

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

CHINYERE JENKINS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 77-0420-CV-W-DW
)	
SCHOOL DISTRICT OF KANSAS)	
CITY, MISSOURI, et al.,)	
)	
Defendants.)	

AMENDED ORDER

On January 23, 2003, the School District of Kansas City, Missouri (“KCMSD”) filed its Motion for Unitary Status. On February 28, 2003, the American Federation of Teachers, Local 691 (“AFT”) filed suggestions urging the Court to grant the KCMSD’s motion. On that same date, Plaintiffs filed suggestions in opposition to the KCMSD’s motion. The Court scheduled a hearing on the motion for May 12, 2003. The parties conducted discovery and presented evidence to the Court at the hearing. Following the hearing, the KCMSD and Plaintiffs filed proposed findings and fact and conclusions of law. Based on the record in this case and the evidence presented at the unitary status hearing, the Court GRANTS the KCMSD’s Motion for Unitary Status.

I. Background

On September 17, 1984, the State of Missouri and the KCMSD were found to have violated the United States Constitution by failing to eliminate the vestiges of the racially segregated school system previously mandated by State law. Jenkins v. Missouri, 593 F. Supp. 1485 (W.D. Mo. 1984). In crafting the remedial order, this Court’s predecessor, the Honorable Russell C. Clark, found that “[s]egregation has caused a system wide *reduction* in student

achievement in the schools of the KCMSD.” Jenkins v. Missouri, 639 F. Supp. 19, 24 (W.D. Mo. 1985) (emphasis in original). Thus, Judge Clark ordered a wide range of educational improvements, including hiring of librarians, teachers and counselors to meet State standards, reductions in class size, summer school, full-day kindergarten, before and after school tutoring, early childhood development programs, grants for site-based planning for school improvement, and staff development. Id. at 26-35. The KCMSD was ordered to provide enhanced levels of staffing and Judge Clark ordered significant magnet school and capital facilities elements as part of the remedy aimed in large part at enhancing student achievement. Jenkins v. Missouri, 672 F. Supp. 400 (W.D. Mo. 1987).

In Jenkins v. Missouri, 11 F.3d 755 (8th Cir. 1993), the State of Missouri argued to the Eighth Circuit that the quality education programs were “unitary” because they had been fully funded and implemented. Jenkins v. Missouri, 11 F.3d 755 (8th Cir. 1993). The Eighth Circuit disagreed with the State’s legal standard, citing various district court orders finding that while there was a trend of academic improvement within the KCMSD, achievement test scores still were at or below national norms at many grade levels. Id. at 761-62. On appeal, however, the Supreme Court rejected the use of national norms on standardized tests as the tool with which to measure whether the KCMSD was unitary in the area of student achievement. Missouri v. Jenkins, 515 U.S. 70, 101 (1995) (“Jenkins III”). The Supreme Court held in Jenkins III as follows:

The basic task of the District Court is to decide whether the reduction in achievement by minority students attributable to prior *de jure* segregation has been remedied to the extent practicable. Under our precedents, the State and the KCMSD are “entitled to a rather precise statement of [their] obligations under a desegregation decree.” Although the District Court has determined that “[s]egregation has caused a system wide *reduction* in achievement in the schools of the KCMSD,” it never has identified the incremental effect that segregation has had on minority student achievement or the specific goals of the quality education programs.

Id. (citations and footnote omitted) (emphasis in original). The Supreme Court emphasized the district court's duty to return control of the KCMSD to the state and local authorities as soon as the KCMSD is operating in compliance with the Constitution. Id. at 102.

In April 1996, the State defendants filed a motion for unitary status. Judge Clark held a hearing on the motion, along with proceedings requested by the State and KCMSD seeking the Court's approval of a proposed settlement agreement to extinguish the State's obligations upon payment of a specified amount of transitional funding. Judge Clark identified the following as the tasks of the District Court on the unitary status issue concerning student achievement: Restoring state and local control as soon as possible; if the KCMSD has not achieved unitary status under the standards set in Dowell and Freeman, identifying the incremental effect that the prior discrimination had on the achievement gap; and making a precise statement of the KCMSD's obligations in the remedial effort to cure the effects of the prior discrimination. Jenkins v. Missouri, 959 F. Supp. 1151, 1162 (W.D. Mo. 1997). In weighing the evidence on the student achievement vestige, the Court recognized the Supreme Court's mandate to "sharply limit" its reliance on standardized test scores and comparisons between KCMSD students and national norms. Id. at 1157. Judge Clark concluded, however, that test scores are the only tools available for any historical comparison of student performance in the KCMSD and that the test score evidence submitted by the parties evidenced an achievement gap between white and African-American children within the KCMSD "irrespective of any nationwide comparison." Id. at 1157-58.

Judge Clark heard expert testimony relevant to whether the racial "achievement gap" could be properly characterized a vestige of prior de jure segregation. Judge Clark found that 13% of the achievement gap between African-American and white students was caused by prior

segregation and thus, he ordered the KCMSD to close the achievement gap by 13 %, an amount that at the time was equivalent to 2.6 normalized curve equivalents (“NCEs”). Id. at 1165. Judge Clark found that the KCMSD should complete the task of closing the gap by 13 % within three years. Id.¹ The Eight Circuit Court of Appeals affirmed. Jenkins v. Missouri, 122 F.3d 588 (8th Cir. 1997).

The case was reassigned to the undersigned and on March 1, 2001, the Court held a unitary status hearing on the KCMSD’s motion for partial unitary status. On March 29, 2002, this Court declared the KCMSD unitary with respect to racial balance, facilities, budget and transportation. (Docket No. 5005). Thus, the remaining vestige of discrimination preventing this Court from completely relinquishing jurisdiction over the KCMSD is the achievement gap between African-American and white students.

Over the last two years, this Court, the Implementation Monitor, and the parties have endeavored to clarify what, if any, remaining hurdles the KCMSD must clear to reach unitary status. These efforts have resulted in a series of Court orders approving modifications to the KCMSD’s educational plans and stipulations that substantial portions of the KCMSD’s obligations have been met. See (Docket Nos. 4974, 5000, 5020). The KCMSD argues that it can show that the achievement gap between African-American and white students has been closed to the extent required by Judge Clark and thus, court oversight of the KCMSD should end.

¹The Court denied the State’s motion for unitary status with respect to assignment of students and faculty, facilities and transportation, but granted that motion with respect to extracurricular activities. Id. at 1179-80. The KCMSD was required to file a transition plan with the Court, in light of the Court’s approval of the settlement agreement that would phase out the State’s financial support of desegregation in the KCMSD. Id.

II. Unitary Status Standard

The legal standard applied to a motion for unitary status is not complicated. In order for a district court to relinquish control over a defendant school district, the court must consider “whether the [school district] ha[s] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” Board of Ed. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237, 249 (1991). The burden of proof on a motion for unitary status rests with the offending school district. Jenkins v. Missouri, 122 F.3d 588, 593 (8th Cir. 1997).

Essentially, the KCMSD and Plaintiffs agree that the KCMSD must satisfy the Court that it has eliminated the remaining vestige of discrimination,² that it has complied with this Court’s remedial orders in good faith, and that it has done so for a reasonable time. The Court in evaluating the evidence and arguments submitted by the parties is ever mindful that this court does not have the power to retain jurisdiction in order to encourage improvements within the KCMSD; rather, “federal supervision of local school systems was intended as a temporary measure to remedy past discrimination.” Jenkins III, 515 U.S. at 88 (quoting Board of Ed. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237, 247 (1991)).

III. Discussion

A. Has the KCMSD eradicated the academic achievement vestige?

²Although the Dowell standard requires only that the vestige be removed to the extent practicable, the KCMSD insists that the achievement gap vestige has been completely eliminated and is relying solely on the evidence supporting that conclusion.

The KCMSD argues that it has closed the achievement gap to the extent required by Judge Clark and thus, according to the law of this case, there remains no achievement gap vestige. Plaintiffs counter that the KCMSD has not set forth reliable evidence supporting gap closure and that more time is needed to determine whether the achievement gap has actually been closed to the extent required. The Court disagrees and for the following reasons, finds that the KCMSD has closed the achievement gap to the extent required by Judge Clark's 1997 Order.

1. Judge Clark's 1997 Order

In order to fully understand the standard set forth by Judge Clark and the evidence required to satisfy it, one must examine the methodology employed by Judge Clark in determining that an achievement gap existed in the KCMSD, 13% of which was attributable to prior segregation. In Jenkins III, the United States Supreme Court found that the scope of remedy ordered by Judge Clark exceeded the district court's equitable powers. See Jenkins III, 515 U.S. at 100. The Court cautioned the district court against comparing the achievement of students within the KCMSD to national norms. Id. at 101. The Supreme Court instructed the district court to determine whether any reduction in achievement by African-American students attributable to prior segregation had been remedied to the extent practicable. Id. If it had not, the district court was to give the KCMSD a rather precise statement of its obligations under the remedial order. Id. In his 1997 Order, Judge Clark set forth to do precisely that.

Judge Clark found that an achievement gap existed within the KCMSD between African-American and white students. See Jenkins, 959 F. Supp. at 1158. This "original" or "initial" gap was approximately 10 NCEs. Id. at 1158, 1165. The existence of an achievement gap between African-American and white students was not unique to the KCMSD. It was, however, Judge

Clark’s charge to determine whether and to what extent the achievement gap within the KCMSD was attributable to prior State-mandated discrimination. For the answer to this question, Judge Clark turned to the analysis of Dr. William Trent. Id. at 1158.³

Dr. Trent performed a regression analysis to isolate and identify the causes of the achievement gap. Id. Dr. Trent found that in 1994, after controlling for other factors, there existed a portion of the achievement gap between African-American and white students attributable solely to race. Id. Dr. Trent also found that teacher efficacy, the feeling a teacher has that he or she can make a difference, accounted for a portion of the 1994 achievement gap. Id. at 1158-59. Judge Clark set forth Dr. Trent’s findings as follows:

the first table represents “a summation of the effect that race and teacher efficacy has on student mathematic scores taken in 1994:”

<u>GRADE</u>	<u>% Effect of Race</u>	<u>% Effect of Teacher Efficacy</u>
Fifth Grade	4.2%	2.8%
Sixth Grade	7.3%	2.8%
Seventh Grade	5.6%	1.7%
Eighth Grade	6.2%	1.3%
Ninth Grade	7.8%	.7%
Tenth Grade	5.3%	0%

the next table depicts the 1994 data for reading scores:

<u>GRADE</u>	<u>% Effect of Race</u>	<u>% Effect of Teacher Efficacy</u>
Fifth Grade	4.3%	2.5%
Sixth Grade	7.9%	4.0%
Seventh Grade	4.8%	1.8%
Eighth Grade	6.4%	2.1%
Ninth Grade	9.2%	2.2%
Tenth Grade	8.4%	.7%

Id. at 1159.

³Dr. Trent was retained by the KCMSD. It should be noted that the KCMSD was opposing the State’s motion for unitary status in front of Judge Clark.

Judge Clark observed the above numbers and concluded that 4% to 9% of the achievement gap between African-American and white students was attributable to race and an additional 2% to 4% was attributable to teacher efficacy.⁴ *Id.* at 1164. Judge Clark engaged the presumption that any racial disparity, unless proven otherwise, was a result of prior discrimination and found that the above two factors were attributable to prior de jure segregation. *Id.* In assigning a value to what he termed the total “race effect,” Judge Clark added the high end of the possible ranges, 9% for race and 4% for teacher efficacy, and came up with a total race affect amounting to 13% of the achievement gap. *Id.* Judge Clark gave no reason for arbitrarily adding the high end of the two factors as opposed to using the low end or attempting to isolate the average effect per grade level or using some other method designed to assign a more accurate value to the total race effect.⁵

⁴It is unclear why Judge Clark stated that the teacher efficacy affected the achievement gap by 2%-4%. The table set forth by Judge Clark sets forth values ranging from 0% on the low end to approximately 4% on the high end. *Jenkins*, 959 F. Supp. at 1159.

⁵ By taking the approach he did, Judge Clark found a level of “race effect” that exceeded the “race effect” in existence in any grade tested in 1994. The following totals represent the actual combined race effect on the achievement gap for the grades referenced in Judge Clark’s table derived from the 1994 Iowa test of Basic Skills (“ITBS”):

The first table sets forth data for the math portion of the ITBS:

<u>GRADE</u>	<u>Total Race Effect (Race + Teacher Efficacy)</u>
Fifth Grade	7%
Sixth Grade	10.1%
Seventh Grade	7.3%
Eighth Grade	7.5%
Ninth Grade	8.5%
Tenth Grade	5.3%

the next table depicts the 1994 data for reading scores:

<u>GRADE</u>	<u>Total Race Effect (Race + Teacher Efficacy)</u>
Fifth Grade	6.8%
Sixth Grade	11.9%
Seventh Grade	6.6%

After determining the effect of race on the achievement gap, Judge Clark returned to the size of the achievement gap itself. As noted above, Judge Clark found that the “original” or “initial” gap was approximately 10 NCEs.⁶ Judge Clark relied on the testimony of Dr. David Armor in finding that not only did a gap exist, but it actually increased as children progressed through the KCMSD. *Id.* at 1159. Judge Clark set forth the following table reflecting this increase expressed in NCEs (the grades in which the students were tested are in parenthesis):

Eighth Grade	8.5%
Ninth Grade	11.4%
Tenth Grade	9.1%

⁶It bears noting that while the parties, and this Court for the purpose of this Order, assume that the initial 10 NCE gap noted by Judge Clark existed upon entry to the KCMSD, however, this is not entirely clear from his 1997 Order. The first mention of the 10 NCE gap in Judge Clark’s 1997 Order is as follows:

While the Supreme Court instructed this Court to “sharply limit” its reliance on the comparison of the students within the KCMSD to “national norms,” *Jenkins III*, 515 U.S. at ----, 115 S.Ct. at 2045, the witnesses for all parties agreed that, as measured by scores on standardized achievement tests, *a gap exists between the test scores of black and white children within the KCMSD*, irrespective of any nationwide comparison. Further, these test scores are the only tools for any historical comparison because that is what the KCMSD has available for analysis.

Dr. David Armor, the State’s expert, testified that *this achievement gap* was about 10 normalized curve equivalents (NCEs). Normalized curve equivalents or NCEs explain individual student scores on a normal distribution or bell-shaped curve with 50 NCEs as the median score. . . . Dr. Armor further testified the size of *the gap* was larger in the higher grades than in the elementary grades.

The national gap measured in NCEs is approximately sixteen, compared to *the gap* in the KCMSD of ten. A school district operating with a gap between black and white test scores of about 10 NCEs is considered a good school system.

Jenkins, 959 F. Supp. at 1158-59. One could argue that at this point, Judge Clark is referring to a 10 NCE gap taking into account all grade levels. At a later point in the Order, Judge Clark refers to this finding as the “original” gap and then the “initial” gap. *See id.* at 1165.

CLASS	Increase in Math Gap	Increase in Reading Gap
Class of 1992 (8-12)	1.71	5.46
Class of 1993 (7-12)	2.60	5.86
Class of 1994 (6-12)	9.73	6.46
Class of 1995 (6-11)	8.37	7.96
Class of 1996 (4-10)	6.46	6.95
Class of 1997 (3-9)	4.88	7.36
Class of 1998 (2-8)	2.63	2.70
Class of 1999 (1-7)	1.96	8.01
Class of 2000 (K-6)	3.61	10.15
Class of 2001 (K-5)	3.45	4.74
Class of 2002 (K-4)	(.18)	6.76

Id. at 1159. Observing the above figures, Judge Clark reasoned as follows:

while the gap between black and white test scores is in place when a kindergarten student enrolls in the KCMSD, ranging from between four and eleven NCEs, by the time that student has reached the fifth or sixth grade, the gap has increased by an amount ranging from between three and a half to as many as ten NCEs.

Id. Judge Clark, in formulating his mandate to the KCMSD referred back to the above observation and reasoned as follows:

the *increase* in the gap needs consideration. While minority school children arrive at school without the necessary skills for high achievement, the gap between blacks and whites increases while they are students within the KCMSD. As the Court discussed earlier, this gap grows from as little as three and a half to as large as ten NCEs. The Court cannot say for certain that the same factors that play a role in the original gap do not influence the increase in the gap as well. It seems reasonable to this Court that the “race effect” plays just as substantial a role in the increase that it did in creating the original gap.

Id. at 1165 (emphasis in original).^{7,8} Finding both the existence of the initial achievement gap and the increase in the achievement gap significant, Judge Clark held as follows:

[t]herefore, to sum up, the original gap between black and white test scores is

⁷The values referenced by Judge Clark are actually the amount of *increase* in the gap as opposed to an indication of the actual size of the achievement gap at any point.

⁸Judge Clark does not indicate why he used data collected in grades K-6 from the Class of 2000 to represent the increase in the achievement gap for all students as they progress through the KCMSD.

approximately ten NCEs. The increase in the achievement gap at the high end is approximately ten NCEs. The Court has found that 13% of the initial gap and 13% of the increase in the gap may be traced to the prior discrimination within the KCMSD.

This translates into a mandate to the KCMSD to reduce the achievement gap by 2.6 NCEs. . . . [T]his task is to be completed within three years.

Id. at 1165. A plain reading of the above paragraph indicates that Judge Clark formulated his mandate by simply adding the amount of gap increase (10 NCEs) to what he called the “original” or “initial” gap (10 NCEs) and requiring that it be reduced in an amount equal to that caused by the total race effect; 13% or 2.6 NCEs (.13 x 20 NCEs).⁹ Judge Clark’s findings were affirmed by the Eighth Circuit Court of Appeals. See Jenkins, 122 F.2d 588 (8th Cir. 1997).

Therefore, according to the law of this case as established by Judge Clark’s 1997 Order and affirmed by the Eighth Circuit Court of Appeals, the KCMSD is to reduce the achievement gap between African-American and white students by 13%. Once this has been established, there will be no remaining vestiges of discrimination within the KCMSD and thus, the KCMSD will be unitary.

2. Has the KCMSD reduced the achievement gap by 13%?

At the unitary status hearing, the KCMSD presented the report and testimony of Dr. Michael Podgursky, the Chairman of the Department of Economics and the Middlebush Professor of Economics at the University of Missouri-Columbia. Dr. Podgursky is an expert in statistical

⁹It is important, in light of the testimony presented at the unitary status hearing to properly characterize the 2.6 NCEs as representing 13% of 20 NCEs. The Eighth Circuit, in affirming Judge Clark’s 1997 Order, and this Court, in its 1999 Order granting unitary status to the KCMSD, mischaracterized the KCMSD’s obligation as reducing an achievement gap of 10 NCEs by 26%. The parties, however, do not dispute that properly read, Judge Clark ordered the KCMSD to reduce the achievement gap by 13%.

analysis in education. Tr. III 454.¹⁰

Dr. Podgursky analyzed the changes in the racial achievement gap in Missouri Assessment Program (“MAP”) scores between the first year of mandatory MAP administration (1998 for mathematics and 1999 for communication arts) and the spring 2002 administration of those tests (which is the most recent year for which test data is available). Tr. III 469 (Dr. M. Podgursky); KCMSD Ex. 19 at 6-10. Dr. Podgursky actually presented three separate gap analyses. First, he analyzed the achievement gap in the scale scores, the points earned by students. Next, he analyzed the gap in index scores, the measure developed by the Missouri Department of Elementary and Secondary Education (“DESE”) to sort the scale scores into five performance categories. Finally, he analyzed a subset of questions on the MAP test called the Terra Nova which is a set of nationally normal multiple-choice questions that can be scored in NCEs. Tr. III 471 (Dr. M. Podgursky); KCMSD Ex. 19 at 6-10.

To begin with, the Court finds, and all parties agree, that the scale scores provide the most information about student performance. Tr. III 473 (Dr. M. Podgursky); Plaintiffs’ Ex. 72 at 47-48 (Dr. A. Porter); Tr. IV 633 (Dr. J. Poggio). When Dr. Podgursky compared the MAP scale scores for mathematics and communication arts from the first year of mandatory MAP administration to 2001 and 2002, in each grade tested the achievement gap between African-American and white students had declined. Tr. III 474 (Dr. M. Podgursky); KCMSD Ex. 19 at 21 (Table 2). On 9 of the 12 data points (3 grades x 2 content areas x 2 years), the gap closed by 13% or more. Tr. III 475 (Dr. M. Podgursky); KCMSD Ex. 19 at 21 (Table 2). When Dr. Podgursky used a composite statistical method, called a “z score,” to arrive at an overall statement of change in the

¹⁰Unless otherwise indicated, all references to “Tr.” are references to the transcript of the May 12-15 Unitary Status hearing.

achievement gap by race from the first year of mandatory MAP administration to 2002, he concluded that the achievement gap in mathematics had declined by 29.33%, and in communication arts by 16.95%. Tr. III 476 (Dr. M. Podgursky); KCMSD Ex. 19 at 24 (Table 5).

When Dr. Podgursky calculated a composite measure of the change in the achievement gap on the index scores, he found a 15.79% decline in the gap on communication arts and a 17.46% decline in the gap in mathematics. Tr. III 484 (Dr. M. Podgursky); KCMSD Ex. 19 at 24 (Table 5). When Dr. Podgursky ran a composite measure of the achievement gap reduction on the Terra Nova, he concluded that it fell by 24% on mathematics and 14.96% on Communication Arts. Tr. III 488 (Dr. M. Podgursky); KCMSD Ex. 19 at 24 (Table 5).¹¹

Essentially, Dr. Podgursky's analysis demonstrates that the achievement gap, since 1998 (for Mathematics) and 1999 (for Communication Arts) and the spring 2002 has been reduced by more than the 13 % required by Judge Clark's Order. Using the MAP scale scores and using the first year of test administration as the starting point, the achievement gap in mathematics between African-American and white students declined by 29.33%, and in communication arts it declined by 16.95% by the year 2002. Thus, the Court finds that the gap has been closed in excess of that required by Judge Clark.

Plaintiffs dispute the reliability of Dr. Podgursky's methodology and the data on which he relied. Plaintiffs, however, conducted no independent analysis of test score data. Thus, while Plaintiffs argue that one cannot be certain that Dr. Podgursky's analysis is accurate, Plaintiffs do not suggest that Dr. Podgursky's conclusions are necessarily wrong.

¹¹On the Terra Nova portion of the MAP, as expressed in NCEs, the gap fell by 3.31 in Mathematics and 1.63 in Communication Arts (note that the gap fell by more than 13% but less than 2.6 NCEs in Communication Arts because it the 1999 gap was less than 20 NCEs.).

To begin with, Plaintiffs argue that Dr. Podgursky should have obtained the test results for all years since 1994, the year of test scores on which Dr. Trent’s findings were based.

Specifically, Plaintiffs argue that Dr. Podgursky should have analyzed the results of the ITBS given in the years 1994-95, 1995-96, 1996-97 and 1998-99. Presumably, Plaintiffs contend that such an analysis would present a more accurate picture of the achievement gap over time. The Court finds that such analysis was not warranted.

First of all, the KCMSD need not “trace” the size of the achievement gap since 1994 in order to comply with Judge Clark’s Order. The parties agree that the essence of Judge Clark’s mandate was to reduce the achievement gap by 13%, the amount found by Judge Clark to be caused by prior de jure discrimination. Thus, regardless of whether the size of the achievement gap increased or decreased in the years following 1994, assuming the percent of the gap attributable to prior segregation did not increase, as long as the KCMSD could show that it reduced the gap by 13%, it has complied with Judge Clark’s Order to reduce the gap by an amount equal to that caused by prior discrimination. In other words, if size of the gap, in fact, had increased prior to the administration of the MAP, then the KCMSD would have been required to close the gap by more than 2.6 NCEs to achieve 13% closure, Plaintiffs have never suggested that the KCMSD is required to close the gap in excess of 13% to satisfy Judge Clark’s mandate.¹² Regardless, the Court notes that Dr. Podgursky’s analysis of the Terra Nova portion of the MAP test scores

¹²In fact, although the KCMSD’s evidence is that the achievement gap has been reduced by at least 13%, one could argue that with the passage of time, the percent of the achievement gap attributable to prior segregation should gradually lessen and that increases in the gap would have been caused by factors unrelated to prior de jure segregation. Cf., People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205, 246 F.3d 1073, 1076 (7th Cir. 2001) (reasoning that “[a]t some point . . . the continuing and ineliminable traces of an earlier violation are too slight to justify continued federal judicial control of public education.”) (quoting United States v. Bd. of Sch. Commissioners, 128 F.3d 507, 511 (7th Cir. 1997)).

indicates that the achievement gap did not become wider prior to the administration of the MAP test. KCMSD Ex. 19 at 24 (Table 4).¹³ Thus, the Court finds that Plaintiffs' argument regarding the prior years of ITBS data has no merit.

Plaintiffs also argue that Dr. Podgursky should have, in addition to the MAP data, used data derived from the Stanford Achievement Test, 9th Edition ("SAT-9") which the KCMSD began giving in 1999. KCMSD Ex. 26. The SAT-9 is given in the fall of the school year and it is used as a diagnostic tool. KCMSD Ex. 26. Dr. Podgursky explained that he chose not to use SAT-9 data because it is not a quality assessment and fewer students take the test. KCMSD Ex. 19 at 5, 20. Furthermore, the academic achievement students of a lower socio-economic status tends to remain flat or regress over the summer more often than that of higher socio-economic status students. Tr. III at 467-68 (Dr. M. Podgursky).

Plaintiff does not contend that the SAT-9 data would in any way contradict Dr. Podgursky's conclusions. Simply put, Plaintiffs argument is that had Dr. Podgursky used the SAT-9 data it would have provided more data points thereby bolstering Dr. Podgursky's conclusions. This may be so, however, there can be no dispute that the MAP test is the best measure of student achievement in the KCMSD. Since 1998 (for Mathematics) and 1999 (for Communication Arts), the State of Missouri has required administration of the MAP test. KCMSD Ex. 19 at 6. The MAP is the measure of five of the 12 performance indicators in the State's accreditation process. Tr. III

¹³The Terra Nova portion of the MAP test is the only component that can be expressed in NCEs because it is a nationally-normed standardized test made up of multiple choice questions. Dr. Podgursky found that according to the Terra Nova scores, the achievement gaps expressed in NCEs in the first mandatory year of MAP administration are as follows: In Communication Arts, the gaps in 1999 range from 10.82 NCEs to 11.93 NCEs. KCMSD Ex. 19 at 23 (Table 4). In Mathematics, the gaps in 1998 range from 12.84 NCEs to 17.19 NCEs. KCMSD Ex. 19 at 23 (Table 4).

408 (Dr. B. Schulte). The MAP is the only formal assessment required by the State. Tr. III 409 (Dr. B. Schulte). DESE requires minimum levels of participation in MAP testing. Tr. IV 719 (Dr. B. Taylor). The KCMSD's Core Curriculum is aligned with the MAP. Tr. IV 715 (Dr. B. Taylor). Thus, the Court finds that the KCMSD's sole reliance upon the MAP test as the best measure of student performance and therefore, the size of the achievement gap, is justified.

Plaintiffs urge that Dr. Podgursky's analysis is flawed because it does not employ tests of statistical significance or "confidence intervals," a statistical method of stating that an observation fluctuates due to measurement and sampling error. The Court disagrees. The extent of achievement gap reduction required by the 1997 Order is 13%. If the Court were to require the application of confidence intervals, the intervals would be extremely wide due to the relatively small number of white students at the higher grade levels. Tr. IV 693-95 (Dr. M. Podgursky). Dr. Podgursky calculated the confidence intervals that would be applied on the MAP data. In order to employ standard confidence intervals and satisfy Plaintiffs' standard, the required achievement gap reductions on the scale scores would be between 31.95% and 74.37% (depending on the grade and content area) rather than the simple 13% stated in the 1997 Order. KCMSD Ex. 20 at 4 (Table 2). Requiring such reductions would put an undue burden on the KCMSD and is not required by Judge Clark's 1997 Order.

Plaintiffs make much of the fact that Dr. Trent's analysis on which Judge Clark's findings were based were subject to tests of statistical significance. This, however, does not persuade the Court that Dr. Podgursky's analysis of the gap fails for want of such tests. The analysis of Dr. Trent upon which Judge Clark relied was a regression analysis aimed at isolating discreet causes of the 1994 achievement gap. This analysis is wholly different than that performed by Dr. Podgursky which was simply to measure the achievement gap at a point in time.

Furthermore, in formulating his mandate, it was Judge Clark himself that combined the data to formulate what he termed the “total race effect.” It was also Judge Clark that combined the “initial” or “original” achievement gap with the increase in the achievement gap to come up with the size (20 NCEs) of the achievement gap. Judge Clark did not subject his own calculations to a test of statistical significance. Despite giving the KCMSD a precise mandate, Judge Clark’s methodology was far from precise. In light of that methodology, the Court finds it highly doubtful that the standard set by Judge Clark contemplated the sort of proof sought by Plaintiffs.

The Court finds that the 13% reduction requirement in Judge Clark’s 1997 Order does not require that a statistical test be performed to calculate the reduction. The entire universe of test scores from the relevant years of MAP testing were used by Dr. Podgursky in his analysis. His calculations produce an accurate picture of achievement during the relevant years. The Court finds that the 13% or 2.6 NCE reduction should be calculated based on observed reductions rather than confidence intervals or inferential statistics. Therefore, Dr. Podgursky’s analysis is a sufficient basis on which this Court can find that the KCMSD has reduced the achievement gap in excess of 13%.

Plaintiffs argue that in order to determine whether the closure in the achievement gap is durable, the closure should be observed to endure for a period of three to five years. Judge Clark ordered the KCMSD to close the achievement gap by 13% by the year 2000. Judge Clark anticipated that at that point, the KCMSD would be unitary, he did not anticipate any need for continued supervision beyond the three year period. Plaintiffs argument is rejected.

Plaintiffs argue that the KCMSD should be required to demonstrate closure of the achievement gap throughout all grades tested before they have met the standard for elimination of the vestige. The Court disagrees. The following is a table submitted by Dr. Podgursky

representing his analysis of MAP scale scores by grade:

KCMSD Gap Change on MAP - Scale Scores

1999 (1998 for Math) Baseline Gap (scale score)	2001 Gap	Test	Change in gap: 1999 (1998 for math) - 2001	% Change
18.7	13.7	3rd grade CA	-5.0	-26.7%
20.1	14.2	7th grade CA	-5.9	-29.4%
26.3	19.5	11th grade CA	-6.8	-25.9%
27.2	17.1	4th grade math	-10.1	-37.1%
31.4	19.9	8th grade math	-11.5	-36.6%
42.3	37.6	10th grade math	-4.7	-11.1%

1999 (1998 for Math) Baseline Gap (scale score)	2002 Gap	Test	Change in gap: 1999 (1998 for math) - 2002	% Change
18.7	17.1	3rd grade CA	-1.6	-8.6%
20.1	10.1	7th grade CA	-10.0	-49.8%
26.3	23.5	11th grade CA	-2.8	-10.6%
27.2	19.1	4th grade math	-8.1	-29.8%
31.4	17.7	8th grade math	-13.7	-43.6%
42.3	35.0	10th grade math	-7.3	-17.3%

Defendant’s Ex. 19 at 21 (Table 2). The table demonstrates that the 13% gap reduction was not achieved at every grade level. A requirement that the gap reduction be demonstrated at every grade level, however, would raise the standard for achievement gap reduction beyond that set by Judge Clark. If the achievement gap in virtually every grade in virtually every subject must close by at least 13%, the overall reduction would necessarily be larger than 13%. That is not what

Judge Clark required.

The operative language in Judge Clark's 1997 Order mandated that "the KCMSD [is] to reduce the achievement gap by 2.6 NCEs" because "13% of the initial gap and 13% of the increase in the gap may be traced to the prior discrimination within the KCMSD." 959 F. Supp. at 1179, 1165. Judge Clark's 1997 Order did not, by its terms, require reductions at individual grades. The 1997 Order was the "rather precise statement of [the obligations of the KCMSD] under a desegregation decree" that the Supreme Court called for in this case in 1995. Jenkins III, 515 U.S. at 101. The Court is unwilling to read into that "precise statement" requirements not found there.

Furthermore the methodology employed by Judge Clark in choosing not to state the achievement gap in grade-by-grade terms, actually led to a requirement that the KCMSD reduce the achievement gap in amount higher than that caused by prior segregation at any grade level reviewed by Judge Clark. Judge Clark characterized the effect of race on test scores as being between 4 and 9% and the effect of teacher efficacy as between 2 and 4%, and accordingly attributed 13% of the achievement gap (calculated by adding the high end of both ranges) to the vestiges of segregation. Jenkins, 959 F. Supp. at 1165. In actuality, the total percent of the achievement gap attributable to segregation ranged from 5.3% (tenth grade math) to 11.9% (sixth grade reading). Jenkins, 959 F. Supp. at 1165; note 5 supra. Requiring the KCMSD to reduce the vestige of segregation at the grade-by-grade levels as set forth in Judge Clark's 1997 Order would result in a standard less than 13% (and, in many cases, substantially less) for every grade in both content areas. Plaintiffs' argument is rejected.

Plaintiffs raise numerous less persuasive arguments. Plaintiffs argue that charter school migration, declining white achievement, or a test bounce effect may have contributed to closure of the achievement gap. Plaintiffs have not presented persuasive evidence supporting these

arguments; rather they simply represent Plaintiffs' speculation as to why the achievement gap has closed.¹⁴ The Court finds the arguments unpersuasive and accepts Dr. Podgursky's conclusions as representing an accurate depiction of the size of the achievement gap between the first years of MAP administration and the year 2002.

The evidence set forth by the KCMSD is responsive to the mandate in Judge Clark's 1997 Order. The KCMSD has presented grade-by-grade and separate content area data for scrutiny and analysis, but has stated composite results as well, as did Judge Clark in the 1997 Order. The Court finds that the KCMSD has reduced the achievement gap in excess of the requisite thirteen percent. Thus, the KCMSD has eliminated the final vestige of discrimination remaining in the long-running desegregation case.

B. Has the KCMSD complied with the Court's remedial orders in good faith for a reasonable time?

In order to ensure that judicial oversight is no longer required, the KCMSD must demonstrate that it has complied in good faith with its Court-ordered obligations for a reasonable time. Plaintiffs concede that the KCMSD is in "substantial compliance with most orders" yet to the extent the KCMSD is in compliance with the Court's remedial orders, Plaintiffs contend that is only a recent phenomenon. To an extent, the Court agrees with Plaintiffs. As the following discussion demonstrates, the KCMSD has not implemented every single requirement set forth in the Court-ordered educational plans and for other requirements has only recently done so. Despite

¹⁴Furthermore, the Court notes that pursuant to Judge Clark's mandate, it is not entirely clear that Plaintiffs could resist unitary status even if they had evidence to support one of the aforementioned arguments.

the highly detailed nature of the educational plans, however, the vast majority of the requirements therein have been in place for a substantial period. Furthermore, the intent of the KCMSD to comply with the Court's orders has not been questioned and the Court finds no reason to fear that relinquishment of supervision will lead to renewed discrimination against African-American students. As a result, the Court finds that the KCMSD has complied in good faith with this Court's orders for a reasonable time.

1. Has the KCMSD Complied with the Court's remedial orders in Good Faith?

In determining whether the KCMSD has proceeded in good faith in implementing this Court's remedial orders, the key question is whether the KCMSD "has demonstrated, to the public and to the parents and students of the once disfavored race, its commitment to the whole of the Court's decree and to those provisions of the law and the constitution that were the predicate for judicial intervention in the first instance." A difference exists between technical compliance and good faith compliance. Judge Posner, in People Who Care v. Rockford Board of Education, School Dist. No. 205, 246 F.3d 1073, 1077 (7th Cir. 2001). It is the latter that is required before the Court will grant unitary status. See id.

The good faith requirement concerns the manner of the school district's compliance more so than it does technical compliance with every detail of a remedial order. "Perfect compliance with the court's remedial orders is not required for a constitutional violator to be released from judicial oversight." See Berry v. School District of the City Benton Harbor, 195 F. Supp. 2d 971, 991 (W.D. Mich. 2002). In Berry, the Court characterized the inquiry as follows:

When examining evidence of compliance to determine "whether a school board has acted in good faith, a court should not dwell on isolated discrepancies, but rather

should ‘consider whether the school board’s policies form a consistent pattern of lawful conduct directed to eliminating earlier violations.’” Manning, 244 F.3d at 946 & n. 33 (quoting Lockett v. Board of Educ. of Muscogee County Sch. Dist., 111 F.3d 839, 843 (11th Cir.1997)). As the Manning court noted, “[t]he focus is on the school board’s pattern of conduct, and not isolated events, because *the purpose of the good-faith finding is to ensure that a school board has accepted racial equality and will abstain from intentional discrimination in the future.*” Id. at 946 n. 33 (emphasis added) (citing Freeman, 503 U.S. at 498-99, 112 S.Ct. 1430 (“A history of good-faith compliance is evidence that any current racial imbalance is not the product of a new de jure violation, and enables the district court to accept the school board’s representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future.”))).

The First Circuit Court of Appeals characterized a finding of good faith as follows:

where a court has reason to believe that a discriminatory animus still taints local decisionmaking, it may be appropriate for the court to retain jurisdiction for some period after neutral procedures have been implemented. A finding of good faith, on the other hand, reduces the possibility that a school system’s compliance with court orders is but a constitutional ritual.

Morgan v. Nucci, 831 F.2d 313, 321 (1st Cir. 1987). The essence of the above-cited authority is that whether a school district has evidenced good faith depends on whether the school district’s record throughout the litigation demonstrates that the school district has accepted the principle of racial equality.

Plaintiffs contend that the KCMSD’s record throughout this litigation does not evidence a good faith effort to desegregate. Plaintiffs complain that details of the Court-ordered educational plans are yet to be implemented or have not been implemented to the maximum possible extent. Plaintiffs do not argue with the notion, nor could they, that the KCMSD has whole-heartedly adopted the concept of systemic reform that was the thrust of the educational plans. Nor do Plaintiffs question the KCMSD’s commitment to the delivery of quality education to all students regardless of race.

KCMSD officials were plaintiffs in this case until this Court realigned them as defendants.

There has never been resistance to remedy implementation by the KCMSD or its officials. The Superintendent, four of the nine Board members, and about 60% of the top District officials are African-American. Tr. IV 739 (Dr. B. Taylor). The Board and leadership of the District have accepted the principle of equal opportunity for all students, Tr. IV 802-03 (A. Mauro); Tr. IV 740-42 (Dr. B. Taylor), and are endeavoring to further reduce the achievement gap between African-American and white students. Tr. II 384 (D. Smith). Moreover, the principles of the Assessment, Accountability and Professional Development Plans have been endorsed by the District Board and Administration. Tr. II 381-83 (D. Smith); Tr. IV 790, 796 (A. Mauro); KCMSD Exs. 14, 16, 25.

The Court finds the KCMSD has engaged in a pattern of lawful conduct directed to eliminating earlier violations. The Court finds that the KCMSD has accepted racial equality and will abstain from intentional discrimination in the future. Specifically, the Court finds that the KCMSD has demonstrated a good faith commitment to its African-American students that it will endeavor to provide a quality education to students of all races. Thus, the Court finds that the KCMSD has complied with the Court's remedial orders in good faith.

2. Has the KCMSD complied with Court orders for a reasonable time?

In order for the Court to grant the KCMSD's unitary status, it must find that the KCMSD has been in compliance with this Court's remedial orders for a reasonable time. Such a finding ensure's that the KCMSD has accepted the systemic reform that was the purpose of the Court-ordered educational plans. The Court finds that the KCMSD has in fact been in good faith compliance with the educational plans for a reasonable time.

Beginning in 1985, the KCMSD was required to hire specific personnel and to establish certain educational programs. The significant changes brought about through those orders are

documented throughout the history of this case record. E.g., Jenkins III, 515 U.S. at 74 (many goals of the quality education plan are attained, including achievement of the State of Missouri's AAA rating, due to the enhanced staffing and other resources provided by the desegregation remedy). In his 1997 Order, Judge Clark ordered the KCMSD to file a transition plan, focusing in particular on reducing the achievement gap, which would guide the KCMSD's efforts to achieve unitary status. Jenkins, 959 F. Supp. at 1179.

In August 1997, KCMSD filed its transition plan. Dock. No. 4573. The parties stipulated to the transition plan, Dock. No. 4659, and further stipulated to significant transition implementation steps, including school closings, school assignments and boundaries, and magnet theme and transportation modifications. Dock. No. 4697.

In January 1999, the KCMSD filed Assessment, Accountability and Professional Development Plans and sought the Court's approval. Dock. No. 4761. This Court approved the three plans in May 1999. Dock. No. 4768. The Assessment, Accountability and Professional Development Plans represented a change in the structure of the desegregation remedy. Rather than calling for the KCMSD to provide specific staff and programs, the thrust of the 1999 plans was to require the KCMSD to engage in certain activities and processes to assess the levels of student achievement, hold those responsible for student achievement accountable for the results, and support training for educators to improve the quality of teaching and learning.

The Court initially approved the Assessment Plan, Accountability Plan and Professional Development Plan on May 27, 1999. (Docket No. 4768). After a period of time, it became clear that some of the plans had been effectively implemented while others needed modification. As a result, over the past two years, the Court has issued a series of orders requiring the parties to identify areas requiring modification and approving agreements among the parties concerning

changes to the educational plans (Docket Nos. 4973, 4981, 5000, 5020). Following discussions between the parties, the KCMSD filed amended Assessment, Accountability and Professional Development Plans reflecting the parties' agreements. (Docket Nos. 4974, 5000, 5020). The implementation of the Assessment, Accountability and Professional Development Plans represents the final step in complying with this Court's remedial orders dating back to 1985.

i. The Assessment Plan

As of December 17, 2001, the parties were in agreement that the Assessment Plan, including the Core Curriculum, had been implemented, with the exception of full implementation of the Written Thesis Paper called for in the Assessment Plan. (Docket No. 4974). The written thesis paper to be completed by children in grades 5, 8 & 12, as contemplated by the Assessment Plan, is now part of the quarterly standards and objectives of the Core Curriculum for those grades. Tr. IV 711-12 (Dr. B. Taylor).

ii. The Accountability Plan

As of December 17, 2001, the parties were in agreement that the Accountability Plan had been substantially implemented. (Docket No. 4974). Specifically, as of December 2001 the KCMSD had implemented the following requirements of the plan: 1) Principal Accountability; 2) Teacher Accountability; and 3) the offering of monetary incentives to different levels of district employees. (Docket No. 4974). In the same filing, the parties agreed that the KCMSD would keep, use and make public a revised set of measures of student achievement. (Docket No. 4974). The KCMSD currently tracks the aforementioned student achievement data and publishes the data on its

website as required. (Docket No. 5102).

The single remaining point of contention regarding the Accountability Plan centers on the plan's requirement that "[c]ompetencies and specific outcomes must be developed for each central administration division depending on their individual roles in and contributions to supporting and furthering the central mission of high student achievement." KCMSD Ex. 1 at 6. Superintendent Dr. Bernard Taylor recently developed instruments to evaluate the upper echelon administrative personnel who report directly to the superintendent. TR. IV 771-72 (Taylor). Yet, the competencies and outcomes against which these personnel are to be evaluated have not yet been added to or incorporated into the job descriptions applicable to their positions as of the date of the unitary status hearing. TR. I 64 (P. Rowles).

The fact that Dr Taylor failed to develop competencies and outcomes in a timely manner for central office personnel does not in and of itself mean the KCMSD is not in substantial compliance with the Accountability Plan. The Court finds that technical compliance with the central office personnel component of the plan notwithstanding, the KCMSD has complied with the Accountability Plan for a reasonable time in good faith.

iii. The Professional Development Plan

Much of the evidence at the unitary status hearing centered on implementation of the Professional Development Plan. In the joint pleading filed with the Court on December 17, 2001, the parties stipulated that much of the Professional Development Plan had been implemented. (Docket No. 4974). The Court ordered the parties to consult and determine whether modifications to the remaining portions of the Professional Development Plan were necessary. (Docket No. 4981). The parties consulted and agreed to certain modifications which the Court approved on

May 8, 2002. (Docket No. 5020). That May 8, 2002 Order includes seven numbered paragraphs setting forth specific action steps that were to be taken by the KCMSD during the 2002-2003 school year in order to fully implement the remaining portions of the Professional Development Plan. (Docket No. 5020).

Again, the parties agree that the vast majority of the requirements set forth in the May 8, 2002 Order are now in place and functioning in the KCMSD. Among the requirements of the May 8, 2002 Order were the following: 1) the formation of Professional Development Committees (“PDCs”) in accordance with Mo Rev. Stat. § 168.400.4(1) to replace the function of “school teams” contemplated by the initial Professional Development Plan; 2) enhanced funding to individual schools in lieu of the then existing instructional coach position; 3) the development of plans by PDCs to use the enhanced funding; 4) that the enhanced funding be directed toward activities aligned with the Show-Me-Standards, the Core Curriculum and the MAP Program; 5) that the KCMSD provide a “menu” of options to the individual schools which would contain options for how to spend the enhanced funding;¹⁵ 6) that the enhanced funding shall not be used for purposes other than the delivery of job-embedded professional development; and 7) that each school’s PDC become part of the school’s School Improvement Plan. (Docket No. 5020).

Plaintiffs’ sole point of contention is that the KCMSD has not technically complied with the May 8, 2002 Order. The provision at issue required the District to “create 12 new District-level positions for highly qualified content-area specialists to assist schools” KCMSD Ex. 4. These specialists became known as district instructional coaches. TR. I 56-57 (P. Rowles). Only nine new district instructional coach positions were created and only seven of those positions

¹⁵ The options contemplated included an instructional coach position, content support from district-level content area specialists and increased substitute teacher time.

were filled. TR. I 57-58 (P. Rowles) ; TR. IV 761 (Dr. B. Taylor). The KCMSD argues that four “resource teachers” should be counted toward its goal of twelve, however, Plaintiffs point out that these resource teachers are neither new nor are they in newly created positions. TR. IV 763 (Dr. B. Taylor); Plaintiffs’ Ex. 62.

Plaintiffs’ position in regard to the Professional Development Plan is consistent with their positions regarding the other educational plans. Plaintiffs argue that because the KCMSD has not technically complied with every single plan requirement since the adoption of the plans, this Court is required to retain jurisdiction over the KCMSD. The Court disagrees. As explained above, “perfect compliance with the court’s remedial orders is not required for a constitutional violator to be released from judicial oversight.” See Berry v. School District of the City Benton Harbor, 195 F. Supp. 2d 971, 991 (W.D. Mich. 2002).

Substantial implementation throughout the KCMSD of job-embedded professional development, the central theory of the Professional Development Plan, was confirmed by consultants hired by the Plaintiffs and the KCMSD who conducted visits to schools during the 2002-03 school year. The consultants, under the supervision of Dr. Richard Wallace (hired by the KCMSD) and Dr. Judy Gouwens (hired by the Plaintiffs) together conducted 108 visits to 60 KCMSD schools. KCMSD Ex. 23. Those teams visited all regular KCMSD schools with the exception of Faxon Montessori, Hartman Elementary, Weeks Elementary, and Fairmount Elementary. KCMSD Ex. 23. The Court heard testimony from four of the principal investigators on those teams -- Dr. Richard Wallace, Dr. Judy Gouwens, Dr. Susan Hill and Judy Pfannenstiel – and received a lengthy report prepared by Dr. Wallace. KCMSD Ex. 18. The job-embedded professional development in place at Faxon, Hartman and Weeks was specifically described by other fact witnesses and documented in exhibits. Tr. I 104-05 (C. Dennis – Hartman Elementary);

Tr. I 153-57 (S. Brown – Faxon and Weeks Elementary Schools); KCMSD Exs 5 (includes professional development plans for Faxon and Hartman), 6 (includes March 2003 reporting forms for Hartman), 10 (includes menu selection of support for job-embedded professional development at Faxon, Fairmount, Hartman and Weeks), 11 and 13 (includes calendars of job-embedded professional development activities for Faxon, Fairmount, Hartman and Weeks), and 29 (Weeks' Professional Development Plan). The Court also notes that Dr. Charles McClain, the Court-appointed Implementation Monitor has reported to the Court that the Professional Development Plan is in fact fully implemented in the KCMSD. See Doc. # 5085. The Court is confident in finding that job-embedded professional development is being practiced in the KCMSD. This reform is a direct result of the KCMSD's pattern of compliance with this Court's remedial orders. This Court finds that the KCMSD has, in good faith, complied with this Court's orders for a reasonable time.

To accept Plaintiffs' invitation to continue Court supervision over the KCMSD would involve this Court in issues with which it has no business. As set forth above, the KCMSD has reduced the achievement gap by the amount set forth by Judge Clark. Thus, there is no remaining vestige of discrimination. Furthermore, Plaintiffs do not contend that the KCMSD is likely to discriminate against African-American school children when returned to local control. Thus, Plaintiffs are requesting that the Court, after 1) finding that no vestiges of discrimination exist within the KCSMD and 2) that there is no danger of future discrimination, retain control over the KCMSD in order to ensure that educational reforms favored by Plaintiffs produce a better school district than that existing before the reforms. Taken to its logical end, Plaintiffs would have this Court serve as a super-school board perpetually reviewing educational programs implemented in the KCMSD. This is precisely the sort of involvement in school districts against which the United

States Supreme Court has cautioned.

IV. Conclusion

For the above-stated reasons, the KCMSD's Motion for Unitary Status will be granted. The KCMSD, has removed the sole remaining vestige of prior discrimination and it is unlikely to discriminate against African-American children in the future. Thus, the KCMSD is in compliance with the Fourteenth Amendment of the United States Constitution. The end of court supervision will allow the Superintendent to make everyday decisions without being required to consult lawyers whose expertise lies in the law as opposed to education.

Although it is now in compliance with the Constitution, the KCMSD has a long distance to travel before it is a school district of which the citizens of Kansas City can be proud. Whether the KCMSD reaches that destination will depend on a variety of factors. Among them is whether current and future school board members will put education before politics and whether the leadership of the KCMSD will have the courage to resist pressure from those with personal agendas not consistent with the KCMSD's educational mission. This Court prays that the KCMSD completes its journey.

For the aforementioned reasons, it is hereby ORDERED that the above-captioned case is DISMISSED WITH PREJUDICE. The Court, however, will retain jurisdiction over pending and future motions for attorneys' fees, expert fees and costs.

IT IS SO ORDERED.

/s/ DEAN WHIPPLE
Dean Whipple
United States District Judge

Date: August 13, 2003