

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 UNITED STATES,

5 Plaintiff,

6 v.

7 BAKERSFIELD CITY SCHOOL
8 DISTRICT AND SCHOOL BOARD OF
9 BAKERSFIELD CITY SCHOOL
10 DISTRICT; HERBERT M. COLE JR.,
Superintendent,

11 Defendants.

1:84-cv-00039 OWW JLT

MEMORANDUM DECISION AND
ORDER RE JOINT REQUEST TO
DECLARE UNITARY STATUS,
TERMINATE CONSENT DECREE,
AND DISMISS CASE (DOC. 21)

12 I. INTRODUCTION

13 Before the Court for decision is a joint motion filed
14 by all parties to (1) declare that a "unitary school
15 system" now exists in Defendant Bakersfield City School
16 District ("District"); (2) terminate the Consent Decree
17 entered in this case on January 25, 1984 ("Consent
18 Decree" or "Decree") and thereafter modified from time to
19 time; and (3) dismiss this case. The matter came on for
20 hearing on January 10, 2011 at 10:00 a.m. in Courtroom 3
21 (OWW). No objections have been received by the Court.
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24 II. BACKGROUND

25 In the early 1970s, the Office of Civil Rights of
26 what was then the U.S. Department of Health Education and
27 Welfare, subsequently the Department of Education
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1 ("DOE"), conducted an investigation of civil rights
2 violations allegedly perpetrated by Defendant Bakersfield
3 City School District ("District"). At issue were the
4 District's practices in the areas of bilingual education,
5 the treatment of educable mentally handicapped students,
6 and student assignment. The DOE investigation ultimately
7 led to a compliance proceeding before an Administrative
8 Law Judge ("ALJ"). On January 12, 1978, the ALJ found
9 the District in violation of the Equal Protection Clause
10 of the Fourteenth Amendment and Title VI of the Civil
11 Rights Act of 1964 in all three areas of DOE concern.
12 The District was deemed ineligible for federal financial
13 assistance until it made corrections.
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16 While the District was pursuing appellate remedies,
17 significant changes occurred within the District. A new
18 governing board was elected, a new superintendent was
19 hired, administrators were changed, new legal counsel was
20 appointed, and substantial changes in state law resulted
21 in changes to the District's programs in the areas of
22 concern. The District was subsequently able to resolve
23 its differences with DOE on two of the issues of concern:
24 bilingual education and its programs for educable
25 mentally handicapped students.
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27 However, the parties were unable to reach full
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1 agreement on the issue of student assignment. Although
2 some progress had been made in the District to encourage
3 greater racial and ethnic diversity, there remained a
4 handful of schools whose enrollment was almost entirely
5 minority, and a few schools whose enrollment was largely
6 white, in a district then roughly balanced between
7 minority and white. DOE wanted further changes to
8 address these issues, but the District was unable to
9 accommodate these requests. DOE agreed not to terminate
10 federal financial assistance as a result of the student
11 assignment issues, but indicated the matter might be
12 forwarded to the Department of Justice ("DOJ") for
13 further review.
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16 After continued negotiations failed, the matter was
17 referred to DOJ. On November 29, 1982, DOJ requested
18 information about what progress had been made in
19 implementing integration measures voluntarily adopted by
20 the District. Information was provided to DOJ, and
21 extended negotiations between DOJ and the District
22 ensued. These negotiations culminated in the filing on
23 January 25, 1984 of this action and the immediate entry
24 of a consent decree.
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26 The Complaint alleged that some elementary schools
27 continued to have student enrollment levels which
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1 remained substantially all-minority as a result of the
2 District's failure to take adequate corrective steps,
3 although educationally sound and administratively
4 feasible alternative methods of student assignment were
5 available, including plans already considered by the
6 District. The Decree focused directly on student
7 assignment and on programs deemed necessary to reduce
8 segregation. It mandated that the District:

- 10 • continue to maintain an administrative office whose
11 mission was to assist in developing and implementing
12 integration programs;
- 13 • continue and if possible expand its controlled open
14 enrollment program ("COE") to encourage students at
15 schools with predominantly white enrollments to
16 attend predominantly minority schools, and vice
17 versa, with particular emphasis on encouraging
18 students at "racially imbalanced schools" (defined in
19 the Decree as Fremont, McKinley, Mt. Vernon and Owens
20 elementary schools) to attend Nichols or Eissler
21 schools, both then predominantly white;
- 22 • continue to recognize "reduction of racial isolation"
23 as a grounds for permitting student transfers on a
24 year by year basis under the District's interschool
25 transfer policy;
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- 1 • continue its short term mini magnet programs whereby
2 students from diverse ethnic and racial backgrounds
3 came together for programs designed to provide
4 concentrated, short term enrichment experiences,
5 enhance academic achievement and increase social
6 awareness and racial tolerance; each of the then 25
7 District schools to continue to offer one or more
8 such programs every year, at least until full term
9 magnet programs were operational;
10
11 • establish full term magnet programs at the Fremont
12 and Mt. Vernon schools, two of the "racially
13 imbalanced schools" in the next school year, 1984-85,
14 to attract white students to attend those almost
15 entirely all-minority schools; and establish full
16 term magnet programs at the other two "racially
17 imbalanced schools," McKinley and Owens, the
18 following year, 1985-86.

20 The full term magnet school programs were to be the
21 core of the District's desegregation effort. Several
22 years later the same concept was extended to Juliet
23 Thorner and Cesar Chavez schools, to encourage minority
24 students to attend new schools, which, based on the
25 demographics of their attendance areas, might otherwise
26 have disproportionately white enrollments.
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1 In addition to these programs aimed at altering
2 student assignment patterns at specific schools, the
3 Decree required the District to provide compensatory
4 education at the four racially imbalanced schools as well
5 as certain other predominantly minority enrollment
6 schools. The District was also authorized to develop
7 other plans, programs and policies to afford greater
8 choice in student enrollment and to promote further
9 desegregation through voluntary means. The District was
10 ordered to ensure that, consistent with educational
11 values and the proper operation of the school system as a
12 whole, school closings, site selection and new
13 construction, and adjustments of contiguous attendance
14 boundaries and feeder patterns should further
15 desegregation.
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18 The Decree was subsequently modified by consent
19 Orders entered September 9, 1986 ("1986 Order") and June
20 30, 1990 ("1990 Order"). The 1986 Order addressed
21 concerns about the District's bilingual education
22 programs sometimes conflicting with efforts to reduce
23 racial and ethnic isolation, provided for enrichment
24 programs to be established at certain schools where the
25 lack thereof was a potential deterrent to minority
26 students participating in the Controlled Open Enrollment
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1 program ("COE"), called for additional counselors to be
2 provided at the magnet schools to encourage greater
3 participation in and reduce drop out from the magnet
4 programs, and required preparation of a comprehensive
5 facilities utilization study to plan for anticipated new
6 facilities in the District.
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8 The 1990 Order required that the "pull out" gifted
9 and talented program be moved to Owens, one of the
10 "racially imbalanced schools," so that students in those
11 programs attend Owens once a week, and that additional
12 counselors be provided in magnet and COE schools to serve
13 increased enrollment. The 1990 Order also approved
14 construction of new elementary and middle schools, and
15 provided for desegregation programs, including magnet
16 programs, to be implemented at some of those schools.
17

18 In 1990-91, a full-time magnet program was initiated
19 at Juliet Thorner School, similar in concept to the
20 magnet programs already in place at the "racially
21 imbalanced schools," but intended to draw Hispanic and
22 African-American students to a new school in an
23 attendance area with a relatively high percentage of
24 white students as compared with the District-wide
25 average. In 1994-95, another full-time magnet program
26 was initiated at Cesar Chavez School, again to encourage
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1 Hispanic and African-American students to attend a new
2 school in an attendance area expected to have a larger
3 percentage of white students as compared with the
4 District-wide average. Those magnet programs remain in
5 operation today.

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7 Section XI of the Decree permitted the District to
8 move for a declaration of unitary status and termination
9 of the case as early as the conclusion of the 1986-87
10 school year. The Court was to grant such a motion
11 without a hearing if the racial (and ethnic) enrollment
12 at the four schools previously identified as "racially
13 imbalanced" were within +/- 20% of the District-wide
14 racial enrollment. If these percentages were not
15 achieved by that deadline, a hearing would be required in
16 which the District would have to demonstrate that "it has
17 fully and in good faith taken the appropriate steps to
18 ensure full and proper implementation of the plans,
19 programs, and policies provided in this Decree." Consent
20 Decree at 11.
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23 If the District can demonstrate that it has
24 implemented the plans, programs, and policies
25 approved by this Court and continued them in
26 effect through the 1986-87 school year, a
27 declaration of unitariness shall be entered, the
28 Consent Decree terminated and this case
dismissed. Otherwise, this Court shall retain
jurisdiction until the District has demonstrated
that it has implemented the plans, programs, and
policies approved by this Court and continued

1 them in effect for three consecutive school
2 years at which time the declaration shall be
3 entered, the Consent Decree terminated and this
4 case dismissed.

5 *Id.*

6 The District did not meet the target of +/- 20% of
7 systemwide racial enrollment percentages by the 1986-87
8 school year, and did not move for dismissal at that time.
9 The District met the +/- 20% target as of the 1992-93
10 school year, and has satisfied that target ever since,
11 but has never previously moved for a declaration of
12 unitary status and dismissal.

13 The District has experienced significant demographic
14 shifts since the Decree was entered in 1984. In 1984,
15 District enrollment was 35% Hispanic, 16% African-
16 American, and 47% white; in the 2009-10 school year the
17 District was 75% Hispanic, 10% African-American, and 10%
18 white. The District's enrollment is also much larger than
19 it was in 1984; total enrollment for the 1983-84 school
20 year was 18,506, while total enrollment for the 2009-10
21 school year was 27,267. The District operated 32 schools
22 in the 1983-84 school year; in 2009-10 it operated 41
23 schools.

24 On February 19, 2010, the District was ordered to
25 prepare a Final Report of its implementation of the
26 plans, programs and policies called for by the Decree,
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1 including but not limited to the information required by
2 Section IX of the Decree, such additional information as
3 the United States may reasonably request for purposes of
4 its review, and an appropriate affirmation by the
5 District of its intention to continued to operate in full
6 compliance with law. The United States was directed to
7 review the District's performance as it deemed necessary;
8 within 90 days of receiving the Final Report and
9 information or in any event by September 28, 2010 to
10 inform the District of its assessment of the District's
11 compliance; and confer and attempt to present a joint
12 motion to the Court to address concerns raised by the
13 United States or to seek unitary status if the United
14 States determines that in its opinion the District has
15 complied with its desegregation obligations and federal
16 law.
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19 On June 28, 2010 the District filed and served on the
20 United States a Final Report of the Bakersfield City
21 School District which included annual reports of the
22 racial/ethnic distribution of enrollment at each of its
23 schools for the years 1983-84 through 2009-10, financial
24 information regarding revenues and the costs of operating
25 desegregation programs and supporting infrastructure,
26 biannual enrollment figures from 1983-84 through 2009-10
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1 for Hispanic, African American and white enrollment at
2 each of the District's schools, biannual percentages of
3 White and minority enrollment at each of the magnet and
4 COE schools from 1983-84 through 2009-10, and a
5 description of the District's efforts to implement the
6 plans, programs and policies required by the Decree over
7 the twenty six year period since the Decree was entered.
8 Doc. 14.

10 The Final Report confirmed that since 1992-93 the
11 racial/ethnic enrollment at the previously identified
12 "racially imbalanced schools" has been within +/- 20% of
13 the systemwide percentages. See *id.* at 11. As of the
14 2009-10 school year, every school in the District except
15 the Downtown School has a white/African-
16 American/Hispanic enrollment ratio within +/- 20% of the
17 system wide distribution, mostly within +/- 10% thereof,
18 and at the "racially imbalanced schools" identified in
19 the Decree the ratio is within +/- 6% of the system wide
20 distribution. *Id.* The District has represented that it
21 has fully and in good faith implemented the plans,
22 programs and policies called for by the Decree and the
23 modifying Orders, and that it has been operating, is now
24 operating and intends to continue to operate a system
25 which complies in all respects with the requirements of
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1 Title the Federal Constitution. *Id.* at 63-64.

2 The Parties' Joint Motion represents that, upon
3 receipt of the Final Report, the United States conducted
4 a review of the District's performance. On the basis of
5 its review of the information provided in the Final
6 Report and additional materials and information
7 subsequently provided, the United States has concluded
8 that the District has since 1992-93 met the 20% +/-
9 systemwide racial/ethnic goals at the previously
10 identified "racially imbalanced schools"; that presently
11 every school in the District except the Downtown School
12 meets the +/- 20% goal, and most are within +/- 10% or
13 less of the systemwide enrollment ratios; that the
14 District has complied and is complying with the plans,
15 programs and policies called for by the Decree; and that
16 the District is operating in a unitary manner. See Doc.
17 21 at ¶ 16.

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21 III. DISCUSSION

22 A Consent Decree can exist only as long as it is
23 needed to remedy the original constitutional violations
24 that justified its adoption. See *Freeman v. Pitts*, 503
25 U.S. 467, 489 (1992) ("A remedy is justifiable only
26 insofar as it advances the ultimate objective of
27 alleviating the initial constitutional violation."); *id.*
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1 at 496 ("The vestiges of segregation that are the concern
2 of the law in a school case may be subtle and intangible
3 but nonetheless they must be so real that they have a
4 causal link to the de jure violation being remedied.").
5 The Supreme Court has held that the party moving to
6 terminate a desegregation consent decree must demonstrate
7 good-faith compliance with the Consent Decree since it
8 was entered, and that the vestiges of past discrimination
9 have been eliminated to the extent practicable. *Board of*
10 *Education of Oklahoma City Public Schools v. Dowell*, 498
11 U.S. 237, 249-50 (1991).
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13 The Consent Decree embodies these standards by
14 requiring the District to demonstrate that "it has fully
15 and in good faith taken the appropriate steps to ensure
16 full and proper implementation of the plans, programs,
17 and policies provided in this Decree." Consent Decree at
18 11. The Final Report described above demonstrates good
19 faith compliance with the Decree as well as substantive
20 accomplishment of the +/- 20% goal at all but the
21 Downtown School. The United States is satisfied with the
22 District's past and continued efforts. The performance
23 conditions of the Decree have been met. A declaration of
24 unitary status, termination of the Consent Decree, and
25 dismissal of this case are justified.
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1 IV. CONCLUSION

2 For the reasons set forth above:

3 (1) It is DECLARED that Defendant Bakersfield City
4 School District has achieved unitary status;

5 (2) The 1984 Consent Decree, as subsequently modified
6 by the 1986 and 1990 Orders, is TERMINATED; and

7 (3) This case is DISMISSED WITH PREJUDICE.
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9 SO ORDERED

10 Dated: January 11, 2011

11 /s/ Oliver W. Wanger
12 Oliver W. Wanger
13 United States District Judge
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