

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**LITTLE ROCK SCHOOL DISTRICT,** **PLAINTIFFS**  
*et al.*

**v.** **No. 4:82-cv-866-DPM**

**NORTH LITTLE ROCK SCHOOL DISTRICT,** **DEFENDANTS**  
*et al.*

**LORENE JOSHUA, et al.** **INTERVENORS**

**BRIEF OF LAW IN SUPPORT OF MOTION FOR UNITARY STATUS**

Jacksonville/North Pulaski School District (JNPSD), through its attorneys Scott P. Richardson, states as follows for its Brief of Law in Support of Motion for Unitary Status in Staffing and Facilities:

Since its creation in the 2014-15 school year, JNPSD has provided quality desegregated education to the scholars in the District. JNPSD developed its student discipline and academics programs with specific reference to Plan 2000 to the extent that its obligations transferred to JNPSD. As explained more fully herein, JNPSD has substantially complied with its obligations in student discipline, academics, and staffing and should be declared unitary in these areas and released from court supervision.

JNPSD hereby requests that it be declared unitary and released from Plan 2000 and court supervision in the remaining areas: academics, student discipline, and staffing. JNPSD further requests that it be released from Plan 2000's monitoring provisions. JNPSD acknowledges that its facilities remain in the status established by the Court's September 25, 2018, Order. DE # 5445. In the unlikely

event that the Court declines to release JNPSD in these remaining areas, JNPSD requests that its obligations be modified to directly address whatever remaining constitutional violations the Court finds rather than continue Plan

Federal Rule of Civil Procedure 60 provides as follows:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. Pro. 60(b)

Desegregation decrees like Plan 2000 were never intended to continue forever. *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 248, 111 S.Ct. 630, 637 (1991). They are “a temporary measure to remedy past discrimination.” *Id.* “The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities.” *Id.* A desegregation decree should not continue any longer than necessary to remedy the identified constitutional violation; i.e. to remedy the effects of past discrimination addressed by the consent decree “to the extent practicable.” *Id.*; see also *Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749 (1977)(*Milliken II*). Once the constitutional violation is remedied, control of children’s education must be returned to local school officials. *Id.*

In a desegregation case, a federal court’s remedial authority ends when the Constitutional violations found to exist in the school district have been remedied.

*Dowell*, 498 U.S. 237, see also *Kindred v. Duckworth*, 9 F.3d 638, 644 (7th Cir.1993) (“[D]ecrees imposing obligations upon state institutions normally should be enforceable no longer than the need for them.”); *Cody v. Hillard*, 139 F.3d 1197 (8<sup>th</sup> Cir. 1998). This limited authority furthers the goal of returning school systems to local control. In determining whether a consent decree should be modified, courts look to the following factors:

- (1) any specific terms providing for continued supervision and jurisdiction over the consent decree;
- (2) the consent decree’s underlying goals;
- (3) whether there has been compliance with prior court orders;
- (4) whether defendants made a good faith effort to comply;
- (5) the length of time the consent decree has been in effect; and
- (6) the continuing efficacy of the consent decree's enforcement.

*Cody v. Hillard*, 139 F.3d 1197, 1199 (8<sup>th</sup> Cir. 1998); see also *Dowell*, 498 U.S. 237, 247, 111 S.Ct. 630, 636-37 (1991) (if district court finds a defendant operating in compliance with Constitution and unlikely to return to “its former ways,” purposes of injunction have been achieved).

Even where not all of the constitutional violations are remedied, a court should relinquish control over areas where no violation of the Constitution exists. Federal courts have discretion to partially withdraw supervision over a school system and incrementally return control to the local governments. *Freeman v. Pitts*, 503 U.S. 467, 112 S.Ct. 1430 (1992). “By withdrawing control over areas where judicial supervision is no longer needed, a district court can concentrate both its own resources and those of the school district on the areas where the effects of *de jure* discrimination have not been eliminated and further action is necessary in order to provide real and tangible relief to minority students.” *LRSD v. PCSSD*, 237

F.Supp.2d 988, 1028 (E.D. Ark. 2002)<sup>1</sup> quoting *Freeman*, 503 U.S. at 493, 112 S.Ct. 1430. Partial withdrawal of supervision over a plan also fulfills the Court’s duty to return control of the areas of a school system that are operating in compliance with federal law back to the the patrons and taxpayers supporting the schools. *Freeman*, 503 U.S. at 490 (“Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system.”).

In *Horne v. Flores*, the Supreme Court reaffirmed that courts “must take a flexible approach to Rule 60(b)(5) motions addressing [institutional reform] decrees.” *Horne*, 557 U.S. 433, 129 S.Ct. 2579, 2594-95 (2009) (internal quotations omitted). This “flexible approach” requires courts to “remain attentive to the fact that federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate federal law or does not flow from such a violation.” *Id.* at 2595. A court evaluating release of a long-standing, institutional reform decree must apply “a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied.” *Id.*

This Court’s decisions regarding whether to modify its consent decree are reviewed for abuse of discretion. *LRSD v. PCSSD, et al.*, 451 F.3d 528, 531 (8<sup>th</sup> Cir. 2006). However, once a party seeking relief from a consent decree establishes that changed circumstances warrant relief, “a court abuses its discretion when it refuses

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<sup>1</sup> Because of the number of opinions in this case this brief will refer to the opinions by year of decision. For example, Judge Wilson’s comprehensive opinion from 2002 finding the LRSD unitary will be referred to as *LRSD 2002*, 237 F.Supp.2d 988.

to modify an injunction or consent decree in light of such changes.” *Horne*, 129 S.Ct. 2579, 2593 quoting *Agostini v. Felton*, 521 U.S. 203, 117 S.Ct. 1997 (1997).

The *Horne* opinion by the United States Supreme Court is of particular importance because in it, the Court made clear that plan compliance is not the touchstone of consent decree release decisions. *Horne*, 129 S.Ct. 2579. *Horne* dealt with a State attempting to secure release from a number of competing consent decrees relating to education of non-native English speaking students. *Id.* at 2590. The District Court denied release holding that Arizona had not complied with the court’s prior decree and failed to show changed circumstances. *Flores v. Arizona*, 480 F.Supp.2d 1157 (D.Ariz. 2007). The Ninth Circuit affirmed noting that it should not “look away from Arizona’s attempt to comply [with the prior decrees . . . – and turn instead to other factors – a generalized increase in state funding, changes in the management of [the local school district], and passage of the No Child Left Behind Act of 2001.”. *Flores v. Arizona*, 516 F.3d 1140, 1167 (9<sup>th</sup> Cir. 2008). The Ninth Circuit rejected “the novel proposition that the judgment need no longer be complied with.” *Id.* The Supreme Court, however, reversed the Ninth Circuit and clarified that this proposition was not novel at all but, in fact, represents the state of the law.

### **1. Background of PCSSD’s Desegregation Obligations in Academics and Discipline**

Plan 2000 is the latest iteration of desegregation decrees governing the Pulaski County Special School District’s operations since the 1971-72 school year.

*See LRSD 1984*, 584 F.Supp. 328, 336-337 (E.D. Ark. 1984). The original *Zinnamon* decrees have never been supplied to JNPSD. The only source for identification of the original constitutional violations is the 1984 opinion in this case by Judge Henry Woods. *Id.* The initial *Zinnamon* desegregation plan does not appear to have addressed academics or student discipline. A consent decree was entered in 1973 which addressed student assignments, facilities, staffing, and the school board. *Id.* at 336. In his 1984 opinion, Judge Henry Woods makes no reference to any student discipline obligations on PCSSD. He does make one finding regarding PCSSD obligations regarding academics: *Id.*

82. The Pulaski County Special School District has never instituted or implemented any policy, practice, or procedure as required under the *Zinnamon* decree to encourage principals and other responsible administrators to structure curricular or extracurricular activities to insure the participation of a proportionate number of blacks.

*LRSD 1984*, 584 F.Supp. at 348. Judge Woods also compared programs in each then Pulaski County school district for providing compensatory instructional support to African-American students. *Id.* at 350. He found that PCSSD provided such programs but not to the extent that LRSD did. *Id.* The majority of Judge Woods's findings regarding educational programs related to special education and gifted and talented programing. Judge Woods's conclusions of law draw no conclusions about segregation in the regular academic offerings of PCSSD and nothing about student discipline. *Id.* at 353. He does draw a conclusion that PCSSD "assigned students to special education classifications and gifted programs on a discriminatory basis." *Id.* But, he made no suggestion that he found any discrimination in the curricular offerings for African-American students in the

regular classrooms. The Eighth Circuit opinion following Judge Woods's decision is similarly thin on findings of discrimination in the classrooms after PCSSD schools had been integrated. *LRSD v. PCSSD 1985*, 778 F.2d 404, 420-422 (8<sup>th</sup> Cir. 1985).

In short, lost in the mists of time are whatever facts that formed the basis of a finding of a constitutional violation in the areas of academics and discipline in PCSSD and, more importantly, the schools that now form the JNPSD.

## **2. Background of the JNPSD**

For over a decade the people of the City of Jacksonville and North Pulaski County have sought to have their own school district separate from the PCSSD. *See e.g. LRSD 2004*, 378 F.3d 774 (2004). In the latter part of 2013, the parties to this case entered a settlement agreement that allowed for the creation of a new school district for North Pulaski County and the City of Jacksonville. See DE # 5063, Consent Judgment. On November 13, 2014, the State Board of Education adopted an order creating the JNPSD by detachment from the PCSSD. Ex. \_\_\_, Order of Creation. On December 22, 2014, the Court entered an order approving a partial plan for detachment of the JNPSD. DE # 5088. A short time later, JNPSD began its first steps toward independent operation with the hiring of an interim Superintendent and a Chief of Staff. By July 1, 2015, JNPSD had hired a full time Superintendent, Mr. Tony Wood, and an Assistant Superintendent, Dr. Jeremy Owoh, to guide the District to fully independent operation. A more comprehensive detachment agreement was negotiated between the two school districts and filed with the Court on August 7, 2015. DE # 5145. The Court approved this detachment

agreement by Order entered October 14, 2015. DE # 5165. The Detachment Agreement provided for final transfer of operation to JNPSD by July 1, 2016.

**3. JNPSD is Unitary in Student Discipline**

Plan 2000's student discipline remedy "is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation." *Freeman v. Pitts*, 503 U.S. 467, 489 (1992). As to JNPSD, it is not clear what the "initial constitutional violation" is from which this discipline requirement flows. It appears that whatever the violation may have been it is very remote in time and has not been a "constitutional violation" for a long time. JNPSD has never been provided any court order that found segregation in the student discipline in the schools in the District (or even in PCSSD prior to 2016, for that matter). In 2011, Judge Brian Miller credited the testimony of PCSSD's expert on student discipline that PCSSD had succeeded in producing better outcomes in student discipline than other school "districts regarding the racial disparity in discipline." *LRS D v. PCSSD*, 2011 WL 1935332, p. 30-31. Specifically, Dr. Rossell reported the following:

- (1) The racial disparity in suspensions in the PCSSD is almost entirely caused by the differences in rates of poverty between the races, a factor that is outside the control of the PCSSD schools;
- (2) There is no evidence of racial discrimination on the part of white administrators;
- (3) Racial disparities in the PCSSD are less than most school districts that have attained unitary status.

*Id.* at 30. Dr. Rossell's report is attached to this motion as Exhibit A. One factor in her analysis of student discipline in PCSSD was to compare the discipline meted



out by African-American principals to that meted out by white (i.e. non-black) principals. Ex. A, p. 7-8 & fig. 7, 8. She found that in the 2008-09 school year, “black principals suspend a higher percentage of black students that they do nonblack students” and that black principals expelled about six times as many black students than they did nonblack students. *Id.* at 7. Dr. Rossell’s findings suggest strongly that whatever unconstitutional discrimination gave rise to Plan 2000’s discipline provisions had been eliminated by the 2008-09 school year.

In 2011, the Court held that PCSSD had complied with the student discipline requirements of subsection F.(1) and F.(6) of Plan 2000. JNPSD has continued efforts in these areas. For example, the initial JNPSD student handbook was identical to PCSSD’s then student handbook. Some changes have been made since then, but the two handbooks remain substantially similar.

Several of the discipline subsections of Plan 2000 had implementation timelines of 45 to 150 days after the Court’s approval of Plan 2000. Plan 2000 sections F. (2), (4), & (5). JNPSD had no opportunity to comply with these deadlines or the studies required by these sections because it did not exist in 1999 or 2000. Therefore, these deadlines should not weigh in the balance as to JNPSD.

***A. JNPSD’s Discipline Data Meets and Exceeds Plan 2000***

The PCSSD will continue to gather data which allows a full assessment of its success in achieving its objective of eliminating racial disparities in the imposition of school discipline. As a foundation for this effort, disciplinary records shall be kept on each student concerning the nature of any discipline imposed (suspension, Saturday school, expulsion, etc.); the teacher and staff member involved; and the school, race, and sex of the student.

JNPSD has developed a robust method for gathering data on student discipline, including the areas specifically identified in Plan 2000. JNPSD has regularly hosted training for administrators and teachers to impress upon them the need to be attentive that the discipline documented matches the alleged student conduct. Only administrators are allowed to enter student discipline data. This requirement helps maintain consistent and quality data regarding student discipline. The data is tracked by discipline type, the teacher who recommended it, the school where it was imposed, and the demographic information of the student. The JNPSD Director of Student Services regularly audits the data to ensure its integrity. JNPSD anticipates that the evidence at trial will show that the tools and programs used to gather and analyze the data are significantly more robust than they were when Plan 2000 was adopted. Indeed, JNPSD has worked with the State to develop data capabilities unique to JNPSD to support its efforts to comply with Plan 2000's discipline requirements.

***B. JNPSD Monitors Discipline Rates of Schools, Staff, and Teachers***

Not later than 45 days after the court's approval of this Plan, the Assistant Superintendent for Desegregation shall submit to the Joshua Intervenors, for comment, proposed criteria for identifying, from the data collected: (i) teachers and other staff members who are experiencing problems which require attention; (ii) schools which have atypically high discipline rates; and (iii) schools which have atypically high racial disparities in discipline. The Joshua Intervenors shall have 21 days to provide comments on these proposed criteria. The PCSSD shall then complete the criteria promptly.

The JNPSD Central Office provides weekly reports to school administrators that specifically identify administrators, teachers, staff, and schools with atypically high discipline rates. The reports also identify discipline rates by race of students so

that racial disparities in discipline can be monitored as well. Data collection efforts and how the data are used are discussed in the Student Discipline Reports that have been provided to the Joshua Intervenors on a semester basis. Ex. B, 2018-19 Discipline Report Summary p. 2. These reports also go beyond the requirements of Plan 2000. They include data on how often the handbook procedures are followed for each offense-level discipline occurrence. JNPSD watches closely how handbook procedures are followed as a necessary step in providing equitable discipline for all student infractions.

***C. JNPSD Balances Management of School Climate with Equity in Administering Student Discipline.***

The Assistant Superintendent for Desegregation and the Assistant Superintendent for Pupil Personnel shall thereafter provide for and participate in specific efforts to work with teachers and other staff members and the personnel of schools, identified pursuant to the criteria set forth in paragraph 2, to promote achievement of the goal of eliminating racial disparities in school discipline. The Assistant Superintendent for Desegregation shall maintain records showing the specific steps undertaken.

Dr. Tiffany Bone, JNPSD Assistant Superintendent for Secondary Schools and Desegregation, and Mr. Jake Smith, JNPSD Director of Student Services work together to address discipline needs at the schools. JNPSD administrators have worked to provide an orderly school learning environment while engaging efforts to see that student discipline is based on student needs and not discrimination.

JNPSD administrators use the data collected on student discipline to identify teachers and schools that need support in reducing discipline rates. Building administrators and faculty receive reports on discipline data weekly and bi-weekly to identify potential problem areas on an ongoing basis. Professional development is

offered to help address any problem areas, and administrators assist any teachers in need of support. The data are also integrated into the District's teacher evaluation system under the Teacher Excellence and Support System ("TESS"). Ark. Code Ann. § 6-17-2801*et seq.* (Another education improvement program that did not exist at the time Plan 2000 was adopted.) This allows administrators and support professionals to work with the discipline data to help tailor an individual teacher's professional development goals, training, and mentoring to support achievement of Plan 2000's discipline objectives. JNPSD also utilizes this data with its Leader Excellence and Development System ("LEADS") so that professional development and training of District administrators also takes into account needs arising from Plan 2000's goals in student discipline. TESS and LEADS are aligned to Plan 2000's goal of providing equitable student discipline, creating classroom and campus environments conducive to positive student behavior, and ensuring that all student discipline is recorded promptly and accurately.

The District also implements several student focused programs to help address student behavior. One of the main initiatives in Response to Intervention ("RTI"). This is a program for supporting individualized interventions for struggling learners. RTI has an academic and a behavioral side. The behavioral side is known as Positive Behavior Interventions and Supports ("PBIS"). PBIS is a proactive system for assisting students to engage appropriate behavior. For many students, it is individually focused on interventions designed for the students by a team of educators.

For the 2018-19 school year, JNPSD has added Titan Academy; a new facility housing an alternative learning environment (“ALE”) for students that struggle to perform well in the regular school environment. Titan Academy has dedicated educators committed to assist the students assigned there to increase their academic outcomes and learn positive methods to manage behavior and reintegrated into the regular classroom environment.

***D. JNPSD’s Student Handbook and Discipline Review Process is Plan***

***2000 Compliant***

PCSSD shall adhere to the policies set forth in the Handbook for Student Conduct and Discipline, as revised after consultation with the Joshua Intervenors, PACT and PASS, to provide that students are disciplined in a fair and equitable manner. The Assistant Superintendent for Pupil Personnel shall be responsible for determining the fairness of student disciplinary decisions. He will delegate the student hearing function to a single hearing officer who will consider the appeal brought by parents and the position of the administrator making the recommendation and then make a decision based upon equitable factors. An aggrieved student may appeal to the Superintendent of Schools. The Superintendent may review the matter or refer it to the school board for action. The committee approach which utilizes school principals in the student appeal process has been discontinued and will not be reinstated.

JNPSD’s initial student handbook was adopted almost word-for-word from PCSSD’s then existing student handbook. Some revisions have been made during the ensuing years, but it remains largely the same handbook.

JNPSD’s Director of Student Services has been designated as the hearing officer who considers appeals brought by parents of disciplinary decisions and is responsible for determining the fairness of student disciplinary decisions. The student handbook provides forms for parents to use to appeal suspension and

expulsion recommendations. When that occurs, the hearing officer conducts a hearing with administrators, the student, and the student's parents to review the discipline recommended by the building administration. If he upholds the recommended discipline, the parents and student may appeal that decision to the superintendent of schools. If a recommended expulsion is upheld parents may appeal that recommendation to the school board for a contested hearing. The process is outlined in the student handbook. Handbook p. 23-24, 40

#### **4. JNPSD is Unitary in Academics**

The modern classroom bears little resemblance to the methods and means of education that were in place when this case began. Even since 1999 (when Plan 2000 was adopted) education has undergone major changes.

In 1999, the General Assembly created the Arkansas Comprehensive Testing, Assessment, and Accountability Program ("ACTAAP"). Act 999 of 1999. ACTAAP and the State Board regulations implementing it formed a comprehensive system that provided increased academic standards, student assessments, professional development for educators, and accountability for schools. Ark. Code Ann. § 6-15-402 (repl. 1999). ACTAAP was enhanced several times until 2003 and 2004 when the Arkansas General Assembly adopted major enhancements to the State's education system with the Quality Education Act of 2003 (Act 1467 of 2003) and other Acts passed by the General Assembly at that time. *Lake View School Dist. No. 25 v. Huckabee*, 358 Ark. 137, 189 S.W.3d 1 (2004) ("The accounting and accountability measures set in place appear to be state-of-the-art. . . . The

legislative accomplishments have been truly impressive.”); *Lake View School Dist. No. 25 v. Huckabee*, 370 Ark. 139, 146, 257 S.W.3d 879, 883 (2007)(“We hold that the General Assembly has now taken the required and necessary legislative steps to assure that the school children of this state are provided an adequate education and a substantially equal educational opportunity. A critical component of this undertaking has been the comprehensive system for accounting and accountability, which has been put in place to provide state oversight of school-district expenditures.”)

At the federal level, the United States Congress passed the No Child Left Behind Act in 2001. 115 Stat. 1702, 20 U.S.C. § 6842, et seq. “NCLB marked a dramatic shift in federal education policy. It reflects Congress’ judgment that the best way to raise the level of education nationwide is by granting state and local officials flexibility to develop and implement educational programs that address local needs, while holding them accountable for the results.” *Horne*, 129 S.Ct. 2579, 2601. Since then federal law has shifted and State laws and standards have followed further enhancing education in Pulaski County for students.

To the extent that Plan 2000 and the Ross Plan are focused on remediating the achievement gap between African-American students and students of other races, this Court has previously recognized the problems in that endeavor:

Sociologists and educators have recognized for over a decade that there are a host of factors, completely unrelated to the effects of de jure segregation, that also are responsible for the minority student achievement gap. Some of these other factors include low birth weight, poverty, whether the student is raised by a single parent, parental interest and involvement, and peer influence. Complicating this issue

still further is the fact that the achievement gap “exists across the country in prior segregated school districts and school districts that have not discriminated against minority students.”

\* \* \*

In May of 1996, Judge Wright took testimony from three nationally recognized expert witnesses on various desegregation obligations contained in LRSD’s 1990 Settlement Plan, as revised by its May 1992 Desegregation Plan. Each of those experts offered testimony on the issue of LRSD’s obligation to eliminate the academic achievement gap. See Testimony of Herbert J. Walberg, Ph.D. (docket no. 2692 at 33-86); David J. Armor, Ph.D. (docket no. 2693 at 18-39); and Gary Orfield, Ph.D. (docket no. 2768 at 25-31). Together, the testimony of these experts made it clear that, regardless of the effort put forth by LRSD, it was unlikely this gap could be substantially narrowed, much less eliminated, within the foreseeable future.

*LRSD 2002*, 237 F.Supp.2d 988, 1037, 1040.

It has now been about twenty years since the Plan 2000 was adopted and the Ross Plan was developed. As noted above, delivery of education has changed substantially since then. The Ross Plan is outdated and no longer a good fit for improving educational outcomes in JNPSD.

Even so, JNPSD has done its best to adopt the goals of the Ross Plan and implement it to the extent practicable. The District and each school in JNPSD have adopted strategic plans that deliberately include the goals of the Ross Plan as their goals for education in the District and the schools in the District. Ex. C, 2019-20 District Strategic Plan. The District anticipates presenting evidence at trial establishing that it has implemented the Ross Plan to the extent it could. One major program adopted in pursuit of the Ross Plan goals is Advancement Via Individual Determination or AVID. AVID is open to all students but is focused on underachieving middle and high school students. It provides instruction and



academic supports tailored to individual students needs. AVID also has a particular focus to address the education of minority and low-income students. JNPSD adopted and fully implemented AVID in the 2018-19 school year. It has already helped to improve opportunity and outcomes for students who have taken advantage of the program.

The academic component of RTI also forms a basis of JNPSD's compliance with Plan 2000 and the Ross Plan. RTI focuses educational efforts on individual students so that data is used collaboratively to produce planning that addresses educational deficiencies identified with each individual student. Each school has an RTI committee primarily composed of the principal or assistant principal, school counsellor, and teachers. The committees meet once per week and work together to provide positive behavioral supports and academic supports for each student. They evaluate individual students and identify interventions to assist the students. One of the outgrowths of this system is "Titan Time." For Kindergarten through fifth grade, JNPSD schools provide a specific time during the school day that all students receive instruction tailored to their needs. During Titan Time students who are struggling with particular concepts receive additional instruction in them and students who are advanced in certain areas receive enhanced instruction to continue challenging them. At sixth grand, JNPSD offers Titan Strategies Class to continue the tailored instruction and behavioral supports similar to Titan Time. JNPSD plans to expand this offering to the Middle and High School levels in the coming years.

Other changes include professional learning communities (“PLC”). PLCs introduce a level of collaboration unknown at the time of Plan 2000. PLC is educators (teachers and administrators) meeting during the school day as a team to collaborate on best practices for students. Overall program design is discussed and individual student needs are discussed by teachers and administrators. The district contracted with Solution Tree to assist in enhancing PLCs.

<https://www.solutiontree.com> All administrators are trained through Solution Tree and all JNPSD schools rated a “C” or below on the State’s school performance indicators have a Solution Tree coach to help address learning.

More is offered including reading strategies like Phonics First to help struggling readers and Science of Reading to improve reading instruction at the elementary level. In the 2018-19 school year, JNPSD adopted the Ford Next Generation Learning (“Ford NGL”) framework. <https://fordngl.com/about> Ford NGL helps JNPSD to enhance instruction by focusing on real world application of academic skills. It will help increase the education strategies to help meet students, including African-American students in the style of education that helps them grow the most.

JNPSD also employs rigorous assessments to identify any gaps in learning. Currently, JNPSD uses NWEA Map testing. These tests are online assessments administered to students at three times per school year to identify academic strengths and weaknesses students may have in their learning. The tests are aligned with JNPSD’s curriculum and produce what is called a “RIT score” that

shows skills mastered by students and those not mastered so that teachers can focus instruction on those areas not mastered. The results are uploaded to a program called Edgenuity that helps to create an individual instruction path for the students with the goal of having the students perform at or above grade level in the academic areas tested. While NWEA Map testing occurs throughout the school year, the State provides the districts with the ACT Aspire testing to assess student learning once per year. Educators also utilize the data from the ACT Aspire test to address deficits in student's learning. JNPSD also uses other assessments such as DIBELS or Dynamic Indicators of Basic Early Literacy Skills to assess entering kindergarten students.

Finally, the Court is aware of JNPSD's monetary support for the Donaldson Scholars Program. The District has met the requirements of this program and provided regular access to its schools for the Donaldson Scholars staff to recruit students to the program and support it.

#### **5. JNPSD Has Complied with the Remaining Staffing Portion of Plan 2000**

Ms. Powell's latest monitoring report regarding the remaining staffing obligation well summarizes the District's efforts to provide incentives for African-American teachers to obtain certification in early childhood, elementary, and secondary core areas. DE # 5521. Following the unitary status trial in February 2018, JNPSD has enhanced its efforts to provide these incentives, its advertising for

the incentives, and recruitment efforts. JNPSD should be declared unitary in this remaining area as well.

### **6. Monitoring**

Generally, in this case the monitoring requirements of Plan 2000 have been released as the Districts were declared unitary in the various released areas. JNPSD would request that as it is released from Court supervision in these remaining areas, that it would be released from the monitoring obligations as well.

### **7. Conclusion**

JNPSD anticipates that the evidence at trial will support the descriptions above and go beyond them to demonstrate that the district is focused on improving the performance of African-American students. The District looks forward to presenting all of the various instructional strategies, programs, and supports for providing enhanced learning and addressing what achievement gaps exist at JNPSD. JNPSD has substantially complied with Plan 2000, remedied whatever constitutional violations may have existed in the areas of student discipline and academics. It has also substantially complied with its remaining obligation in the area of staffing as well.

WHEREFORE, JNPSD respectfully requests that it be declared fully unitary and released from Plan 200 and court supervision with the sole exception of its facilities obligations, and for all other relief to which it is entitled.

Respectfully Submitted,

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School District

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

All Counsel of Record

Scott P. Richardson