

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., <i>et al.</i>)	
)	
<i>Plaintiffs,</i>)	CIVIL ACTION
)	
v.)	56-1662-D-M3
)	
EAST BATON ROUGE PARISH SCHOOL BOARD, <i>et al.</i> ,)	Judge James J. Brady
)	
<i>Defendants.</i>)	
)	

FINAL SETTLEMENT AGREEMENT

The parties to *Davis, et al. v. East Baton Rouge Parish School Bd.*, No. 56-1662-A (M.D. La.) (the "Lawsuit"), Clifford Eugene Davis, D'Orsay Bryant, Alphonso Potter, *et al.* (the "Original Plaintiffs"), the Baton Rouge Branch of the National Association for the Advancement of Colored People ("NAACP"), the United States of America, and the East Baton Rouge Parish School Board (the "School Board") jointly stipulate and agree, subject to the approval of the Court, that upon Court approval of this Final Settlement Agreement (the "Agreement"), the Court may make a finding of full unitary status based on prior actions and enforceable commitments in the Agreement, vacate all prior orders and injunctive relief in the case, and enter a Final Judgment and Order dismissing the lawsuit with prejudice, subject only to its continuing jurisdiction to enforce the terms of the Agreement during its term, should that be necessary and its continuing jurisdiction to make an award of attorneys' fees and costs for the prior litigation in this case pursuant to 42 U.S.C. 1988 as provided in paragraph VII.C.1 herein.

I. MAGNET SCHOOL PROGRAM

A. Status of Existing Magnet Programs

During the four-year term of this Agreement, the dedicated magnet schools located at Baton Rouge Magnet High School, Baton Rouge Center for Visual and Performing Arts (“BRCVPA”), and South Boulevard Elementary School shall remain in operation as modified by this Agreement. The Montessori magnet program at Belfair Elementary School shall be maintained, and the Montessori program at Dufrocq Elementary School shall be maintained for so long as that school remains in operation; if Dufrocq Elementary School is closed, the program shall be moved to another site; if Dufrocq Elementary School is closed, the program shall be moved to one of the elementary schools listed in Exhibit C hereto.

B. Dedicated Magnet Schools

During the four-year term of this Agreement, the Board shall operate BRCVPA and an Academic theme “strand” of dedicated magnet schools. The Academic dedicated magnet schools shall be continued or established at South Boulevard Elementary School, Forest Heights Elementary School, McKinley Middle School, and Baton Rouge Magnet High School.¹ An academic magnet school shall also be established at Polk Elementary School, or a comparable school agreeable to the parties. A second magnet middle school shall be established at either Kenilworth Middle School, Sherwood Middle School, or the Christa McAuliffe Center. The elementary dedicated magnet schools shall be designed to enroll 330 students in grades 1-5, 60

¹Existing talented programming at Baton Rouge Magnet High School will be continued.

kindergarten students and 60 pre-kindergarten students each.² The dedicated magnet middle schools shall be designed to enroll approximately 750 (McKinley) and 500 students, (Kenilworth, Sherwood or McAuliffe Center), respectively, and the dedicated magnet academic high school shall be designed to enroll 1350 students.

C. Prescribed Enrollment Targets for Dedicated Magnet Schools

1. *Existing dedicated magnet schools.* During the four-year term of this Agreement, existing dedicated magnet schools (Baton Rouge Magnet High School, South Boulevard Elementary School, and BRCVPA) shall have a target student enrollment of 55% black, 45% non-black, applied to each entering class admitted at the entry-level grade(s) for the school following approval of this Agreement. The lack of success in attracting a student enrollment that meets this target during the term of this Agreement shall not, by itself, constitute a breach of this Agreement.
2. *New dedicated magnet schools.* During the four-year term of this Agreement, the remaining dedicated magnet schools to be established pursuant to this Agreement shall have a target student enrollment of 55% black, 45% non-black. The lack of success in attracting a student enrollment that meets this target during the term of this Agreement shall not, by itself, constitute a breach of this Agreement.
3. *Empty seats.* During the four-year term of this Agreement, for the first two school

²Except for South Boulevard and Polk (or such other substitute school as is agreeable to the parties), which taken together shall be designed to enroll at least 330 students in grades 1-5, as well as 60 kindergarten and 60 pre-kindergarten students each.

years that a dedicated magnet school is operated following approval of this Agreement, if there are not sufficient applications from black or non-black students to fill the school to its intended enrollment specified in paragraph I.C.1. above without exceeding an enrollment ratio of 55% black, the magnet school shall be operated with empty seats notwithstanding the existence of a waiting list. Beginning with the third year of operation, if the same conditions occur, the Board shall admit students from the waiting list notwithstanding the effect on the target ratio.

D. Admissions Requirements for Dedicated Magnet Schools

During the four-year term of this Agreement the Academic magnet high school and middle school shall admit students based on criteria currently utilized at Baton Rouge Magnet High School,³ *i.e.*, a 2.5 grade-point average and demonstrated ability to read on grade level; the Academic magnet elementary schools shall not require any minimum test score for admission at the entry-level grade(s)⁴ but shall use criteria equivalent to those presently utilized at South Boulevard Elementary School, *i.e.*, student and parent interviews and an interest inventory; and the BRCVPA shall continue its current policy, which does not require any minimum test score but may require a demonstration of interest through submission of a portfolio, an audition, etc., as well as student and parent interviews.

³Except for the admission of students identified as “talented” (using the criteria in State Department of Education Bulletin 1508) to Baton Rouge Magnet High School, see *supra* n.1.

⁴If the Board accepts applications from students in other than the entry-level grade(s) for an Academic magnet elementary school, prior achievement may be taken into account as one factor in the admissions decision to the extent that an applicant has failed courses in academic

E. Admissions Preferences for Dedicated Magnet Schools

During the four-year term of this Agreement, so long as consistent with the enrollment targets set forth in paragraph I.C.1. above, first admissions preference shall be given to students residing in the former attendance zones of the dedicated magnet schools, and second admission preference shall be given to students who attend a racially identifiable school, defined as a school with a black or non-black student enrollment greater than 15 percentage points above or below the system-wide percentage of black or non-black students, respectively, at the grade levels served by the school. If a dedicated magnet school remains below its intended enrollment as specified in paragraph I.B. above after these two categories of students are admitted, other applicants shall be admitted consistent with the enrollment limits and targets.

F. Transportation

During the four-year term of this Agreement, the Board shall provide free transportation to all students enrolled in dedicated magnet schools and Centers of Excellence who are otherwise eligible under the Board's transportation policy,⁵ and shall inform all prospective dedicated magnet school students of the availability of free transportation. If other than direct (pick-up point to school) transportation is provided, routes shall be scheduled so that no student need wait more than 10 minutes at a transfer point to change buses.

subjects in prior years.

⁵That is, all students who live more than one mile from the magnet school or Center of

G. Implementation of Dedicated Magnet Schools

Operation of Baton Rouge Magnet High School, BRCVPA and South Boulevard as dedicated magnet schools shall continue during the 2003-04 school year, while comprehensive planning for the additional dedicated magnet schools identified above continues. The remaining elementary dedicated magnet schools shall open effective with the 2004-05 school year. The remaining middle dedicated magnet schools shall open effective with the 2005-06 school year. Should any school opening be delayed beyond this schedule for any reason, the time within which any party may seek specific performance of this Agreement with respect to such school shall not expire until the end of the second full school year during which such school has been in operation.

H. Centers of Excellence

During the four-year term of this Agreement, the existing magnet programs at Crestworth Middle School and at Glen Oaks, Istrouma and Scotlandville High Schools shall be continued with modifications and expanded as part of a coordinated design to establish complementary Centers of Excellence at these schools, open to enrollment on a voluntary basis, having the same target enrollment ratio as the dedicated magnet schools, and emphasizing career/technical instruction, with additional programs in Construction Trades and Construction Management, Business and Government Affairs, and Emerging Technologies and strengthened links to post-secondary institutions in the area. At least some portion of this program redesign shall be

Excellence in which they enroll shall be provided with transportation to the school.

implemented in the 2004-05 school year. The Centers of Excellence shall offer Honors courses should twelve or more students timely register for an Honors course of study for any semester. In addition, as students enrolled at the Centers complete the Honors curriculum, EBRPSS shall make available and offer AP (Advanced Placement) courses in response to similar levels of interest. (i.e. twelve or more students)

I. Planning; Implementation

The EBRPSB shall in good faith carry out this Agreement. During the 2003-04 school year, the Board and staff shall develop a concrete and comprehensive plan for carrying out the commitments in this Agreement with respect to the operation of magnet schools and Centers of Excellence. The plan shall address all aspects of the startup and operation of these programs, including such matters as timelines, curriculum, staffing, facilities, recruitment, marketing, steps that will be taken to avoid or minimize duplication of curricular offerings at non-magnet schools that are similar or equivalent to offerings at magnet schools, pupil transportation, admissions procedures, expenditures, and funding sources, as well as determinations as to which magnet programs that had been required under the 1996 Consent Decree will be maintained or discontinued. The plan shall be adequate to offer reasonable promise of success; it shall be reduced to writing in sufficient detail to be susceptible of assessment and analysis and shall be provided to counsel for the other parties and to the Independent Magnet Program Evaluator, see paragraph J, *infra*, no later than March 31, 2004. Within thirty days of March 31, 2004, the plaintiff parties shall notify the EBRPSS of deficiencies, if any, in the plan and specify how they believe the plan fails to meet these standards or is otherwise inadequate. If notification of

allegations of breach of contract is supplied by the plaintiff parties, the conciliation period provided in paragraph VII.B shall commence and, if the matter is not resolved through conciliation, the remedy specified in paragraph VII.B shall then be available to the parties if a breach is demonstrated in accordance with the standards of paragraph VII.B. If no such notification is made, or once the matters at issue are resolved, the school district shall implement the plan in good faith and shall provide notice to counsel for the other parties, at least 30 days in advance of effectuation (unless exigent circumstances such as Acts of God or medical or safety emergencies, or other delays beyond the school system's control, prevent such prior notification, in which case notice shall be given as soon as possible) of any material changes in the plan for implementing this Agreement with respect to dedicated magnet schools and Centers of Excellence.

J. Appointment of Independent Magnet Program Evaluator

1. An independent magnet program evaluator (the "Evaluator") shall be appointed to monitor the implementation of the Magnet School Program described herein during the four-year term of this Agreement. The parties shall reach consensus on the individual to be appointed and the type of position and compensation no later than 60 days after execution of this Agreement; in the absence of such agreement, the plaintiff parties and the defendant shall each nominate three candidates. Each may then strike up to two of the other's nominees. The remaining recommendations shall be submitted to the Honorable James Brady, whose selection there from shall be binding.

2. The Evaluator shall be given full access to the school district's facilities, documents, staff and consultants on reasonable request and notice. The Evaluator may make suggestions regarding the planning or implementation of the Magnet School Program to the Superintendent or the Superintendent's designee. The Evaluator shall prepare written compliance reports on a quarterly basis, starting January 31, 2004. Each such compliance report shall address the steps that the school district has taken with respect to the Magnet School Program, the matters the Board intends to undertake in connection with that Program during the next 90 days, and any other issues that the Evaluator believes should be included in the report. Each compliance report shall be provided to counsel for the parties.
3. The Board shall pay the reasonable fees and costs of the Evaluator. The individual serving as Evaluator may be terminated and replaced only with the parties' unanimous consent.

II. MAJORITY-TO-MINORITY TRANSFERS

A. Continuation of M-to-M Program

During the four-year term of this Agreement, EBRPSB shall encourage and permit students to participate in the M-to-M Transfer Program. Under the program, for black students, schools that are above 45% non-black are receiving schools and schools that are below 45% non-black are sending schools. For non-black students, schools that are above 55% black are

receiving schools and schools that are below 55% black are sending schools. Dedicated magnet schools are not available to receive M-to-M transfers.

B. Transportation

During the four-year term of this Agreement, the Board shall provide free transportation to all students enrolled as M-to-M transfers who are otherwise eligible under the Board's transportation policy,⁶ and shall inform all prospective M-to-M students of the availability of free transportation. If other than direct (pick-up point to school) transportation is provided, routes shall be scheduled so that no student need wait more than 10 minutes at a transfer point to change buses.

C. Recruitment

For each school year during the four-year term of this Agreement, EBRPSB shall actively recruit students for the M-to-M program, including taking the following steps:

1. Students and parents shall be provided with an informational flyer informing them that the M-to-M program has been continued and modified as provided in paragraph II.A. above, explaining the program, including specific information about the deadline for guaranteed admission as set forth in paragraph II.D, *infra*, and providing contact information for obtaining additional information on the M-to-M program from the school district.

⁶ That is, all students who live more than one mile from the receiving school to which

2. Sending and receiving schools shall hold meetings, including in the evenings, to inform parents of educational opportunities at their schools.
3. Trained District staff shall respond to inquiries regarding M-to-M transfers. If an application is received for an M-to-M transfer to a school at which such transfer is no longer available because of space limitations, staff shall suggest alternative receiving schools to the applicant.

D. Deadline for Applications for M-to-M transfers

During the four-year term of this Agreement, the deadline for applying for guaranteed admission to a receiving school as an M-to-M transfer shall be two weeks prior to the start of each school year. Applications for M-to-M transfer shall continue to be accepted through the first two weeks of the school year and may be granted on a first-come, first-served, space-available basis, but applicants who do not meet the deadline will have no priority or preference over students residing within the attendance zone of a receiving school.

they have been granted an M-to-M transfer shall be provided with transportation to the school.

III. OTHER STUDENT ASSIGNMENT MEASURES

A. Enrollment Limits

1. During the four-year term of this Agreement, EBRPSB shall comply with the enrollment limits (caps) set forth in the attached Exhibit A in making assignments to each school that is not closed, consolidated, or converted into a dedicated magnet school pursuant to this Agreement.
2. In making school assignments, the school district may exceed the caps in accordance with the terms of the Order entered by the Court on July 3, 2003, complying with the terms of paragraphs 2,3, and 4 of that Order each year (except for the reference to the 2003-04 school year) during the remainder of the four year term of this Agreement.

B. Temporary Buildings

EBRPSB shall eliminate temporary buildings ("t-buildings") so that 75% of the total t-buildings existing during the 1996-97 school year and an additional number of t-buildings equal to the number of t-buildings obtained by the district after the 1996-97 school year are eliminated by the end of the 2003-04 school year, except that the district may utilize t-buildings as necessary to replace school capacity that is unavailable during replacement construction or major renovations. T-buildings (1) that are not within the permissible allowance established herein (25% of the number existing during the 1996-97 school year), or (2) that are not being utilized in

connection with construction or major renovations shall be physically removed from a school's campus as expeditiously as possible.

C. Attendance Zone Changes

For the duration of this Agreement, and as required by the opening of each dedicated magnet school or the closing of any school, EBRPSB shall, in re-drawing attendance zone lines, comply with the enrollment limits and shall make every reasonable good-faith effort to achieve further desegregation to the extent practicable. The district shall provide notice to counsel for the other parties of school closings and of changes to attendance zones at least 60 days prior to the beginning of the school year in which such actions shall be effective.

D. "No Child Left Behind" Act Transfers

During the four-year term of this Agreement, in the event that EBRPSB is required by the federal "No Child Left Behind" Act, 20 U.S.C. § 6301 *et seq.* to offer transfer options to students enrolled at particular schools that have been identified pursuant to the provisions of the Act, it shall permit students to transfer to any school that would be a receiving school for them under the M-to-M program, see *supra* ¶ III.A. These limitations apply so long as there are at least two such schools available for transfer, if requested. This paragraph shall be effective for the 2003-04 school year and shall replace transfer options previously offered for that school year to students at schools identified pursuant to the Act.

IV. FACILITIES

EBRPSB shall timely complete the school construction, renovation and improvement projects authorized by the Sales Tax approved by voters in 1998 and approved by the District Court in its orders of April 27, 1999 and December 13, 1999. Any changes to the 1998 Tax Plan shall be approved by the Oversight Committee as provided in the 1998 Tax Plan; EBRPSB shall provide notice to the other parties of any request to the Oversight Committee for such changes. The district shall notify counsel for the other parties upon completion of these projects. The EBRPSB shall complete the construction projects that are listed on Exhibit B; in addition, EBRPSB shall expend a minimum of \$250,000 to enhance and improve facilities at elementary grade-level dedicated magnet schools.

V. EXTRACURRICULAR ACTIVITIES

EBRPSB has conducted an extra-curricular activity survey and will provide a report analyzing the responses to the survey to counsel for the other parties by July 31, 2003. Thereafter, on or before June 1 of each year during the term of this agreement, EBRPSB shall compile a report indicating the number of students participating in extracurricular activities at each middle school and high school, by school, race, and activity. This report shall be made public and shall be provided by June 1 of each year to counsel for the other parties.

VI. EDUCATIONAL PROGRAMS

A. Equity Funding

Commencing with the 2004-05 school year, and during the remainder of the four-year term of this Agreement, EBRPSS agrees to fund additional staffing at the elementary grade level sufficient to provide 108 positions, all of which shall be filled with "highly qualified" (as that term is used in Louisiana's Teacher Quality Initiative, Summer, 2003 Update, http://www.teachlouisiana.net/certification/HQ_PPT.ppt.) professional classroom teachers, who shall be assigned to the elementary schools identified in Exhibit C hereto and used at those schools for the purpose of class size reduction. The School Board may fund these positions from any available source of revenue, at its option. IEA accounts shall be continued at the funding level of \$900,000 per year.

B. Extended Day and Extended Year Programs

During the four-year term of this Agreement, EBRPSS shall continue to operate the Extended Day and Extended Year Programs so long as state and/or federal funding (LEAP remediation funds, Title I funds, Special Education Extended Year funds, 8g Block Grants, "I Care" grants, federal grants, and drug/crime prevention grants) continues to be available to the Board for this purpose. EBRPSS may change the service delivery model and/or service times with federal and/or state permission and shall notify counsel for the other parties to this Agreement of such changes at least 60 days prior to their effectuation.

C. Pre-Kindergarten Program

During the four-year term of this Agreement, EBRPSS shall continue to operate existing pre-K programs so long as state and/or federal funding (Head Start, Even Start, Title I, 8g Early Childhood Block grants, Starting Points) continues to be available to the Board for this purpose.

D. Gifted and Talented Program

During the four-year term of this Agreement, the EBRPSS shall operate programs for Gifted and Talented students in accordance with applicable federal and state laws, regulations and guidelines, including but not limited to Louisiana Department of Education Bulletin 1706, Subpart B. The EBRPSS shall continue to utilize the Scholastic Academy Matrix, attached hereto as Exhibit D, in identifying students for participation in Gifted programs and shall continue its present policy of considering the results of individual student testing conducted by professional providers outside the school system's staff as only one factor in determining eligibility for participation in Gifted programs. During the four-year term of this Agreement, EBRPSS shall locate Gifted programs at elementary schools of its selection among those listed on Exhibit C, and at middle or high schools among those listed on Exhibit E.

E. Magnet Program Grant

The EBRPSS shall apply for a federal Magnet Program grant in December, 2003.

VII. SCOPE & IMPLEMENTATION OF AGREEMENT

A. Term of Agreement

The term of this Agreement shall be four years commencing on the date it is executed. All obligations set forth in this Agreement shall expire at the end of the term except as otherwise provided in paragraph I.G.

B. Enforcement of Agreement

Any party who alleges a breach of any provision of this Agreement shall provide notice of the alleged breach to all parties. Any alleged breach shall be deemed waived if such notice is not provided within one year of the alleged breach. Upon such notice, a 90 day conciliation period shall commence. A party may not commence a breach of contract action until after the conciliation period has expired. The Court shall retain supplemental jurisdiction solely to enforce this Agreement in the event a party bringing a breach of contract action demonstrates, by a preponderance of the evidence, that a material breach has occurred, and its continuing jurisdiction to make an award of attorneys' fees and costs for prior litigation in this case pursuant to 42 U.S.C. 1988 as provided in paragraph VII.C.1 herein. The sole remedy for any such breach shall be specific performance of the provision(s) of this Agreement that was breached, except that the Court may award costs and attorneys' fees to the party prevailing in any such breach of contract action under the following circumstances: (1) an award may be made in favor of EBRPSS only if the Court finds that the bringing a breach of contract action by a party to this Agreement was "frivolous"; (2) an award may be made in favor of a party bringing the breach of

contract action only if the Court finds that there was a material breach of this Agreement by EBRPSS and also that the breach occurred because of actions taken in “bad faith” by EBRPSS. *See* La. Civil Code, art. 1997. The Term of this Agreement may only be extended by order of the Court upon a finding that specific performance ordered to remedy a breach has not been completed during the Term.

C. Waiver and Release

1. Upon execution of this Final Settlement Agreement, the Original Plaintiffs, the Baton Rouge Branch of the NAACP, the Plaintiff Class, and the United States of America release, waive, compromise, settle, abandon, and forever discharge the School Board, its members, agents, and employees, of and from any and all civil liabilities, obligations, claims, causes of action, appeals, and demands against them, whether known or unknown, legal or equitable, that any of them has or have had, or at any time in the future may have, arising from or in any way directly relating to the facts and events giving rise to the Lawsuit, that were or could have been asserted in the Lawsuit, including any claims for interest, costs, attorneys’ fees, or expenses of any nature, except that the Original Plaintiffs and the Baton Rouge Branch of the NAACP do not waive the right to seek attorneys’ fees and costs pursuant to 42 U.S.C. § 1988; the parties shall negotiate in good faith to resolve these costs and fees issues, but in the event they are unable to do so on an amicable basis, the original plaintiffs and/or the Baton Rouge Branch of the NAACP may apply to the Court for and the Court may make an award of costs and fees for this litigation under 42 U.S.C. § 1988.

2. Upon execution of this Final Settlement Agreement, the School Board, to the extent permitted by law, releases, waives, compromises, settles, abandons, and forever discharges the Original Plaintiffs, the Baton Rouge Branch of the NAACP, the Plaintiff Class, and the United States of America, their legal representatives, heirs, executors, administrators, successors and assigns, of and from any and all civil liabilities, obligations, claims, causes of action, appeals, and demands, whether known or unknown, legal or equitable, that it has or had, or at any time in the future may have, arising from or in any way directly relating to the facts and events giving rise to the Lawsuit, that were or could have been asserted in the Lawsuit, except for claims for interest, costs, attorney fees, or expenses as specified in Paragraph VII.C.1 above in the event that the parties are unable to amicably resolve attorneys fees, costs and expenses of any nature.

D. Entire Agreement

The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Agreement.

E. Modification

This Agreement may be modified through a writing executed by all parties.

VIII. DISMISSAL OF THE LAWSUIT

A. Submission of Joint Motion

The parties shall submit, substantially in the form of the attached Exhibit F, a joint motion seeking preliminary approval of this Agreement, substitution of class representatives, Certification of a Class, and to give notice of and schedule a fairness hearing. The parties shall attach to the joint motion a Proposed Order substantially in the form of Exhibit G.

B. Findings of Fact and Conclusions of Law

Prior to the Fairness Hearing or at such other time as the Court shall require, the parties shall jointly prepare and submit to the Court Proposed Findings of Fact and Conclusions of Law (which may be supplemented promptly following the fairness hearing).

C. Joint Submission of Final Order and Judgment

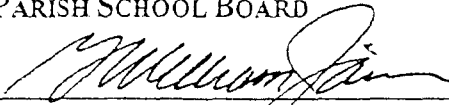
Prior to the Fairness Hearing, the parties shall submit a proposed Final Order and Judgment declaring that the School District is unitary, that the 1996 Consent Decree and all other injunctive and other orders and relief entered in the Lawsuit are dissolved and that the Lawsuit is dismissed with prejudice.

D. Counterpart Signatures

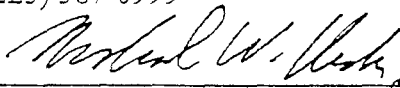
This Agreement may be signed in counterparts.

The foregoing Final Settlement Agreement is Agreed to by the Undersigned in Baton Rouge, Louisiana, this 16th day of July, 2003.

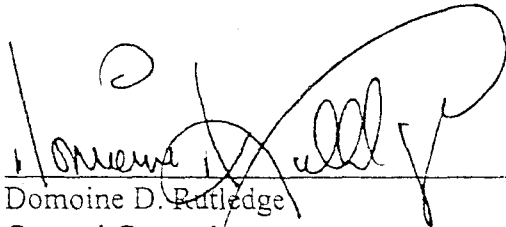
THE EAST BATON ROUGE
PARISH SCHOOL BOARD


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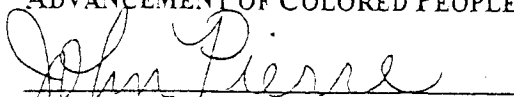
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THE BATON ROUGE BRANCH OF THE
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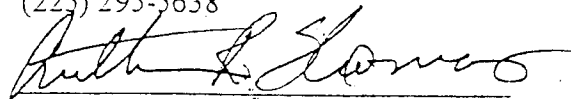


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