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 IN THE UNITED STATES DISTRICT COURT

 FOR THE EASTERN DISTRICT OF TEXAS

 TYLER DIVISION

 UNITED STATES OF AMERICA

 V.

 CIVIL ACTION NO. 5281

 STATE OF TEXAS, ET AL.

This Court's Order of April 20, 1971, in the above-entitled and number civil action is hereby modified to comply and conform with the directions of the United States Court of Appeals for the Fifth Circuit in its Opinion of July 9, 1971, in Cause No. 71-1061, entitled United States of America, Plaintiff- Appellee, versus State of Texas, Et Al., and Dr. J. W. Edgar, Commissioner of Education, Et Al., Defendants-Appellants, ___ F.2d ___ (5 Cir. 1971), and, as so modified, such Order is re-issued, as follows:

On November 24, 1970, this Court entered an order in this case then styled United States of America v. State of Texas, et al., Civil Action No. 1424, Marshall Division, requiring inter alia that the Texas Education Agency, the State Commissioner of Education and their officers, agents, employees, successors re-evaluate all of their activities and practices relating to the desegregation of public elementary and secondary education within the State of Texas; upon completion of this re-evaluation the defendants were required to file a plan stating specific actions which they would take pursuant to their affirmative obligations under Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment to the Constitution. On January 15, 1971, the defendants filed their plan. Plaintiffs filed a response to this plan on February 1, 1971, incorporating both objections to defendants' plan and recommendations for what the defendants were legally required to accomplish by this plan. An evidentiary hearing was held on February 1 and 2, 1971. A further hearing was held in Tyler on April 12, 1971, the case then, and hereafter, being styled Civil Action No. 5281, Tyler Division.

The Court has carefully considered the submissions of the respective parties and the evidence presented at the hearings, in light of the defendants' affirmative duty to take "whatever steps might be necessary to ... [eliminate] racial discrimination root and branch." *Green v. New Kent County*, 391 U.S. 430, 437-38 (1968), *Swann v. Charlotte-Mecklenburg Board of Education*, Nos. 281 and 349, ___ U.S. ___, (April 20, 1971). In this regard the duty of the state appears to be two-fold: First, to act at once to eliminate by positive means all vertiges of the dual school structure throughout the state; and second, to compensate for the abiding scars of past discrimination.

Accordingly, it is hereby ORDERED that the State of Texas, Dr. J. W. Edgar, Commissioner of Education of the State of Texas, the Texas Education Agency, their officers, agents, employees, successors and all other persons in active concert or participation with them (hereinafter referred to as defendants) shall fulfill those duties

A. Student Transfers

(The Modified Order of July 13, 1971, has been amended by the Court by Order dated August 9, 1973, and Section A now has the following language:)

- (1) Defendants shall not permit, make arrangement for or give support of any kind to student transfers, between school districts, when the cumulative effect, in either the sending or receiving school or school district, will be to reduce or impede desegregation, or to reinforce, renew, or encourage the continuation of acts and practices resulting in discriminatory treatment of students on the ground of race, color, or national origin.
- (2) In applying the above section to student transfers between school districts, the defendants may grant the following classes of exceptions regardless of the race, color, or national origin of students.

- (a) Class One: All transfers of students to county or multi-county day schools for the deaf.
- (b) Class Two: Special education students from districts where the special education class for which the students are qualified is unavailable and such class is available in the receiving district, provided such students have been properly screened according to Texas Education Agency guidelines by the receiving districts.
- (c) Class Three: The Commissioner of Education may grant additional transfers in hardship situations. Before such transfers are granted by the Commissioner, the parties will be notified at least 30 days in advance of the intent to grant such transfers and the reasons therefor. The parties may object to such transfers to the court, and the court may approve or disapprove such transfers with or without a hearing.
- (3) In addition to the above exceptions, defendants shall use the following guidelines to determine the cumulative effect of student transfers in the various school districts of Texas.
- (a) Where student transfers between school districts involve ethnic consideration concerning race, color or national origin of students, only hardship situations shall be considered, and such transfers shall be governed by the procedure in Paragraph A(a)(c), above.
- (b) In such situations, the defendants shall not approve transfers where the effect of such transfers will change the majority or minority percentage of the school population, based on average daily attendance in such districts by more than one percent (1%), in either the home or the receiving district or the home or the receiving school.
- (4) Defendants may use the following additional guidelines in approving or disapproving student transfers between the various school districts in Texas:
- (a) The Agency will review and apply this Section to all in-grade transfers between school districts in Texas.
- (b) The Agency will investigate all complaints of violations of its decisions made pursuant to Section A of the Court Order.
- (c) The Agency will from time to time solicit the assistance of other agencies, both State and Federal, in arriving at a decision under Section A of this Court Order, but the Agency shall not be bound by such recommendations.
- (d) The Agency will consider as factors relevant to its decision in approving or disapproving student transfers under this Section: (1) whether the receiving district or the home district is composed solely of students of one race or ethnic origin, (2) whether all the students seeking transfers are of one race or ethnic origin, and (3) whether the sending or receiving school district is operating under the provisions of an order issued by another District Judge requiring said school district to eliminate segregation on the ground of race, color, or national origin.
- (e) The Agency will use such additional guidelines as may be ordered by the court. The Agency may also use such guidelines as adopted by the Agency and submitted to the court order and to all other parties, in writing, provided no objection is filed by the parties to said agency-adopted guidelines within twenty-one (21) days of the filing of said guidelines with the court or their receipt by certified mail, return receipt requested, by the parties. In the event of objection by the parties or the court within such period, the Agency may request a hearing for approval of said guidelines by the court.
- (5) The Texas Education Agency shall review all student transfers and shall notify the sending and receiving districts promptly of all transfers which do not appear to comply with the terms of this order.
- (6) If, after receiving notice of the Texas Education Agency's refusal to approve transfer, the receiving district shall continue to accept the transfer of students, or if the sending district shall refuse to provide suitable educational opportunities for these students, defendants, after 15 days notice to the President of the Board of Trustees and the Superintendent (if the district has such an official), shall refuse to transfer the funds, based on the average daily attendance of the transfer students involved to the account of the receiving district, and shall, thereby, terminate and refuse to grant or continue paying to the offending district a percentage of state funds equivalent to the district's entitlement based on the average daily attendance of the students transferring in violation of this order.
- (7) Defendants shall also refuse to distribute to the offending district any transportation funds which might accrue on account of transfer students accepted in violation of this order. If the offending district continues to refuse to deny transfers which adversely affect desegregation, the Texas Education Agency shall warn the district that its accreditation status is in danger. This warning shall remain in effect for ten days, at which time, if the offending district has failed to correct its violations, the Texas Education Agency shall suspend the district's TEA accreditation.
- (8) The State Board of Education shall entertain no appeal from any decision of the Agency which applies

sanctions against a school district in compliance with this or any preceding order of this court. However, any school district aggrieved by the proposed reduction or the reduction of funds, or the proposed suspension or the suspension of accreditation, shall have the right to petition the United States Court for the Eastern District of Texas, in which this suit is pending, for such relief as said court may deem proper.

B. Changes in School District Boundaries

- (1) Defendants shall not permit, make arrangements for, approve, acquiesce in, or give support of any kind to changes in school district boundary lines - whether by detachment, annexation, or consolidation of districts in whole or in part - which are designed to, or do in fact, create, maintain, reinforce, renew, or encourage a dual school system based on race, color, or national origin.
- (2) Defendants shall require the board of trustees of any school district desiring to annex or consolidate with a nearby district. If whole or in part, or desiring to change its boundaries in any other manner such as is described, for example, in Part II-A(2) of the Court's Order of November 24, 1970, to report said intention to the Commissioner of Education for the State of Texas at least 15 days prior to the effective date of such action, and shall take appropriate measures to insure compliance with this requirement.
- (3) Whenever the Commissioner shall receive notice that a district or portion of a district is to be detached from, annexed to, or consolidated with another district, he shall institute an immediate investigation as to the effects of such projected change of boundaries on the desegregation status of all of the school districts concerned. He shall promptly notify the appropriate county and local officials of his findings, and indicate whether or not the transfer of territory is in violation of the law.
- (4) If county and local officials proceed to consummate the transfer of territory after being notified that they are in violation of the law, defendants, after 15 days notice to the President of the Board of Trustees and the Superintendent of the district (if the district has such an official), shall refuse to transfer funds, based on the average daily attendance of the students in the territory detached, annexed or consolidated, to the account of the new district, and shall, thereby, terminate and refuse to grant or continue paying to the offending district a percentage of state funds equivalent to the district's entitlement based on the average daily attendance of the students detached, annexed or consolidated in violation of this Order. These funds shall be distributed to the remainder of the original district, in cases of illegal detachments, but shall not be used by that district to support the education of children living in the detached area. In cases involving the consolidation of school districts, the Texas Education Agency shall hold the funds derived from the average daily attendance of the students illegally annexed to or consolidated with the new district in escrow pending dissolution of the illegal transfer of territory and the return of students to their original districts.
- (5) Defendants are enjoined from granting incentive aid payments pursuant to Texas law (Art. 2815-4, Vernon's Texas Revised Civil Statutes as amended), to districts which are enlarged by annexations or consolidation actions in violation of this Order.
- (6) Should a county board of education or a school district, having received notice from the Commissioner that a territorial alteration has been disapproved, fail to disavow the action and to declare its effects null and void, the Texas Education Agency shall notify the district that its accreditation status is in danger. This notice shall remain in effect for 10 days, at the end of which time, if the offending district has failed to correct its violations, the Agency shall suspend the district's TEA accreditation.
- (7) In all cases involving annexation or consolidation of school districts, the Texas Education Agency shall apply the portions of the Order of the Court in this case dated April 19, 1971, concerning the annexation of nine all-black school districts to nearby bi-racial districts, and specifically, the portions of that Order relating to faculty and staff and to bi-racial committees, to the newly enlarged districts and shall require the said district to submit to the Texas Education Agency such reports as may be necessary to enable that Agency to determine whether the newly enlarged district is operating and will continue to operate in compliance with Title VI and the Fourteenth Amendment.

C. School Transportation

- (1) Defendants shall not permit, make arrangements for, acquiesce in, or give support of any kind to bus routes or runs which are designed to, or do in fact, create, maintain, reinforce, renew, or encourage a dual school system based on race, color, or national origin.
- (2) The transportation system in those county units and school districts having transportation systems shall be completely re-examined each year by the Texas Education Agency. Bus routes and runs as well as the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis. Bus routes and runs shall be constituted to provide that each bus operated by a district picks up every pupil along the route or run who is assigned to the school or schools and grade levels served by that bus. Where two or more equally efficient and economical routes or runs are available in a given area of the school district, the route or run which promote or facilitate desegregation of buses shall be adopted by the district and approved by the Texas Education Agency rather than a route or run which, whether by intent, inaction, or inadvertence, would maintain or encourage segregation.

- (3) Accordingly, if upon examination of transportation systems, the Texas Education Agency shall find that a district is operating one or more bus routes or runs which serve 66% or more students of a minority group, which are duplicated by one or more routes or runs serving more than 66% students of another race or ethnic background, the Texas Education Agency shall immediately investigate and determine whether the heavily minority routes or runs may be re-routed, terminated or combined with routes or runs which serve non-minority students so as to desegregate these routes or runs. In no event shall this paragraph be construed as requiring any fixed percentage of students of a minority group of a particular route or run.
- (4) If the Texas Education Agency finds that a county or local district is operating its transportation system in violation of this Order, it shall notify the appropriate officials of the local district. If the offending district refuses to alter its bus routes or runs so as to avoid segregation in instances where the Texas Education Agency has determined that such alterations are necessary, or if such a district persists in operating bus routes or runs which adversely affect the desegregation of its schools, classes, or extra-curricular activities, the Texas Education Agency shall refuse to approve the entire route structure of the district and shall, thereby, terminate and refuse to grant or continue paying state transportation funds to the offending district until it shall have altered all routes or runs operated in violation of this Order, so as to eliminate all vestiges of discrimination based on race, color, or national origin. In addition, the Texas Education Agency shall notify the district that its accreditation status is in danger. This notice shall remain in effect for 10 days, at which time, if the offending district has failed to correct its violations, the Agency shall suspend the district's TEA accreditation.
- D. Extra-Curricular Activities
- (1) Defendants shall not permit, make arrangement for, acquiesce in or give support of any kind to activities run in connection with the elementary and secondary educational program operated by the state or any of its county and local educational agencies which, whether by intent, inaction, or inadvertence, results in segregation or other discrimination against students on the ground of race, color, or national origin. These extra-curricular activities include, but are not limited to, student government organizations, athletic teams for interscholastic competition, clubs, hobby groups, student newspaper staffs, annual staffs, band, band majorettes and cheerleaders.
- (2) The Texas Education Agency shall instruct the members of its accreditation review teams in conjunction with its Title IV staff, to examine the extra-curricular activities of each district which they review. All violations of this Order which are discovered by such investigations shall be reported to the Commissioner of Education. If the Texas Education Agency receives complaints from any source that a school district is operating and supporting extra-curricular activities in violation of this Order, immediate investigation shall be made of such complaint.
- (3) If the Commissioner finds that a district is operating and supporting extra-curricular activities in violation of this Order, he shall notify the county or local school district through the President of its Board of Trustees and through the Superintendent (if the district has such an official), that the district is operating in violation of Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment. At the same time, he shall warn the district that its accreditation is in danger. This warning shall remain in effect for 10 days, at which time, if the district has failed to correct the violations, the Texas Education Agency shall suspend the district's TEA accreditation.
- (4) In addition to the suspension of the accreditation of districts operating discriminatory extra-curricular activities, the State of Texas and the Texas Education Agency shall reduce the percentage of state funds granted to the district under the Minimum Foundation Program for salaries and operating expenses by ten percent. Should the district persist in operating its extra-curricular activities in a manner which results in segregation or discriminatory treatment of students on account of race, color, or national origin, the State of Texas and the Texas Education Agency shall reduce the percentage of state funds as described above by an additional ten percent for each semester or term that the violations continue.
- (5) Defendants are required to consider that a suspension or reduction of programs and activities to avoid operating them on a desegregated basis continues a violation of Title VI and the Fourteenth Amendment.
- (6) Any school district aggrieved by the proposed reduction or the reduction of Minimum Foundation Program Funds or the proposed suspension or the suspension of accreditation shall have the right to petition the United States District Court for the Eastern District of Texas, in which this suit is pending, for such relief as said Court may deem proper.
- E. Faculty and Staff
- (1) Defendants shall not permit, make arrangement for, acquiesce in or give support of any kind to the hiring, assigning, promoting, paying, demoting, reassigning or dismissing, or treatment of faculty and staff members who work directly with children in a discriminatory manner on account of race, color or national origin. Defendants shall be responsible for the application and enforcement throughout the State of the provisions of the Order of the Court in this case dated April 19, 1971, referred to in Section B(7) herein, and specifically, the portions of that Order relating to the treatment of faculty and staff.

- (2) In carrying out its affirmative duties under Title VI and the Fourteenth Amendment in this area, the Texas Education Agency shall require each county or local educational agency desiring to receive state funds under Minimum Foundation Program to include with its preliminary application for such funds a list of objective, non-racial and non-ethnic criteria by which the county or local district will measure its faculty and staff for assignment, promotion, demotion, reassignment or dismissal and by which it will judge prospective employees for faculty and staff positions.
- (3) The Texas Education Agency shall require the members of its accreditation review teams, in conjunction with the members of its staff designated to work in collaboration with the United States Office of Education to provide technical assistance to desegregating school districts pursuant to Title IV of the Civil Rights Act of 1964 (hereinafter referred to as "Title IV staff" or "Title IV personnel"), to examine the faculty and staff hiring and assigning practices of the districts which they visit for accreditation purposes, and to examine the records relating to hiring, assigning, promoting, paying, demoting, reassigning or dismissing of faculty and staff who work directly with children for a period including the three years prior to the complete elimination of the district's dual school structure. The review teams and state Title IV personnel shall also examine faculty assignments within each school district under review to determine whether the percentage of minority teachers in each school is substantially the same as the percentage of minority teachers in the school district as a whole, as required under Part II, Section A of the Order of this Court dated April 19, 1971, and referred to in Sections B(7) and E(1) herein. Any evidence of discriminatory practices concerning faculty and staff shall be reported to the Commissioner of Education.
- (4) After such further investigation as deemed necessary by the Commissioner, he shall notify the district through the President of its Board of Trustees and its Superintendent of the district has such an official, of any acts and practices with regard to faculty and staff which violate the areas described in Part II, Section A, of the Order of this Court, dated April 19, 1971, referred to in Section B(7), E(1) and E(3) herein. At the same time, he shall warn the district that its accreditation is in danger. This warning shall remain in effect for 15 days, at which time if the offending district fails to correct its violations with regard to faculty and staff who work directly with children, the Texas Education Agency shall suspend the district's TEA accreditation.
- (5) In addition to the suspension of accreditation, the State of Texas and the Texas Education Agency shall refuse to approve the district's application for state funds under the Minimum Foundation Program for salaries, and shall, thereby, terminate and refuse to grant or continue paying such funds to the district.
- (6) Any school district aggrieved by the proposed termination or the termination of Minimum Foundation Funds or the proposed suspension or the suspension of accreditation shall have the right to petition the United States District Court for the Eastern District of Texas, in which this suit is pending, for such relief as said Court may deem proper.
- (7) This Order shall not be construed to have any effect upon the state or federal remedies available to any individual members of Faculty or Staff for discriminatory action by a school district in assignment, demotion, dismissal, reassignment, payment or other employment conditions.
- F. Student Assignment
- (The Modified Order of July 13, 1971, has been amended by the Court by Order dated August 9, 1973, and Section F now has the following language:)
- (1) Defendants are required to consider forthwith the application of the procedures and provisions of this order to any school district reviewed pursuant to Section F of this court's Modified Order of July 13, 1971, where (a) such review has been conducted at any time prior to the entry of this order, (b) such district was found to be in violation of federal constitutional standards, and (c) specific recommendations designed to eliminate such violations were provided to the district by the defendants but have not been implemented.
- (2) Defendants shall not permit, make arrangement for, acquiesce in or give support of any kind to the assignment of students to schools, individual classrooms or other school activities on the basis of race, color, or national origin, except where required to comply with constitutional standards.
- (3) Defendants shall review each year all school districts in the state in which there exists schools enrolling more than 66% minority group students, as reported in accordance with part II(E)(6) of the Court's Order in this case dated November 24, 1970, and shall make findings as to whether or not the student assignment plans of these districts have resulted in compliance with the terms of this order. Priority shall be given to any district about which the defendants receive specific complaints. Any district found not to be in compliance shall be notified that it is in violation, and, further, shall be provided in writing by the defendants with a specific detailed plan designed to eliminate all such violations of the terms of this order. Defendants shall be required to take all measures necessary to insure that whenever possible, the notice and plan provided for herein shall be received by the district at least 45 days prior to the beginning of the next semester or term. As to any district reviewed at any time prior to the entry of this order, defendants shall serve the notice and plan provided for herein forthwith in order that the sanctions provided hereafter in this order be made applicable to the school semester or term starting on or about September 1, 1973.
- (4) If, by the end of the first week of the semester or term following receipt of the notice and plan provided

for in paragraph F(3), a district has failed to implement such plan, or, has failed to adopt and implement an equally effective alternate plan to eliminate all racially or ethnically identifiable schools found to be in violation of constitutional standards as provided by paragraph F(3), the defendants shall warn the district through the President of its Board of Trustees and through its Superintendent (if the district has such an official) that its accreditation is in danger. This warning shall remain in effect for ten days after which time, if the district has still failed to achieve compliance, the Texas Education Agency shall suspend the district's TEA accreditation.

- (5) In addition to suspension of accreditation and simultaneously therewith defendants shall suspend payment of all state funds granted to the district under the Minimum Foundation Program for salaries, operating expenses, transportation and all other purposes.
- (6) Defendants shall suspend immediately without further notice the accreditation and the payment of all Minimum Foundation Program funds of any district which changes or otherwise modifies a plan adopted and implemented pursuant to paragraphs F(3) and F(4) herein when such changes or modifications are designed to, or do in fact, recreate, renew, reimplement or result in violation of federal constitutional standards.
- (7) On or before June 1 of each school year until further orders of this court, defendants shall file a report with the court indicating (a) the school districts reviewed and the particular findings concerning the assignment and transfer of students within each such district, (b) all recommendations made and actions taken by the defendants and each such district to eliminate racially or ethnically identifiable schools, (c) what special cultural and educational activities these districts have instituted to compensate for the inherently unequal educational opportunities provided to students in these racially or ethnically identifiable schools. Copies of this report shall be served upon the Civil Rights Division of the United States Department of Health, Education and Welfare and all parties to this action. A copy of this report shall also be retained in the offices of the Texas Education Agency in such a manner that it will be readily and conveniently available for public inspection during normal business hours.
- (8) Any school district aggrieved by the proposed reduction or the reduction of Minimum Foundation Program funds or the proposed suspension of accreditation shall have the right to petition the United States District Court for the Eastern District of Texas, in which this suit is pending, for such relief as said court may deem proper.
- (9) If a school district which is reviewed pursuant to paragraph F(3) is the subject of a school desegregation suit or a court-approved plan of desegregation, a copy of the report required by paragraph F(3) shall be submitted to the District Court having jurisdiction of such suit or plan.

G. Curriculum and Compensatory Education

- (1) Defendants shall insure that school districts are providing equal education opportunities in all schools. The Texas Education Agency, through its consulting facilities and personnel, shall assist school districts in achieving a comprehensive balance curriculum on all school campuses, and, where necessary, in providing for students to transfer to different schools in the district on a part-time basis to avail themselves of subjects not offered in their assigned school. Full time transfers may be allowed only where they do not adversely affect desegregation as further described in Section A herein.
- (2) The Texas Education Agency shall institute a study of the educational needs of minority children in order to insure equal educational opportunities of all students. The Texas Education Agency shall request the assistance of the United States Office of Education and any other educational experts whom they choose to consult in making this study. By not later than August 15, 1971, a report on this study shall be filed by the Texas Education Agency with the Court including:
- (a) Recommendations of specific curricular offerings and programs which will insure equal educational opportunities for all students regardless of race, color or national origin. These curricular offerings and programs shall include specific educational programs designed to compensate minority group children for unequal educational opportunities resulting from past or present racial and ethnic isolation, as well as programs and curriculum designed to meet the special educational needs of students whose primary language is other than English;
- (b) Explanation of presently existing programs funded by the State of Texas or by the Federal Government which are available to local districts to meet these special educational needs and how such programs might be applied to these educational needs;
- (c) Explanation of specific standards by which the defendants will determine when a local district, which has racially or ethnically isolated schools or which has students whose primary language is other than English, shall be required by the defendants to participate in the special compensatory educational programs available; and
- (d) Explanation of procedures for applying these standards to local districts including appropriate sanctions to be employed by the defendants should a district refuse to participate in special compensatory educational programs where it has been instructed to do so pursuant to application of the standards developed under

subsection (c) above.

(e) Copies of this report shall be served as described in Section F above, and a copy shall also be retained in the Offices of the Texas Education Agency as described therein.

H. Complaints and Grievances

The defendants shall send to all county and local educational agencies an information bulletin designed to notify faculty, staff and patrons of local school districts of the availability of complaint and grievance procedures and to inform them of how to utilize these procedures. Defendants shall further require that every county and local educational agency shall place this bulletin on public display in such a way as to assure it availability at all times during school hours. A copy of this bulletin shall be filed with the Court on or before August 15, 1971, with a copy to the plaintiff.

I. Notification

The defendants, in all cases where notification is given to a school district of imminent loss of accreditation or state funds because of its failure to meet the requirements of Title VI, Civil Rights Act of 1964 and the Fourteenth Amendment, shall, at the same time, notify the plaintiff. In the event that it becomes necessary to suspend the district's accreditation or to reduce or remove state funds the defendants shall also notify the plaintiff.

J. Conveyances of Real Property by a School District

(The Court, by orders dated August 9, 1973, and August 15, 1973, has ordered the following to be added to the Modified Order of July 13, 1971:)

- (1) Defendants shall not permit, make arrangement for, approve, acquiesce in or give support of any kind to sales, leases or other conveyances of real property by a school district where such conveyances are designed to or do, in fact, create, maintain, reinforce, or encourage a dual school system based on race, color or national origin.
- (2) Defendants shall require the board of trustees of any school district desiring to sell, lease or otherwise convey any interest in real property or buildings to report said intention to the Commissioner of Education for the State of Texas at least 15 days prior to the effective date of such conveyance and shall take all appropriate measures to insure compliance with this requirement.
- (3) Whenever the Commissioner shall receive notice that a district intends to sell, lease or otherwise convey an interest in real property, he shall promptly notify the appropriate local school officials that the following language shall be incorporated into the instrument of conveyance, sale or lease, and further, that failure of the district to comply with this requirement will result in the imposition of sanctions as set out in paragraph J (4):

"The further convenient, consideration and condition is that the following restrictions shall in all things be observed, followed and complied with:

"(a) The above-described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.

(b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains, reinforces, renews, or encourages, or which tends to create, maintain, reinforce, renew or encourage, a dual school system.

"These restrictions and conditions shall be binding upon grantees, lessee, etc., name of grantee, lessee, etc., his heirs, personal representatives and assigns or its successors and assigns, as the case may be, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the grantor herein and its successors, this instrument shall be null and void, and grantor and its successors shall be entitled to immediate possession of such

premises and the improvements thereon; and no act or omission upon the part of grantor herein and its successors shall be a waiver of the operation or enforcement of such condition.

"The restriction set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restriction specified in (b) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation."

(4) If a school district, after notice from the Commissioner, proceeds to sell, lease or otherwise convey any interest in real property but fails to comply with the requirements set forth in paragraph J(3) herein, the defendants shall proceed to impose sanctions in accordance with the following:

(a) The Commissioner shall notify the proper official or officials of the school district that the district is not in compliance and that, unless the district is not in compliance and that, unless the district initiates legal proceedings in a court of competent jurisdiction, within thirty days from date of the notice, to reacquire possession of the property, the payment of all state funds to said district under the Minimum Foundation Program for salaries, operating expenses, transportation and all other purposes shall be suspended. If the district initiates legal proceedings as required but, in the judgment of the Commissioner, the district fails to prosecute said proceedings expeditiously and in good faith, the Commissioner at any time thereafter may suspend the payment of all state funds to the district. Any party to this action who has reason to believe or to question that the Commissioner is not proceeding as required herein may, upon proper motion, apply to this Court for whatever relief is indicated, at law or at equity.

(b) In the event that a school or other facility used in conjunction with any institution of learning which would constitute a breach of the condition set forth in paragraph J(3) is operated on the real property conveyed by the district, the defendants shall suspend the payment of state funds under the Minimum Foundation Program for salaries, transportation and all other purposes, operating expenses, and, simultaneously therewith, defendants shall suspend the district's TEA accreditation. The suspension of funds and of accreditation as provided in this subparagraph shall continue until such times as the school or other institution of learning which was the basis for these sanctions has ceased operation or until such times as the district in question has taken steps to exercise its rights of reversion and has required the property in question.

(5) Defendants are enjoined from granting TEA accreditation to any school or other facility used in conjunction with any institution of learning, study or instruction, the operation of which would constitute a breach of the condition set forth in paragraph J(3).

(6) Any school district aggrieved by the proposed suspension or the suspension of Minimum Foundation Funds, or the suspension of accreditation shall have the right to petition the United States District Court for the Eastern District of Texas in which this suit is pending, for such relief as said court may deem proper.

K. Jurisdiction

(The Modified Order of July 13, 1971, was changed by amendment by the Court by Order dated August 1973, and Section J of such Modified Order now appears as Section K.)

(1) This Court retains jurisdiction of this matter for all purposes, and especially for the purpose of entering any and all further orders which may become necessary to enforce or modify this decree.

(2) Nothing herein shall be deemed to affect the jurisdiction of any other district court with respect to any presently pending or future school desegregation suit.

*Contact Program Monitoring and Interventions with any questions you may have.
This page last updated January 7, 2005.*

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