**Educate!** A newsletter on education in Charlotte-Mecklenburg, NC

**Dec. 17, 2000**

**Editor's note**: Editions of Educate! during year 2000 were distributed solely in e-mail format without pictures or graphics. For purposes of archiving and distribution, the text of these editions has been converted to PDF files. No other changes have been made.

Educate! the weekly newsletter of
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## EDUCATE! WILL TAKE TWO WEEKS OFF, RETURN JAN. 7

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Thanks to all of you who have been supportive of our fledgling publication, launched last Sept. 24. More is in store for 2001, and we hope you continue to find it worth checking out. You can help in three ways: by advising us of folk who would like to receive it; by writing about your children's schools; and by suggesting ideas for future articles.

We will suspend publication for Dec. 24 and Dec. 31. When we return Jan. 7, we will pick up with the final two parts of the Appeals Court ruling excerpts.

Lucy Bush

## READERS COMMENT ON CHOICE PLAN

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Ken Hageman writes:

School Choice is really no choice for the poorest members of our community. It has been my experience that those who have influence and money either send their kids to private school or are the main benefactors of school choice. The people on the bottom of the economic and social totem pole are always the losers.

Here is my remedy for the best education possible for everyone in Mecklenburg County. Make all the schools the best. And here is how I would start. I would make the inner-city schools where our least influential citizens live the best schools in the whole system to start. I would make the schools so great that the people in the suburbs would beg to have their children attend those inner-city schools. And since I would make all schools great schools, the people in

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the "burbs" would get their great schools in their own neighborhoods.

I guess my point is that all kids in Mecklenburg County need to go to great schools in their own neighborhoods. So let's make every school great. Let's just start with the worst schools in the city of Charlotte and make them great first.

The school board should get the help of the corporations in Charlotte to give the inter-city schools a leg up. They have the money to help. I know they pay property taxes, but they could give more....They help subsidize our professional sports teams. It's about time they gave more to our kids....

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Bob and Kristen Henderson write:

Add our names to the list of those who were appalled by the School Board's irresponsible trashing of the School Choice Plan and offended by your recent characterization of Dr. Eric Smith in the Swann newsletter. We fear The Swann Fellowship has drifted further and further away from being an effective, moderate voice of reason and compromise in its advocacy of integration. It's too bad, because it is something this community is badly in need of.

## OPEN HOUSES AND TOURS

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Schools are winding down for the holidays. No activites will occur next week. This week's activities:

Dec. 18 Monday
9 a.m. Nathaniel Alexander Elementary open house

Dec. 19 Tuesday
9:15 a.m. East Meck High school tours
1:15 p.m. East Meck High school tours

Source: Charlotte-Mecklenburg Schools

## 4th CIRCUIT SPEAKS, part two: UNITARY STATUS ISSUES

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Over the years, the court filings in Swann vs. Mecklenburg have been splendid reading for newcomers and long-time residents alike about how local history shaped school desegregation in Charlotte-Mecklenburg. As part of our educational mission, we continue today excerpting portions of the Nov. 30 Appeals Court ruling.

The following principles have guided our editing of the long document. All legal citations have been removed, as have most of the notes. Where notes were re-inserted in the text, they are in parentheses. The court's discussion and rulings on the injunction, nominal damages, attorney fees and discovery disputes have been eliminated. Locations of text edited for space are marked with three dots. Upper-case headlines have been inserted as an aid to reading. After editing,

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four big chunks of material emerged. Our tentative plans for publication, subject to changing events, are as follows:

Dec. 10: History of the case
Today: Questions of unitary status
Jan. 7: The magnets
Jan. 14: Judge Traxler's concurrence and dissent, covering the three same issues

For occasional readers of Educate!, we apologize for the length of this offering. But to make such information available to all is the purpose of this newsletter. For copies of earlier excerpts, please message SwannFello@aol.com with the dates.

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UNTED STATES DISTRIC COURT OF APPEALS FOR THE FOURTH CIRCUIT

... The Supreme Court has identified six factors (collectively the "original Green factors") that must be free from racial discrimination before the mandate of Brown is met: (1) student assignment, (2) physical facilities, (3) transportation, (4) faculty, (5) staff, and (6) extracurricular activities. Not only are reviewing courts to ascertain whether these original Green factors are free from racial discrimination, but courts also are entitled, in their discretion, to identify other factors and "determine whether minority students were being disadvantaged in ways that required the formulation of new and further remedies to ensure full compliance with the court's decree."

For school systems proceeding through the difficult process of desegregation, the Supreme Court has adopted the goal of achieving unitary status. Although prior to the Court's Dowell and Freeman decisions federal courts used the term "unitary status" somewhat inconsistently, the term has now come to mean that the school system has been unified such that the vestiges of segregation have been eliminated to the extent practicable. When a school system achieves unitary status, federal courts must withdraw supervision over the local school board.

In this case, Judge Potter declared that CMS had achieved unitary status in every respect. The Supreme Court has directed that an appellate court review a district court's unitary status determination by applying a two-part inquiry (the "Freeman inquiries"). An appellate court must determine if (1) a school Board has, in good faith, complied with the desegregation decree since it was entered; and (2) the vestiges of de jure segregation in the school system have been eliminated to the extent practicable.

If the party seeking a declaration of unitary status cannot demonstrate that the school system has achieved unitary status in its entirety, we then undertake to determine whether the school system has achieved unitary status with respect to one or some of the Green factors ("partial unitary status"). At that point, we apply, with respect to each Green factor, the two Freeman inquiries along with one additional Freeman-mandated inquiry: "whether retention of judicial control [over one aspect of the school system] is necessary or practicable to achieve compliance with the decree in other facets of the school system." This third Freeman inquiry recognizes that the Green factors are -- to a great extent -- interrelated, and when determining whether judicial supervision over a school board may be withdrawn, the overlap between the Green factors is a crucial consideration.

The Freeman analysis brings us to the most difficult questions presented in any desegregation case: whether present racial isolation is a vestige of past segregation and, if so, whether a school board can practicably reduce that racial isolation. It is even difficult to define "vestige" in this context. The "vestiges that are the concern of the law may be subtle and intangible but nonetheless they must be so real that they have a causal link to the de jure violation being

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remedied." We adhere to the most common-sense meaning of "vestige": it is a condition or occurrence causally related to the former de jure system of segregation.
Because a school system's duty to eliminate such vestiges is restricted by the availability of practicable measures for doing so, it is also incumbent on us to consider practicability. In determining the practicability of further measures, the district court must look to numerous indicia of the system's operation.

Practicability depends on the feasibility of the proposed method, from both a financial and an administrative perspective. Whether a measure is practicable also depends on whether it is "directed to curing the effects of the specific violation," and whether it is likely to do so....

THE EXCLUDED 'REMEDIAL PLAN'

By way of introduction to our analysis of this case, we first address a fundamental flaw in the district court's proceedings -- a flaw arising from the district court's failure to give any consideration to a remedial plan sought to be admitted as evidence by CMS. Following the filing of the Capacchione plaintiffs' Complaint in Intervention, the Board undertook to produce a comprehensive analysis of whether vestiges of de jure segregation existed in CMS and whether any such vestiges could be practicably remedied. The Board analyzed available data and identified several vestiges remaining; then, in line with the mandate of Freeman, the Superintendent of CMS developed a plan containing practicable remedial steps. The Board independently reviewed this plan and, on March 30, 1999, adopted the "Charlotte-Mecklenburg Schools' Remedial Plan to Address the Remaining Vestiges of Segregation"...

Judge Potter responded with two rulings. First, Judge Potter explained in assessing whether CMS had achieved unitary status that he believed Freeman required him to consider just one thing: "only . . . what CMS has done, not what it may do in the future." Second, based on this understanding of Freeman and the unitary status test, Judge Potter concluded that the Remedial Plan was irrelevant: "If the Court later determines that additional remedial measures are needed, it may consider the plan. Until that time comes, however, the Court will not get mired in the complex details and mechanics of a proposed plan."
We believe Judge Potter erred in both of these rulings. First, he misapprehended Freeman and its test for unitary status. At the outset, Freeman explicitly rejects, as a matter of law, the very analysis adopted by the district court. ...

STUDENT ASSIGNMENT

... We must now determine whether present racial isolation in CMS may be a vestige of the former dual system, and, if so, whether there are practicable measures CMS could take to reduce or eliminate that isolation. In doing so, we are bound to focus particularly on the Board's record of compliance with the district court's desegregation orders. Because significant and growing racial imbalances in student assignment do exist in CMS, because the Board for decades has failed to comply with certain specific decrees of the district court (particularly regarding the siting of new schools), because these failures may have contributed to current racial isolation, and because future compliance might practicably reduce this racial isolation, we must vacate the district court's finding that CMS has achieved unitary status with respect to student assignment.

In the wake of the 1970 desegregation order, virtually all of the schools in CMS operated in racial balance for a considerable time. By 1998-99 however, nearly thirty percent of the schools in the system had become racially identifiable. Of the 126 schools included in the CMS desegregation plan, twenty-three are identifiably black and thirteen more are identifiably white. Further, virtually all of the identifiably black schools are located in either the inner city or in the immediate northwest-to-northeast suburbs, the areas of Mecklenburg County with the highest concentration of African-Americans. In stark contrast, all thirteen of the identifiably white schools are found in the extreme northern and southern areas of the county, both of

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which (and particularly the latter) have seen dramatic increases in white population during the past thirty years. The trend in CMS toward resegregation of its schools has accelerated markedly since the move to de-emphasize satellite zones and mandatory busing in 1992. In the last seven years, the number of CMS African-American students who attend racially identifiable schools (now almost three in ten) has risen fifty percent.

Indisputably, from 1981 until 1997, the CMS school system went through significant demographic changes. For example, the total population of Mecklenburg County has grown from 354,656 in 1970 to 613,310 in 1997. Almost 100,000 children attend CMS, making it the twenty-third largest school system in the country. During the period from 1970 to 1997, the black school-age population (ages 5 through 17) in the county has increased by approximately 10,000. Over the same period, the corresponding white school-age population has decreased by approximately 3,000, and by 1997, African-Americans comprised 34 percent of the county's school-age population, the total of which numbered approximately 108,600. Evidence before the district court revealed that, since 1970, the growing African-American population has migrated outward from the inner city into formerly white suburbs. In turn, many white citizens who formerly populated the city's periphery have moved even farther into the county's outlying reaches. Though parts of the county have become more integrated as the result of these shifts, a disproportionately large number of African-Americans still reside in contiguous clusters generally north and west of the downtown area.

The primary issue we must address is whether the thirty-six racially identifiable schools in CMS represent a vestige of segregation -- that is, whether the present racial isolation is causally related to the prior system of de jure segregation. The Swann plaintiffs argue, and CMS agrees, that current racial isolation, like the racial isolation of the 1960s and 1970s, results both from past inequities that, to some extent, have persisted to this day, and from the Board's failure to comply with certain specific directives in the remedial decrees in this case.

Because CMS has not previously been adjudged to have achieved unitary status in student assignment, we are bound under Swann to presume that the current racial imbalance in the school population constitutes a continuing vestige of segregation. The Capacchione plaintiffs have the burden of showing that the present existence of predominantly one-race schools in CMS "is not the result of present or past discriminatory action."

Our unwillingness to affirm the conclusion that CMS is unitary with respect to student assignment centers on the Board's failure to comply with court orders regarding selection of sites for the construction of new schools. The role of school siting in achieving sustainable desegregation should not be underestimated. In fact, the importance of site selection has been apparent since the early stages of this case....

Subsequent to the Supreme Court's decision in Swann, Judge McMillan specifically ordered that site selection for new schools could not "be predicated on population trends alone." New schools were "to be built where they can readily serve both races." In the 1979 Martin decision, Judge McMillan devoted an entire section of his opinion to demonstrating that "construction, location and closing of school buildings continue to promote segregation." Judge McMillan explained that "[t]he location of schools plays a large if not determinative role in . . . insuring that any given assignment and feeder plan will provide meaningful desegregation, rather than just the predictably short lived appearance of desegregation."

(Judge Potter incorrectly declared that "Martin was not a unitary status hearing[.]" In fact ... the white parents in Martin contended, as the Capacchione plaintiffs do today, that CMS had achieved unitary status. Intervening African-American parents, like those herein, maintained to the contrary. In actuality, there is little difference between today's case and Martin, and Judge McMillan's findings in the latter are as binding on the parties as any others made in the

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course of this litigation.)

In the years since this decree was issued, CMS has built twenty-five of twenty-seven new schools in predominantly white suburban communities. In the mid-1980s, CMS adopted a formal policy of building "midpoint" schools -- schools located midway between black and white population centers. There is little evidence, however, to suggest that CMS faithfully adhered to this policy. Rather, record evidence strongly indicates that the policy influenced the site selection for, at most, four of the twenty-seven new schools. Meanwhile, as we discuss infra, there is substantial evidence that CMS has allowed many of its older school facilities in the city -- schools attended in disproportionate numbers by African-American students -- to fall into a state of disrepair.

The Board's record of building the great majority of its new schools on the predominantly white suburban fringe of the county supports two possible conclusions. On one hand, CMS could have been responding to demographic reality -- a demand for new classrooms in areas of high population growth (although we note that the number of white students in CMS has decreased since 1970, while the black student population has greatly increased). On the other hand, the Board's pattern of school construction could have facilitated or even hastened white flight to the suburbs. As the Supreme Court explained in Swann, "[p]eople gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods." The Board's school siting policies could well evidence its lack of political will in the face of pressure to abandon desegregative policies -- pressure from families who "are concerned about the racial composition of a prospective school and [who] will make residential decisions accordingly."

There is certainly no evidence that CMS has intentionally sought, through its school siting policies, to "lock the school system into the mold of separation of the races" in the way that the Supreme Court described in Swann. But the actual choices the Board has made with regard to school siting may in fact be quite similar to the "pattern of school construction and abandonment" described by the Court, with the actual effect that the Court feared of "lock[ing] the school system" into a condition of racial isolation. We cannot conclude, at least in the absence of further fact-finding, that CMS, in choosing sites for new schools, has pursued "meaningful desegregation, rather than just the predictably short lived appearance of desegregation."

Rather, the Board's practice of siting new schools such that they could not reasonably be expected to serve a racially balanced student population and Judge McMillan's determination that this practice, in the past, represented the school system's failure to eliminate the vestiges of segregation, together raise a strong inference that those vestiges remain today. When this inference is viewed in combination with the burden borne by the Capacchione plaintiffs to show that current racial imbalances have no causal link to past discrimination, we are compelled to conclude that a remand to the district court is required.

Although we defer to a district court's findings of fact unless clearly erroneous, Judge Potter's error here came in his application of the legal standard to the evidence regarding the Board's school siting policies. Judge Potter found that (1) CMS had not discriminated on the basis of race in choosing sites for new schools and that (2) CMS had incorporated racial diversity as one of its factors in site selection. Even assuming arguendo that both findings are not clearly erroneous, neither is sufficient to support the legal conclusion that in siting new schools CMS acted in compliance with the governing court orders and Constitution to eliminate the vestiges of segregation to the extent practicable....

CMS had to do more than merely select sites for new schools on a nondiscriminatory basis. It had to do more, too, than simply give some consideration to "diversity" in its selection of sites.

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To the extent practicable, CMS had to site new schools "where they can readily serve both races." Judge Potter never found that CMS had met this standard, and as outlined within, there is substantial record evidence that CMS did not do so....

The Swann plaintiffs have identified additional areas in which CMS has fallen short of its obligations under the court orders. For the life of the desegregation orders, CMS has consistently placed the heaviest burden of mandatory busing on African-American students. Currently, 80% of those students who ride the bus as a result of a mandatory assignment are African-American. Judge McMillan repeatedly ordered CMS to distribute this burden more fairly. Yet, CMS has utterly failed to do so. In addition, CMS has never developed an effective system for monitoring student transfers to ensure that the overall effect of such transfers is not to increase the racial imbalance in the system as a whole. Again, this represents a failure to comply with the explicit instructions of the district court. We are troubled by these failings on the part of CMS. They provide additional support for a conclusion that, in the face of political pressure, CMS has not done all that it could do to eliminate the vestiges of segregation.

Finally, the Board has itself taken the remarkable step of admitting its noncompliance with prior orders in this case. A school board's frank acquiescence in a position inuring to its detriment (in this case, the potential of ongoing judicial intervention), if not treated as conclusive, should at least be considered with the utmost gravity. Under these circumstances, we have no difficulty in determining that the district court's conclusion that the Board's level of compliance was "full and satisfactory" must be vacated.

WHAT DISTRICT COURT MUST DO

On remand, the district court must first determine whether, since Judge McMillan's decision in Martin, CMS has fulfilled its constitutional and court-imposed obligations with regard to site selection for new schools. If CMS has failed to fulfill its obligations, the district court must then determine whether this failure contributed to the present condition of racial isolation in the school system. Finally, if CMS did fail to live up to its constitutional and judicially decreed obligations, and if that failure did contribute to the present racial imbalances, then the court must determine if proper site selection is a practicable remedy for the lingering effects of the Board's past discriminatory practices. If not, then the district court should relinquish control over student assignment: there is nothing further that CMS can practicably do to eliminate the vestiges of the prior de jure system.

If, however, proper sites can be found, then the district court should retain control over student assignment. The court might decide, for example, that most or all new schools constructed over the next several years be located proximate to the inner city or in midpoint areas already integrated residentially. Conversely, the district court may conclude that more flexibility is required because of real estate costs, crushing demand in the suburban fringes, or for some other sufficient reason. The court should also consider the efficacy of the Board's Remedial Plan as a limited term remedy for the racial isolation that would otherwise continue to exist until the Board's newly redirected school siting policies can begin to take effect.

(The strategies described in the Remedial Plan may be of particular help to the court in deciding whether practicable measures are available. The Plan proposes, among other things, to divide Mecklenburg County into three to five demographically similar "clusters," within which students may choose to attend any school, magnet or otherwise. Where the demand for a given school exceeds the available room, spots would be assigned by lottery based on factors such as proximity, sibling attendance, and racial, ethnic, and economic diversity. The Plan also outlines a formal mechanism to disseminate information regarding the enrollment process, and it provides that the Board will work with the business community and local government to secure subsidies for disadvantaged families wishing to relocate to areas in which low-cost housing is scarce.)

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Of course, some reasons will not be sufficient to deny African-American students a remedy, should corrective action be deemed justified. For example, political pressure and perceived resistance to change by certain groups in the community will not suffice. Additionally, logistical barriers merely making "difficult" the transport inward of outlying white students will likewise, if reasonably surmountable, not be enough. Although what is "practicable" need not extend to all that is "possible," rectifying the grievous constitutional wrongs of the past surely justifies reaching beyond the "difficult" or purely "problematic."

PHYSICAL FACILITIES

(The Appeals Court held as "a error of law" Judge Potter's use of several quotes from Judge Macmillan's rulings of 1969, and 1971 as grounds "to release the Capacchione plaintiffs from their burden of proving CMS unitary with respect to facilities.")

Thirty-five years have passed since the Board first acted to equalize its facilities, yet serious questions remain as to whether it has finally realized that goal. Dr. Dwayne E. Gardner, an impressively qualified educational planner and consultant, compiled an exhaustive report for the Board in which he evaluated the suitability of its school facilities..... The value of Dr. Gardner's research lies in the general conclusions that can be drawn from the entirety of the data. The most obvious conclusion is that, as a general matter, imbalanced-black schools in CMS are in worse shape than those attended by larger proportions of white students. Once we accept that premise, the lone remaining question of any significance is "Why?"

The Capacchione plaintiffs maintain that no discrepancies exist in CMS facilities, and even if they do, such discrepancies are totally benign in origin. Had the Capacchione plaintiffs proved their theory, we would be constrained to affirm the district court's conclusion that unitary status has been achieved with respect to the facilities factor.

The district court, however, required the Capacchione plaintiffs to prove nothing; it instead erroneously placed the burden on CMS and the Swann plaintiffs to affirmatively show that the present inequities in facilities are a vestige of official discrimination, i.e., causally related to the prior de jure system of segregation.

The district court erred as a matter of law in foreclosing the development of evidence relevant to a proper vestige analysis. We must therefore remand this portion of the case to permit the parties and the district court to elicit the additional facts necessary to fully consider the question of causation with respect to the current racial inequities in facilities.

Because CMS has not been previously adjudged to have attained unitary status, the Capacchione plaintiffs are charged on remand with the burden of demonstrating that the vestiges of past de jure racial discrimination in the context of the school system's facilities have been eliminated "root and branch" to the extent practicable.

(The district court made no findings as to whether practicable remedies exist with respect to facilities. In light of the court's refusal to consider the Board's proposed five-year Remedial Plan, we cannot determine in the first instance whether practicable remedies to the current disparities exist. We therefore remand to the district court for development on this point....

TRANSPORTATION

Upon review of the Green factor of transportation, Judge Potter concluded that "a court may grant unitary status when transportation is provided on a non-discriminatory basis." In other words, according to the district court, a school system achieves unitary status with respect to transportation once it provides access to transportation non-discriminatorily to black and white children. Because CMS provides all children, regardless of race, access to transportation, Judge

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Potter concluded that CMS had achieved unitary status with respect to this Green factor.

We must be mindful of the Supreme Court's command to consider the interrelatedness of the various Green factors -- "whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system." In this context, we can only conclude that the Green factor of transportation is so inextricably intertwined with the Green factors of student assignment and facilities that our vacatur on those issues also mandates vacatur on the factor of transportation.

The Swann plaintiffs maintain and offer substantial record evidence that the burdens of busing for desegregation purposes are being borne disproportionately and unfairly by African-American children.... Eighty percent of students who currently ride the bus as a result of a mandatory assignment are African-American. Judge Potter rejected any consideration of this evidence, holding that a school district has achieved unitary status with respect to transportation as soon as it is provided on a race-neutral basis. The evidence, however, demonstrates the close interrelationship of transportation with student assignment. In view of our conclusion that CMS is not yet unitary with regard to student assignment, we think it is premature to relinquish control over transportation at this stage. On remand, if the district court determines that CMS must remain under court order to correct the current imbalances in student assignment, it should also retain control over transportation to ensure that those imbalances are corrected in a way that is fair to all students....

STUDENT ACHIEVEMENT

Pursuant to Freeman, the district court accepted the invitation of the Board and the Swann plaintiffs to consider whether vestiges of official discrimination remain concerning the ancillary factors of student achievement and student discipline. The court found in the negative, concluding that CMS had attained unitary status in both areas.

With respect to the ancillary factor of student achievement, we must vacate Judge Potter's holding that unitary status had been achieved, and we do so on a basis similar to our analysis of the Green factor of transportation. Judge Potter found that disparities in student achievement existed but that the disparities (1) were not vestiges of de jure segregation and (2) could not be remedied by any practicable measure. An analysis of disparities in student achievement may only be appropriate once the school system has achieved unitary status in other respects. See Swann ruling: "Until unlawful segregation is eliminated, it is idle to speculate whether some of this [achievement] gap can be charged to racial differences or to 'socio-economic-cultural' lag." At the very least, as with transportation, student achievement in this case is inextricably intertwined with the other Green factors, particularly student assignment. Therefore, having vacated certain of the district court's rulings on unitary status, including its ruling with respect to student assignment, we must also vacate the district court's conclusion on student achievement.

STUDENT DISCIPLINE

We have reviewed and considered the district court's consideration of student discipline, and we affirm the district court's resolution as to this ancillary factor.

FACULTY

... The evidence at trial demonstrated that CMS assigned its faculty in substantial compliance with the desegregation order at least until 1992, when school principals were granted the leeway to actively recruit new teachers without the strictures of maintaining a specific racial proportion. As a result of this gravitation from centralized to site-based control of faculty assignments, a trend away from proportionality has emerged. In 1998-99, one-third of the 126 schools covered by the remedial decree had a proportion of black faculty deviating more than ten percent from the system-wide norm (about twenty-one percent). Prior to the 1992 change in

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policy, no more than one-sixth of the schools had ever been so situated.

We are satisfied that the current trend toward faculty imbalance is neither a vestige of the dual system nor the product of subsequent discrimination. There is no evidence that this trend results from legal or administrative compulsion within CMS or from perceptions about the desirability or undesirability of teaching positions in schools that serve students of predominantly one race. In short, we do not perceive a causal relationship between past de jure segregation and the present assignment of faculty members to schools within CMS.

Nor do we think that this trend toward more racially imbalanced faculties has resulted in disparities in the quality of teaching, as measured by the instructors' years of experience and post-graduate work. Indeed, there is no significant difference in experience between faculties at imbalanced-black schools as compared to those that are imbalanced-white. Faculties at black schools are about one year less experienced than the district-wide average, while faculties at white schools are correspondingly more seasoned. This disparity may arouse some initial concerns, until one is informed that the typical CMS teacher has spent more than ten years in the classroom. The upshot is that black and white students alike are, with no meaningful distinction, enjoying the benefits of their teachers' substantial experience.

The difference in post-graduate education between black-school and white-school faculties is more pronounced. For every three teachers holding advanced degrees who ply their craft at imbalanced-white schools, there are only two similarly qualified teachers assigned to schools that are imbalanced-black. Compared to the district average, white schools have a somewhat larger proportion of these highly trained instructors, while the allotment granted to black schools is slightly less than the norm.

Although these facts give us reason for concern, we think it imprudent to disturb the district court's conclusion that the trial evidence affirmatively disclosed no link between past discrimination and the current asymmetry. Most revealing on this point is that, until now, the issue of teacher quality within CMS has not been contested. The 1970 desegregation order mandating equal competence and experience in faculty assignments was not meant to remedy disparities then existing, but was instead intended to caution against future imbalances. In the intervening thirty years, there is little indication that CMS has neglected to heed the warning inherent in that order.

The district court did not clearly err in concluding that the developing disparities in teacher assignments and any (perhaps superficial) deficiency in the quality of instruction currently afforded African-American children are unrelated to the de jure segregation once prevalent in the school system. We therefore affirm the lower court's finding that CMS has attained unitary status with respect to faculty.

STAFF

In substantially the same manner as it spoke to the allocation of teachers, the final desegregation order provided that "the internal operation of each school, and the assignment and management of school employees, of course be conducted on a non-racial, nondiscriminatory basis." Inasmuch as the Swann plaintiffs raised no challenge to the school system's compliance with the desegregation order in this regard, the court below found CMS to have achieved unitary status with regard to its support staff. We agree, and we affirm that aspect of the district court's judgment.

EXTRACURRICULAR ACTIVITIES

According to the evidence at trial, African-American students in CMS participate in athletics and hold class office at a rate proportionate to their numbers. These same students lag far behind, however, when it comes to participating in co-curricular clubs and honors programs.

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However, the scope of our inquiry concerning extracurricular activities is limited. We need only determine whether the school system permits its students equal access to extracurricular activities, without regard to race.

The criterion of equal access is surely satisfied in this regard. Participation in honors programs and co-curricular clubs is strictly voluntary, and there is no evidence that the lack of participation by African-American students in certain activities reflects the efforts of CMS to exclude them. We discern no error in the district court's conclusions regarding this Green factor, and we therefore affirm its finding that CMS has achieved unitary status with respect to extracurricular activities.

END OF EXCERPTS
Jan. 7: The magnets
Jan. 14: Judge Traxler's concurrence and dissent

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We welcome your comments and observations on this newsletter. Send us e-mail addresses for people who would like to receive it. To write about your school's activities, just do it -- then send the material to us.
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THE SWANN FELLOWSHIP
Lucy Bush, president
B.B. DeLaine, vice president

The name:
The Swann Fellowship was named for Darius and Vera Swann, who on behalf of their son James became the lead plaintiffs in Swann vs. Mecklenburg in the 1960s. Darius Swann was the first African American Presbyterian missionary ever assigned outside of Africa. His experiences in India led him to appreciate the value of an integrated society for human development.

The vision:
As people of faith, our vision is that all children in the Charlotte-Mecklenburg School System will have excellent educational opportunities which are both equitable and integrated.

The background:
Formed in 1997 out of several Charlotte religious congregations, the Fellowship focuses on being a witness to the value of diversity as an integral part of children's education, and educating the public on public school issues as they relate to this and allied subjects. The Swann Fellowship is a nonprofit organization exempt under Section 501(c)(3) of the Internal Revenue Code. A copy of the license to solicit charitable contributions may be obtained from the N.C. Department of Human Resources, Solicitation Licensing Branch. Registration does not imply endorsement, approval or recommendation by the state.