

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

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)

³Grant, 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

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 policymakers 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 nature of past

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

The table below summarizes features of each district studied here:

FEATURES OF SELECTED SCHOOL DISTRICTS. 1993-94¹³

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

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

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/bicultural 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

¹⁸The 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.

"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 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 for reasons that were unrelated to the educational components in Detroit.²⁴

In 1980, following the suggestion of the Appeals Court, the Chief of the U.S. District Court replaced DeMascio with a three-judge panel. 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

²²Interview with Stuart Rankin, February 3, 1994.

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

²⁴DeMascio'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.

would be on its own... the court not judge the state perpetually 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

²⁸Interview with U.S. District Court Judge Averm 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.

³¹Interview with Arthur Jefferson, May 5, 1993

present conditions the Monitoring Commission intrudes on the normal 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

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.

³⁸For 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.

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 Judgment 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:

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.

⁴⁶Ibid.

⁴⁷Ibid.

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.

⁵⁰Interview with Arthur Jefferson, January 19, 1994.

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

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

⁵⁴From 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)

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

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

⁶¹Interview with Dr. Mac Bernd, March 18, 1993.

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

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

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

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 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 its 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 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 would 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 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

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

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

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

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

⁷⁴Ibid.

⁷⁵Ibid.

⁷⁶Correspondence 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.

TOTAL 1993-94	1,454 (THIS DOES NOT INCLUDE ISH ELEMENTARY, WHICH WAS CLOSED AFTER 1991-92)	87%
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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.

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

racial imbalances in these schools. 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. Under the court agreement, the Memorandum of Understanding, plaintiffs agreed not to contest the uneven racial composition of these schools.⁸⁸

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

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

⁸⁹Interview with John Murphy, December, 1993.

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

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

The program is specifically designed to enhance the quality of 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

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

⁹⁶Interview with Edward Felegy, March 10, 1993.

⁹⁷Interview 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.

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 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

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

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

¹⁰⁶1991 Interim Report of the Community Advisory Council to the Prince George's County Board of Education, pp. 2-5.

AUSTIN, TEXAS

Background and History

It is common for many 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

¹¹⁰The 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.

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

¹¹²Personal 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.

¹¹³Ibid.

¹¹⁴Ibid.

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 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.

¹¹⁸Interview with Abel Ruiz, April 21, 1993.

¹¹⁹Interview 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).

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

¹²³Calculations 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 Reaching Mastery Level on the English Version TAAS in Priority Schools and Other Elementary Schools, Austin, Texas, 1990 and 1991¹²⁵

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

In addition to these achievement disparities, other statistics suggest that Priority Schools remain unequal to other elementary schools. First, 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 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.

¹²⁵Calculations 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.

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 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

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

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

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 is 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.

¹³⁵Interview with Bernice Hart, April 20, 1993.

¹³⁶Interview with Blanca Garcia, April 21, 1993.

¹³⁷Interview with Bernice Hart, April 20, 1993.

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. To 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 its 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. Policymakers 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:

¹³⁹ *Milliken II*, at 280-281, 97 S.Ct., 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 policymakers 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.

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 of the plan described the goal of desegregation as:

¹⁴⁴Interview 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)

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 isn't 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.

For the many school districts whose pool of white students is small, racial integration

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

¹⁴⁹See, 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.