UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JEFFREY HART, et al.,

Plaintiffs,

– against –

THE COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK SCHOOL DISTRICT #21, et al.,

Defendants.
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MEMORANDUM & ORDER
72-CV-1041 (JBW)

Jack B. Weinstein, Senior United States District Judge:

I. Introduction

Defendant in the 72-CV-1041 case ("Hart") moves to terminate the remedial order imposed by this court in 1974 requiring the defendants to desegregate the Mark Twain school in Brooklyn, New York. See Hart v. Cmty Sch. Bd., 383 F. Supp. 699 (E.D.N.Y. 1974) ("Hart I"); see also Defendant's Motion dated Feb. 12, 2008, Hart Docket Entry No. 456.

Anjan Rau and Kanchan Katpadi move to intervene in Hart. See Motion to Intervene dated Jan. 14, 2008, Hart Docket Entry No. 451. These proposed intervenors are also plaintiffs in the 08-CV-210 case ("Rau"); they seek relief similar to that requested by the defendant in Hart. The intervenors are American citizens of Asian Indian descent. They have three children, one of whom they assert applied for entry to the full applicant admission Mark Twain Intermediate Gifted and Talented School for the 2007-2008 school year and who was denied admission. They have another child who they assert will seek admission to the Mark Twin School for the 2008-2009 school year.

The named plaintiffs and the members of the then designated plaintiff class do not have the same direct and identical personal interest which they possessed at the time they commenced

this litigation. They nonetheless believe that they still retain party standing and a party litigant interest in the litigation. Plaintiffs consent to the request of the defendants with one important caveat: they would have the court issue a narrow order to save it from being misinterpreted in a manner to foreclose the utilization of race, among other factors, in any future admissions policies in the assignment of students to the Mark Twain school or any other school.

The court has received letters from parents and interested members of the community—Nancy Yabroudi dated February 21, 2008; Betty Golembeski dated February 20, 2008; Venka Fasulo dated February 21, 2008; and two letters from Bonnie Kerzer dated February 19 and 20, 2008. Some of these parents express concern that they do not want Mark Twain to lose its status as a school for talented and gifted, and that they do not want the school to lose the racial balance achieved pursuant to the 1974 remedial order.

This litigation is now approximately thirty six years old. It has been designated on the court's docket as "closed." In 1990, the Mark Twain Junior High School Parents' Association sought an order requiring the Chancellor to provide contract busing for out-of-district students admitted to Mark Twain. In denying that request, the court stated that Mark Twain has been constitutionally administered to date and that "it is undesirable for the federal courts to continue supervision of state educational institutions once the constitutional violations that gave rise to the original action have been eliminated — as they have in the case of Mark Twain."

Since the adjustments made pursuant to the 1974 remedial order by this court, the Mark Twain school has operated in remarkable manner. The achievements of its students, more recently at the Polytechnic University's Future City competition where they were awarded the "Safest City" and "Best Use of Nanotechnology" awards, has provided a model of how a solution that enlisted the better nature of a community 33 years ago in a constructive manner

should be used in eliminating racial boundaries.

For the reasons stated below, the court finds that the defendants and their successors in interest have fully complied with the terms and conditions of this court's 1974 desegregation remedial Order; that the desegregation of the Mark Twain school has been fully achieved; and that the court has no further jurisdiction to entertain any other matters within of this litigation. The motion to intervene in the Hart case by Anjan Rau and Kanchan Katpdi is denied.

II. History of the *Hart* Litigation

A. Trial Proceedings

Hart was the first New York City school desegregation case to reach a federal court. Hart, 338 F. Supp. 699 at 769. It was a class action on behalf of children attending Coney Island's Mark Twain Junior High School, J.H.S. 239 ("Mark Twain"). The defendants were the Community School Board of Brooklyn, New York, School District Number 21 ("CSB 21"), its members, and the Chancellor of the Board of Education of the City of New York. The action, begun on August 4, 1972, alleged that the defendants were maintaining Mark Twain as an unconstitutionally racially segregated and underutilized school. The plaintiffs prayed for declaratory and injunctive relief, including a direction to the defendants "to formulate and implement forthwith a comprehensive plan which will eliminate, with deliberate speed, the racially segregated and underutilized nature of Mark Twain Junior High School and which will provide for and assure equal educational opportunities for the plaintiffs and the members of their class." The defendant CSB 21 and its members interposed a general denial and defended on the ground, inter alia, that if segregation exists, it is due to housing patterns fostered and maintained by the city, state, and federal authorities who had been impleaded as third-party defendants. This court did not dismiss the third-party action because the third-party defendants were required to

insure that a comprehensive remedy be devised.

A full trial was held commencing on January 2, 1973. On December 19, 1973, the court announced its decision. It found that the School Board and Chancellor were liable for conducting a segregated school in violation of the Constitution; and that the court would require a Plan, effective in September 1973, which would provide that the school population of Mark Twain not deviate more than ten percent from the average ratio of minority to white population in District # 21. A written opinion was issued on January 28, 1974. See Hart I, 383 F. Supp. 699.

The parties were ordered to submit a plan in conformity with the decision by March 1, 1974 to be placed in operation in September, 1974. The parties submitted plans on March 1, 1974. The court held hearings. On April 2, 1974 the court appointed the late professor Curtis J. Berger as Special Master, and found that "plans to deal comprehensively with conditions that have figured in the segregation of Mark Twain cannot be executed by September of 1974. Accordingly, the desegregation of Mark Twin is postponed to September, 1975." Id. at 758.

B. Premature Appeal to the Court of Appeals for the Second Circuit

The plaintiffs immediately appealed to the Court of Appeals for the Second Circuit and sought a reinstatement of the original September, 1974 date. The appeal was dismissed on the ground that the district court had never issued an injunction from which an appeal could be taken. See Hart v. Cmty Sch. Bd., 497 F.2d 1027 (2d Cir. 1974) ("Hart II") (Friendly, J.).

C. Entering of Judgment by this Court

This court, after the Special Master had reported in July, had before it three basic plans for desegregation of Mark Twain: (1) a plan proposed by the School Board; (2) a plan, quite similar but more detailed, by the Special Master; and (3) a plan proposed by Professor Dan W.

Dodson, plaintiff expert on educational desegregation, who had devised several alternative plans, but favored his "Model II" plan.

The court entered a final judgment on July 26, 1974. That judgment, in the form of a memorandum opinion and order, provided in summary that the plan tendered by the School Board be put into operation, with certain conditions added by the court. Hart v. Cmty Sch. Bd., 383 F. Supp. 769 (E.D.N.Y. 1974) ("Hart III"). The plan called for: (1) redrawing the feeding patterns of the middle schools so that the incoming grade of each intermediate and junior high school, and 7th and 8th grades of K-8 schools, would reflect approximately 70% Caucasian and 30% "minority" population—which was the approximate ratio of Caucasian to minority in the school population of the district's middle schools; (2) graduate the 8th and 9th grades of Mark Twain; (3) transfer Mark Twain's present 7th grade, and zone the graduating pupils of P.S. 188 and P.S. 238 (predominantly minority schools) to middle schools in the district other than Mark Twain; (4) establish at Mark Twain a District School for gifted and talented children—a "magnet school". Id. at 383 F. Supp. at 771.

The plan also had a few more specifics. First, it required that no new special or accelerated programs for the academically gifted known as "SP" or "SPE" programs would be organized henceforth in any school in the district. The court acknowledged that removing those programs would provide a major incentive for parents to send their children to Mark Twain, which would be the only special program in the district for gifted and talented students. Id. at 774. Second:

> The magnet school plan will be deemed to have failed if there are not in attendance at Mark Twain—in the ratio of approximately 70-30, white to minority students—at a minimum at the beginning of the school year in September 1975, 350 students; in September 1976, 750 students; and in September 1977, 1050 students. Pursuant to the Master's recommendations, the plan will also be considered to have failed if at least 400 children have not expressed an intention

> to enroll in the program at Mark Twain by March 15, 1975; 800 children by March 15, 1976; and 1100 children by March 15, 1977, in order to allow for natural attrition and in order to provide adequate time for an alternative plan should failure be highly probable.

Id. at 774. Third:

> In order to provide for an alternative plan should the 'Magnet School' concept fail, by January 1, 1975, the Chancellor, in cooperation with the School Board shall provide, in reserve, detailed proposals for new zoning and busing schedules based on 'Model II' of the proposal of Dr. Dodson. The full reserve plan shall be kept up-to-date by necessary modifications based upon changes in population. Modifications shall be prepared by January 1, 1976 and by January 1, 1977 for the next succeeding school year.

Id.

D. Appeal to the Court of Appeals for the Second Circuit on Merits

An appeal was taken to the Court of Appeals for the Second Circuit. See Hart v. Cmty Sch. Bd., 512 F.2d 37 (2d Cir. 1975) ("Hart IV"). The Court of Appeals described the various positions taken by each party on appeal:

> a) The Chancellor of the City Board of Education filed a brief in support of the Community School Board plan. It does not address itself to the order "mooting" or dismissing the third-party action. b) The city of New York urges that the District Court did not abuse its discretion in refusing to order HDA and the other housing defendants to follow a specific housing plan. c) HUD filed a brief urging that the District Court properly adjudged the third-party complaint as moot. d) The State agencies similarly urge affirmance upon the cross-appeal by the CSB 21. e) Intervention was allowed by the District Court on June 14, 1974 of certain persons, as a separate class, consisting of parents with children in Mark Twain or about to go there who reside on Coney Island sites designated for urban renewal. These intervenors have filed a brief urging affirmance on the cross-appeal of the school board.

Id. at 43 n. 8. The court also summarized what each party was seeking on appeal:

> (1) The plaintiffs appeal from the July 26, 1974 judgment confined to the District Court's approval of the plan to make Mark Twain a school for gifted and talented children, on the ground that the plan is constitutionally impermissible, while at the same time seeking approval by this Court of the Dodson plan (Model II), and asking that the District Court's alternative plan become operative now.

(2) CSB 21 appeals from the order of February 21, 1974, which purported to moot its third-party complaint.

(3) CSB 21 also cross-appeals from the decision holding it liable for the segregated condition of Mark Twain.

Id. at 43-44.

The Court of Appeals agreed with this court's finding that: (1) Mark Twain was segregated as a matter of constitutional law, due at least in part to state action, id. at 45-52; (2) the extension of the commencement of the desegregation plan by this court to the beginning of the next school year, September 1, 1975, was not foot-dragging in violation of the Supreme Court's directive of "all deliberate speed"—the extension was well within the court's discretion in the framing of remedies, id. at 53; (3) the magnet plan did not impose an unfair burden on minority students, id.; and (4) the approval of the School Board's plan was well within its discretionary equitable powers, id. at 55. As to this court's retention of jurisdiction over the third-party defendants, the Court of Appeals "recommended" to the district court that it withdraw its decision to "moot" the third-party action and dismiss it. Id. at 56.

E. Compliance with the 1974 Remedial Order

The Chancellor was an original defendant in the Hart litigation and is the head of the New York City Department of Education. With the abolition of the Community School Boards in 2003, the Department of Education became responsible for enrollment. According to the Chancellor, the 1974 remedial order has remained in effect, and has continued to be implemented in good faith. In accordance with the 1974 order, Mark Twain was turned into a highly desirable, highly successful school. Approximately 1,200 students attend Mark Twain in grades 6-8. Although only 400 to 450 students are admitted to each entry class, approximately 2,000 applicants ranked Mark Twain as the first choice on their application for the 2007-2008 school

year. The school offers talent specialization in eleven areas: arts, athletics, computers/mathematics, creative writing, dance, science, vocal, theater, visual media, and instrumental music in winds and strings. Students learn in a rigorous, interdisciplinary environment that brings diverse students with a range of talents together in the classroom.

The results of this program are impressive: Mark Twain students consistently earn high scores on state exams, and are admitted to the City's specialized high schools in remarkable numbers. In fact, Mark Twain was so successful at attracting students early on that the School Board approached the Court in 1976 to reinstitute accelerated programs in the other schools. According to a letter from Hyman Bravin, attorney for the School Board, there were so many applications to Mark Twain that a significant number of students were unable to attend, leaving GT students without an accelerated studies program. The School Board proposed that acceptance into the accelerated programs at other schools would remain linked to Mark Twain admissions to ensure that the court-ordered percentages would be met at Mark Twain.

In 1985, the School District sought further modification of the remedial order to establish GT programs at District middle schools other than Mark Twain. The expansion of the remedial order brought these additional middle school GT programs under the rubric of the School Board Plan, thereby subject to the same racial percentage as the originally-approved GT program at Mark Twain. The testing and admissions process for Mark Twain has long included all these programs.

After the initial implementation period ended in or about 1978, it appears the case returned to court over compliance issues only once. In 1990, the Mark Twain Junior High School Parents' Association sought an order requiring the Chancellor to provide contract busing for out-of-district students admitted to Mark Twain. In denying that request, the court stated

that Mark Twain has been constitutionally administered to date and that "it is undesirable for the federal courts to continue supervision of state educational institutions once the constitutional violations that gave rise to the original action have been eliminated — as they have in the case of Mark Twain." The docket sheet for this case reflects that on October 31, 2000, the Court endorsed an order, noting that "the court doubts that continuing jurisdiction is still justified."

Enrollment numbers for Mark Twain have ranged from approximately 70% White, 30% Non-White from 1975 to 1983, to approximately 60% White, 40% Non-White in later years. In addition to implementing the racial percentages in admission to Mark Twain, the School Board also redrew the feeder patterns of the other middle schools in the district by changing zoning lines to achieve the required percentages in the other middle schools. Although the 1974 remedial order does not require the maintenance of an ongoing racial percentage in District 21 middle schools other than Mark Twain, the middle schools in District 21 generally remain racially mixed today.

Over the years, the defendants' placements at Mark Twain were in accordance with the 1974 remedial order. Records indicate that Mark Twain's White enrollment remained close to 70% through 1983. White enrollment had declined to approximately 60% by 1989 and has remained at that level since then. The school remained racially mixed. In sum, the defendants have complied with the Remedial Order by establishing Mark Twain as an outstanding, racially mixed GT school and by implementing the racial percentage requirements for a reasonable period of time.

F. Demographics of District 21

At the time of the Hart decision 1974, District 21 was "overwhelmingly white." Hart I, 383 F. Supp. at 741. The White population declined to under 70% by 2000. Among the

District's school-aged residents, White non-Hispanics comprised 55.7% of residents aged 5-14 years of age in 2000, a 15% decline from 1980, when Whites were 70.9% of that age demographic. While District middle school enrollment was approximately 70% White in 1973, it had declined to 50.2% by 2000, and 40.7% by 2007.

III. The Instant Motions

A. Defendants' and Intervenors' Arguments

Relying to some extent on the Supreme Court's recent decision in Parents Involved in Cmty Schs. v. Seattle Sch. Dist., 127 S. Ct. 2738 (2007) ("Seattle"), the Chancellor and the proposed intervenors (Anjun Rau and Kanchan Katpadi) move to terminate the 1974 remedial order, arguing that the defendants have complied with it in good faith and the vestiges of discrimination have been eliminated to the extent practicable. The intervenors also seek to secure specific relief set forth in their motion and the inter-related intervening plaintiffs' complaint associated therewith. They ask the court to: (1) declare that the Mark Twain School is now effectively desegregated and that "all vestiges" of any past de jure segregation have been eliminated; (2) declare that the Mark Twain school has achieved a constitutionally acceptable "unitary" status; (3) declare that the purportedly mandated race-based quotas that are used by defendants to determine admission to Mark Twain are unconstitutional; and (4) require the defendants to "extend admission" into the Mark Twain School to their daughter Nikita Rau whom they assert was unconstitutionally denied admission into the Mark Twain Intermediate Gifted and Talent School.

B. Discussion

The Supreme Court has explained that judicial supervision of local schools as a result of past discrimination is not intended to "operate in perpetuity." Board of Educ. v. Dowell, 498

U.S. 237, 248, 111 S. Ct. 630, 637 (1991). It further explained:

> From the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination . . . . Local control over the education of children allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs. . . . The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by local authorities. Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination."

Id. at 247-48 (citations omitted).

In determining whether a desegregation decree should be dissolved, the Supreme Court has instructed lower courts to inquire "whether the [School] Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable." Freeman v. Pitts, 503 U.S. 467, 492 (1992) (quoting Dowell, 498 U.S. at 249-50). Good faith compliance should be for a reasonable period of time. Dowell, 498 U.S. at 248, 111 S. Ct. at 729. This standard is traditionally framed as an assessment of the "unitariness" of the school system, although the Supreme Court has emphasized that "the term 'unitary' is not a precise concept," Freeman, 503 U.S. at 487, and that it would be a "mistake to treat words such as 'dual' and 'unitary' as if they were actually found in the Constitution." Dowell, 498 U.S. at 245-246, 111 S. Ct. at 636.

A vestige of segregation must be a condition or practice which is fairly traceable to, and proximately caused by, the original constitutional violation. United States v. Yonkers Bd. of Educ., ("Yonkers III"), 123 F. Supp. 2d 694, 701 (S.D.N.Y. 2000) (a vestige is a "policy or practice which is traceable to the prior de jure system of segregation and which continues to have discriminatory effects"). The simple passage of time since the original violation makes it less

likely that the necessary causal link will be found to exist between the original constitutional violation and any alleged vestiges that remain. Freeman, 503 U.S. at 496, 112 S. Ct. at 1448.

The defendants' implementation of the remedial order at Mark Twain and the achievement of a racial mix at Mark Twain and other District 21 middle schools over the last thirty-plus years demonstrates substantial, good-faith compliance over a more-than-reasonable period of time. The original constitutional violation in this case was the racial segregation of Mark Twain. Hart I, 383 F. Supp. at 713-14. No such vestiges remain. None could, given the sweeping changes implemented pursuant to the remedial order, abolishing the offending feeder patterns and immediately ending segregation and underutilization at Mark Twain. By establishing an admissions-based gifted and talented program that has drawn students based on talent from outside the neighborhood, the remedial order guaranteed that no vestiges of the improper feeder patterns would remain at Mark Twain. In sum, Mark Twain and District 21 today do not in any way reflect the unconstitutional actions cited by this court in 1974. Instead, both reflect the ambitious remedial order put in place by this court and three decades of effort by school officials to ensure compliance.

The defendants' and the intervenors' reliance on Seattle, 127 S. Ct. 2738 is not well-founded on the face of the plurality opinion itself, and on the landmark decision of Brown v. Bd. of Ed. of Topeka, 347 U.S. 483 (1954) and its progeny.

In Seattle, Chief Justice Roberts announced the judgment of the Court and delivered the opinion of the Court with respects to Parts I, II, III-A, and III-C. His opinion with respect to Parts III-B and IV was only joined by Justices Scalia, Thomas and Alito. Justice Kennedy filed a separate concurring opinion and concurred with the judgment on the narrowest grounds—his opinion, as discussed below, deserves to be read in the same manner as that of Justice Powell's

in Bakke. Justice Thomas filed a concurring opinion. Justice Breyer filed a dissenting opinion joined by Justices Stevens, Souter, and Ginsburg; Justice Stevens also filed a separate dissenting opinion.

Section III-B of Chief Justice Roberts's opinion, which was joined by three other Justices is summarized as follows:

> Accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to our repeated recognition that at the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class. Allowing racial balancing as a compelling end in itself would effectively assure that race will always be relevant in American life, and that the 'ultimate goal' of 'eliminating entirely from governmental decisionmaking such irrelevant factors as a human being's race' will never be achieved." An interest linked to nothing other than proportional representation of various races would support indefinite use of racial classifications, employed first to obtain the appropriate mixture of racial views and then to ensure that the program continues to reflect that mixture.

Seattle, 127 S. Ct. at 2757-58 (internal quotation marks, footnotes, ellipses and brackets omitted).

Justice Breyer's dissenting opinion, also joined by three other Justices, is summarized as follows:

> These cases consider the longstanding efforts of two local school boards to integrate their public schools. The school board plans before us resemble many others adopted in the last 50 years by primary and secondary schools throughout the Nation. All of those plans represent local efforts to bring about the kind of racially integrated education that Brown v. Board of Education, 347 U.S. 483 (1954), long ago promised-efforts that this Court has repeatedly required, permitted, and encouraged local authorities to undertake. This Court has recognized that the public interests at stake in such cases are "compelling." We have approved of "narrowly tailored" plans that are no less race-conscious than the plans before us. And we have understood that the Constitution permits local communities to adopt desegregation plans even where it does not require them to do so.

> The plurality pays inadequate attention to this law, to past opinions' rationales, their language, and the contexts in which they arise. As a result, it reverses course and reaches the wrong conclusion. In doing so, it distorts precedent, it misapplies the relevant constitutional principles, it announces legal rules that will obstruct efforts by state and local governments to deal effectively with the growing resegregation of public schools, it threatens to substitute for present calm a disruptive round of race-related litigation, and it undermines Brown's promise of integrated primary and secondary education that local communities have sought to make a reality. This cannot be justified in the name of the Equal Protection Clause.

Id. at 2800-01.

The opinion of Justice Kennedy, who concurred in judgment with the Roberts' plurality, still allows for the use of race as a factor among others. In summarizing his opinion, Justice Kennedy writes:

> This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered. What the government is not permitted to do, absent a showing of necessity not made here, is to classify every student on the basis of race and to assign each of them to schools based on that classification. Crude measures of this sort threaten to reduce children to racial chits valued and traded according to one school's supply and another's demand.
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> That statement, to be sure, invites this response: A sense of stigma may already become the fate of those separated out by circumstances beyond their immediate control. But to this the replication must be: Even so, measures other than differential treatment based on racial typing of individuals first must be exhausted.
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> The decision today should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds. Due to a variety of factors-some influenced by government, some not-neighborhoods in our communities do not reflect the diversity of our Nation as a whole. Those entrusted with directing our public schools can bring to bear the creativity of experts, parents, administrators, and other concerned citizens to find a way to achieve the compelling interests they face without resorting to widespread governmental allocation of benefits and burdens on the basis of racial classifications.

Id. at 2792.

The Seattle plurality decision must be read in congruency with the principle set forth by the Supreme Court in Marks v. United States, 430 U.S. 188 (1977). The Court reaffirmed its holding in Marks more recently and explained:

> In that case, we explained that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."

Grutter v. Bollinger, 539 U.S. 306, 325 (2003). In applying Marks, the Grutter Court endorsed the view of Justice Powell in his concurring opinion in Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) "that student body diversity is a compelling state interest that can justify the use of race in university admissions." Grutter, 539 U.S. at 325. Accordingly, it is the view of Justice Kennedy, which represents the applicable approach under Marks and the most workable solution on the use of race as an admissions factor.

The same consideration that permit race as one factor among many to be considered in college and graduate schools applies to grade schools. As Chief Justice Warren stated in Brown:

> [I]n finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on those qualities which are incapable of objective measurement but which make for greatness in a law school. In McLaurin v. Oklahoma State Regents, (339 U.S. 637), the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession. Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system.

Brown, 347 U.S. at 494-95.

The motion to intervene, therefore, must be denied for two reasons. First, the contention that the law has changed making the 1974 remedial order invalid is unfounded. If the facts were the same today as they were in 1974, the same decree would issue because the plaintiffs proved both de facto and de jure segregation. Brown still rules – segregation is still illegal. Second, the case is closed and has been closed for a considerable amount of time. The docket sheet so indicates. See supra section II.E. Any challenge based on alleged discriminatory practices with respect to any school or administration of school system would require an independent action. Seriousness of such contentions warrant serious litigation and cannot be treated in a summary fashion as proposed by the intervenors. The court assumes that the defendants will take whatever action necessary and that the intervenors will seek exhaustion of remedies—reopening a closed 1972 case in order to grant declaratory and injunctive relief will not be undertaken in a superficial and cursory way.

C. Certificate of Closure

The Supreme Court has said that the defendants are entitled to a certificate of closure. See Dowell, 498 U.S. at 248. It is issued forthwith: The defendants have complied with the 1974 remedial order. Mark Twain has been desegregated. The court has not further jurisdiction over the case.

D. Parents' Concerned

The court has received many letters from parents whose children currently attend Mark Twain or have attended in the past. Students from this wonderful school—created by so many devoted teachers, students, parents, government officials from the local, state and federal levels—have contributed to making this a better borough, city, state, and country. In their letters, these parents raise the concern that there should not be any radical changes that would tend to destroy this stellar model of urban education. Based on the arguments today, the court is concerned that the City and the Department of Education are acting in good faith and that they intend to continue the school along with its excellent lines.

Accordingly, the court requests a letter from the Chancellor or Mayor indicating that:

1. September 2008 admission policy will not appreciably change and students currently attending satisfactorily should be permitted to graduate on schedule; and
2. Mark Twain will continue as a superior magnet school as in the past, as well as an integrated and desegregated school.

IV. Conclusion

The defendants have complied with the 1974 remedial order. Mark Twain has been desegregated. The court has not further jurisdiction over the case. The motion to intervene is denied.

The court visited physically visited the school and its environs yesterday. The school was closed due to a school holiday. The court would like to bring to the Chancellor's attention that the lovely metal gate at the school's entrance on Neptune Avenue is rusting; paint might be useful to improve the morale of those entering the school. As a magnet school, it also needs to be restored and freshened up.

The court would like to thank the concerned parents for writing and voicing their concerns and the parties for submitting excellent briefs. It wishes again to note the contribution made to desegregation by the attorneys in this case: James Meyerson, Hyman Bravin, Edward Boyd, Christine A. Flynn, Robert Hammer, Jeanne Hollingsworth, Professor Dan W. Dodson, and Special Master Curtis J. Berger. The death of Professor Curtis J. Berger, Special Master in this case, has deprived us of innovative and workable methods of ending segregation in urban environments. See Scholar and Teacher, People Person and Institutional Conciliator, 99 COLUM. L. REV. 273. (1999).