



1 The Plaintiffs' Motion to Reconsider is granted in part as to the Court's directive that  
2 the parties meet and confer regarding a post-unitary status plan and policies for TUSD.  
3 Plaintiffs' request that the Court reinstate policy 5090 is denied.

4 Plaintiffs' Motion to Reconsider: Order filed August 21, 2007

5 On August 21, 2007, this Court explained that as of the Supreme Court's ruling on  
6 June 28, 2007, in *Parents Involved in Community Schools*, any racially based student  
7 assignment plan must be narrowly tailored to achieve the compelling government interest of  
8 remedying *de jure* segregation. Given the narrowly tailored student assignment plans  
9 approved by the 1978 Stipulation of Settlement to remedy any vestiges of *de jure* segregation  
10 in the TUSD school district within five years, and it is now 27 years later, the Court  
11 concluded that in all likelihood partial unitary status has been attained relating to the issue  
12 of student assignments. The Court's preliminary ruling was also based on a review of the  
13 Stipulation of Settlement and corresponding Desegregation Plans, the data contained in the  
14 Annual Reports, and the challenges raised by the Plaintiffs in their briefs. The Court asked  
15 the Defendants to compile the record in a comprehensive report for the benefit of the public  
16 and the Court. The Court gave Defendants 30 days to file the report and gave Plaintiffs 10  
17 days to file any objections.

18 The Court did not order the Defendants to repeal its student transfer policy 5090, but  
19 noted that it operates to the disadvantage of minority students seeking open enrollment  
20 choices. Defendants filed a notice with the Court on August 29, 2007, that it has repealed  
21 policy 5090 and other race-based student assignment policies in the District. Plaintiffs  
22 object. Plaintiffs argue that until the Court declares the district unitary, the policies must  
23 remain in place. Plaintiff asks the Court to order the repealed policies reinstated.

24 While the Court's Order did not require TUSD to repeal policy 5090 or any other  
25 policy, the Court finds no reason to reinstate them. First, the policies repealed by the District  
26 are student transfer/open enrollment policies, not the student assignment desegregation plans  
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1 adopted pursuant to the 1978 Settlement Agreement. The repealed policies have a minimal  
2 effect on student assignments, which are neighborhood, not race-based. Given school has  
3 begun, reinstating the repealed policies would disrupt some children's education. It is this  
4 Court's intention to resolve student assignment questions without such disruption, if possible.

5 Plaintiffs also object to meeting and conferring with Defendants regarding a post-  
6 unitary plan because Plaintiffs should not be forced to assist Defendants in perfecting their  
7 petition for unitary status. (Plaintiffs' Reply/Motion at 5.) Plaintiffs ask this Court "to test  
8 the District's commitment and competence to operate without court supervision by reviewing  
9 what the District itself can produce by way of policies it intends to pursue once released from  
10 court supervision without the benefit of plaintiffs' input." *Id.* at 6. "Because of the present  
11 adversarial posture" of the case, Plaintiffs decline to assist in preparing a post-unitary status  
12 plan for TUSD. *Id.* at 5. "Thus, Plaintiffs specifically request that the Court order the  
13 District to develop and submit a post-unitary plan, provide the Plaintiffs with a reasonable  
14 amount of time (30-45 days) to evaluate and reply to the proposed plan, and to order the  
15 parties to subsequently meet and confer regarding post-unitary policies and procedures." *Id.*  
16 at 6-7. Given the adversarial posture proposed by the Plaintiffs for testing the merits of any  
17 post-unitary plan proposed by the Defendants, there is no reason for the parties to meet and  
18 confer.

19 **Accordingly,**


20 **IT IS ORDERED** that Plaintiffs' Motion for Reconsideration (document 1243 and  
21 1244) is DENIED IN PART AND GRANTED IN PART.

22 **IT IS FURTHER ORDERED** denying the Plaintiffs' request that the Court order  
23 reinstatement of the repealed policies.

24 **IT IS FURTHER ORDERED** granting the Motion to Reconsider as to the Court's  
25 directive that the parties meet and confer. The parties need not meet and confer regarding  
26 post-unitary plans and policies. Defendants shall prepare and present post-unitary plans and  
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1 policies to the Court within 60 days of the filing date of this Order. Plaintiffs shall have 45  
2 days to file objections. No reply shall be filed unless requested by the Court.

3 DATED this 6<sup>th</sup> day of September, 2007.

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8 David C. Bury  
9 United States District Judge  
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