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## Education Reform and Education Quality: Is the Reconstitution the Answer?

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ing schools by terminating all administrators, faculty, and staff and hiring new personnel who are committed to the objectives of education reform set out for that particular district.<sup>4</sup> These objectives generally center on improving student achievement on standardized tests, reducing suspension and dropout rates, and upgrading on-site services such as staff development, technological equipment, and counseling.<sup>5</sup> Viewed as a bold measure by both proponents and opponents, reconstitution is emerging as a national trend, adopted not only in San Francisco, but also St. Paul, Chicago, Baltimore, Cleveland, and Houston, among other cities.<sup>6</sup> However, critics argue that reconstitution is not the pan-

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4. In San Francisco, the indicators of achievement for schools facing reconstitution were agreed upon by the parties of the original lawsuit against the school district. See *infra* Part III B, for a fuller discussion of the history of San Francisco's desegregation efforts. In other districts, a state or local agency or the district itself may develop the criteria. See *infra* Part III C.

5. See, e.g., BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, SFUSD, May 8, 1996, at 3-4 (setting forth quantitative and qualitative areas for San Francisco schools); Maureen M. Smith, *St. Paul Schools Prepare to Close Achievement Gap*, STAR TRIBUNE, June 20, 1994, at 1B (stating that in addition to improvement on test scores, improvements in classroom environments must also be achieved); *Fixing Connecticut's Schools*, THE PROVIDENCE JOURNAL-BULLETIN, Feb. 25, 1997, at 4B (noting that reconstitution is triggered by failure to meet state-adopted education standards).

6. Also following in San Francisco's venture into reconstitution are Boston, Nashville, New York, Milwaukee, and Minneapolis, among others. See, e.g., Peter Schmidt, *Rojas Seeks to "Reconstitute" 3 Underachieving S.F. Schools*, EDUCATION WEEK ON THE WEB, Feb. 23, 1994 (noting SF, Cleveland, and Houston have adopted reconstitution); Lady Hereford and Dana Pride, *Deseg Victory Launches Major Fight for Funding; "Commitment" Plan Wins Board's Approval*, THE NASHVILLE BANNER, July 24, 1996, at B1 (describing Nashville's "on focus" version of reconstitution); Duchesne Paul Drew, *Morris Park School Wipes Slate Clean; Faculty at Troubled Institution Will Be Disbanded*, STAR TRIBUNE, June 12, 1996, at 1B (highlighting the reconstitution of a Minneapolis school); Carol S. Parham, *We're Moving to Help Struggling Schools*, THE CAPITAL, Feb. 11, 1996, at A11 (discussing Maryland's statewide reconstitution plan); Curtis Lawrence, *Future of Charter Schools Uncertain/Highland in Midst of Battle Between Teachers Union and MPS*, MILWAUKEE JOURNAL SENTINEL, Oct. 6, 1996, at 1 (describing lawsuit by teachers' union against implementation of state law regarding reconstitution); *Enhance School Choice*, THE BOSTON HERALD, Dec. 14, 1995 at O4O (citing reconstitution as a natural occurrence under a choice plan for schools that do not attract enough students); Lori Olszewski, *Big Issues Cloud Back-to-School Day in Oakland*, THE SAN FRANCISCO CHRONICLE, Sept. 9, 1996, at A15 (noting the Oakland school's superintendent's desire to initiate "reassignment" and teachers' doubts as to its effectiveness without funding similar to the money SFUSD receives via the consent decree); Gil Klein, *Radical School Reformers Are Starting From Scratch; Some Cities Tackle Problems By Rebuilding Entire Staffs*, THE RICHMOND TIMES DISPATCH, Feb. 23, 1997, at A-6 (listing Philadelphia, Atlanta, Houston, Memphis, New York City, Albany, and Chicago as cities practicing reconstitution).

acea its supporters envision; in fact, some contend that reconstitution alone cannot save schools.<sup>7</sup>

This Article will examine reconstitution, its place in the history of education reform, its conceptualization, and its performance in practice. Part II outlines historical educational reform efforts, particularly those traditionally tied to desegregation efforts.<sup>8</sup> Major desegregation cases and the ramifications of the application of those decisions will be highlighted. Part II concludes with an overview of other education reform measures adopted through litigation and legislation, including charter schools, voucher programs, magnet schools, and other such programs. Part III describes in greater detail the theoretical underpinnings of reconstitution as it emerged in San Francisco. A case study of the impact of reconstitution on the San Francisco Unified School District ("SFUSD") follows, focusing on how reconstitution is initiated and how it impacts the different stakeholders of the schools. Reconstitution efforts in other states will also be discussed, with particular attention to how the process is instituted and what successes and/or problems other districts have met. After this review of reconstitution, Part IV assesses the practice. Drawing from newspaper commentaries, past monitor reports for SFUSD, and interviews with SFUSD personnel, this Part will evaluate how well reconstitution has achieved its promise. Part IV proposes changes and improvements to better accomplish reconstitution's goal of higher educational quality for all students. This Article concludes with recommendations for modifications and further research to ensure that the new trend

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7. Joan-Marie Shelley, former President of the teachers' union in San Francisco, points to reconstituted schools' continuing low scores on standardized tests as evidence that Reconstitution is not the sole answer to education reform. Carolyn Hendrie, *S.F. Reforms Put on the Line In Legal Battle*, EDUCATION WEEK ON THE WEB, Dec. 11, 1996 (visited Mar. 28, 1998) <<http://www.edweek.org/htbin/fastweb?getdoc+view4+ew1996+1887+20+wAAA+%26%28orfield%29%26AND%26%28orfield%29%3AKEYWORDS%26OR%26%28orfield%29>>.

8. Since reconstitution first appeared in San Francisco as part of a desegregation consent decree, contextualizing reconstitution with other desegregation measures seems appropriate. While SF's desegregation decree is unique in that it mandates both racial desegregation *and* improved educational quality for all students, desegregation actions in general are brought to improve educational quality. Therefore, an examination of reconstitution would not be complete without an overview of the reforms that arose before it in the name of desegregation.

of reconstituting schools is implemented with optimal results for all of the stakeholders.

## II. OVERVIEW OF EDUCATION REFORM

Education reform efforts in the United States became most pronounced and broadsweeping in the context of desegregation. The landmark case of *Brown v. Board of Education (Brown I)*<sup>9</sup> forced school districts around the country to provide equal educational opportunity for their students of color. Therefore, this brief overview of education reform will begin with a look at school desegregation jurisprudence. Next, Part II will examine other reform efforts attempting to accomplish desegregation with "all deliberate speed."<sup>10</sup>

### A. *Desegregation and Interpreting Brown: How Separate is Unequal?*

Following *Brown I's* rejection of the "separate but equal" doctrine, school districts nationwide faced desegregation litigation. Between 1968 and 1986, one study reveals that over 960 school districts attempted desegregation.<sup>11</sup> The Department of Education's Office of Civil Rights reported in 1990 that 256 school districts, servicing over two million pupils, operated under court supervision as a result of actions brought by the Justice Department alone.<sup>12</sup> Although the response to *Brown* is significant, *Brown's* rhetoric, while compelling, was hard to quantify, and a long line of cases arose to clarify school districts' responsibilities in desegregation.

Defining the contours of desegregation took much time and litigation. Initial holdings broadly construed the *Brown* doctrine, but as the inquiries became more technical, the rulings became

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9. 347 U.S. 483 (1954) ("Brown I").

10. *Brown v. Board of Educ. of Topeka*, 349 U.S. 294 (1955) ("Brown II").

11. David S. Tatel, *Desegregation Versus School Reform: Resolving the Conflict*, 1993 STAN. L. & POL'Y REV. 61, 63.

12. *Id.* (citing Office for Civil Rights, Dep't. of Educ., 1990 Elementary and Secondary School Civil Rights Survey: Court-Ordered School Districts).

narrower.<sup>13</sup> The Supreme Court favored using racial quotas or caps as a remedial "starting point" and adopting bussing as a desegregation tool.<sup>14</sup> Encouraging school districts to experiment with desegregation methods, the Supreme Court also approved requiring schools to retain approximately the same number of white and African American faculty members, deeming this an adequately tailored remedy.<sup>15</sup>

As desegregation jurisprudence shows, this trend of openness to experimentation and shunning of facially reasonable but suspect-in-application methods began to dwindle as desegregation plodded forward.<sup>16</sup> Later decisions ignored *de facto* segregation, still an enormous factor in many large cities.<sup>17</sup> These holdings opened the door to partial integration as sufficient desegregation. The final court sanction of partial desegregation, *Jenkins II*, barred *voluntary* transfer programs between districts where the involved districts were not culpable of segregation.<sup>18</sup> Many

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13. One of the earliest cases to follow *Brown I and II*, *Keyes v. School District No. I*, held that a *prima facie* case of unlawful segregation could be shown where a school board intentionally acted to segregate a significant portion of a school system. *Keyes*, 413 U.S. 189 (1973). Another early case determined the "time for mere 'deliberate speed' had run out" after three years, and closing public schools rather than integrating them was not an acceptable desegregation method. *Griffin v. County School Board*, 377 U.S. 218, 234 (1964).

14. *Swann v. Charlotte-Mecklenburg Board of Educ.*, 402 U.S. 1, 25, 30 (1971). *But see* Lisa Laplace, *infra* note 228, arguing that "[t]he main objective of the integration maintenance quota is to promote integration" not to end discrimination. For example, the *Green v. County School Board* court struck down a sham school choice program which essentially kept schools segregated in the same ratios as pre-*Brown*, establishing an affirmative duty on school districts to desegregate and opining that if there were a reasonable, faster alternative to a choice program, that alternative should be taken. *Green*, 391 U.S. 430 (1968).

15. *U.S. v. Montgomery County Board of Educ.*, 395 U.S. 225 (1969).

16. *See, e.g., Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*) (holding that interdistrict bussing was barred where all involved districts have not failed to implement desegregation, but requiring the school district to improve faculty ratios and student programs); *Board of Educ. v. Dowell*, 498 U.S. 237, 238 (1991).

17. *Board of Educ. v. Dowell*, 498 U.S. 237, 238 (1991) (holding that a school district could conclude desegregation efforts if these efforts had eliminated "vestiges of past discrimination," such as *de jure* segregation, to the extent practicable); *Freeman v. Pitts*, 503 U.S. 467, 499 (1992) (reiterating *Dowell* by permitting incremental release from judicial oversight with partial "unitary" status). *See generally* Lisa J. Laplace, *The Legality of Integration Maintenance Quotas: Fair Housing or Forced Housing?*, 55 BROOK. L. REV. 197, 203 (1989) (noting that one factor in "white flight" is the quality of schools in that locality).

18. *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995) (*Jenkins II*).

scholars view *Jenkins II* as "delineating the end of judicial control over desegregation remedies."<sup>19</sup>

What *Jenkins II* may truly mark is the end of a broad interpretation of *Brown I*. David Chang analyzes segregation on three levels: 1) explicit segregation; 2) segregation as the result of past invidious state action; and 3) facial segregation.<sup>20</sup> Explicit segregation occurs where, for example, a school district designates schools as "white" or "nonwhite," or where a school district racially gerrymanders school attendance zones.<sup>21</sup> An example of segregation as a result of past invidious state action would be segregated residential patterns stemming from long-term, now-condemned government policies.<sup>22</sup> Even if the intent to segregate can no longer be attributed to the government policies, the resulting segregation is violative in the education context.<sup>23</sup> Finally, for facial segregation, the mere fact of segregation triggers remedial responsibility — no showing of intent or past state action.<sup>24</sup> Given the most recent desegregation cases, courts will likely continue to proscribe explicit segregation but will perhaps be more permissive of segregation resulting from past invidious state action. Facial segregation, however, is probably insufficient to command a remedy under *Jenkins II* and the other recent Supreme Court decisions in desegregation cases. From a pragmatic angle, many school districts might face insolvency without funding through judicial or legislative desegregation mandates. However, if traditional desegregation techniques bear little fruit, justifying extra funding becomes more difficult.

19. Raina Brubaker, *Missouri v. Jenkins: Widening the Mistakes of Milliken v. Bradley*, 46 CASE W. RES. L. REV. 579, 599 (1996).

20. David Chang, *The Bus Stops Here: Defining the Constitutional Right of Equal Educational Opportunity and Appropriate Remedial Process*, 63 B. U. L. REV. 1, 6-7 (1983).

21. *Id.* at 6. Chang cites *Gong Lum* and *Green* as examples of this theory. See *Gong Lum v. Rice*, 275 U.S. 78 (1927) (rejecting Chinese-American student's challenge to "colored" school assignment); *Green v. County School Board*, 391 U.S. 430 (1968) (striking "free choice" program which maintained segregated schools).

22. Chang, *supra* note 20.

23. *Id.* at 7. Chang supports this theory by citing to *Swann v. Charlotte-Mecklenburg Board of Education*, see *supra* note 14.

24. *Id.* This theory is unsupported by the case law and, following *Freeman, Dowell*, and *Jenkins II*, does not seem feasible in today's judicial climate. *Freeman v. Pitts*, 503 U.S. 467, 499 (1992); *Board of Educ. v. Dowell*, 498 U.S. 237, 238 (1991); *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995) (*Jenkins II*).

*B. Modern Attempts to Accelerate Desegregation*

Traditional desegregation methods such as bussing and involuntary student or faculty reassignments have not created integrated schools.<sup>25</sup> Frustrated by the slow pace and mediocre results of traditional methods, many school districts, communities, and legislators now opt for more aggressive measures to achieve integration.<sup>26</sup> Suggestions range from examining new legal doctrines for better implementation of desegregation to restructuring schools and programs. For example, one scholar advocates approaching desegregation as a violation of first amendment, rather than equal protection rights as a means of broadening the conception of integration.<sup>27</sup> Another urges that

25. In 1993, the Harvard Project on School Desegregation reported that African American and Latina/o students attended schools with predominantly students of color at even greater rates than in 1968. Wendy Brown-Scott, *Justice Thurgood Marshall and the Integrative Model*, 26 ARIZ. ST. L.J. 535, 540 n. 26 (1994). One scholar explains that traditional desegregation efforts actually eroded "indigenous institutional resources" which African American communities developed when segregated. Quoting Roy Brooks, this article describes the "equality myth" as promoting integration into white society but "ignor[ing] the exacerbation of the problems of subordination and lack of educational opportunity for most African Americans."

26. A veteran educator in Boston, where bussing continues, declared, "To go through such a traumatic process, to lose 40,000 students in the school system, to lose teaching staff, to lose the reputation of an education system that Boston has never regained, was it worth it? . . . My judgement is no." Jonathan Tilove, *Desegregation: Will We Turn Back the Clock?*, THE COMMERCIAL APPEAL, Feb. 2, 1992, at B6 (stating that forty years after *Brown I*, "America's enthusiasm for school desegregation is spent").

After nine years of litigation regarding Kansas City schools, a court order demanded extensive funding of the school district to provide state-of-the-art facilities and resources. Despite this influx of funds, test scores remain low, the racial balance in the schools is unchanged, and dropout rates increased. *Money Alone Can't Fix Failing Public Schools*, THE SAN DIEGO UNION-TRIBUNE, Sept. 5, 1993, at G-4 (quoting from THE ECONOMIST).

Lulann McGriff, NAACP official, actively participated in the case leading to San Francisco's desegregation consent decree. Assessing the consent decree's impact, she stated that although integration has markedly improved, academics have "been a disappointment — at best." However, she also noted that the consent decree "should be kept in place because it has not done all that it was supposed to" and, more pragmatically, "Without that consent decree, this district would probably go bankrupt." Nanette Asimov, *Guardian at the School Gate: Behind SF's Complex Enrollment Policy*, THE SAN FRANCISCO CHRONICLE, Nov. 3, 1996, at 3/Z1.

27. For an insightful look into this approach, which argues that the equal protection doctrine has become unavailing in the context of desegregation and should be replaced with the broader freedom of speech rights of all students, see David W. Burcham, *School Desegregation and the First Amendment*, 59 ALB. L. REV. 213 (1995). Basing his analysis in large part on *Board of Education v. Pico*, Burcham asserts

disputing parties opt for negotiating rather than litigating to conserve resources and reach a settlement more amenable to all sides.<sup>28</sup> Measures designed to effectuate integration at a faster pace include magnet and charter schools, school choice or voucher programs, privatization of schools, school-business partnerships, and adoption of educational standards. Magnet and charter schools, adopted by many districts, focus on specialized curriculum and tailored school structure. However, these programs are plagued by funding inequities, lack of sufficient publicity or information for students and parents, and difficulty in replicating successes.<sup>29</sup> School choice and voucher programs face

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students have a right not to be inculcated with racist values, a right which stems from broader academic and speech freedoms. *Id.* at 235.

28. Negotiated resolutions present benefits to both sides. Through negotiation, plaintiffs avoid the difficult burden of showing a causal link between "past segregative conduct of school officials and the present-day condition or manifestation." Daniel J. McMullen and Irene Hirata McMullen, *Stubborn Facts of History — The Vestiges of Past Discrimination in School Desegregation Cases*, 44 CASE W. RES. L. REV. 75, 115 (1993). Plaintiffs can negotiate for programs and benefits without concern for exacting causation. *Id.* Defendants can also avoid having to disprove the causal link and the formal finding of a "vestige" against them. *Id.* One practitioner suggests that if plaintiffs are less confrontational, more effective compromises may be reached that lead to greater long-term satisfaction. *Id.*, quoting Alfred A. Lindseth, *A Different Perspective: A School Board Attorney's Viewpoint*, 42 EMORY L.J. 879, 887 (1993).

29. Magnet schools are "public schools of voluntary enrollment designed to promote integration by drawing students away from their neighborhoods and private schools through distinctive curricula and high quality." Raina Brubaker, *supra* note 21, at 582.

Charter schools also tend to focus on a unique, high quality curriculum. However, charter schools are more focused on school structure; charter schools are developed by individuals with a common philosophy and are often exempted from regulations affecting schools in general. For example, charter schools tend to embrace site-based management, shared governance, and community outreach. These structural differences increase the potential for community involvement in charter schools as compared to traditional schools. In addition, in many states charter schools are released from agreements with local teachers' unions. See, e.g., *Grassroots*, NEA TODAY, Feb. 1995, at 8 (highlighting a decision striking down Michigan's school charter law). Charter schools have competitive enrollment procedures and public funding is directly tied to enrollment. James A. Peyser, *Issues in Education Law and Policy: School Choice: When, Not If*, 35 B.C. L. REV. 619, 621 (1994).

For a thoughtful critique of magnet schools, see Kimberly C. West, *A Desegregation Tool That Backfired: Magnet Schools and Classroom Segregation*, 103 YALE L.J. 2567 (1994) (reporting that racial segregation continues in magnet programs). *But see* James Peyser, *supra* this note at 628-629 (describing a notable example of a very successful charter school program in New York City's School District 4 in East Harlem, which has raised test scores and attracted students from throughout the city who otherwise could not afford private education).

Recently, a controversial form of magnet programs has received national and judicial attention. In Detroit, an African American immersion school for boys only faced

similar problems and do not always lead to true integration, either.<sup>30</sup> Privatization on a large scale remains untested, but pilot programs have not fared well.<sup>31</sup> School-business partnerships which require extensive community resources and outreach, seem to produce favorable reviews by participants, but have met with difficulty in quantifying their successes to retain continued financial support.<sup>32</sup> And educational standards, while

a legal challenge by parents of African American female students. *Garrett v. Board of Educ.*, 775 F. Supp. 1004 (E.D. Mich. 1991) (enjoining temporarily all-male African American immersion schools in Detroit as violative of equal opportunity for both genders; parties eventually settled and female students were also allowed to attend these schools). For a discussion of the merits of such an immersion school, see Roberta L. Steele, *All Things Not Being Equal: The Case for Race Separate Schools*, 43 CASE W. RES. L.J. 591 (1993) (advocating race-exclusive but not gender-exclusive schools as proposed in Detroit and Milwaukee). After the Detroit case, the Supreme Court ruled in *United States v. Fordice*, 112 S. Ct. 2727 (1992) that historically African American colleges may be subject to closure in the name of desegregation. *Fordice* is perceived as ironic in that it calls for the end of institutions which sustained and nurtured African Americans during sanctioned segregation. Lorne Fienberg, *United States v. Fordice and the Desegregation of Public Higher Education: Groping for Root and Branch*, 34 B.C. L. REV. 803, 805 (1993).

30. See, e.g., Chubb, John and Terry Moe, *POLITICS, MARKETS, AND THE AMERICAN SCHOOLS 1990* (Wash. D.C., Brookings Institute) (noting that dealing with union pressures and ensuring students and families can make informed choices warrant careful consideration); James A. Peyser, *infra* note 43 at 619-620; Deborah E. Beck, *Jenkins v. Missouri: School Choice as a Method for Desegregating an Inner-City School District*, 81 CALIF. L. REV. 1029 (1993) (describing the "Rivarde plan," a plaintiff's proposal for vouchers as a remedy, which could face challenges to its inclusion of parochial schools on Establishment Clause grounds, similar to a voucher plan in Milwaukee). Another potential problem with vouchers/choice is replicating successful schools to meet student demand. See, e.g., Marsha Ginsburg, *Can S.F. Create Another Lowell High? Parents Want More Academic Alternatives*, THE SAN FRANCISCO EXAMINER, Mar. 6, 1994, at B-1. For a look at how funding school choice may conflict with traditional school finance methods, see Jim Hilton, *Local Autonomy, Educational Equity, and Choice: a Criticism of a Proposal to Reform America's Educational System*, 72 B.U. L. REV. 973 (1992) (arguing that local property tax funding is hard to justify when the municipality gives up substantial control of its schools; disparate funding may also face challenges under state equal protection and education clauses); James A. Peyser, *supra* note 29, at 628 (conceding that choice alone is insufficient "at least in the short run").

31. For a comprehensive review of one of the most extensive privatization efforts, that of Education Alternatives, Inc., in Hartford, Connecticut, see Jennifer L. Romer, *Attacking Educational Inequality: The Privatization Approach*, 16 B.C. THIRD WORLD L. J. 245 (1996).

32. See generally Brook Larmer, *New Help for U.S. Students*, THE CHRISTIAN SCIENCE MONITOR, Sept. 11, 1986, at 1 (reporting several philanthropists' efforts at improving schools); "The Each One, Reach One Mentoring Program Fact Sheet," Friends of the School Volunteer Program of Los Angeles, Inc., and the Los Angeles Unified School District (1995).

In Los Angeles alone, two models of community outreach were developed to improve schools. Both offer numerous on-campus services, including health and legal clinics as well as interdisciplinary curricula and extensive community service and shadowing

useful as guideposts and goals, raise political and ethical issues regarding who sets the standards.<sup>33</sup> In sum, thus far none of these methods have achieved real gains in integration.

### III. RECONSTITUTION: A BOLD NEW WAY TO ATTACK SEGREGATION AND EDUCATIONAL INEQUALITIES

Reconstitution originated in December, 1982, when the San Francisco Unified School District ("SFUSD") entered into a consent decree with the NAACP and other parties involved in the desegregation litigation against SFUSD.<sup>34</sup> This consent decree proved unique in two ways: 1) it explicitly requires both integration and academic excellence for all students; and 2) it explicitly provides for reconstitution as a means of achieving the decree's dual goals.<sup>35</sup> This combination of goals seems particularly appro-

projects. The LEARN program is in its sixth successful year but may lose funding because objective quantification of its successes remains elusive. Pamphlet, LEARN (1995); "School Reform," LA Roundtable for Children, June 21, 1995. The LA Learning Centers, proposing collaborative management with school and community representatives, never got past the drafting stage. Design Summary, Los Angeles Learning Centers (1993).

33. Adopting educational standards has become a national endeavor. Elaine Woo, *Education Summit Draws Governors; Schools: Progress Since the First Goal-Setting Gathering Has Been Modest and Changes in American Life Could Make the New Session More Difficult*, LOS ANGELES TIMES, Mar. 26, 1996, at A15 (noting that President Clinton's Goals 2000 now face sharp attacks as unnecessary federal influence on a local issue). For a fuller discussion of developing educational standards, please see Natriello, McDill, & Pallas, 135 SCHOOLING DISADVANTAGED CHILDREN: RACING AGAINST CATASTROPHE (1990). For an introduction to "multiple abilities theory," see, e.g., *Torff to Explore Multiple Intelligences*, WEAC NEWS & VIEWS, Dec. 1995, at 5 (suggesting teachers should not think "How smart are your students?" but rather "How are your students smart?"; the multiple intelligences include linguistic, logical/mathematical, spatial, bodily/kinesthetic, musical, interpersonal, and intrapersonal).

34. 1983 Consent Decree, San Francisco NAACP, et al. v. San Francisco Unified School District (Civil No. C-78-1445 WHO) (including modifications required by court-approved stipulations and orders through Nov. 5, 1993) (hereinafter Consent Decree); BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, SFUSD, May 8, 1996, at 1; see also Desegregation and Educational Change in SF; Findings and Recommendations on Consent Decree Implementation, Report to Judge William H. Orrick, July, 1992, at 2 [hereinafter Findings and Recommendations].

35. Consent Decree, *supra* note 34, at Part II A. para. 12 et seq., Part VII, para 39 et seq. (describing desegregation and educational equality); see, e.g., paras. 16-C, 18, 30 (discussing reconstitution).

priate for San Francisco, whose schools have one of the most diverse populations in the country.<sup>36</sup>

### A. *The Launching of Reconstitution*

The development of reconstitution began in San Francisco shortly after the consent decree was finalized. Reconstitution became part of the consent decree as a result of the efforts of the Settlement Team, which consisted of appointees from the court, the plaintiffs, the district, and the State.<sup>37</sup> Then-superintendent Robert Alioto also played a role in developing reconstitution.<sup>38</sup> By authorizing a complete restructuring of underachieving schools backed by a promise of resources, reconstitution is neither piecemeal nor slow-paced.<sup>39</sup> SFUSD describes the reconstitution process as “while the building remain[s] open and the students stay[ ] at the site through the transition, the staff [is] ‘vacated’ and hiring beg[ins] for new staff.”<sup>40</sup>

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36. SFUSD is unique in that its Asian American students comprise the largest ethnic group in the student population. Ethnic groups represented in the student population include Latina/os (20%), African Americans (18%), Japanese Americans (under 5%), Korean Americans (under 5%), Native Americans (under 5%), Filipina/os (8%), whites (15%), Chinese Americans (25%), and other nonwhites (12%). Appendix, SFUSD Desegregation Report No. 13 to the U.S. District Court for the Northern District of California, Sept. 3, 1996 [hereinafter Report No. 13].

37. Exhibit B, Consent Decree, *supra* note 34 at 1-6. The original court appointees to the Settlement Team included Prof. Harold Howe II of the Harvard University Graduate School of Education and Prof. Gary Orfield of University of Chicago (now Harvard Law School and still an expert consulted by the court). Plaintiff’s appointees to the Team included Prof. Gordon Foster of the University of Miami, and Prof. Robert L. Green, Dean of Urban Affairs Programs at Michigan State University. The district’s appointees were Barbara Cohen, administrative assistant to the Superintendent of the San Francisco Board of Education, and Fred Leonard, Jr., Associate Superintendent for instructional support services for SFUSD. Finally, the State’s appointees were the Department of Education’s Dr. Ples A. Griffin, Chief of Intergroup Relations, and Dr. Thomas M. Griffin, lecturer at the University of California.

38. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

39. See *supra* Part II for a fuller description and critique of other available remedies for desegregation.

40. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 2.

## 1. *Defining Reconstitution*

Reconstitution is not merely a sweeping mechanism. In addition to "vacating" staff, reconstitution, at least in San Francisco, calls for several other components: 1) adoption of the eleven "Philosophical Tenets" to establish expectations for learning and behavior;<sup>41</sup> 2) determination of specific student outcomes for each grade; 3) advancement of available instructional technology; 4) increases in adult-student ratios; 5) increases in staff development to implement these components; 6) selection by staff of effective, unique instructional tools; and 7) encouragement of parent involvement.<sup>42</sup> At its best, reconstitution serves to refocus a school on solidifying commitment to providing an effective education for students through consensus and collaboration between teachers, students, administrators, and parents.

## 2. *The Evolution of the Reconstitution Process in the San Francisco Unified School District*

For Phase I, or the first round of reconstitution, the *Special Plan for the Bayview-Hunter's Point Schools* informed the interview and implementation processes.<sup>43</sup> This plan describes in

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41. The Philosophical Tenets are as follows: 1) All individuals should learn to live and to work in a world that is characterized by interdependence and cultural diversity; 2) All individuals are entitled to be treated with respect and dignity; 3) All individuals want to learn and should be recognized for their achievements; 4) All individuals can learn; 5) All individuals learn in many different ways and at varying rates; 6) Each individual learns *best* in a particular way; 7) All individuals are both potential learners and potential teachers; 8) If individuals do not learn, then those assigned to be their teachers will accept responsibility for this failure and will take appropriate remedial action to ensure success; 9) Learning has both cognitive and affective dimensions; 10) Learning can be subdivided into a number of specific, concrete competencies that can be used as a focus for teaching; and 11) Parents want their children to attain their fullest potential as learners and to succeed academically. *Special Plan for Bayview-Hunters Point Schools, Draft Update*, SFUSD Division for Integration, April, 1995, at 3-14 [hereinafter *Special Plan*].

Initially, teachers disfavored the eighth tenet, which attaches responsibility to teachers (versus administrators, the district, or all stakeholders in the schools) for individuals' failure to learn. However, this has not been an issue of contention recently. Everyone agrees the focus should be on the students' learning. Interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997).

42. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 1.

43. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 1. This

detail the restructuring of schools and school cultures of one area of San Francisco Unified School District's ("SFUSD's") poorest achieving members.<sup>44</sup> Developed by a team of education experts and periodically revised by a committee dedicated to educational improvement, the *Special Plan's* comprehensive reform proposals are attributed to the success of the Phase I school reconstitutions.<sup>45</sup> These proposals included detailed goals, and steps for achieving them, for each of the Philosophical Tenets. For example, for the fourth tenet, "All individuals can learn," the *Special Plan* lists ten subgoals. These subgoals include "All teachers will provide learning experiences that will enable students to think critically and creatively and to solve problems and exercise judgment as they learn new skills and knowledge," and administrators at each site will be responsible for the development of a professional growth profile for each staff member. Staff members will use these professional growth profiles to maintain records of participation in professional development activities.<sup>46</sup> Subgoals for each tenet, while affording flexibility, provide more guidance in achieving the tenets, which helps curtail the analogous problems with adopting standards that do not articulate clear goals.<sup>47</sup> The *Special Plan* takes an additional step, however; the *Plan* details instructional programs for elementary, middle, and high schools that literally depict a proposed typical day at a targeted school.<sup>48</sup>

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*Special Plan* has since been updated. See *Special Plan*, *supra* note 41.

44. The Bayview-Hunter's Point Schools were targeted first for reconstitution and are now known as "Phase I schools." BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 2. Consent decree provisions explicitly required reconstitution at these schools. See Consent Decree, *supra* note 34, at Part B, para. 15 et seq.

45. See, e.g., *Special Plan*, *supra* note 41, at 29; BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 2. See also Findings and Recommendations, *supra* note 34, at 56-57.

46. *Special Plan*, *Draft Update*, SFUSD Division for Integration, April, 1995, at 7.

47. See *infra* notes 72-75 and accompanying text for a more complete discussion of the difficulties in adopting clear standards.

48. *Special Plan*, *supra* note 46 at 14-27. These "Proposed Instructional Programs" specify school scheduling and course assignments. For instance, elementary schools are to have opening and closing ceremonies and academic learning blocks; middle schools will have heterogeneous student groupings and full access to all educational programs to ensure a diverse and challenging educational environment; and high schools will promote student participation in school governance and advanced classes by aptitude rather than overall GPA, to name a few examples. This highly structured format is arguably not philosophically optimal in the school setting in general, but providing a

*B. Case Study: The Application of Reconstitution in San Francisco*

After the adoption of the consent decree in 1982, SFUSD completed the first round of reconstitution by the summer of 1984. Four existing schools were reconstituted; two additional schools were created, also with the guidance of the *Special Plan*.<sup>49</sup> The Phase I schools, as these six schools came to be known, underwent complete overhaul with mixed success. However, although some commentators observe that these six schools have not yet reached the level of renowned Lowell High School,<sup>50</sup> their improvements are recognized by the district, the court, and the teachers.<sup>51</sup>

Subsequent to the first reconstitution, Phase II through IV schools, or those schools reconstituted in the second through fourth years, were not reconstituted in the same manner as the Phase I schools. The consent decree explicitly cited the Phase I schools,<sup>52</sup> a comprehensive restructuring plan tailored to Phase I school communities guided the reconstitution process,<sup>53</sup> and large amounts of funding provided the basis for developing and maintaining new programs.<sup>54</sup> The October 29, 1992 report to the court regarding the status of the consent decree recommended low achieving schools outside of Phase I also be open to reconsti-

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clear structure in schools which have consistently failed to do so is conducive to an enhanced learning environment. Interview with Kent Mitchell, former Treasurer and Current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

49. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 1.

50. Lowell Alternative High School, "the crown jewel of the San Francisco district," attracts the best and the brightest but many feel admissions are ultra competitive and the facility is overcrowded. Marsha Ginsburg, *Can S.F. Create Another Lowell High? Parents Want More Academic Alternatives*, THE SAN FRANCISCO EXAMINER, Mar. 6, 1994, at B-1. One parent commented that, "There just aren't enough good schools around" — this parent would have moved his family from San Francisco had his daughter not been accepted to Lowell. Creating another Lowell remains SFUSD's "greatest challenge."

51. Interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997); Findings and Recommendations, *supra* note 34 at 4-9; Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

52. See Consent Decree, *supra* note 34 at Part II C.

53. See generally *Special Plan*, *supra* note 41.

54. See Consent Decree, *supra* note 34.

tution.<sup>55</sup> Subsequently, Phase II schools faced reconstitution, but did not receive specially tailored plans for guidance nor the same level of funding as Phase I schools.<sup>56</sup> Phase II through Phase IV schools received less and less extra funding; Phase IV schools were incorporated into the school targeting process without having received any consent decree funds to assist with improvements beforehand.<sup>57</sup>

In 1992, a court-appointed committee of experts evaluated San Francisco's reconstitution efforts and made several recommendations.<sup>58</sup> Although highly approving of Phase I reconstitution,<sup>59</sup> this evaluative report made several suggestions for reconstitution.<sup>60</sup> For example, the committee recommended that all schools in the district be subject to reconstitution if they fail to implement strategies "that produce substantial progress."<sup>61</sup> However, the committee urged the district to provide reconstituted schools with the same support and resources Phase I schools received, particularly something akin to the *Special Plan for Bayview-Hunter's Point* to assist schools in identifying strong programs and committing themselves to the district's philosophical tenets.<sup>62</sup> The committee also recommended that reconstituted schools have five years to show improvement and commitment.<sup>63</sup>

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55. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 3.

56. Findings and Recommendations, *supra* note 34; interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

57. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 34, at 5 ("Starting in the spring of 1994 a dilemma began to emerge. It became clear to the parties that certain schools in the District were actually doing more poorly on the 17 indicators than schools which were involved in the Competitive School Improvement Program (hereinafter CSIP) process . . . The result of applying all these indicators to the entire District was the addition of the non-targeted schools that were included in the 1995-96 CSIP schools."). *Id.*; see also interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997) (emphasizing that these "non-targeted" schools received no support from the consent decree before targeting).

58. Findings and Recommendations, *supra* note 34.

59. *Id.* at 5. ("The implementation of the Bayview-Hunter's [P]oint model of school reconstitution — with staff selection and training built around a philosophy of opportunity for all children — did work. Reconstitution, *under the first phase of the Consent Decree*, involved selecting a new principal and recruiting an entire new staff at a school, committed to the goals of the Consent Decree") (emphasis added).

60. *Id.* at 56-57.

61. *Id.* at 56.

62. Findings and Recommendations, *supra* note 34.

63. Findings and Recommendations, *supra* note 34, at 57.

In response to these recommendations, all schools in the district became open to reconstitution but were also provided with greater support. From 1993, schools became "targeted schools" via performance on seventeen indicators agreed upon by the parties to the decree.<sup>64</sup> Once targeted, schools entered the Comprehensive School Improvement Program, or CSIP. CSIP provides targeted schools with: 1) a central office administrator who, on a part-time basis, assists the school in writing their one-site plans; 2) discretionary district resources; 3) no decline in categorical funding and more budget flexibility; and 4) a management consultant process, if desired.<sup>65</sup> In addition, CSIP principals and committees reached consensus on evaluative criteria that include quantitative and qualitative components.<sup>66</sup> In this way, some schools which participate in the CSIP process are reconstituted, but some schools "graduate" from being targeted schools.<sup>67</sup>

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64. Findings and Recommendations, *supra* note 34, at 57.

65. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, SFUSD, May 8, 1996, at 3.

66. *Id.* Quantitative areas include historical trends in student achievement; performance on the California Language Assessment System writing sample; alternative assessments of individual schools; average daily attendance records pursuant to state law; student suspension rates; students' grades; dropout rates; and student placement referrals. *Id.* at 4. Each quantitative component is valued at 12.5% of the overall quantitative assessment. For the qualitative areas, the One Site Plan must provide for effective activities to improve academic performance of African American and Latina/o students; school visits must show a match between the school's portfolio and oral presentation to the superintendent and review panel and the day-to-day activities of the school; the school's portfolio indicates the school's program to improve academic achievement; and the presentation to the superintendent and review panel communicates the effort and commitment to improving African American and Latina/o students' achievement. Together, the qualitative and quantitative components add up to one hundred points. BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 65 at 4.

Superintendent Waldemar (Bill) Rojas envisions some changes to the CSIP indicators. For example, he would like to see substantive coursework, GPA's, and lesson plans incorporated in the CSIP evaluation process. Interview with Waldemar Rojas, Superintendent of SFUSD, in San Francisco, CA (May 2, 1997).

67. For example, of the nine schools considered CSIP schools in the spring of 1993, five were eventually reconstituted (Bret Harte, Edison, Rosa Parks, Visitacion Valley, and Wilson), three graduated (Flynn, Alvarado, and James Lick — all of which remain in CSIP on a "voluntary" basis), and one remains on the CSIP list (John Muir) as of the spring of 1995. CSIP SCHOOLS, SFUSD, Oct. 18, 1995. Schools added to the CSIP list in the spring of 1994 include two schools which graduated (Daniel Webster and Glen Park — schools which also continue to participate in CSIP on a "voluntary" basis) and two schools which continue on the CSIP list as of Spring 1995. Those schools are De Avila and Potrero Hill. Continuing as a voluntary CSIP participant maintains the evaluation process of CSIP as well as oversight of programs provided through CSIP.

After over ten years of reconstitution, the meaning of reconstitution "until the task is completed"<sup>68</sup> is beginning to be reconsidered. While central district personnel continue to support reconstitution, several suggest thinking about partial or departmental reconstitution, or changing the structure of the process to include more people, assist in placing teachers, and afford more time for the reconstitution process.<sup>69</sup> If the "task" is interpreted to mean achieving the dual goals of the consent decree,<sup>70</sup> reconstitution will continue in its current form until the decree is officially revised to incorporate modifications to reconstitution.

### C. *The Impact of Reconstitution on the Stakeholders in the Schools*

The reconstitution process serves as a mechanism not only to swiftly change the entire environment of a school but also to bring greater resources to troubled schools. It is estimated that consent decree funds comprise about ten percent of SFUSD's total budget.<sup>71</sup> This money funds improvements ranging from replacing opaque plexiglass windows with glass to instituting staff development programs for more effective school disciplinary measures.<sup>72</sup> However, the process of reconstitution affects different members of the school community differently. Overall, the central district officials tend to praise reconstitution.<sup>73</sup> The response from school administrators, teachers, parents, communities, and, most importantly, the students must also be ex-

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68. Parties' Second Joint report to the Court Pursuant to the Court's Request at the August 26 & 27, 1992 Status Conference, at 6 [hereinafter Second Joint Report].

69. Interview with Judith M. Kell, Hal J. Solin, and Winnie Tang of SFUSD, in SF, CA (Feb. 24, 1997). See Part III for a fuller discussion of suggested alternatives.

70. This appears to be the generally accepted interpretation. See, e.g., BASIC INFORMATION ABOUT SCHOOL RECONSTITUTION, *supra* note 65 at 3.

71. Interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997). However, general district funds are now used for reconstitution; more schools are restructured but the resources available remain the same. Interview with Dr. Anthony Anderson, Assistant Superintendent of the Integration Department of SFUSD, in San Francisco, CA (May 2, 1997).

72. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

73. Interview with, Hal J. Solin, and Winnie Tang of SFUSD, *supra* note 69; interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997).

plored to effectively consider the impact of reconstitution on the school district.<sup>74</sup>

### 1. *Perspectives of School Administrators*

Two principals in SFUSD spoke candidly about what it means to work in a reconstituted school. The elementary school principal listed several programs "graciously funded by the consent decree" and noted that her school had taken great strides after reconstitution.<sup>75</sup> The middle school principal also recognized the value of consent decree support and funding for her school.<sup>76</sup> Both schools boasted innovative teaching strategies and structures, including special multi-cultural education courses and two-period core blocks.<sup>77</sup> Both principals reported fewer discipline problem and a warm response from the community as

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74. Superintendent Rojas candidly noted that due to the emotionalism surrounding the issues touched by the consent decree, "the problem with the consent decree is a political problem." Interview with Waldemar Rojas, Superintendent of SFUSD, in San Francisco, CA (May 2, 1997). While this Article will not address politicians as direct stakeholders, it is important to include political aspects in any discussion of school reform. For example, former Superintendent Ramon Cortines described the consent decree as a "cookie jar" for layers and experts and "an employment agency for everybody." Michael Dorgan, *Desegregation or Resegregation?*, SACRAMENTO BEE, July 2, 1995, at F01. Enola Maxwell, an African American community activist, blames the operation of the consent decree for persistent low achievement rates of African American students but sees no incentive for the district to end the decree and the money that comes with it. Debra J. Saunders, *Students Are Getting a Mixed Message: All Our Students Lose When Schools Emphasize Color Over Achievement*, THE ATLANTA JOURNAL AND CONSTITUTION, Aug. 29, 1995, at 18A. The NAACP's Lulann Mcgriff feels the consent decree must continue because it has not reached its potential, but she also notes that "[w]ithout that consent decree, the district would probably go bankrupt." Nanette Asimov, *Guardian at the School Gate: Behind San Francisco's Complex Enrollment Policy*, THE SAN FRANCISCO CHRONICLE, Nov. 3, 1996, at 3Z1. School board candidates in a recent election were forced to "reconsider" reconstitution if they wanted to earn union votes. Dirk Olin, *State and National Candidates*, SAN FRANCISCO WEEKLY, Oct. 30, 1996 (citing one candidate campaigning for re-election as stating he would "require a thorough analysis before supporting [reconstitution] again"); *San Francisco School Board Candidates*, THE SAN FRANCISCO EXAMINER, Oct. 31, 1996, at A-4 (quoting one candidate as supportive of reconstitution "if used sparingly").

75. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

76. Interview with Middle School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

77. *Id.* See also *supra* note 74.

a result.<sup>78</sup> For example, the elementary school principal recounted that a nearby supermarket employee commented, "Where are the kids?" shortly after she established and enforced new school-wide rules to deter truancy and cutting class.<sup>79</sup> That supermarket now provides the school with discounted lunches for field trips and snacks for school programs.<sup>80</sup>

At the elementary school specifically, the principal focused on increasing parent involvement and improving the learning environment for the students.<sup>81</sup> The school houses a parent room, complete with a computer, a multi-cultural library of children's books, and various self-help workshops, to attract parents. The principal even arranges to bus in parents to encourage attendance at school events. Students now wear uniforms and have clear rules for both the school and individual classrooms. With the help of a part-time curriculum specialist assigned through the consent decree, every classroom participates in special district and school programs to improve math and literacy skills.<sup>82</sup> Test scores have not yet significantly improved at the school, but the principal believes the foundation for learning built by the creation of a safe, positive environment over the past two years will result in higher test scores in the near future.

While the elementary school principal noted that "the district is very good about granting requests" to reconstituted schools, she pointed to several trouble spots in the process. For example, she stated that she had extreme difficulty attracting seasoned teachers to her school after reconstitution. With predominantly new (two or fewer years of experience) and

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78. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

79. *Id.*

80. *Id.* In addition, this principal feels it is important to "pound the pavement" in the community to garner support for the school. She introduced herself to several area businesses and arranged for student discounts for video rentals, haircuts, and dry cleaning, the last in an effort to assist low-income parents with the newly instituted uniform rule.

81. All of the information regarding the elementary school is derived from an interview in San Francisco, California, on March 14, 1997.

82. For example, to improve literacy, each classroom had "Word Walls" which displayed new vocabulary words under the corresponding letter of the alphabet. All grades were learning about fractions at various levels of difficulty, from drawing "half pictures" in the early grades to performing simple math with fractions and displaying the cognitive process to get the answer in words, numbers, and graphs in the fifth grade.

noncredentialed teachers, the reconstitution experiment would benefit with more "veterans" for mentoring and input. In addition, the pressure to raise test scores sometimes seemed to eclipse the positive affective gains made at the school. Both quantitative and qualitative measures are incorporated in the Comprehensive School Improvement Program, but the main focus rests on the quantitative test scores.<sup>83</sup> For curricular improvements, the principal wished for a full-time curriculum specialist to take on a more active role and built-in teacher planning time to encourage interdisciplinary instruction. As she displayed the newly renovated teachers' room, she noted sadly that it looked spotless not because of meticulous cleaning but because few teachers had time to enjoy it.

The middle school principal was also quite positive about the effect of reconstitution on her school.<sup>84</sup> Noting that the school used to be fraught with racial tension, the principal has inculcated students with the idea that everyone deserves respect. For example, at the school's talent show, students of all colors clapped appreciatively for performances featuring African, Afro-Haitian, and Latino themes despite past contention between those groups. Enforcing clear, consistent rules has helped develop mutual respect. The principal also stated that her school is "at the forefront in developing curriculum." In particular, the school is now focusing on integrating visual arts and technology in the curriculum and increasing hands-on, project based assignments. Its successful IRISE program, an Afrocentric course, is also supported by the consent decree. In addition, the principal tries to involve parents by notifying them of special events and programs, inviting them to various on-site workshops, and enlisting their help in monitoring their children's homework. Parents are not always able to participate in school events as two-thirds of the students are bussed in; this school is not a "neigh-

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83. In addition to generally suggesting that more attention be paid to affective improvements, the principal also reported that her school received many transfer students who required additional time to become accustomed to their new school's rules and atmosphere. She suggested that these students form a subgroup, by amount of time spent in the given school, in test score reporting to better reflect the impact of the school on the student.

84. All of the information regarding the middle school principal's views is derived from interviews with the principal in San Francisco, California, on March 14, 1997, and April 11, 1997.

borhood school” although its student population did *not* change with reconstitution.<sup>85</sup>

Looking back on the troubled history of the school, which was dominated by gangs and consistently continues to enroll at least half of its new students from the lowest quartile of test scores, the principal believes reconstitution has helped an underdog school reach some of its potential.<sup>86</sup> However, she sees that gang problems still emerge and suspension rates remain relatively high. She expressed some disappointment with the emphasis on test scores rather than an equal consideration for affective changes. The climate of the school has altered considerably with reconstitution but these positive changes, including socialization and community building, do not garner much weight in the Comprehensive School Improvement Program process.<sup>87</sup> By continuing to push standards for the students and providing them with more information about their educational futures,<sup>88</sup> the principal feels her school and her students will be successful.

## 2. *Views of Classroom Teachers*

The former president of San Francisco’s Teachers’ Union considers reconstitution a method of blaming teachers for the school district’s problems.<sup>89</sup> The current president feels reconstitution has become more of a political than educational tool.<sup>90</sup> Since teachers face termination at the hands of reconstitution, it

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85. The principal also noted that this middle school has one of the highest percentages of targeted schools in the district.

86. For example, this past year the school’s students achieved average scores in math and reading with no reduction by racial group.

87. *See supra* notes 64-67 and accompanying text for more information about CSIP indicators.

88. The principal and several teachers took part in an information program for seventh graders describing various post-secondary educational opportunities in the San Francisco area. The seventh graders were preparing for a field trip to one of several universities or colleges; after hearing about what each institution had to offer, students elected three choices for the visit. The principal concluded the program by telling the students any of them could attend any of the institutions, which ranged from Stanford University to junior colleges and trade schools, emphasizing that some may have to study more or obtain loans or part-time work to do so, but it was all within reach.

89. *See supra* note 2.

90. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

is not surprising that many have strong feelings about the practice.

The teachers' union has had an antagonistic experience with reconstitution. A lawsuit challenging the practice as violative of state contracting laws, which reached the appellate level, was abandoned for lack of resources and lack of certainty that the State Supreme Court would side with the union.<sup>91</sup> Neither teachers nor the union were consulted in conjunction with the consent decree or the development of reconstitution policy, which has festered into a feeling of being shut out of the process.<sup>92</sup> The union is now contemplating ways to build bridges with the parties to the consent decree so that the process incorporates the views of teachers.<sup>93</sup>

As noted by the elementary school principal, it is difficult to attract dedicated, experienced teachers to reconstituted schools. Many feel the reconstitution label will stigmatize them.<sup>94</sup> Some are so disheartened by reconstitution that they do not reapply for positions at their home school.<sup>95</sup> While not "reconstituted" herself, one teacher noted that a colleague who had just undergone the process the year before still describes it as the most demoralizing, heartbreaking experience of his life.<sup>96</sup> Other teachers in the district describe reconstitution as "randomly replacing people instead of looking at their individual qualifications," "a scapegoating device," and a method that "blames and shames teachers, which is exactly the way we are trained not to treat children."<sup>97</sup> A thirty-year veteran was so angry at being

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91. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

92. *Id.*

93. *Id.* In particular, Mr. Mitchell noted a need for the union and the NAACP to collaborate on goals and solutions. For a more complete discussion of reforms the union proposes, please see *infra* Part IV. In addition, a recent tentative agreement between Superintendent Rojas and United Educators of San Francisco ("UESF") former President Shelley may bridge this gap. See *infra* note 211 and accompanying text.

94. Interview with a High School Teacher of SFUSD, in San Francisco, CA (Mar. 15, 1997).

95. Teachers may reapply for positions at their schools after reconstitution. Tenured teachers are guaranteed placement elsewhere in the district. However, many choose to retire from teaching altogether. See also Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

96. *Supra* note 94.

97. David Ruenzel, *Do or Die*, EDUCATION WEEK ON THE WEB (Mar. 1997) (visited Mar. 28, 1998) <<http://www.edweek.org/tm/vol-08/06sf2.h08>>.

“vacated” she wanted to hit someone; she claims the district “stymied us, then shut us down.”<sup>98</sup> In this antagonistic environment, retaining reconstituted teachers seems to be a tough challenge.

The result of this difficulty in attracting seasoned educators to apply to reconstituted schools is a surplus of new and inexperienced or noncredentialed teachers filling slots at reconstituted schools.<sup>99</sup> This situation reduces the seasoned teachers’ perspective and leaves novice teachers without mentors. High turnover rates at reconstituted schools, in part because of one year renewable contracting, can further exacerbate the situation. While Superintendent Rojas recognizes that “youngsters need appropriately prepared and appropriately credentialed teachers,” he also emphasizes that reconstitution is an effort toward building a “critical mass” of teachers with the dedication to improve their students’ learning.<sup>100</sup> Rojas describes reconstitution as a means of “accelerat[ing] teaching and learning.”<sup>101</sup> However, the ability to transform a school by creating a community dedicated to mutual goals may be tempered by the inability to attract teachers to what is sometimes perceived as a “sinking ship.”<sup>102</sup>

98. David Ruenzel, *Do or Die*, EDUCATION WEEK ON THE WEB (Mar. 1997) (visited Mar. 28, 1998) <<http://www.edweek.org/tm/vol-08/06sf2.h08>>.

99. David Ruenzel, *Do or Die*, EDUCATION WEEK ON THE WEB (Mar. 1997) (visited Mar. 28, 1998) <<http://www.edweek.org/tm/vol-08/06sf2.h08>>. As of November, 1996, out of approximately 4,000 educators in SFUSD, 1,049 are long-term substitutes, 146 are noncredentialed, and 38 are interns. Reconstituted schools, however, seem to have the largest proportion of teachers falling outside the category of “permanent or probationary teacher.” Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997). The principals of the schools described above could not give an accurate count of noncredentialed teachers at their respective schools. *Supra* notes 81, 84.

100. Interview with Waldemar Rojas, Superintendent of SFUSD, in San Francisco, CA (May 2, 1997).

101. *Id.*

102. See, e.g., Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997); interview with High School Teacher of SFUSD, in San Francisco, CA (Mar. 15, 1997); but see interview with Middle School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997) (stating that her school had nationwide recruitment from some of the top Schools of Education in the country).

### 3. *Attitudes of Parents and Communities*

Once schools are reconstituted, parent involvement seems to have improved in those schools.<sup>103</sup> Schools structure more events and workshops with parents in mind, and even help with transportation for those parents who do not live in the neighborhood.<sup>104</sup> In addition, reconstituted schools concentrate greater efforts on informing parents of upcoming events and of their children's schoolwork.<sup>105</sup> However, the Comprehensive School Improvement Program process puts schools on notice and many parents protest impending reconstitution when they feel their children's schools are already on the right track.<sup>106</sup>

Although Superintendent Rojas now includes the PTA in his cabinet meetings, he does not always receive support from parents for his policies.<sup>107</sup> For example, in addition to protesting reconstitution at a school board meeting discussing redrawing the district map, parents reportedly attacked Rojas for drafting a map without their input.<sup>108</sup> According to some reports, the fear of having their children placed in notoriously underachieving schools, like those on the CSIP list, induces some parents to lie about their children's ethnic backgrounds to gain admission to better schools despite the forty percent cap per ethnic group.<sup>109</sup>

103. See, e.g., Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997). See also David Ruenzel, *Do or Die*, EDUCATION WEEK ON THE WEB (Mar. 1997) (visited Mar. 28, 1998) <<http://www.edweek.org/tm/vol-08/06sf2.h08>>.

104. *Supra* notes 80-82 and accompanying text.

105. *Id.*

106. See, e.g., Venise Wagner, *Parents Fight Changes at Schools: Replacing Staff Will Hurt Children at Starr King, Aptos, They Say*, THE SAN FRANCISCO EXAMINER, May 14, 1996, at A-3. Parents at these schools felt the threat of reconstitution was "unjustified" and the parents would be the first to rally for reconstitution if it meant an improvement for their kids.

107. Venise Wagner, *Rojas' Rules: Controversial SF School Superintendent Bill Rojas Has Demonstrated the Courage to Shake Up the System. The Question Remains: Will Our Schools Get Better?*, THE SAN FRANCISCO EXAMINER, July 30, 1995, at M-10.

108. *Id.*

109. Nanette Asimov, *Racial Fakery Gets Kids in Better SF Schools*, THE SAN FRANCISCO CHRONICLE, Dec. 7, 1990, at A4. This article reports that parents "skirt" the ethnicity issue to get children as young as kindergarten age into top schools, and "[n]o one in the district questioned them." "It is hard to find a parent who does not know at least one person who has lied on a school application or who is at least thinking about it." The district cites the great diversity of the population and interracial marriages as impediments to trying to deter lying about ethnicity on applications. District personnel placing students in schools also noted the difficulty in investigating this issue —

Since parents are crucial to the education of their children, and since parent involvement is a major component of reconstitution, the voices of parents must also be incorporated in the process for it to be successful.

#### 4. *Opinions of Students*

In visits to reconstituted elementary and middle schools, students seemed genuinely engaged in and positive about their classes. Elementary school students in small-sized classes participated as individuals and in groups; many students eagerly showed classroom visitors their current projects.<sup>110</sup> An eighth grader noted that her school seemed safer after reconstitution, but she still felt it had a ways to go.<sup>111</sup> At this school, "greeters" provided visitors with explanations of class lessons, class rules, and class achievements at the middle school.<sup>112</sup> The sixth grade students, enrolled in the school after reconstitution, did not seem to harbor any stigma but rather seemed comfortable in the learning environment and articulate about what and how they were learning.<sup>113</sup> Eighth grade students participating in the IRISE program expressed great enthusiasm for the class, its teacher, and its content.<sup>114</sup> None of these students, however,

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challenging a person's ethnic identity, particularly in a city as diverse as San Francisco, raises questions of privacy and individuality. Interview with SFUSD Office of Enrollment and Registration officials, in San Francisco, CA (May 2, 1997).

This sense of unfairness has spawned a lawsuit against the capping process, at least in the context of elite Lowell Alternative High School. Chinese American and white parents contend the caps focus on race over academic ability and deny children educational opportunity as a result. *See generally* Maria Puente, *Asians, Whites Join Forces in School Integration Debate*, USA TODAY, Sept. 11, 1995, at 8A. However, this challenge to the consent decree was recently denied. *Ho v. San Francisco Unified School District*, 97 DAR 12433 (N.D. CA).

110. Visit to Elementary School Site of SFUSD (Mar. 14, 1997).

111. Interview with Eighth Grade Student of SFUSD, in San Francisco, CA (Mar. 14, 1997). As we walked from the school to the Bay Area Rapid Transit station together, we passed another student of the school whose nose was bleeding from an attack. This was just three blocks from the school, unfortunately a little further than from where the principal and staff monitored students' departures from the school.

112. Interviews with Sixth Grade Students at SFUSD Middle School, in San Francisco, CA (Apr. 11, 1997).

113. *Id.* For example, each greeter (all students took turns in this role) explained not only the actual assignments, but the process by which these assignments were completed and the overall purposes of the assignments.

114. Interview with IRISE Students at SFUSD Middle School, in San Francisco,

were familiar with reconstitution and only vaguely recognized the consent decree.

Some students who have lived through reconstitution are not as positive about the process. The promise of reconstitution programs is not always realized in application. For instance, one newspaper heralded Thurgood Marshall Academic High School as "the first school in the city — and possibly anywhere — to send a computer and modem home with every student."<sup>115</sup> However, the article also mentioned that there are many bugs in the system and the computers are outdated; a student begging her computer, "Please work, oh please work this time!" but resorting to handwriting her work is a shared experience among Marshall students.<sup>116</sup> Another report stated that students at Aptos Middle School noted that reconstitution did not vacate disorderly classrooms.<sup>117</sup> The proposed reconstitution of Mission High set off an elaborate student protest — students marched on City Hall and enlisted the help of Mayor Willie Brown in their unsuccessful fight to keep their school and its administrators.<sup>118</sup> When asked what she thought of her school, a Balboa student reportedly replied, "It's worse than before reconstitution. They should have left it alone."<sup>119</sup> In a roundtable discussion with a principal, school board member, parent, and teacher, a student suggested that the school reform process incorporate student voices to better effect positive change.<sup>120</sup> As she put it, "Everything we're here for is to educate the kids, and if you're not asking the kids how they're doing, then what's the point?"<sup>121</sup>

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CA (Apr. 11, 1997).

115. Nanette Asimov, *Computer Links Homes to Classes; SF School Gives Donated PCs to Kids*, THE SAN FRANCISCO CHRONICLE, Dec. 30, 1994, at A19.

116. *Id.*

117. Venise Wagner, *3 Schools to be Revamped; Teachers Fume Over SF District's Decision to "Reconstitute" Aptos, Starr King, Balboa*, THE SAN FRANCISCO EXAMINER, May 10, 1996, at A-12.

118. Venise Wagner, *Student Campaign to Retain Three Administrators Fails*, THE SAN FRANCISCO EXAMINER, May 29, 1996, at A-5.

119. See Ruenzel, *supra* note 104.

120. Venise Wagner, *Making Schools Better; Roundtable Talk Tackles Tough Issues; A Bay Area Roundtable Discussion on Education*, THE SAN FRANCISCO EXAMINER, Dec. 3, 1995, at C-1.

121. *Id.*

### D. *Following San Francisco: Reconstitution Across the Country*

Recently, school districts across the country have been initiating plans to adopt reconstitution.<sup>122</sup> None have the consent decree background or years of application of San Francisco's public schools, and many have fashioned reconstitution procedures with local pressures and goals in mind that differ from the San Francisco model. This Section will first describe how other school districts have implemented reconstitution. Finally, this Section will examine the challenges the districts have faced regarding reconstitution, and whether these were successfully or unsuccessfully met.

#### 1. *Authorization of Reconstitution*

Reconstitution differs from other education reform measures in its drastic nature, which may make it more difficult to achieve in the often highly politicized context of public education.<sup>123</sup> While San Francisco adopted reconstitution through its consent decree, other states have or are attempting to legislate reconstitution.<sup>124</sup> Media reports monitor these developments across the country. In Philadelphia, the city's Superintendent of Schools announced plans to reconstitute two high schools for continuing poor performance,<sup>125</sup> and Oakland's Superintendent of Schools made a comparable proposal to initiate reconstitution.<sup>126</sup> In Maryland, the State Department of Education imple

122. See *supra* note 6 and accompanying text for a list of cities considering or implementing reconstitution.

123. See *supra* note 74 for an overview of the political aspects of reconstitution in San Francisco as one example of the politics of education.

124. An Illinois state law provides for reconstitution — but no extra resources are earmarked for the reform measure. Rosalind Rossi, *School Shakeups a Muddled Issue; Firing Power: Witch Hunt or Reform?*, CHICAGO SUN-TIMES, June 12, 1995, at 8. A Wisconsin law allows for reconstitution; when this law faced a legal challenge, one school board member wanted to rename it "refocusing." Daniel J. Hooker, *Board OK's Revamp of 6 Schools; New Programs Will Not Include Staffing Changes*, MILWAUKEE JOURNAL SENTINEL, May 30, 1996, at 1.

125. Gil Klein, *Radical School Reformers Are Starting From Scratch; Some Cities Tackle Problems By Rebuilding Entire Staffs*, THE RICHMOND TIMES DISPATCH, Feb. 23, 1997, at A-6.

126. Lori Olszewski, *Big Issues Cloud Back-to-School Day in Oakland*, THE SAN FRANCISCO CHRONICLE, Sept. 9, 1996, at A15. In both Oakland and Philadelphia, the

mented regulations allowing for reconstitution.<sup>127</sup> Similarly, the State Board of Education in Minnesota recently approved a revised school desegregation rule incorporating reconstitution.<sup>128</sup> Perhaps most analogous to San Francisco, the *Sheff* Commission on desegregation, named after Massachusetts' landmark school desegregation case, recommended as part of a revised desegregation plan.<sup>129</sup>

## 2. Implementation of Reconstitution

With formal authority, school districts may apply reconstitution based on the criteria set for their district. Some provisions allow for different gradations or phases before the clean sweep of reconstitution. Unlike San Francisco's Comprehensive School Improvement Program indicators,<sup>130</sup> other districts depend on state standards<sup>131</sup> or pure test score results to determine which schools will be reconstituted.

A Chicago newspaper describes the Chicago system of reconstitution. If a school fails to meet state standards for three consecutive years, the school is eligible for "intervention."<sup>132</sup> At the intervention stage, a special Academic Accountability Council, along with the school, present the school's case to the school board at a hearing. If the board approves the intervention, every employee of the school must be evaluated and the trustees will refer to these evaluations for firing, laying off, transferring, or

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superintendents' decisions met with some opposition from teachers and community activists as well as some education specialists. *Infra* notes 153-155 and accompanying text.

127. Carol S. Parham, *We're Moving to Help Struggling Schools*, THE CAPITAL, Feb. 11, 1996, at A11.

128. Duchesne Paul Drew and Wayne Washington, *State Will Overhaul Rule on School Integration But Change Not Favored By All*, STAR TRIBUNE, Mar. 11, 1996, at 1A.

129. *Fixing Connecticut's Schools*, THE PROVIDENCE JOURNAL-BULLETIN, Feb. 25, 1997, at 4B. However, at the time this article was written, "reconstitution" as a practice remained undefined — what it would entail, how schools would be identified, how reform would be funded.

130. *See supra* notes 107-117 and accompanying text for a discussion of the CSIP process in San Francisco.

131. This emphasis on state standards may be problematic where the standards are not clearly designed or adequately specific. *See supra* note 74 and accompanying text.

132. Rosalind Rossi, *School Shakeups a Muddled Issue; Firing Power: Witch Hunt or Reform?*, CHICAGO SUN TIMES, June 12, 1995, at 8.

retaining staff.<sup>133</sup> If the school is “in educational crisis,” it may face complete employee reassignments without any hearings, evaluations, or terminations.<sup>134</sup>

Maryland’s program evaluates schools statewide on the basis of test performance, attendance, and dropout rates.<sup>135</sup> Reconstitution in Maryland, however, does not necessarily entail “vacating” all school employees. According to commentators, a school is often first designated an “alert school,” a school performing lowest in the state with regard to state standards.<sup>136</sup> If the school remains on alert, the school may be subject to. Pursuant to state regulations, reconstitution in Maryland involves “changing one or more of a school’s administration, staff, organization, or instructional program.”<sup>137</sup> Before any change, the school system submits a proposal to the state for the reconstitution-eligible school, addressing specific problems and ways to resolve them.<sup>138</sup> The state provides increased services and careful monitoring of instruction to ensure progress.<sup>139</sup> Similar to San Francisco’s CSIP list, schools in Maryland may graduate, or be removed, from the “alert school” list.<sup>140</sup>

In Wisconsin, the Milwaukee Public Schools Superintendent proposed, and the school board approved, application of state

133. Rossi, *School Shakeups a Muddled Issue; Firing Power: Witch Hunt or Reform?*, CHICAGO SUN TIMES, June 12, 1995, at 8. These trustee decisions are made without further hearings.

134. *Id.* The phrase “in educational crisis” is not defined.

135. Carol S. Parham, *We’re Moving to Help Struggling Schools*, THE CAPITAL, Feb. 11, 1996, at A11.

136. *Id.*

137. *Id.*

138. Carol S. Parham, *We’re Moving to Help Struggling Schools*, THE CAPITAL, Feb. 11, 1996, at A11.

139. *Id.* In 1995, four percent of the state’s public schools were reconstituted at a cost of \$200,000 to \$300,000 per school; the state grants financial and personnel resources and the schools make up the difference with their individual budgets. Susan Young, *Failing Our Kids: State Seeks New Standards for Failing Schools*, BANGOR DAILY NEWS, Dec. 21, 1996. In San Francisco, the total cost of reconstituting one high school, Burton, was calculated at \$1,530,000. Memorandum, Sub: Phillip and Sala Burton H.S., Feb. 10, 1997. Relying on state funding since local funds were no longer available resulted in a one to two year delay in achieving the proposed reconstitution. Dr. Anthony Anderson, Assistant Superintendent of SFUSD’s Integration Department, noted that reconstitution will become more economically difficult because the resource pool remains stagnant, causing pressure of SFUSD to reprioritize resources. Interview with Dr. Anthony Anderson of SFUSD, in San Francisco, CA (May 2, 1997). For a discussion of how funding reconstitution affects school systems statewide, see *infra* Subsection 3, Challenges to reconstitution.

140. Parham, *supra* note 138.

legislation allowing superintendents to override normal procedure and reconstruct public school facilities.<sup>141</sup> Media reports reveal Milwaukee's reconstruction is similar to the San Francisco plan that the entire staff is dismissed, or reassigned,<sup>142</sup> the curriculum is revamped, but the students remain the same.<sup>143</sup> One reconstitution-eligible school presented the following scenario: an overall "D" grade point average, a 51% dropout rate, a 75% attendance rate, high student turnover, 80% of the students living in poverty, and consistently low performance on the district's academic achievement assessments.<sup>144</sup> The community, parents, district administrators, teachers, and local and national union representatives attempted to negotiate reconstitution-like changes, but the discussions lapsed.<sup>145</sup> Currently, a lawsuit against the district's implementation of reconstitution prevents school districts in Wisconsin from using the reform measure pending modified legislation.<sup>146</sup>

Observers found Minnesota's revised school desegregation rule suggests using the "threat" of reconstitution, or reassignment of staff, if gaps between the test scores of white and minority students are not narrowed.<sup>147</sup> State Board of Education President Jeanne Kling warned, however, that this measure may have overstepped board authority and may require legislative

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141. Alan J. Borsuk, *A Breather: MPS Reforms Proceed Slowly; Rush of Enthusiasm a Year Ago Gives Way to Obstacles, Opposition*, MILWAUKEE JOURNAL SENTINEL, June 2, 1996, at 1.

142. In San Francisco, tenured teachers are reassigned to other schools within SFUSD.

143. Daniel L. Hooker, *Fixing MPS: An In-Depth Look at Some of the Trends and Forces; Shaping and Reshaping the 102,500-Student System*, MILWAUKEE JOURNAL SENTINEL, Nov. 19, 1995, at 22.

144. *Id.* This particular school, South Division High School, received extra funding and services prior to Wisconsin's reconstitution legislation. However, problems such as staffing disputes, lack of outreach to parents, and low morale have festered. In addition, the student population changed from predominantly white in the 1970's to approximately 85% students of color, including Latina/o, African American, Hmong, and Native American students.

145. See Subsection 3, Challenges to reconstitution, below, for a discussion of the union's successful suit to enjoin the state legislation authorizing reconstitution in Wisconsin. As a result of this injunction, South Division High School stakeholders attempted to craft an individualized restructuring as described in the text to this note, which unfortunately reached an impasse. South Division remains a troubled school.

146. See below, Subsection 3, Challenges to reconstitution, for a fuller discussion of this lawsuit.

147. Duchesne Paul Drew and Wayne Washington, *State Will Overhaul rule on School Integration But Change Not Favored By All*, STAR TRIBUNE, Mar. 11, 1996, at 1A.

authority.<sup>148</sup> One Minneapolis elementary school was the first to face reconstitution, or the hiring of a new principal who could select faculty districtwide.<sup>149</sup> The new staff would replicate a successful, detailed educational program to turn around the school.<sup>150</sup>

### 3. *Challenges to Reconstitution*

Given the upheaval reconstitution places on school staff, union opposition to the measure is not surprising. In San Francisco, the teachers' union attempted to attack reconstitution as violative of state contract law, but these efforts failed in the face of the federal court's consent decree.<sup>151</sup> The Milwaukee teachers' union, however, successfully enjoined the Wisconsin state law authorizing reconstitution because it imposed involuntary transfers on teachers in violation of their contracts and collective bargaining rights.<sup>152</sup> The Philadelphia Federation of Teachers ("PFT") recently filed suit to enjoin the superintendent from reconstituting schools.<sup>153</sup> According to news reports, the PFT and

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148. Duchesne Paul Drew, *Morris Park School Wipes Slate Clean; Faculty at Troubled Institution Will Be Disbanded*, STAR TRIBUNE, June 12, 1996, at 1B. In March of 1996, the board proposal including the reconstitution provision still faced extensive public hearings and judicial review. However, by June of 1996, Minneapolis's superintendent announced, without opposition, the reconstitution of a school "[a]fter years of failing."

149. Drew, *supra* note 148. Former teachers at the school could reapply but were given no preference or priority in filling positions.

150. *Id.* A great emphasis on future success of the school was placed on the new staff working and feeling like a team.

151. *See supra* note 141 and accompanying text. Similarly, the recently passed state initiative, Proposition 209, which prohibits preferential treatment on the basis of ethnicity (informally known as the anti-affirmative action initiative), does not impact the functions of the federal consent decree.

152. Borsuk, *supra* note 141. Circuit Court Judge Patrick Madden struck down the law as unconstitutional for disregarding previously-bargained for seniority rights and prohibiting negotiations on seniority rights in future contracts. Curtis Lawrence, *MPS Closings Blocked; Judge Questions Constitutionality*, MILWAUKEE JOURNAL SENTINEL, Mar. 9, 1996, at 1. New legislation has not yet addressed this issue. Plans to proceed with the other aspects of reconstitution, such as structuring longer core class periods into the school day and incorporating innovative academic programs, have moved forward. One skeptical former school board member doubts these measures will have a real effect because "[W]e don't have the ability to exact consequences when a school fails to educate a child."

153. *PFT Sues to Protect Parents, Students and Children at Audenreid & Olney*, PR NEWSWIRE, Feb. 18, 1997.

Philadelphia's school board had contracted to form the Keystone School Program, under the auspices of which the superintendent announced the reconstitution of two schools.<sup>154</sup> Claiming this announcement violated the contract, which required PFT concurrence in reform measures, the PFT argued that the superintendent's unilateral action served to "intimidate and coerce" employees and violated not only the contract but also the state school code.<sup>155</sup> This lawsuit is still pending.

In addition to challenges in the courtroom, reconstitution also faces internal disputes.<sup>156</sup> In Maryland, an overwhelming proportion of reconstituted schools are in Baltimore.<sup>157</sup> This condition, no surprise when one looks at the data used to evaluate schools for the measure,<sup>158</sup> has caused other school systems in the state to question Baltimore's money management.<sup>159</sup> With significantly more money per pupil, Baltimore's schools, even those reconstituted, continue to rank lowest statewide.<sup>160</sup> In some Baltimore schools, one observer reports that "not one child meets the state standard in any subject."<sup>161</sup> While the community is frustrated by the apparent lack of results, other Maryland school districts challenge Baltimore's extra funding as a matter of educational equity.<sup>162</sup> As a result, Baltimore schools are reportedly not likely to receive more funding until they con-

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154. *PFT Sues to Protect Parents, Students and Children at Audenreid & Olney*, PR NEWSWIRE, Feb. 18, 1997.

155. *Id.* The Philadelphia federation of Teachers ("PFT") did not assert that reconstitution is a prohibited practice; instead, the PFT demanded a part in the determination process. PFT spokespersons alleged that allowing the superintendent to singlehandedly direct reconstitution would be unacceptably arbitrary and disruptive to the educational process.

156. Even the President of the State Board of Education, the body proposing reconstitution, doubted the Board had authority to implement such a measure in Minnesota. *See supra* note 148 and accompanying text.

157. *From Reconstitution to Reform; Fixing City Education; Long List of Failed Schools Adds Urgency to State-City Partnership*, THE BALTIMORE SUN, Jan. 25, 1996, at 14A.

158. Baltimore displays the poorest dropout, attendance, and test performance rates in the state.

159. *From Reconstitution to Reform; Fixing City Education; Long List of Failed Schools Adds Urgency to State-City Partnership*, THE BALTIMORE SUN, Jan. 25, 1996, at 14A.

160. *Id.* Almost one quarter of Baltimore's schools are reconstitution-eligible, a much higher percentage than any other district in the state.

161. *From Reconstitution to Reform, supra* note 159.

162. *Id.* For instance, nine other school systems in the state have less money per pupil but perform significantly better than Baltimore.

vince state legislators that the money leads to educational progress.<sup>163</sup>

Community members also may take a strong stand regarding reconstitution. In Milwaukee, prior to the union's lawsuit, one commentator observed that the public hearing discussing the school board's proposal to reconstitute six schools resulted in several community members' outrage at the idea of reconstitution.<sup>164</sup> Claiming that reconstitution unfairly singles out teachers and does not attach enough blame to parents and the students themselves, opponents of reconstitution did not make a strong case to the school board in light of the need for restructuring and the responsibility to educate all students.<sup>165</sup> However, the injunction settled this argument, at least until further legislation is enacted.

#### IV. ASSESSING RECONSTITUTION: DOES IT LEAD TO GREATER EDUCATIONAL QUALITY?

The main purpose of reconstitution is to completely reorganize a school and its culture so that the school will better meet the educational needs of its students. In districts other than San Francisco, it is difficult to assess reconstitution because the practice has not been in application very long.<sup>166</sup> Many of those districts are still adjusting to the process. The committee of experts asked to make recommendations in San Francisco suggested that reconstituted schools be given five years to make progress.<sup>167</sup> Therefore, rather than prematurely evaluating

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163. Sara Engram, *Another Crisis, Another Opportunity*, THE BALTIMORE SUN, Jan. 28, 1996, at 3F. Reconstitution has heightened tensions between city and state governments in Maryland due to this disparate funding issue and the continued poor performance of Baltimore schools.

164. Stanford, *No Compelling Case for Preserving 5 of 6 Targeted Schools*, MILWAUKEE JOURNAL SENTINEL, Dec. 19, 1995, at 18. The reporter describes the hearing: "The emotions were as intense as the arguments were weak at two marathon public hearings . . . ."

165. *Id.*

166. Note, however, the general disappointment associated with the Baltimore schools, despite heavy reconstitution and the extra services and funding that come with it. *Supra* notes 157-163 and accompanying text.

167. *Findings and Recommendations*, *supra* note 34, at 57.

“systems-in-progress,” Part IV will focus on San Francisco’s public schools.

*A. Centralized vs. Decentralized Education Reform*

Reconstitution in San Francisco is unabashedly a top-down reform measure.<sup>168</sup> For example, the central district office selects which schools will be reconstituted and then which programs will be implemented at those schools.<sup>169</sup> This clashes with the recent trend towards decentralization in education reform.

Historically, centralized education reforms purported to equalize educational opportunity by giving all students exactly the same education.<sup>170</sup> Influenced by the Industrial Revolution, education leaders at that time proposed that “applying the factory model to the systemization of schools”<sup>171</sup> to better equip students with the resources and knowledge required by “the complex nature of citizenship in a technological, urban society.”<sup>172</sup> Although these ideas developed over one hundred years ago, an analogy may be made to the present Information Age, which, it may be argued, requires today’s students to be conversant with computer technology.

Traditional centralization, however, gave way to decentralized approaches to school reform. In the 1960s, compensatory education programs such as Chapter I developed as an ad hoc attempt to rectify inequities; these types of isolated programs, however, “prompt[ed] the comment that pouring funds at the top of school bureaucracies was like feeding a horse in order to feed the sparrows.”<sup>173</sup> The push to decentralize, or provide for greater local control, resulted from this dissatisfaction with top-down

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168. Interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997).

169. SFUSD Desegregation Report No. 13 to the U.S. District Court for the Northern District of California, Sept. 3, 1996, at 41-42 [hereinafter Report No. 13].

170. Tyack, David B., *THE ONE BEST SYSTEM: A HISTORY OF AMERICAN URBAN EDUCATION* (1974).

171. *Id.* at 41. This technique was supposed to promote greater efficiency and uniformity.

172. *Id.* at 14.

173. Tyack, David B., *THE ONE BEST SYSTEM: A HISTORY OF AMERICAN URBAN EDUCATION* (1974) at 282.

measures.<sup>174</sup> Site-based management and charter schools are examples of modern decentralist measures.

Defining "local control" presents another challenge. *Political* control, for example, tends to be in the hands of administrators, boards of education, legislators, and judges.<sup>175</sup> Most education reform promotes *professional* control, or empowering teachers and local communities to make pedagogical decisions to better teach their students.<sup>176</sup> In San Francisco, professional and political control rests in the central district offices. However, under the consent decree and the reconstitution process, each school in the district receives individualized attention from the district. While some may assert that this attention does not respect individual school autonomy,<sup>177</sup> one scholar argues that even under centralized systems, schools and teachers tend to make autonomous decisions.<sup>178</sup> Therefore, the monitoring and review mandated under reconstitution may not be so different from decentralist concepts.

174. Handler, Joel, *DOWN FROM BUREAUCRACY: AMBIGUITIES IN PRIVATIZATION AND EMPOWERMENT* (1996) at 261.

175. *Id.* at 266.

176. Handler, Joel, *DOWN FROM BUREAUCRACY: AMBIGUITIES IN PRIVATIZATION AND EMPOWERMENT* (1996) at 265. Prof. Handler describes this type of control as teachers collaborating more and working in isolation less. Prof. Handler also notes that in general, teachers do not want to undergo more evaluation of their work. However, the evaluation component goes to *political* control, i.e., who is in the role of the evaluator. Perhaps if teachers and students participated in evaluations, this would lead to a greater sense of professional power and reduce the sense of political powerlessness in teachers, students, and communities.

177. *See, e.g.*, Report No. 13, *supra* note 169 (noting that the central district office selects programs for individual school sites rather than allowing the schools to choose for themselves); interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997) (stating that the rigid restructuring of schools under reconstitution is not philosophically optimal and, while benefitting students initially, should constantly be revisited). *See also* Neal Devins, *Centralization in Education: Why Johnny Can't Spell Bureaucracy*, 75 CALIF. L. REV. 759, 765 (1989) (asserting that "when a local school system is coerced by courts, lawmakers, and administrators . . . regulation and legalization may work serious harm to the pedagogical objectives of schools . . . the need to stay within the letter of the law may limit the creativity and authority of teachers . . . judicial inquiry may prove counterproductive because it fails adequately to consider nonparty interests or possible political obstacles").

178. Hannaway, Jane, *Decentralization in Two School Districts: Challenging the Standard Paradigm*, *DECENTRALIZATION AND SCHOOL IMPROVEMENT*, Hannaway and Cornoy, ed., Jossey-Bass, Inc., San Francisco (1993) at 137. "Teachers in public systems are not overregulated; they are ignored." The added monitoring and influence of teachers that Hannaway attributes to decentralization does not make decentralizing appear to be the autonomy-builder that its proponents advertise.

*B. Evaluations of SFUSD's Reconstitution Efforts*

As part of the consent decree, the reconstitution process in San Francisco has been consistently evaluated for effectiveness. In the July, 1992 expert committee recommendations to the court, the committee strongly favored reconstitution.<sup>179</sup> Citing successes with Phase I schools, the committee recommended expanding the practice of reconstitution to all district schools, not just those originally targeted.<sup>180</sup> The court adopted this recommendation.<sup>181</sup>

The consent decree also mandates review by an independent monitor who then reports his/her findings to the court.<sup>182</sup> In the most recent report, compiled in 1995-1996, the monitor's assessment is mixed.<sup>183</sup> For example, while reporting that Comprehensive School Improvement Program schools were making progress generally, the Report notes that some schools fare better than others.<sup>184</sup> The monitor found that one instructional aspect missing in many CSIP schools was teaching students test-taking skills.<sup>185</sup> The monitor also asserted that the addition of a new

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179. Desegregation and Educational Change in San Francisco: Findings and Recommendations on Consent Decree Implementation, Report to Judge William H. Orrick, July, 1992 [hereinafter Findings and Recommendations].

180. *Id.* at 56. However, the Union points out that this broad recommendation to expand reconstitution was made without isolating the variables showing contribution to the improvements of Phase I schools, such as reduced class size, increased resources, new instructional programs, and staff development. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997). Were these variables carefully examined, the union argues, school stakeholders would have a much clearer sense of what works in reconstitution.

181. Parties' Second Joint Report to the Court Pursuant to the Court's Request at the August 26 & 27, 1992 Status Conference, at 1 [hereinafter Second Joint Report]; see also 1983 Consent Decree, San Francisco NAACP, et al. v. San Francisco Unified School District (Civil No. C-78-1445 WHO) (including modifications required by court-approved stipulations and orders through Nov. 5, 1993) at para. 40, 44 [hereinafter Consent Decree].

182. Consent Decree, *supra* note 181, at para. 44.

183. Report No. 13, *supra* note 169.

184. *Id.* at 2. After explicitly naming nine Comprehensive School Improvement Program-designated schools as progressing at an "encouraging" rate, the monitor states that "CSIP schools not cited here have begun to show movement in a positive direction, attesting to the effectiveness of the program."

185. *Id.* at 4. The monitor noted that only one classroom was observed in which test-taking strategies were addressed.

internal monitor assisted in improving reconstitution because of added oversight.<sup>186</sup>

The specifics of this Report, however, do not present a glowing review. Phase I reconstituted schools tended to fare better than later Phases,<sup>187</sup> a phenomenon this Report confirms.<sup>188</sup> For example, only the staffs of elementary schools matched the ethnicity of their student populations despite the flexibility in hiring practices afforded by.<sup>189</sup> At CSIP-designated and targeted schools, the elementary level displayed moderate reading gains but poor results in math; the middle schools showed a more even distribution in both areas as compared with other schools in the district; and the high schools demonstrated mediocre gains.<sup>190</sup> Generally, while most students in the district made one or more years' growth in reading and math, African American and Filipina/o students failed to show such growth in these areas.<sup>191</sup> The highest percentage of expulsions continue to stem from targeted and CSIP schools and remain predominantly African American and Latina/o students.<sup>192</sup> Suspension rates for African American students remain disproportionately higher than for other ethnic groups.<sup>193</sup> The data for both academic and disciplinary components, particularly regarding African American students on whose behalf the lawsuit spawning the consent decree was brought, illustrate a district that still requires substantial improvement.<sup>194</sup>

In other schools across the country, the impact of reconstitution is typically assessed by how much progress reconstituted schools have made in the areas that caused them to be targeted in the first place.<sup>195</sup> As of yet, the kind of thoughtful review seen

186. Report No. 13, *supra* note 169, at 27.

187. For example, Phase I schools were finding some success in increasing/maintaining enrollment by aligning instructional programs from elementary through high school levels. This device is used to encourage students to stay within the same area. Report No. 13, *supra* note 169, at 28.

188. See *supra* notes 99-113 and accompanying text for a more complete comparison of Phase I schools with schools reconstituted in later phases.

189. Report No. 13, *supra* note 169, at 35-36.

190. *Id.* at 58-61.

191. *Id.* at 53.

192. *Id.* at 48-49.

193. Report No. 13, *supra* note 169, at 46.

194. *Id.* at 32, 62. In addition to the concerns outlined in the text, the Report also notes problems in adequately publicizing school programs to inform all parents and providing parents with a facility and forum on school sites.

195. See *supra* Part III C 2 for a discussion of the application of reconstitution in

in San Francisco has not yet formally taken hold in other areas. The results included in the monitor's Report, however, indicate that reconstitution, like other education reform measures, may take time to show promise.<sup>196</sup>

### C. *General Proposals for Changes in the SFUSD Approach*

Despite general acceptance of reconstitution — either as an innovative, groundbreaking reform<sup>197</sup> or as a necessary measure to maintain consent decree funding<sup>198</sup> — very few people involved with reconstitution in San Francisco do not have ideas for modifications of the practice. Central office administrators, school administrators, and teachers all offered suggestions for improvements.

Superintendent Waldemar Rojas views the role of public schools as parallel to “running a community anchor.”<sup>199</sup> He emphasizes the need for greater staff development because low performing schools require extra efforts. “You have to have ordinary people doing extraordinary things.”<sup>200</sup> Expanding the Comprehensive School Improvement Program's evaluative indicators to include more authentic measures is another goal of the superintendent.<sup>201</sup>

Central office administrators, while categorically enthusiastic about reconstitution, recommended partial reconstitution in the future.<sup>202</sup> In particular, these administrators felt that the processes for relocation of teachers and staff development of new

other school districts.

196. See, e.g., *supra* Part II for a historical overview of traditional, slow-paced reform measures and modern alternatives.

197. Interview with Robert Harrington of SFUSD, in San Francisco, CA (Feb. 24, 1997).

198. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco (“UESF”), in San Francisco, CA (Apr. 11, 1997); Nanette Asimov, *Guardian at the School Gate: Behind San Francisco's Complex Enrollment Policy*, THE SAN FRANCISCO CHRONICLE, Nov. 3, 1996, at 3/Z1 (interviewing Lulann McGriff, NAACP activist in San Francisco, who commented that the district might go bankrupt without consent decree money).

199. Interview with Waldemar Rojas, Superintendent of SFUSD, in San Francisco, CA (May 2, 1997).

200. *Id.*

201. See *supra* note 66.

202. Interview with Judith M. Kell, Hal J. Solin, and Winnie Tang of SFUSD, in San Francisco, CA (Feb. 24, 1997).

teachers needed improvement.<sup>203</sup> While willing to scale back the scope of reconstitution in its current form, these administrators described the measure as “the ultimate reform tool” and expressed that without reconstitution’s strong incentive for schools to improve, perhaps progress would not be achieved.<sup>204</sup>

School administrators of reconstituted schools also appreciated the added programs and services afforded their schools. However, problems with retaining experienced teachers and discarding ineffective programs (since they are chosen by the central office) should be addressed.<sup>205</sup> Principals also suggested that more attention be paid to affective components, since often-times these areas must improve before an environment conducive to learning can be created.<sup>206</sup> One school administrator even noted that “I could have done it without econstitution but not as quickly . . . In education, you rarely have this kind of opportunity to start over.”<sup>207</sup>

In addition to the demoralization many teachers feel as a result of reconstitution, teachers also feel left out of the process.<sup>208</sup> As nonparties, teachers are not directly involved with consent decree review but are directly impacted. Suggestions made by United Educators of San Francisco include instituting peer evaluations<sup>209</sup> and developing a more rigorous internship program in conjunction with area schools of education.<sup>210</sup> These recommendations would promote professionalism and innovation while supporting teachers and ongoing staff development. A recent tentative agreement between Superintendent Rojas and United Educators of San Francisco’s former President Joan-

203. Interview with Judith M. Kell, Hal J. Solin, and Winnie Tang of SFUSD, in San Francisco, CA (Feb. 24, 1997).

204. *Id.*

205. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

206. Interview with Middle School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

207. David Ruenzel, *Do or Die*, EDUCATION WEEK ON THE WEB (Mar. 1997) (visited Mar. 28, 1998) <<http://www.edweek.org/tm/vol-08/06sf2.h08>>.

208. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

209. In St. Paul, Minnesota, peer evaluation, coupled with ongoing training and support, has already been initiated. Maureen M. Smith, *St. Paul Schools Prepare to Close Achievement Gap*, STAR TRIBUNE, June 20, 1994. Minnesota teachers are also “required to create a caring, nurturing classroom” which will be evaluated annually.

210. Interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997).

Marie Shelley may be the first step toward bridging this gap perceived by SFUSD teachers.<sup>211</sup> Major provisions of this agreement include enlisting the input of teachers in the Comprehensive School Improvement Program process, extending CSIP to two years and providing more support, and allowing teachers to sign on to the new school plans on an individual basis versus submitting to unilateral "vacating" of the entire staff.<sup>212</sup> This is a promising step toward modifying reconstitution to meet future needs because it includes educators, stakeholders who did not feel included in the process before.

## V. RECOMMENDATIONS

San Francisco's Superintendent Waldemar Rojas, considered the reconstitution guru, has himself cautioned that reconstitution is not a panacea for all of the problems facing public education.<sup>213</sup> As San Francisco moves into its third decade under the consent decree, the school community ponders modifications and alternatives to what currently exists. Some support partial reconstitution,<sup>214</sup> others suggest integrating more nonparties in the discussion,<sup>215</sup> and still others seek more alternative school structures, such as beacon schools.<sup>216</sup>

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211. Outline of a Tentative Agreement to Reduce the Need for Reconstitution (May 1, 1997).

212. *Id.* Other provisions include a super-majority vote for adopting site plans, peer assistance and review, development of comprehensive long-range plans, and identification of low performing schools by mutually agreed upon standards.

213. Interview with Prof. Stuart Biegel, Monitor of SFUSD Consent Decree, in San Francisco, CA (Feb. 23, 1997) (quoting Waldemar Rojas).

214. Interview with Judith M. Kell, Hal J. Solin, and Winnie Tang of SFUSD, in SF, CA (Feb. 24, 1997).

215. For example, the union would like stronger involvement of teachers. The Asian American community, particularly in light of the Lowell Alternative High School controversy, would like a stronger voice. As SFUSD's student population has changed since the consent decree to consist of more Chinese American students and fewer African American students, having the NAACP as the sole party representing students of color may not provide enough diversity of opinion for the population.

216. Beacon schools, a relatively new concept, are supported by both Superintendent Rojas and United Educators of San Francisco. Nanette Asimov, *Big Man on Campus: Superintendent Rojas Talks About Violence, School Closures, Test Scores*, THE SAN FRANCISCO CHRONICLE, Mar. 19, 1995, at 1/Z1; interview with Kent Mitchell, former Treasurer and current President of United Educators of San Francisco, in San Francisco, CA (Apr. 11, 1997). Superintendent Rojas describes beacon schools as "a nearly 24-hour, one-stop shopping center where the kids go to school for more

An example of modified reconstitution exists in Nashville, Tennessee. Newspapers report that Nashville's school board dismantled its "on focus" program, a measure analogous to reconstitution, in favor of maintaining strong monitoring of the schools and providing support and resources to schools (and teachers) having difficulty meeting state standards.<sup>217</sup> Nashville's new program, entitled "Commitment to the Future," directly engages teachers in the planning and implementation process.<sup>218</sup> While the "Commitment to the Future" program may still close failing schools, more stakeholders have input and more support services are available than under the former plan.<sup>219</sup>

For San Francisco to modify its reconstitution process, the district may first solicit recommendations from school administrators, teachers, parents, and students in Comprehensive School Improvement Program-designated and reconstituted schools. These stakeholders have experienced the process and could bring valuable insights to the table.<sup>220</sup> If teachers, for instance, feel they have a stronger voice in the reform process, more seasoned teachers may have greater incentive to remain in or apply to reconstituted schools.<sup>221</sup> The Tentative Agreement recently signed by the Superintendent and the former President of United Educators of San Francisco may already provide a remedy for this concern.<sup>222</sup>

than just an 8:40 a.m. to 3 p.m. academic program. They use it for social and health services, mental health services, recreational activities and educational enhancement activities. We could run community centers there from late afternoon into the early evening." Asimov, *Big Man on Campus*, *supra* this note. See also the discussion of Los Angeles' LEARN schools, a comparable model, *supra* notes 66-68 and accompanying text.

217. Lady Hereford and Dana Pride, *Deseg Victory Launches Major Fight for Funding; "Commitment" Plan Wins Board's Approval*, THE NASHVILLE BANNER, July 24, 1996, at B1.

218. *Id.* A union leader petitioned the school board to remove the "on focus" program because, although perhaps instituted "with the best of intentions, the outcome has been chaotic . . . the entire school community feels demoralized, distrustful and frustrated because of the very public and arbitrary manner in which these schools have been branded with the equivalent of a scarlet letter."

219. *Id.*

220. See, e.g., suggestions made by the elementary and middle school principals, *supra* Part III C 1.

221. Attracting seasoned teachers is problematic for reconstituted schools. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

222. See *supra* notes 211-212 and accompanying text.

Beyond greater involvement, there are several areas requiring additional research. For example, existing data regarding staff development programs and school programs could be correlated to determine which provide the most effective match. If CSIP continues to weigh standardized test scores highly, those scores should reflect the length of time students have attended the given school to better appraise the school's impact.<sup>223</sup> Alternative assessment measures could gradually outweigh or replace standardized test scores to better evaluate student learning.<sup>224</sup> Research in the area could determine which measures would best assess performance. Existing programs could face more exacting cost/benefit analysis to more accurately show which programs could meet a given school's needs.<sup>225</sup> This type of evaluation could be expanded to assist in replicating strong schools.<sup>226</sup> Finally, some study into the effects of downsizing or phasing out reconstitution would be helpful in determining feasible alternatives and future approaches; otherwise, it is conceivable that the same schools may face re-reconstitution if the lowest performers must be annually overhauled.

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223. Interview with Elementary School Principal, SFUSD, in San Francisco, CA (Mar. 14, 1997).

224. Students already maintain portfolios and present these and oral presentations to the superintendent's review panel in the spring as part of the CSIP process. Visit to Mission High School, SFUSD, in San Francisco, CA (Apr. 11, 1997). Superintendent Rojas suggested including, as a way to replace the current enrollment system, a "broader application process . . . samples of writing proficiency and other activities that the young men and women participated in, leadership activities, skills and talents, profound computer literacy." Nanette Asimov, *Big Man on Campus: Superintendent Rojas Talks About Violence, School Closures, Test Scores*, THE SAN FRANCISCO CHRONICLE, Mar. 19, 1995, at 1/Z1. See also note 216 for more of Superintendent Rojas' suggestions.

225. For example, Report No. 13 gives an overview of all special programs under the consent decree with brief statements as to effectiveness. Report No. 13, *supra* note 169, at 4-17. A cursory review reveals some are high cost, low impact while others appear low cost with highly positive results. More stringent analysis could indicate which programs lead to the best outcomes, which would better inform selection of these programs for individual schools.

226. See *supra* note 50 and accompanying text regarding the Lowell High School replication issue.

## VI. CONCLUSION

San Francisco led the country with reconstitution. However, over the course of fifteen years, the San Francisco of the original consent decree has changed considerably. A more diverse body of stakeholders necessitate a new vision of SFUSD. As one parent in Detroit commented, "Who shall be empowered to make decisions affecting the education of [our] children? Will it be the leadership of [advocacy agencies]? Or will [our] parents and voters retain the right to expend their tax money as they see fit on behalf of their children's education?"<sup>227</sup> SFUSD must decide whether it will involve more stakeholders or continue with a decidedly top-down format of reform. While the consent decree has been quite successful with integration in one of the most diverse cities in the country, the dual goal of academic excellence for all students has not met as much progress.<sup>228</sup> The challenge from here on in is to improve educational opportunity. The resources and support provided through the consent decree have the potential to attain the second goal of the decree — but only with the input and support of the entire school community. Teamwork, a pillar of reconstitution policy, is essential to education reform in San Francisco. If the team is expanded, the work of reform will only be enhanced.

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227. Note, *Using Discourse Ethics to Provide Equality for African-American Children Forty Years After Brown v. Board of Education*, 5 B.U. PUB. INT. L. J. 99, 105 (1995).

228. Perhaps this reveals a distinction between the numbers: totals of students from different ethnic backgrounds in one school and test scores of students from different ethnic backgrounds in one school. One does not necessarily reflect the other. By analogy to fair housing laws, Lisa J. Laplace asserts that "integration maintenance quotas represent a departure from the typical affirmative action program. The main objective of the integration maintenance quota is to promote integration in housing, not to eradicate discrimination in housing." Lisa J. Laplace, *The Legality of Integration Maintenance Quotas: Fair Housing or Forced Housing?*, 55 BROOK. L. REV. 197, 203 (1989).