ideals are coupled with the availability of financial resources, educational excellence prevails.[60]

But in the view of many, including the superintendent in 1992, Dr. Mac Bernd, the settlement plan was a "deal" struck by the black and white urban communities: de facto segregated schools (meaning no mandatory busing) in exchange for more money:

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[57] *Little Rock School District v. Pulaski County Special School District*, 716 F.Supp. 1162, at 1190 (1989)

[58] Ibid.

[59] The Eighth Circuit, however, described this outcome as "far from certain." Little Rock School District v. Pulaski Special School District, 921 F2d. 1371, at 1385 (8th Cir. 1990)

[60] Little Rock, Arkansas Desegregation Plan, April 29, 1992, p. 151.

> I think what (the settlement plan) was, was a bargain that was driven by the people who put together the plan. And it was a bargain between the whites and the blacks from the city. There was an acknowledgment that it would be very difficult to integrate those inner city schools. There was an acknowledgment that the whites in the city wanted to go to their neighborhood school, and so the bargain was put together as: 'Listen, we'll leave those schools basically black, double fund them, in exchange for the whites getting their area schools. That's my reading of it.[61]

But it isn't only the questionable motivations behind the programs that are troublesome. The implementation of Little Rock's *Milliken II* plan illustrates how unchecked planning and design procedures common in such remedies can produce fundamentally incoherent, ill-conceived, and unaffordable programs which, so far, have demonstrated little promise for restoring "the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[62]

Implementation

The final tally of programs, known as the settlement *plan*, was revised several times and not approved until May, 1992, though the money began flowing into the district in 1989. The school officials and attorneys who crafted the plan devoted about one-third of the plan's 240 pages to an itemization of more than 100 programs to be placed in the Incentive Schools. These programs ranged from new science labs to additional teachers and classroom aides.[63] Most characterized the plan as conglomeration of expensive techniques and programs, rather than a coherent, goal-oriented strategy for ameliorating the educational deficits of minority students.

Dr. Ruth Steele helped develop the plan as Director of the state Department of Education. Later, Steele became superintendent of the Little Rock district and, thus, was in charge of overseeing the *Milliken II* plans:

> We made the assumption that if you put enough aides in a room, or if you put enough computers in a room, or if you put enough of this, that, or the other, you can achieve an outcome, instead of thinking about the outcomes that you want to achieve, then backing yourself up to what outcomes for your individual class you need...that will lead you toward the ultimate outcome...That kind of thinking was not done.[64]

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[61]Interview with Dr. Mac Bernd, former school superintendent, March 18, 1993.

[62]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

[63]Little Rock School District Desegregation Plan, April 29, 1992.

[64]Interview with Ruth Steele, Superintendent of LRSD from 1989 to June, 1992, March 18, 1993.

The educational remedies, then, were developed without specific goals attached to them. It was simply assumed that the assortment of programs would somehow solve the low achievement and academic inferiority in the heavily minority schools. Chris Heller, attorney for the LRSD, conceded that the Milliken II program lacked a clear vision:

> One of the problems...is there wasn't a real unifying theme to all this. I think it was a product of a lot of different people operating...and maybe without regard to how much we would be bombarding these kids with and whether or not it could be coordinated in some useful way.[65]

In the face of considerable expenditures, the district's evaluations have, at this early stage, focused primarily on implementation, rather than educational results. In fact, the monitoring schedule contained in the desegregation plan emphasizes only the dates for implementation and says nothing about the need to measure success or "restore victims of discriminatory conduct to the position they would have occupied in the absence of conduct."[66]

Another problem is that three years before the programs were approved in the settlement *plan*, the financial *agreement* between the parties required the state to pay the LRSD $73 million over 10 years for desegregation and educational compensation remedies. A key problem with the plan is that its funding and educational components were considered separately by two distinct committees. As a result, there was no realistic assessment of what educational programs the district could afford financially. Not only were the agreement and the plan developed separately, but those who created programs were told to design the programs without even considering costs. The negotiators of the financial settlement assured program designers there would be enough money, even though the financial negotiators had little knowledge of what programs the planners would create.

James Jennings, the former associate superintendent for desegregation, was involved in the process:

> There were two groups working on the desegregation plan. One group involved the district administrators. Meanwhile, there was another group, I guess you could describe as higher up, people at the state department (of education), our board, our superintendent, our attorneys, and they were working on the settlement agreement which was the money side...We were not informed in terms of what was going on with the settlement negotiations, so what happened was that we came up with a plan that was much more expensive than what the settlement

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[65]Interview with Chris Heller, March 20, 1993.

[66]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

group settled on.[67]

But in the end, program designers had to accept the $73 million. Educators knew the funds would be inadequate, explained Dr. Ruth Steele, the former superintendent and former education department director.

> ...the staff people were back trying to figure out what it would all cost while negotiations were going on with a whole different set of people...[W]hat (district administrators) tell me is when the negotiators came back from the table with the amount that had been settled upon, the first response from the staff was, 'This isn't enough money to pay for the plan," and the superintendent said, 'It'll just have to be enough, it'll just have to work, we'll just have to make it work. This is basically a plan that the Little Rock school district cannot afford to implement...the district can't afford it, simply cannot afford it.[68]

Again, there have been no comprehensive evaluations of the district's *Milliken II* programs thus far. However, the court, through it's Office of Desegregation Monitoring, is keeping track of the implementation process. Horace Smith, associate monitor for ODM characterized evaluations thus far:

> The Little Rock plan was measured by implementation, not by outcome, and that was because of the way the plan was designed...We really got caught up in just meeting deadlines...evaluation is based more on 'Did you do it?' as opposed to 'Was it successful?'

As of January, 1994, the school district had spent three-fourths - or about $55 million - of the $73 million settlement monies,[69] with few evaluations other than those that would determine whether or not the programs exist.

There is another financial uncertainty. Again, under the settlement agreement, the state agreed to loan the district $20 million for educational programs. This loan will be forgiven if the district could raise test scores of black students districtwide so that their composite scores, by the year 2000 are at least 90 percent of the composite scores of white students. If the district fails to improve scores, it must pay the loan back, with interest.[70]

As of January, 1993, two years into the plan and four years into the financial agreement, the district had spent $12 million of its $20 million loan. Most of this money has

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[67]Interview with James Jennings, associate superintendent for desegregation, July 1987 to July 1992. March 18, 1993.

[68]Interview with Dr. Ruth Steele, March 18, 1993.

[69]Office of Desegregation Monitoring, U.S. District Court, Little Rock Arkansas. March 14, 1994.

[70]*Pulaski County School Desegregation Case Settlement Agreement*, pages 24-5.

been spent in the segregated Incentive Schools, even though loan forgiveness hinges upon improvement in black students' scores districtwide. And even though loan forgiveness is to be judged on test results, the district, over the last five years, has administered four different standardized tests to measure achievement. This makes achievement comparisons difficult, if not impossible.

So far, test scores indicate that despite the increased spending, the school district is not approaching the goal of improving black students' scores. The aggregate scores of black students, districtwide, have not risen significantly. It seems the achievement gap between black and white is getting larger, putting the district in danger of failing to meet the specified target for loan forgiveness.

As of 1993, districtwide, black students scores on the 1992-93 Stanford-8 Achievement Test were 13 points lower than whites' scores overall. The gap between scores has widened since 1991-92 when the difference was just nine points.[71]

And in the Incentive Schools, which received the most funding and extra programs, the scores of black students have dropped. The 1991-1992 Monitoring Report discussed this problem:

> There is no consistent incentive school test performance configuration from 1988 through 1991, with test scores showing a seesaw pattern for the most part...However, a preliminary review of the (Stanford Achievement Test)results is very discouraging: overall performance of incentive school students between (1992) and (1993) has dropped significantly.[72]

District Court Judge Susan Webber Wright, who replaced Judge Woods, currently supervises the case. So far, she has found the district less than compliant in putting its own plan in place. She was particularly dismayed that the school district failed to develop a budget that would have detailed exactly how money was being spent. If the LRSD "were a corporation," Wright said, "I would put it in receivership."[73]

> Since the time of victory by the Little Rock School District in this case, when the Court of Appeals granted almost every facet of relief requested by Little Rock, the Little Rock School District has shown a tendency to drag its feet and act as if it had lost, rather than won, the litigation which it instituted...It was your plan that you agreed to; you got it approved by the Court of Appeals; and I must enforce it. Let me make this clear: while the District Court has some latitude in

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[71]Shameer, Danny. "Black-white Test Score Gap Lingers After Decade," Arkansas Democrat-Gazette, August 19, 1993.

[72]1991-92 Incentive Schools Monitoring Report--Summary, Conclusions and Recommendations, 1992, page 31, referring to Stanford Achievement Test results, districtwide comparative data, 1992 and 1993.

[73]Written statement of Judge Susan Webber Wright to the Little Rock School District and Counsel. March 19, 1993. (court's emphasis)

> modifying the plan, the Court of Appeals has identified elements of the plan which it deems essential and which, under present circumstances, are not within the prerogative of this court to modify.[74]

Wright asserted that the district failed to fulfill more than a dozen provisions of the court orders. With regard to Incentive Schools, Wright said the district failed to "engage in documented, sustained and vigorous recruitment" of white students to Incentive Schools. Wright said there was "little significant progress" made in desegregating the Incentive Schools. In addition, Wright complained, program specialists have not been hired at all the Incentive Schools and the Parent Council had not monitored or reported on Incentive School activities as was required by the court.[75]

Wright, while she can enforce implementation of the plan, as is, can approve modifications, as she describes it, "only to a limited extent."[76] The plan, then, may remain virtually unchanged, even if it fails to redress the effects of past segregation. The "essential" elements to which the judge referred include double-funding for Incentive Schools and the effort to eliminate the achievement disparity between the races. All but one of the Incentive Schools remain nearly all black and the district is bound to keep these programs in place at the segregated schools, regardless of whether the extras succeed in helping students.

Further, since double-funding of Incentive Schools is based upon a per-student calculation, the expenses hinge on changes in student population, making the district financially vulnerable to enrollment shifts. In 1991, for example, the district designated a seventh Incentive School which increased overall enrollment at the Incentive Schools. The Incentive School population rose from 1,670 in the 1990-91 school year to 2,235 in the 1991-92 school year - an increase of 565 students.[77] (The overall enrollment, however, did decrease in the 1993-94 school year - from 1,937 to 1,454 - following the court-approved closure of Ish Elementary School, an Incentive School.) In all of the Incentive Schools, but one, enrollment remains above or near 80 percent black. Of course, if school officials were to concentrate instead on actually desegregating the schools they might be able to bring the percentage of black students in more schools to below 80 percent. Then, double-funding would no longer be required. The chart below shows the enrollment and percentage of black students in each Incentive School in the 1993-94 school year or for the most recent year the school was open

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[74]Ibid.

[75]Ibid.

[76]Correspondence from U.S. District Court Judge Susan Webber Wright to Susan E. Eaton, January 24, 1994, p. 21. On file with author.

[77]*LRSD Incentive Schools, Six Year Enrollment Comparison*, Prepared by the Office of Desegregation Monitoring, U.S. District Court, October, 1993.

Enrollment and Percentage Black Students in Incentive Schools, Little Rock School District, 1993-94 or most recent year school was open[78]

INCENTIVE SCHOOL	ENROLLMENT	PERCENT BLACK
FRANKLIN	345	87%
GARLAND	205	88%
(ISH[79])	187	97%
MITCHELL	230	93%
RIGHTSELL	189	97%
ROCKEFELLER[80]	340	71%
STEPHENS	145	97%
TOTAL 1993-94	1,454 (THIS DOES NOT INCLUDE ISH ELEMENTARY, WHICH WAS CLOSED AFTER 1991-92)	87%

[78]*LRSD Incentive Schools Six Year Enrollment Comparison*, Prepared by the Office of Desegregation Monitoring, U.S. District Court, Little Rock, Arkansas, October, 1993.

[79]This school was closed at the end of the 1992-93 school year Enrollment and racial composition figures are for the 1992-93 school year, the last year the school was open.

[80]As the chart indicates, Rockefeller Elementary School is the only Incentive School with less than 80 percent black enrollment. This relatively low black enrollment, however, is likely caused by the presence of the district's only pre-kindergarten program which is attractive to white parents. White enrollment decreases substantially in the upper grades.

The 1991-92 monitoring report from the court's Office of Desegregation Monitoring stresses the financial implications of inaction regarding racial integration at the Incentive Schools:

> Because the double-funding feature of any incentive school will remain for at least six years from the settlement date, and as long thereafter as its student body is more than 80 percent black, the district must anticipate the long-term financial consequences of failure to desegregate these schools.[81]

The events in Little Rock illustrate the potentially disastrous effects of unchecked program design. With no cohesive, coherent plan that has clear, measurable objectives and informed budgets and evaluations, success seems doubtful. Second, this costly "desegregation" program is not being used to desegregate or even to assist in desegregation. The ambitious promises of the district have not been kept and are bringing more trouble than expected both financially and from a supervising judge who wants results. The LRSD is certainly nearing the financial and educational day of reckoning. Today, a separate but "more than equal" program is in place, financially endangered, so far apparently unbeneficial and accountable to virtually no one.

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[81] *Incentive Schools Monitoring Report--Summary, Conclusions and Recommendations,* 1992. p. 31.

PRINCE GEORGE'S COUNTY, MARYLAND

Background and History

The Milliken school program in Prince George's County, Maryland is part of a larger voluntary desegregation plan in this 113,000-student, suburban, predominantly black school district outside Washington, D.C. This school system has experienced rapid demographic change since the late 1960s. Between 1967 and 1986, Prince George's County had the largest percentage increase in black enrollment concomitant with the largest decrease in white enrollment in the nation.[82] As of the 1993-94 school year, about 69 percent of the school district's students were black,[83] making Prince George's County the largest suburban district in the nation in which blacks make up the majority of the population.[84]

The school district has operated under a court-supervised desegregation plan since 1972. In an effort to end an ineffective busing plan and to avoid a more disruptive one, school officials in 1985 began a magnet school program that seeks to create integration by attracting whites to black schools and attracting blacks to white schools. The Memorandum of Understanding agreed to by the defendant school board and the plaintiff NAACP stipulates that 85 percent of all students attend schools that are between 10 to 80 percent black.[85] The increasing proportion of black students has since forced school officials to make adjustments to these guidelines.[86]

In crafting a desegregation plan, school officials believed it would be impossible to integrate some schools because of their geographical location and high minority populations. As compensation, school officials and plaintiffs agreed that extra money would be funnelled to these segregated Milliken schools.[87] The school board agreed to provide this extra

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[82]Orfield, Gary and Franklin Monfort, "*Racial Change and Desegregation in Large School Districts*" 1989.

[83]*Report on Racial Composition by School*, September 30, 1993. Pupil Accounting and School Boundaries, Prince George's County Public Schools, Oct., 1993. p. 10.

[84]*1990-91 Interim Report of the Community Advisory Council on Magnet and Compensatory Education*, May 23, 1991. p.23.

[85]*Memorandum of Understanding*, Order of Chief Judge Frank A. Kaufman, U.S. District Court, June 30, 1985.

[86]At the elementary level, a desegregated school is now defined as one that is between 10 and 83 percent black. A the middle school level, a desegregated school is defined as one that is defined as one that is between 10 and 89 percent black. At the high school level, a desegregated school is defined as one that is between 10 and 87 percent black.

[87]For a more detailed history of desegregation efforts in Prince George's County, See Crutcher, Elizabeth and Susan E. Eaton, *Magnets and Media: Prince George's County's Miracle Cure*, The Harvard Project on School Desegregation, April, 1994. In press.

compensation in exchange for the NAACP's promise that plaintiffs would not challenge the racial imbalances in these schools.[88] At the Milliken program's inception, in 1985, 10 of the district's 174 schools were designated as Milliken schools. The next phase of the Milliken program, in 1986, added 11 more Milliken schools.

Former School Superintendent John Murphy, the architect of the desegregation plan, characterized Milliken schools this way:

> The greatest academic gains occurred in the Milliken Schools. Now to ask me to put my finger on the one specific thing that made it happen, I couldn't do it...but to give you a guess in terms of what I think was the most significant factor, I believe that it was the structure that was built into the lives of these kids. These schools were highly structured and their were expectations laid out for these kids...there were responsibilities that they had to meet, there were guidelines that they had to follow relative to their behavior patterns, and for the first time in their lives somebody was giving them some structure and I think that that helped these kids to perform a lot better in the classroom..."[89]

School officials have also created a new category of schools called "interim Milliken schools," also known as "model comprehensive" schools. These 12 schools have special designations because they are out of compliance with racial balance guidelines and so receive extra funding. However, they do not receive as many extras as the original Millikens. This new category of school is not sanctioned specifically by the court and there were no court hearings held on the new designations. However, plaintiff attorney George Mernick said, that in light of changing demographics that make it more difficult to achieve integration, plaintiffs have no plans to challenge the new categories.[90]

This case study illustrates the vague, unchecked nature of educational reforms with which school officials make no attempt to prove they have met the Supreme Court mandate to restore "the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[91] Prince George's County officials have made some efforts toward evaluation, but the evaluations and measures on which the evaluations are based are questionable. More rigorous evaluation designs have been on the table for five years, since 1989, but as of February, 1994, the evaluations have yet to be approved or conducted by the school board.

In the meantime, the district's growing black majority and shrinking white population is making it much more difficult to racially integrate not just the Milliken schools, but many

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[88]*Memorandum of Understanding*, Order of Chief Judge Frank A. Kaufman, U.S. District Court, June 30, 1985.

[89]Interview with John Murphy, December, 1993.

[90]Interview with Attorney George Mernick, February 15, 1994.

[91]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

of the other county schools. In fact, the most recent semi-annual report to the court indicates that only about 71.6 percent of all students are attending schools that meet the new racial balance guidelines. Again, the Memorandum of Understanding states that 85 percent of all students should attend racially balanced schools. The plaintiff's attorney, George Mernick, said that because of shifting demographics, plaintiffs have no plans to challenge the imbalances.[92]

School leaders, then, clearly need to determine how to provide "relief" to schools that will surely become more segregated as the proportion of white students continues to dwindle. Since the late 1980s, the Milliken II schools have triggered powerful perceptions of inequity as schools without extra resources demand "equal" treatment. So, despite the lack of evidence that would show that the extra compensation has had a beneficial effect upon students, school officials recently recommended an increase in funding to regular comprehensive schools to bring them up to the level of interim "Milliken" schools. In relying increasingly on costly educational compensation remedies, school officials seem to have put themselves in a difficult position. To provide equity, they are forced to increase funding which, so far, has shown no evidence of restoring "the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[93]

Implementation

The 1985 Memorandum of Understanding that was negotiated by the defendant school board and plaintiff NAACP following the 1983 reopening of the original desegregation case, required only that the district demonstrate that *Milliken II* programs exist. There is no mention of any academic standard or measurement of success.

Compensation relief to the segregated Milliken schools includes all-day kindergarten, teachers who specialize in reading and math, computer labs, strategies to improve parent involvement, media specialists, reduced class sizes, after-school tutoring, high-quality field trips and other special programs.

But again, there are no educational goals or requirements attached to the programs. The court fails to address the question of why certain components were included, the educational philosophy behind the programs or what results would indicate that the programs had met the Supreme Court's demand to "restore victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[94] In 1987, an informational booklet disseminated by the school system defined the educational goals for Milliken schools this way:

> The Milliken II program...offers additional staffing and enriched resources for students who attend a school with limited integration. The program is specifically designed to enhance the quality of

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[92]Interview with Attorney George Mernick, February 15, 1994.

[93]*Milliken II*, at 280-81, 97 S.Ct., at 2757.

[94]*Milliken II*, at 208-81, 97 S.Ct. at 2757.

> instruction and the potential for achievement among all students attending the school.[95]

In fact, all of those interviewed describe the purpose of Milliken schools in similarly vague terms. The superintendent, Edward Felegy said:

> "the additional resources of the *Milliken II* program are intended to enrich the educational experience of these students...so there is an educational goal...one closely linked with educational outcomes..."[96]

The Committee of 100, the citizen's monitoring group, repeatedly asked that the school system be more explicit in its goals for Milliken schools. But this committee was never intended to be a watchdog or check for plaintiffs in the case.[97]

> The Monitoring Sub-Committee has always maintained that the ultimate success of the desegregation program (Magnet Schools and Milliken II Schools) is both statistical and substantive -that required ratio racial categories of students must be met along with the improvement in the academic performance of the students.[98]

The school system did develop "school improvement plans" for each building but the goals were never translated into districtwide measures that could be monitored by the court or the public.

In 1989, school officials did conduct a study comparing black third-grade student achievement gains in the Milliken elementary schools to achievement of students in the regular elementary comprehensive schools that received no extra compensation. The study showed that achievement gains for third-grade black students in the Milliken schools were larger than gains of third-grade black students in the comprehensive schools.[99] Specifically, black Milliken third-grade students moved from the 57th to the 63rd percentile on the California Achievement Test between the third and fifth grades. Black students in comprehensive schools remained in the 58th percentile from third to fifth grade. Certainly, the larger gains of Milliken students is worth noting and should be an impetus for conducting

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[95]*A School System of Choices,* Prince George's County Schools, 1987.

[96]Interview with Edward Felegy, March 10, 1993.

[97]Interview with Attorney George Mernick, February 15, 1994.

[98]*Second Interim Report of the Community Advisory Council on Magnet and Compensatory Educational Programs to the Prince George's County Board of Education*, March 26, 1987. p.23.

[99] *Report of the Academic Effect of Educational Equity Efforts in Prince George's County*, prepared by Michael K. Grady, Office of Research and Evaluation, Prince George's County Schools. Research Report, No. 2.2.90.

more studies. It very well may be true that the extra resources and programming in the Milliken schools really did pay off. However, questions remain. Since this study on elementary school students was released five years ago in 1989, there has been no other study of the effect of the Milliken program. Further, the results from this 1989 study mirror other evaluations that show that compensatory measures usually register their largest effect in the elementary school years and that initial gains often are diminished as children move through school in later years.[100]

Other questions remain about the reliability of the research. For example, the 1989 study uses only a single measure to evaluate students. Obviously, the evaluation would be more reliable if multiple measures had been examined and if a longitudinal analysis was conducted that measured students over time. And the one measure used, the California Achievement Test, is not designed specifically for the purpose of measuring the effectiveness of the *Milliken II* program.

It should also be noted that this version of the California Achievement Test may not be an accurate measure of general progress over time. This is because the national norms for the tests were established in 1976-77[101] and remained unchanged in subsequent years. Since the time norms were established in 1976 and the time the test was administered in the 1980s, it is likely that the actual national norm to which local students are being compared, fluctuated. This phenomenon has made it easy for many school systems to claim improvement over time, when, in actuality, the norm to which they are comparing students may no longer be the norm. [102] But despite these criticisms of dated norms, officials continued to cite CAT scores as evidence of success. As late as 1993, district officials cited CAT scores as sufficient "concrete evidence" to conclude that education had improved as a result of the Milliken II programs.[103] It should be stressed that this criticism of dated norms *does not* discredit or negate the school district finding that black students in Milliken II schools registered larger gains than black students in regular schools. It simply throws the more general claims of improvement over time into question.

In its 1988 report, the Committee of 100 took issue with school administrator's claims that the CAT could measure progress accurately.

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[100]See, for example, *Reinventing Chapter I: The Current Chapter I Program and New Directions*. Final Report of the National Assessment of the Chapter I Program. December, 1993.

[101]*Third Interim Report of the Community Advisory Council on Magnet and Compensatory Educational Programs*, September 12, 1988.

[102]For a discussion of this issue, see, for example, Cannell, John J., *Nationally Normed Elementary Achievement Testing in America's Public Schools: How All Fifty States are Above the National Average*, Friends for Education, West Virginia. 1987.

[103]*1990-91 Interim Report of the Community Advisory Council*, p.20; and Response by the Board of Education of Prince George's County to the 1990-91 Interim Report of the Community Advisory Council, p.19. Interview with Superintendent Edward Felegy, March 10, 1993.

> The position assumes that is acceptable to measure students' academic achievement against a dated standard of achievement that does not include contemporary material. Using this standard, most systems have shown significant gains...gains which have not necessarily been reflected in other indicators of a successful school system.[104]

The State of Maryland stopped using the CAT in 1988 and replaced it with a criterion reference test. Prince George's County administrators did design a more comprehensive evaluation for the Milliken II and magnet schools that would conduct sophisticated analyses and use measures tailored specifically to study certain programs. But because of budget cuts, the evaluation proposal was never approved by the Board of Education. Administrators are currently designing a scaled-back version of the evaluation. As of February, 1994, the evaluation proposal had not been approved by the nine-member Board of Education.

But despite the lack of evaluation that would demonstrate the benefits of extra money, the Committee of 100 and the school superintendent are advocating the provision of extra money to comprehensive schools. So, at the same time the Committee of 100 was disturbed about the inadequate evaluations of Milliken II programs, it was also recommending the expansion of such programs.

It seems that by relying increasingly on extra money to create equity, school officials, perhaps unknowingly, created a dangerous precedent. As more schools grow segregated, it seems logical that representatives from other schools would want an equal share of extra funds.

In 1993, the per-pupil cost of comprehensive schools was $5,097. The additional cost of original Millikens were $564 per student. The interim Millikens cost $378 more per student.[105]

In a recommendation to increase funding, a Committee of 100 report reads:

> The title "Comprehensive" school has become synonymous with the term "poor neighborhood school." Creative principals and teachers were pulled from the Comprehensive schools and given the task of creating the Magnet and Milliken II schools. Additional funds were provided to the Magnet and Milliken II projects. In many instances,the more active parents moved to the Magnet schools. This left many Comprehensive schools with inadequate leadership and inadequate funding. It is past time to bring the Comprehensive schools up to the level of the Magnet and Milliken II schools in terms of expenditure per student.[106]

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[104] *Third Interim Report of the Community Advisory Council on Magnet and Compensatory Educational Programs*. Sept. 12, 1988, p.29.

[105] Personal Correspondence from Joyce Thomas to Elizabeth Crutcher, p. 1. June 18, 1993. On file with the Harvard Project on School Desegregation, Cambridge, Mass.

[106] 1991 Interim Report of the Community Advisory Council to the Prince George's County Board of Education, pp. 2-5.

At the time, in 1991, the extra resources for all Comprehensive Schools would have cost an estimated $100 million more than the then-current budget allocations, according to the Committee of 100's System Funding Subcommittee.[107] The school board's budget at the time was $551.6 million. In 1991, the Board of Education said increased funding would be unlikely. While its attempts at equity and fairness are certainly well-intended, it is disconcerting that such a recommendation for funding would be made without sufficient evidence that such extra funding was doing anything to improve the quality of education.

In his $702 million budget proposal for the 1995 fiscal year that begins July 1, Superintendent Felegy requested "interim Milliken-level" funding for all comprehensive schools. Under the proposal, the first of three allocations would be $5.4 million.[108] This would increase annual spending by about $81 per-student.[109] As of February, the nine-member Board of Education had not voted on the budget proposal.

It seems that Milliken II programs, while developed to provide equity, have, in the view of many, created a new kind of inequity. So, as the percentage of white students declines, school officials may find it more difficult to achieve court-ordered integration at their other non-Milliken schools. It seems highly likely that the use of "Milliken" funds will increase, as it has already with the designation of 12 "interim" Milliken schools. This will force increased spending on unproven programs as patterns of increasing racial isolation emerge that will likely never be reversed.

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[107] *1991 Interim Report of the Community Advisory Council.* Prince George's County, p. 19.

[108] *Superintendent's Proposed Annual Operating Budget*, July 1, 1994 to June 30, 1995. Prince George's County Public Schools, December 23, 1993. page I-17. Also, *Class Size, Classroom Materials, Security and Comprehensive Schools' Funding Improved.* Press Announcement, Department of Public Affairs and Communications, Prince George's County Public Schools, December 23, 1993. p. 2.

[109] *Class Size, Classroom Materials, Security and Comprehensive Schools' Funding Improved.* Press Announcement, Department of Public Affairs and Communications, Prince George's County Public Schools, December 23, 1993. p. 2.

AUSTIN, TEXAS

Background and History

It is common for school officials under desegregation orders to claim that they could better help their students if courts were not involved in school affairs. This case study of Austin, Texas focuses attention on a district that has a history of intentional segregation but that was declared "unitary"[110] by the federal court and, as a result, released from its duty to desegregate. Soon after its release from court control, school officials dismantled their busing plan for elementary schools and returned to neighborhood schools. The district then funnelled extra money into some of these newly segregated schools, thereby creating programs much like those found under traditional Milliken II plans. It should be made clear that Austin did not create the compensatory programs under the legal precedent provided by Milliken II, but as part of an independent, district-designed plan.

Austin was first found guilty of intentional racial segregation in 1970. That year, the U.S. Court of Appeals found that the district had discriminated against African-American students. In 1979, the U.S. District Court found that the district had discriminated against Latino students. In response to the findings, the district started a mandatory busing plan for African-American secondary school students in 1972, which, in 1973, was extended to African-American students in grade 6. In 1980, the busing plan was extended to grades 1 through 12 to include Latino students.[111] In 1980, plaintiffs and defendants in the case signed a consent decree that required the defendant school district to build and integrate a new junior high school in the eastern section of the city. In exchange, plaintiffs agreed to give the school board until the autumn of that year to design and implement a cross-town busing plan. Construction of a new junior high school had been a demand of the NAACP during negotiations that began in 1978.[112] The demand was significant because the closing of segregated black schools in 1972 had left the African-American community without a secondary school in their neighborhood for about eight years.[113] The consent decree also made other commitments, including a requirement to continue a transfer program that allowed students to transfer from schools where their race was the majority to schools where their race was a minority.[114]

In 1983, just three years after a desegregation plan had been established for all

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[110]The term unitary, as it applies to school systems, might be best understood as being the opposite of dual, which implies that a district essentially maintained two school systems, one for white students and one for black students.

[111]Personal Correspondence from Dan Robertson, director of planning for the AISD, to Susan E. Eaton. p. 1. February 15, 1994. On file with author.

[112]Personal Correspondence from Dan Robertson, director of planning for AISD and Jim Raup, attorney for McGinnis, Lochridge and Kilgore to Susan E. Eaton. February 15, 1994. p. 1. On file with author.

[113]Ibid.

[114]Ibid.

students. the Austin Independent School District filed a court motion for "unitary" status. This status would imply that the system had satisfied its duty to desegregate under the law. Plaintiffs, represented by the NAACP and the Mexican-American Legal Defense Fund, filed objections to the motion. Following negotiations, however, plaintiffs withdrew their objections. Under the stipulation agreed to by plaintiffs and defendants, plaintiffs would be entitled to a court hearing if they contended that new boundaries illegally discriminated against students on the basis of their race.[115] In addition, the school board would follow a construction schedule for the new junior high school. In June of 1983, the court dismissed the case "with prejudice," meaning that plaintiffs could have the case reopened at any time if they charged that there had been a new violation. In 1986, three years after the case was dismissed "with prejudice," the court granted the school district complete release from court control. This final ruling meant there was little worry of court intervention since plaintiffs could no longer simply have the case reopened if they charged that there was a new violation. In the eyes of the court, the ruling of unitary essentially erased the school board's history of illegal segregation.

In April, 1987, a year after court oversight had ceased entirely, the Austin School Board began implementing its five-year "Plan for Educational Excellence." The plan redrew attendance zones, bringing the number of elementary schools that are more than 80 percent minority to 20. Under the previous busing plan, only six of 64 elementary schools had such high levels of segregation. Demographics also played a part in increasing segregation in the later years, however. By 1986, 10 elementary schools were more than 70 percent minority.[116]

The school district used 1979-80 enrollment data to designate 16 of the most intensely segregated schools as "Priority Schools." These designations allowed the specified schools to receive extra money and programs. Though in 1987 there were 20 schools that were more than 80 percent minority, school officials based designations on 1979-80 enrollment data to identify and provide compensation to schools that were intentionally segregated *prior* to implementation of the original court-ordered desegregation plan.

The board promised "to provide these educational efforts (in Priority Schools) for a period of five years to ensure that students in the 16 schools named herein have the finest education available in the Austin Independent School District."[117] The resolution, however, does not indicate what will happen to funding and programming in the segregated Priority Schools once the "period of five years" is up. In addition, former board member Abel Ruiz said that many schools that he felt should be compensated for high levels of segregation were not. The decision to provide extra money to just the 16 schools that were more than 80 percent minority before implementation of the first busing plan was not based on any research or comprehensive needs assessment. Rather, Ruiz asserts, the decision to fund just 16 schools was the result of politics and financial considerations. A coalition of three minority board members on the seven-member board had agreed to support the Priority Schools Plan *if* all

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[115]Id. at 2.

[116]AISD Department of Planning and Development.

[117]*Resolution of the Board of Trustees*, Austin Independent School District. April 13, 1987. p. 1.

schools where more than 65 percent of students are minorities were provided special services. This would have provided extra services to about 25 schools. However, the board refused to support that plan and even one of the minority members switched sides to vote with the majority in favor of the plan that assisted only 16 schools, Ruiz said.

> "The board voted for the services but they went ahead and limited it as a dollar amount...What happened was then they just said, well, we can only spend X number of dollars on it, so whatever we can do for $4 million, that's what we'll do, and that's how 16 came about...a lot of schools that should have received services didn't."[118]

In response to the neighborhood school plan, civil rights lawyers again charged that the AISD's new attendance zones discriminated against Mexican-American and black children. But since the school district had been declared unitary - or, in the eyes of the court, free from the vestiges of discrimination - the court shifted the burden of proof to the plaintiffs who had to show that the school district's action was an act of intentional discrimination against minority students. If the district had not been declared unitary, it is likely that school officials would have had the burden of proving that their plan would not exacerbate segregation and would not undermine the goal of achieving a unitary - or desegregated - school system.

The standard actually used in the case, which required civil rights lawyers to prove that the action in question was motivated by discrimination on the basis of race or ethnicity, is difficult to meet, since contemporary school officials rarely make public statements admitting to intentional discrimination. In addition, school officials cited the "Priority Schools" designations as evidence that the district was committed to providing educational opportunity to minority children.[119] The district court sided with the school district and upheld its plan to return to neighborhood schools. In Austin's case, its declaration of unitary status, granted after just three years of desegregation, may have been the key factor that allowed the district to dismantle its desegregation plan. For example, an attendance plan in Dallas, Texas, a non-unitary district, was rejected by the court because the it would have created too many one-race schools and impeded desegregation.[120]

Under the new "Priority Schools" plan, Austin school officials pledged to allocate extra money to the schools and to create Milliken II-type programs for the students. In 1987-88, the Priority Schools received twice what the other schools received and in the years thereafter, the Priority Schools received one and a half the amount other schools received. The district's Plan for Educational Excellence detailed what special programs would be included in Priority Schools. This included such things as reduced student-teacher ratios, parent-community involvement and a pre-school program. For each of the 10 components, there was a stated goal, rationale and procedure for implementation.

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[118]Interview with Abel Ruiz, April 21, 1993.

[119]Interview with AISD Attorney William Bingham, April 20, 1993. Interview with Edward Small, former school board member, April 20, 1993.

[120]*Tasby v. Wright*, 713 F.2d 90 (5th Cir. 1983).

The Austin plan is significant because it demonstrates that giving school districts local control over compensatory measures is clearly not a panacea for educational problems that stem from intentional segregation, racial isolation or poverty. While internal evaluations do show some improvement over time within Priority Schools, even with the extra funding, special programming and freedom from court requirements, Austin's segregated Priority Schools are still unequal on several measures to schools that are more integrated. Equally as significant is that there is no guarantee that this extra effort to make segregated schools equal will continue. In Austin, then, the end of court supervision and the subsequent dismantling of desegregation translated immediately into intense racial segregation in a district that, in 1994, was still only 53 percent minority. As of 1994, the programs' continued existence hinged on tenuous political support from an elected school board whose composition changes frequently. The Priority School plan officially ended in 1992 and while the extra funding and programming continue as of February, 1994, it is unclear what the future holds.

Implementation

The implementation and progress of the five-year Priority School plan was studied each school year from 1987-88 to 1991-92 by the school system's Office of Research and Evaluation.

The final report from the school district's Office of Research and Evaluation shows that after five years, only the lower student-teacher ratio appears to have had a direct, measurable effect on students. And this positive effect, it said, occurred only in the kindergarten and first grade. Evaluators used test scores to determine that some schools demonstrated overall improvement, but none had reached the level the district had hoped for.[121] Specifically, the district set up "Priority School Standards" it hoped the schools could achieve. These standards included student average daily attendance of 95 percent or higher; teacher absences of less than five days; fewer than 10 percent of students falling below the bottom 25 percent on the Iowa Test of Basic Skills and "parent agreement" that the school is "effective" ("effective" in this case was not defined). School officials, however, stress that other elementary schools, and not just the Priority Schools, also have had difficulty in meeting the ambitious standards.

According to the fifth-year evaluation, principals at 10 of the 16 Priority Schools reported that student achievement at their schools had not improved over five years.[122] Such statements from principals are especially discouraging since it is reasonable to assume that principals would see it in their interest to present their schools in a positive light to their supervisors and to the public at large. On the other hand, some standardized test scores indicate that achievement at Priority Schools has improved over the years. But these apparent successes should be considered within the context of the informed views of the 10 experienced principals who believe just the opposite of what the test scores report.

In addition, if the goal of the Plan for Educational Excellence is really to provide

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[121]Christner, Catherine and Theresa Thomas, Wanda Washington, Scarlett Douglas and Janice Curry, *Priority Schools: The Fifth Year*. Austin Independent School District, 1992. page 17.

[122]Ibid.

Priority Schools with the "finest" education available in AISD, the most telling measure of success, then, is not whether or not Priority Schools are improving, but how educational opportunity, achievement and school climate in the Priority Schools compares with academic performance at other elementary schools. After five years of the Priority School programming, achievement levels at the racially segregated Priority Schools lagged behind achievement levels at the more integrated elementary schools. Other indicators of school quality suggest that despite the extra funding and special programs, segregated Priority Schools are simply still not equal in quality to Austin's other elementary schools.

Specifically, the five year evaluation notes that Priority School students registered steady improvements on aggregate median percentile ranks on the Iowa Test of Basic Skills each year from 1987 to 1992. Improvements for grades 1 through 6 ranged from 6 percentile points in grades 3 and 6 to 17 percentile points in grade 2. Percentile ranks are based on 1991 norms.

But according to data from the 1991-92 school year, the most recent year for which data is available, students in Priority Schools score much lower than other students on standardized testing measures despite the extra funding and additional monies. The differences in scores are illustrated in the chart below that compares composite percentile ranks on the Iowa Test of Basic Skills, a nationally normed standardized test. In addition to the disparity in achievement, it should also be noted that Priority School students failed to meet the national norm (above 50th percentile) in every grade except for grade 2. Students in other elementary schools consistently met this standard.

1991-92 Composite Percentile Scores on the Iowa Test of Basic Skills for Priority Schools and Other Elementary Schools, Austin, Texas. (1991 norms) [123]

Grade Level	Priority Schools	Other Elementary Schools	Gap Between Priority and Other Schools
Grade 1	44	64	20 points
Grade 2	55	68	13 points
Grade 3	43	68	25 points
Grade 4	28	61	33 points
Grade 5	35	61	26 points
Grade 6	33	65	32 points

Similar achievement disparities are evident in scores on state-mandated tests. The first chart indicates the percent of students passing all components of the Texas Educational Assessment of Minimum Skills, which tests students in math, reading and writing. Overall percentages are presented for Priority Schools and other elementary schools for grades 3 and 5. The second chart indicates the percentage of students reaching the state-established "mastery" level on the Texas Assessment of Academic Skills, a criterion-referenced test that replaced the TEAMS. The TAAS also tests students in math, reading and writing. This chart also presents overall percentages for Priority Schools and other elementary schools in grades 3 and 5.

[123]Calculations derived from data in Christner, Catherine and Theresa Thomas, Wanda Washington, Scarlett Douglas and Janice Curry, *Priority Schools: The Fifth Year*. Austin Independent School District, 1992. page 17.

Percentage of Non-Special Education Students Passing TEAMS in Priority Schools and Other Elementary Schools, Austin, Texas, 1989 and 1990[124]

Year	Grade Level	Priority Schools	Other Elementary Schools	Gap Between Priority and Other School
1989	Grade 3 Grade 5	68 percent 57 percent	89 percent 75 percent	21 perc. point 18 perc. point
1990	Grade 3 Grade 5	58 percent 59 percent	72 percent 80 percent	14 perc. point 21 perc. point

Percentage of Non-Special Education Students Reaching Mastery Level on the English Version TAAS in Priority Schools and Other Elementary Schools, Austin, Texas, 1990 and 1991[125]

Year	Grade Level	Priority Schools	Other Elementary Schools	Gap Between Priority and Other School
1990	Grade 3 Grade 5	44 percent 27 percent	58 percent 52 percent	14 perc. point 25 perc. point
1991	Grade 3 Grade 5	48 percent 26 percent	57 percent 51 percent	9 perc. points 25 perc. point

In addition to these achievement disparities, other statistics suggest that Priority Schools remain unequal to other elementary schools. For example, an annual survey of teachers in the district revealed that teacher attitudes about morale, safety and learning environments are less positive in Priority Schools than they are in other elementary schools. On the survey, teachers were asked whether they agree or disagree with the following three statements: School climate is conducive to learning; school has safe climate; and teacher

[124]Calculations derived from data found in Annual Report on Student Achievement 1989-90, Austin Independent School District, 1990.

[125]Calculations derived from data found in *Annual Report on Student Achievement, 1991-92.* Austin Independent School District. 1992.

It should be noted that the mastery level for both years is based upon 70 percent of questions answered correctly. This standard is established by the Texas State Department of Education.

Spanish-speaking students do not take the English version of the test.

morale is generally high. Even though the differences are often small, for every year since 1987 for every statement, smaller percentages of teachers in Priority Schools agreed with the positive statements.

The following chart illustrates the responses for the 1991-92 school year:

School Climate Questions and Percent of Teachers Agreeing in Priority Schools and Other Elementary Schools 1991-92 School Year.[126]

Statement	Priority Schools	Other Schools
School climate is conducive to learning	93 percent agreed	95 percent agreed
School has safe climate	85 percent agreed	92 percent agreed
Teacher morale is generally high	71 percent agreed	75 percent agreed

In addition, the number of teachers requesting transfers from their schools is higher in Priority Schools than it is in other elementary schools. In the 1991-92 school year, 21 percent of teachers in Priority Schools requested transfer, compared with 14 percent in other elementary schools.[127]

While school officials in Austin have conducted a fairly comprehensive evaluation of Priority Schools, there is still no agency independent of the Austin School District that rigorously monitors or evaluates the educational compensation programs. In 1987, the AISD did create a seven-member Priority Schools Monitoring Committee that was composed of community members who, in theory, were to audit programs and report findings to the school board and administrators. But the group was never given adequate instruction and assistance in conducting evaluations and was dissolved in 1991 after five years. Further, the committee had no independent staff and had to rely on the school district for data.

Former committee member Loretta Edelen discussed this situation:

> It was pretty much an open-ended type of thing, in a way, just going

[126]Calculations derived from data in Christner, Catherine and Theresa Thomas, Wanda Washington, Scarlett Douglas and Janice Curry, *Priority Schools: The Fifth Year*. Austin Independent School District, 1992. page 3. See also, *Shedding Light on District Issues: 1991-1992*. Austin Independent School District, 1992. Publication Number 91.21.

[127]Christner, Catherine and Theresa Thomas, Wanda Washington, Scarlett Douglas and Janice Curry, *Priority Schools: The Fifth Year*. Austin Independent School District, 1992. page 11.

> by the guidelines that were in that Plan for Education Excellence in terms of viewing the schools and preparation of the report. What we basically did when we went into the schools was to kind of visit with them and whatever interested parties they wanted to bring in. Some of the schools, for instance, had parents that came, some had some of their teachers and some of their counselors, so it varied with the school in terms of the kinds of presentation that we received, but we were trying to go in and find out where they were with the whole process and in terms of meeting their goals, what kinds of things they were falling short on.[128]

Reports from the committee contain little, if any, statistical evidence that would either confirm or deny the worth of various programs. Perhaps more important, it is not clear how the evaluations, if they were to exist, would be used by the school district. Findings of the committee were rarely used in policymaking decisions, according to some committee members, such as Blanca Garcia:

> Last year, we requested more of a working meeting with the board of trustees (the school board), because there were a lot of new school board members who were not members when this agreement came about and so they had a lot of questions; they didn't know what was going on. Then, we had a new superintendent and he was confused and so we wanted to meet with the superintendent and the board of trustees to sit down and tell them, 'Look, these are the problems with these schools, and these are the reasons that we're getting low test scores and why our kids are not learning, why our kids are not achieving, and why we have such a high rate of dropouts in the minority community in AISD.' That never occurred. The superintendent didn't want it, and the majority of the board didn't push for it. In fact, the board of trustees had a work session on Priority Schools and the monitoring committee was not even advised or invited to attend.[129]

When studies were released by the school district, the public - in this case, parents - found it difficult to interpret the findings, according to some of those interviewed. Test scores and other measures often were not translated into an easily understandable form, said Joseph Higgs, who works with parents in his role as president of Austin Interfaith, a community organization of 30 interdenominational congregations, with black, Mexican-American and white members.

> Almost none of these parents had any idea what the achievement data was for the Priority Schools. They kind of knew that their kids weren't

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[128]Interview with Loretta Edelen, member of Priority Schools Monitoring Committee, April 21, 1993.

[129]Interview with Blanca Garcia, member of Priority Schools Monitoring Committee, April 21, 1993.

> doing as well as they wanted them to, but they didn't know how their school did relative to other schools or relative to the Priority Schools, how the Hispanic or black kids did relative to Anglo kids in the district, the difference between a norm-referenced and a criterion-referenced tests...The school district gives both tests, and they give reports back to parents, but parents don't know what the difference is and (they wonder), 'What does it mean that my kid's passed this test?' (and) 'What does it mean that they got a 40 percent on this test?' "[130]

In most Milliken II type programs the court would establish a monitoring committee to oversee the plan. But in the absence of effective court supervision, it is unlikely that a school district, on its own, would choose to appoint a powerful external body. The superintendent recently notified the internal Office of Research and Evaluation that it should scale back its evaluations in light of budget cutbacks. This cutback may mean that many important evaluations will not be conducted, including an analysis of achievement disparities between different races and ethnicities in Priority Schools.[131] There has been no evaluation that specifically analyzes and assesses the benefits of Priority Schools since the fifth-year evaluation in 1991 conducted by ORE. However, though it is unclear whether Priority School designations and programming will remain in place in the future, internal evaluations of all schools, including those now designated as Priority Schools, will continue to be thoroughly evaluated, according to David Wilkinson, ORE director.[132]

Another complication emerges from the Priority Schools designations. Again, 16 schools were originally identified in 1987 as "racially identifiable" because more than 80 percent of the students were racial minorities. But as of 1993-94, 26 schools are more than 80 percent minority[133] but no accommodations have been made for these schools. The lack of court presence in Austin means no external body will ensure that these schools are examined, evaluated, racially integrated or provided extra money. School officials are currently discussing the possibility of providing extra money to these schools based on the poverty rates at each building, though it is still unclear what the result of the discussions will be. It is possible that special Priority Schools designations will end with implementation of a new funding formula.[134] Funding and rigorous, critical evaluation to ensure results, then, depends upon support from a school board that can potentially change with every election, which has a

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[130]Interview with Joseph Higgs, president of Austin Interfaith, a community organization of thirty interdenominational congregations, with black, Mexican-American and white members. April 21, 1993.

[131]Interview with Catherine Christner, Evaluator, Office of Research and Evaluation, AISD, April 19, 1993.

[132]Interview with David Wilkinson, February 22, 1994.

[133]Austin Independent School District, Department of Planning and Development.

[134]Interview with Dan Robertson, director of planning, Office of Research and Evaluation, AISD, Feb. 18, 1994.

history of intentional segregation and that is, to some extent, accountable to fickle public sentiment. As Bernice Hart, a current member of the school board explained, "You can't commit one board to something another board did."[135] Blanca Garcia, the former Priority Schools Monitoring Commission member, characterized the current situation:

> I think that the new members felt that this was a plan that was initiated by someone else and the commitment was there for five years. I don't think they intended to keep the spirit of the ten components (of the plan) as it was written. I think that they feel like yes, there is a need to fund the Priority Schools to a certain extent...I don't know if they're going to go beyond that.[136]

The Austin school district did recognize the special academic needs of students in segregated schools and it agreed to try to meet those needs for five years. But, it is worth stressing again that there was no guarantee that these compensations would continue after the five years ended. In January 1994, there was a new school board election. And regarding the Priority Schools, Bernice Hart, the current board member conceded: "I have no idea what they (new board members) might decide."[137] As of the 1993-94 school year, in the face of this ambiguity, Austin schoolchildren have no legally enforceable rights to attend a school that is not racially segregated and which, based on the available data, appears to be unequal to other schools.

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[135]Interview with Bernice Hart, April 20, 1993.

[136]Interview with Blanca Garcia, April 21, 1993.

[137]Interview with Bernice Hart, April 20, 1993.

SUMMARY ANALYSIS

This brief section examines program design and evaluation procedures to review some of the broadly applicable lessons of the *Milliken II* experience outlined in the preceding case studies. Again, these conclusions need to be considered within the historical context of the *Milliken I* decision that severely limited the remedies available to school districts faced with white flight and increasing minority enrollment. It is, of course, beyond the scope of this chapter to determine whether educational compensation remedies can ever meet the Supreme Court's mandate to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[138] But in the districts studied here, it is clear that the mandate has not been met and that school officials are not designing their educational strategies to meet the legal mandate. So far, the evidence suggests that *Milliken II* remedies are not an adequate substitute for racial integration and that school officials should not abandon integration efforts in favor of Milliken II remedies. In addition, the evidence suggests that courts, school officials and policy makers who want to increase educational opportunity in racially isolated districts should consider cross-district desegregation plans or transfer programs with other school districts that are predominantly white or racially integrated.

Despite the clear limitations of using Milliken II remedies alone, recommendations will be included here for districts and courts who choose to keep using Milliken II remedies - or who are forced to use such remedies in light of demographic realities.

Design

In each district studied here, policy makers implemented educational components without providing an explanation of exactly how such programs would eradicate the harmful effects of prior, intentional segregation. It seems programs have been selected because they were believed to be beneficial in and of themselves and not because the programs specifically fit the needs of the students in a particular district. There is little evidence to suggest that policy makers engage in thorough analyses of what specific effects these programs might have on students. For example, policy makers do not seem to be addressing such questions as: *What benefit will smaller class sizes provide our students? In what ways will proposed reading programs affect our students' literacy skills, chances for taking upper-level classes and opportunities following graduation? What does the scholarly research say about various programs?*

There are few mechanisms in place that would make continued funding contingent on success by any measure. The amount of funding and the continuance of a program is determined arbitrarily through funding limits or a scheduled date of termination. Little Rock's $20 million incentive loan from the state may be an attempt to tie funds to positive outcomes, but district officials concede that it is unlikely that the district will achieve its goal, especially since the district has spent more than $12 million of the loan with no success.

Detroit provides a clear example of arbitrary funding. In this case, the provision of

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[138] *Milliken II*, at 280-81, 97 S.Ct., at 2757.

money was based not on whether the programs were successful, but was determined in a politicized bargaining process. In Austin, funding is not guaranteed and will depend upon political support and fluctuating budget allocations. In Little Rock, the design of programs was not even related to what they would cost. Program design and budgets were crafted independently of one another.

The design and funding schemes for these programs suggests that they cannot meet their legal obligation for restoring "the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[139] Courts have not forced districts to substantiate their program selections or plans but have been willing to accept these programs, their funding and the termination of their funding without assuring effectiveness. But Austin shows that these programs would not necessarily be more successful if districts were not subject to the court's oversight. On the contrary, there is no guarantee or clear commitment to maintaining special programs in Austin, which is free from court control.

School districts, such as Prince George's County and Austin, failed to consider how changing demographics might affect their plans and the distribution of resources in the future. In districts where the percentage of the minority population has risen, the number of racially identifiable schools has often increased as well. However, seldom is there expansion of compensatory services to these new, "second-wave" Millikens. For example, in Austin, 16 schools were originally identified in 1987 as "racially identifiable," because more than 80 percent of the students were black. Today, 26 schools are more than 80 percent minority, but no accommodations have been made for these schools. Prince George's County officials have been forced to identify a new category of "interim" Milliken schools and are now facing the difficult question of how to provide compensation to other schools that are becoming more segregated because of demographic shifts. In the case of Prince George's County, school officials are trying to increase funding to comprehensive schools despite the lack of any evaluation or data that would support that policy.

Evaluation and it's Influence on Policy

School officials have failed to rigorously evaluate the effects of various educational compensation measures. In many cases, there have been extensive studies to demonstrate the *existence* of programs, but evaluation usually stops there. Policy makers seem to be disregarding such questions as: *What have been the actual effects on students of a particular program? What specific opportunities is a student receiving from a particular program?*

In many cases, evaluations were simply not comprehensive, or in the case of Prince George's County and Austin, were carried out by internal offices funded as part of the school district. In all the districts studied, standardized test scores were the principal data used to determine effectiveness. There are several problems with this approach. While test scores might say something about student achievement overall or about the level of academic competitiveness in the district, these tests are not designed to measure the effectiveness of a given program or curriculum. There was never any scientific link made between test score results and educational components. As the Committee of 100 in Prince George's County said:

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[139] *Milliken II*, at 280-281, 97 S.Ct., 2757.

> ...performance indicators, when the are limited to tests scores, are only a small piece of the puzzle when evaluating the effectiveness of a desegregation program as it pertains to the students as a whole person. The findings should not be used as an indication, by themselves, of the success or failure of a school system.[140]

Courts have not held school districts accountable for evaluations. When monitoring groups did make recommendations, school boards were not required to follow or even consider the suggestions. For example, monitoring groups in Detroit and Prince George's County offered repeated criticisms and recommendations, but given the passive role of courts and, sometimes, of plaintiffs, the district could ignore the stated problems with no consequence. In Detroit, the monitoring commission was even disbanded. While in the Detroit case, the court may have viewed the commission as counterproductive, it took no action to appoint an independent and more effective monitor. Instead, the court in Detroit appointed state authorities, the defendants in the case, as overseer. In Austin, the same problems exist. The monitoring body has no real power and unclear responsibilities and was eventually dissolved. The internal evaluation office in Austin did evaluate its Priority Schools, but it is unclear what type of evaluations will be conducted in the future, what action will be taken as a result of the evaluations findings or even if the special Priority School designations will continue.

Ironically, lack of knowledge about program effects has not deterred policy makers from making important decisions about Milliken II components. Without any evidence that the programs had adequately remedied the educational deficits caused by racial segregation, the court encouraged plaintiffs and defendants in Detroit to put an end to the programs. Conversely, first the monitors and now school administrators in Prince George's County are recommending the expansion of partial Milliken funding to all comprehensive schools with no evidence that the programs have been effective. And in Little Rock, the court-approved program requires that components must continue in their current form, regardless of whether or not they help students. Officials in Little Rock cannot move in either direction because they are bound to fulfill the self-imposed program requirements.

Policy Recommendations

If the goal of Milliken II remedies is, as the Supreme Court said, to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct,"[141] then the court's most crucial tasks are to first carefully identify the educational problems that are caused by lingering effects of segregation and second, to select programs and methods that hold the most promise for correcting those problems. District court judges typically lack specialized training in education and because of this, independent

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[140] *Third Interim Report of the Community Advisory Council for Magnet and Compensatory Educational Programs*, September 12, 1988, page 12.

[141] *Milliken II*, at 280-81, 97 S.Ct., at 2757.

educational experts should be appointed to formulate remedies. In consultation with the school district, a set of specific, measurable educational goals should be established. Prior to program design, the court must require the school district to submit detailed budgets.

A panel of professional, independent monitors, trained in statistical methods and accountable to no one but the court, should be appointed. Plaintiffs should always have a role in choosing members of an evaluation and monitoring team. This panel's primary responsibility should be to analyze the educational results of Milliken II programming. Court orders should specify precisely which educational variables will be tracked, in what manner and how often. "Contingency plans" should describe what school officials should do if evaluations show poor results, average results or good results. The most effective means of assessing programs' effectiveness is longitudinal analyses with adequate controls. Reliance solely on a single indicator - such as a standardized test - is unreliable and not always informative. Evaluators should conduct comparative, long-term longitudinal studies of student groups receiving compensatory services with groups of students who do not receive the services. (Prince George's County did conduct such a comparative study, but it was limited to an analysis of a single indicator, the California Achievement Test. It measured progress over just two years.)

Rigorous and frequent evaluation of Milliken II programs is crucial to successful implementation. Data, including test scores, drop-out rates, average daily attendance rates, teacher attendance rates, suspension and expulsion rates, college attendance and completion rates should be processed and evaluated not by the district's internal evaluation arm, but by the independent monitoring panel. Evaluations should always be presented in an understandable form to policy makers and the public. Continued provision of Milliken II money should be contingent upon demonstrated gains for the children who are members of the minority group that has been discriminated against. There should also be measured progress toward equality, meaning that educators should work not just to improve achievement over time, but to bring achievement of minority students closer to that of white students. School districts and courts should resist the temptation to regard the Milliken II remedy, once designed, as a "finished product." The district, court and monitoring arm must anticipate and institutionalize a systematic process of revision and modification. Evaluations should not be seen as "ends" but as "means" to differentiate effective programs from failures. The court should take advantage of its political insulation and should not hesitate to discontinue or replace ineffective programs despite community resistance to reform.

The court should provide clear definitions of what constitutes the need for Milliken relief, whether it be educational deficits or new racial imbalances that occur because of demographic change. Once this status has been clearly defined, the court should specify precisely how future Millikens should be treated. School districts and lower courts need to live up to the fact that the schools were not intended solely for segregated schools, but for minority students who have been the victims of discrimination, wherever they are. These matters need to be answered at the inception of a case and not be left to elected school boards.

LEGAL AND PHILOSOPHICAL QUESTIONS

The policy of allocating money to predominantly minority schools as a desegregation remedy raises several disturbing questions that challenge the legality and efficacy of Milliken II remedies. These nagging problems, though arguably unintended, demonstrate the philosophical flaws of Milliken II programs as they currently exist.

This section discusses two remaining problems that stem not so much from procedure but from philosophy and flawed interpretation.

1) *School districts are using Milliken II remedies as a justification for maintaining segregated schools. This appears to violate the mandate in Swann that such schools be seen as temporary remedies.*

The *Swann* case conceded that a "small number of one-race or virtually one-race schools...is not in and of itself a mark of a system that still practices segregation by law."[142] The decision said that demographics and the limitations of intra-district desegregation mean that some districts can achieve the highest levels of desegregation by maintaining a few one-race schools. However, Justice Burger wrote, such a plan requires "close scrutiny" by the courts to ensure the one-race schools do not derive from intentional segregation. A school district, in other words, has the burden to show that it is intending to ultimately achieve a unitary system in which schools are not racially identifiable.

But districts have used Milliken II programs as justification for maintaining one-race schools. The one-race schools are not seen as temporary, but as permanent fixtures of a contemporary system. Desegregation settlements, then, can often be characterized as "deals." In these instances, politically unpopular busing programs and student reassignments are limited in exchange for increased funds for segregated schools. Officials in Little Rock openly characterized the plan as a "bargain."

> I think what that was a bargain that was driven by the people who put together the plan, and it was a bargain between the whites and the blacks from the city. There was an acknowledgment that it would be very difficult to integrate those inner city schools. There was an acknowledgment that the whites in the city wanted to go to their neighborhood schools, and so the bargain was put together as: "Listen, we'll leave those schools basically black, double fund them, in exchange for the whites getting their area schools." That's my reading of it.[143]

In Austin, the characterizations of Milliken II-type programs were similar and may

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[142]*Swann*, 402 U.S. at 27, 91 S.Ct. at 1281.

[143]Interview with Dr. Mac Bernd, former school superintendent, Little Rock School District, March 18, 1993.

have helped the district win unitary status which released the district from court oversight:

> And so we devised the Priority Schools programs which is essentially a lower pupil-teacher ratio, a commitment that put top notch principals(at schools with predominantly minority enrollment) and let them have some say in picking their staff...some extra funds to do special educational related things, concentrate more on kids, give them some additional opportunities, and to put some parents training specialists there which would go out and work in the community and teach parents how to supervise kids doing homework and those kinds of things. That was part of the court's order when they said we were unitary saying, 'This school district's serious because it's agreed to do all these things to help low socio-economic kids who need the help.[144]

The Supreme Court has stated repeatedly that community pressure is not adequate justification for avoiding desegregation. But as long as Milliken II programs are an option for districts either reluctant to implement or tired of reassignment plans, educators may satisfy community groups but vestiges of discrimination will remain.

Of course, many districts, such as Detroit and the many others like it, may find it virtually impossible to achieve integration because there simply may not be enough white students to go around. If current population trends continue in Prince George's County, school officials there may also be faced with such a reality.

And *Swann* also said that complete, immediate integration was likely impossible because of transportation difficulties. But again, according to *Swann*, racially identifiable schools were to be only temporary, a necessary evil in the transition to a unitary system:

> ...Certain schools may remain all or largely of one race until new schools can be provided or neighborhood patterns change.[145]

During this interim period, districts were supposed to institute policies that would facilitate desegregation. This might have included, for example, the construction of schools in locations that had a racial mix. But, with Milliken II programs, it seems one-race schools have the potential to become institutionalized as an accepted phenomenon as long as the schools are getting extra money. In Prince George's County, for example, school officials rightly see that intradistrict desegregation is growing increasingly difficult and they want to supply segregated schools with extra compensation. However, the option of Milliken schools may have the potential of limiting exploration of other remedies that would achieve racial integration. Such remedies might include voluntary transfer programs with suburban districts and interdistrict schools that enroll students from suburban districts. Of the four districts studied here, only Little Rock tried to use Milliken II money to encourage desegregation. However, this effort was not a priority and so far has been entirely unsuccessful. A monitor

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[144]Interview with William H. Bingham, attorney for the AISD since 1972, April 20, 1993.

[145]*Swann*, 402 U.S. at 26, 91 S.Ct. at 1281 (author's emphasis)

of the plan described the goal of desegregation as:

> way down the list (as a) secondary goal of the Incentive Schools...the enhancements were really to (say) 'We're making you go to these segregated schools, so we're going to give you a lot of neat things to do while you're there.[146]

2)*Providing Milliken II resources only to "racially-identifiable" schools does not provide sufficient relief to minority students who attend technically integrated schools. This appears to violate the original intention of Milliken II.*

In *Milliken II*, the Supreme Court did not restrict compensatory education to racially-identifiable "black" schools. It implied that the vestiges of discrimination affect all minority children, not only those at schools where they are in the majority. The Court declared:

> Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; consequences linger and...do not vanish simply by moving the child to a desegregated school.[147]

Milliken II components were intended to benefit all victims of prior intentional segregation, not only those in the most isolated schools. In many districts, however, a minority child receives either an integrated education *or* compensatory service. School districts seem to assume that minority students who benefit from integration do not need extra resources and vice versa.

Also, it is common for a black student in a school that is, for example, 86 percent black, to receive extra services, while another black child, in a school that might be 85 percent black, to receive no special services. This raises a challenging equity issue of the type being faced by officials in Prince George's County. There, the Milliken II strategy is perceived as perpetuating a new kind of inequity. Monitors want to expand extra funding to all schools. In the meantime, school officials created a new category of "interim Milliken" schools that receive extra funding but not the full Milliken II amount.

These preceding problems, which concern fairness and philosophy, more than planning and procedure, need to be resolved before districts and courts can craft plans that are constitutional and fair.

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[146]Interview with Melissa Guldin, associate monitor, Office of Desegregation Monitoring, March 17, 1993.

[147]*Milliken II*, 433 U.S. at 288-89, 75 S.Ct. at 2761.

CONCLUSION

These case studies suggest that courts and school officials are not living up to their legal obligation under *Milliken II*, to "restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct."[148] The "educational compensation" measures, to date, show no evidence of districts either satisfactorily meeting this Supreme Court mandate or even attempting to meet it.

It seems courts and school officials have come to view Milliken II strategies, not primarily as means to eradicate the harms of prior intentional segregation, but as temporary financial obligations to the plaintiff class. From this perspective, the essential goal of Milliken II programs is neither to eradicate achievement gaps between the races nor to increase opportunity. Rather, the remedies have become a way for school districts and states to serve a temporary and superficial punishment for prior intentional segregation. School districts are allowed to abandon remedial programs after an arbitrary number of years even when there is no evidence whatsoever that the educational deficits of minority students have been eradicated. In Austin, which did not provide Milliken II remedies, per se, but an independently devised program to compensate for segregated schooling, the inherent weaknesses and problems are nearly identical to those in other districts.

Certainly, there are things that can be done to improve the design, implementation, and possibly, the results of educational compensation programs. School districts and courts who use Milliken II-type programs should take those steps toward improvement that are outlined here.

However, the most important message is simply this: there is no indication that after all the extra funding and special programs, that Milliken II remedies will bring minority students any closer to getting an equal education. There is still no proven systemic remedy that can make segregated minority schools fundamentally equal to schools that enroll a racial and economic mix. Until there is a guaranteed cure for the myriad problems that stem from racial and economic isolation and the continuing effects of intentional segregation, Milliken II remedies, as they are currently implemented, simply give "separate but equal" another chance. Milliken II, though essentially a "desegregation" remedy, permits racial minorities to be relegated to segregated schools with high levels of concentrated poverty, factors that have always been correlated with low achievement.[149] This is not to say that educational components cannot ever have positive effects if they are conceived, managed and implemented properly. On the contrary, it may be that a combination of racial integration *and* well-designed, research-based, accountable and effective educational compensation measures offers the best chance for equal opportunity and the most promising way to meet the Supreme Court mandate.

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[148] *Milliken II*, at 280-81, 97 S.Ct., at 2757.

[149] See, for example, *Reinventing Chapter 1: The Current Chapter 1 Program and New Directions*. Final Report of the National Assessment of the Chapter 1 Program. December, 1993.

Also, Massey, Douglas and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, Harvard University Press, Cambridge, Mass., 1993. pp. 141-142.

For the many school districts whose pool of white students is small, racial integration could likely only be achieved by including predominantly white communities in desegregation plans. However, the 1974 *Milliken I* decision made it difficult to achieve city-suburban plans. School officials, civil rights lawyers and courts who truly want to "restore the victims of discriminatory conduct to the position they would have occupied absent that conduct,"[150] should, however, continue to explore alternative avenues to racial integration despite the constraints of *Milliken I*. While it is beyond the scope of this report to recommend specific remedies, such alternatives might include transfer programs and interdistrict magnet schools with suburban districts, interdistrict schools and other plans for metropolitan cooperation. Similarly, educators and policy makers who are considering abandoning desegregation in favor of a policy that only includes educational remedies should seriously consider the evidence in this report before making such a policy change.

Though they may be viewed by some as the only viable "desegregation" option it is clear, that based on the evidence in these case studies, Milliken II's educational compensation remedies are simply not an equal replacement for racial integration. To accept them as such would be to accept segregated schools as an unavoidable fixture in contemporary society. To declare *Milliken II* relief as sufficient would, in effect, simply perpetuate the separate, unequal schools that *Brown v. Board of Education* demanded be abolished.

In 1994, 20 years after the Supreme Court decision in *Milliken I*, Justice Thurgood Marshall's prophetic dissent rings true:

> "Our nation, I fear, will be ill-served by the Court's refusal to remedy separate and unequal education...Desegregation is not and was never expected to be an easy task...In the short run, it may seem to be the easier of course to allow our great metropolitan areas to be divided up each into two cities - one white, the other black - but it is a course, I predict, our people will come to regret."[151]

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[150] *Milliken II*, at 280-81, 97 S.Ct., at 2757.

[151] *Milliken v. Bradley*, 94 S.Ct. 3112 (1974) at 3161.