

1 STUART BIEGEL  
2 Consent Decree Monitor  
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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 SAN FRANCISCO NAACP, et al, ) No. C-78 1445 WHA  
9 Plaintiffs, ) (Related Case: Ho v. SFUSD,  
10 vs. ) No. C-94-2418 WHA)  
11 )  
12 SAN FRANCISCO UNIFIED SCHOOL ) FINAL SUPPLEMENTAL REPORT OF  
13 DISTRICT, et al, ) CONSENT DECREE MONITOR  
14 Defendants ) REGARDING DESEGREGATION  
AND ACADEMIC ACHIEVEMENT

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16 As per the schedule of independent reviews agreed upon by the parties pursuant to  
17 Paragraph 44, I am hereby filing our final Supplemental Report. In this Report, we document the  
18 most current resegregation figures, provide additional information regarding the test score results  
19 released in mid-August, and summarize our most recent findings at the close of the Consent  
20 Decree.

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22 **I. The Consent Decree and the Monitoring Process in General**

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24 The 1983 *SFNAACP v. SFUSD* Consent Decree has been recognized as unique in many  
25 ways. Unlike most desegregation orders and decrees, it did not rely on desegregation efforts  
26 alone, but also focused explicitly on academic achievement. In addition, the desegregation  
27 mandate was not limited to school-by-school numbers, but also required a focus on within-school  
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1 segregation by program and classroom. Interrelated strategies designed to maximize access to a  
2 quality education for students of all races and ethnicities were set forth in great detail, and a  
3 collaborative relationship between the parties led to enduring results over time.

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5 At the same time, however, the Decree led to one of the most volatile and excruciatingly  
6 difficult lawsuits of the era, *Brian Ho v. SFUSD*. Filed by Chinese-American plaintiffs who  
7 argued that the Decree and its racial caps discriminated against them in violation of the  
8 Fourteenth Amendment, the *Ho* litigation led to the removal of race as a factor from the student  
9 assignment plan and to the establishment of a termination date for the Decree.<sup>1</sup>

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11 The *SFNAACP* Decree involved many high-profile members of the education  
12 community, including but not limited to Harold Howe (education adviser to President Lyndon B.  
13 Johnson), Gary Orfield (Harvard professor and longtime desegregation expert), Robert L. Green  
14 (education adviser to Martin Luther King), Ramon Cortines (Superintendent of Schools, 1986–  
15 1992), Bill Rojas (Superintendent of Schools, 1992–1999), Arlene Ackerman (Superintendent of  
16 Schools, 2000–2006), Henry Der (Founder of Chinese for Affirmative Action), Hoover Liddell  
17 (longtime educator, activist, and community leader in San Francisco), and Eugene Garcia  
18 (bilingual education expert and former Dean of the UC Berkeley Graduate School of Education).  
19 The Decree was supervised by the Honorable William H. Orrick, legendary federal judge, from  
20 its inception until his retirement in 2001. In addition, some of the most well-known attorneys in  
21 the country participated in the various negotiations, reports, hearings, and court appearances.

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23 It has been a great honor for me to have served as the independent monitor for the Decree  
24 over the past nine years, reporting to this Court and to the people of California on the progress of  
25 the District pursuant to the Decree’s terms and conditions. Most memorable, and most

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27 <sup>1</sup> In retrospect, it is ironic that during an era when the federal courts recognized the constitutionality of using race as  
28 a factor in a narrowly tailored fashion to maximize diversity, counter de facto housing segregation, and maintain  
integrated schools, the parties to the San Francisco Consent Decree were blocked from using race as a factor because  
of agreements reached during an era when everyone thought that Fourteenth Amendment jurisprudence prohibited  
any use of race at all.

1 significant, has been the opportunity to spend time in every neighborhood, coordinate and  
2 participate in visits to every school, return to many of these schools over the years, and see first-  
3 hand the remarkable work that is being done by so many educators in this city. As we stated in  
4 Report #21, filed with this Court in September 2004, “We cannot emphasize strongly enough  
5 how much good we see in this District, how hard people are working and how much is being  
6 accomplished at the local school sites.”

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8         At the same time, however, we have been obligated to document the increasing  
9 resegregation prevalent in the District since 1999, and the parameters of an achievement gap that  
10 only became apparent over the past few years. As stated in Report #21, “...we also cannot  
11 emphasize strongly enough how essential it is that everyone who is in a position to effect change  
12 confront the resegregation trends and the disparities in achievement identified in the March 2004  
13 Supplemental Report...trends and disparities which continue to be reflected in our most recent  
14 findings.”

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16         All of our reports since the 1996-1997 academic year have been posted online at  
17 <http://www.gseis.ucla.edu/courses/edlaw/sfrepts.htm>, and we plan to continue to make them  
18 available on this site. The complete history of this unique Consent Decree has yet to be written,  
19 and we urge continued study of its development and implementation. In particular, we urge  
20 people to focus on both the factors that made the Decree so successful – in so many ways – for  
21 so many students over time, and on the factors that led to lost opportunities and so many  
22 unresolved issues in the end.

## 23 24 **II. Resegregation Update**

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26         Our review of final Fall 2005 enrollment figures obtained from the District has revealed  
27 once again that the resegregation documented in our previous reports continues unabated. The  
28 number of SFUSD schools severely resegregated (60% or higher) at one or more grade levels

1 increased yet again during the past year, and has now reached approximately 50 schools for the  
 2 first time in this era.<sup>2</sup>

4 **Table 1 - Number of SFUSD Schools Severely Resegregated At One or More Grade Levels**

	01-02	02-03	03-04	04-05	<b>05-06</b>
# of Severely Resegregated Schools Based on Final Fall Enrollment Figures	30	34	41-43	43-45	<b>49-52</b>

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 8 In addition, as reflected in Appendix 1, the actual percentages of students of one  
 9 race/ethnicity at these schools are once again higher overall than they have been at any time  
 10 since resegregation began after the Ho Settlement of February 1999. More than half of the  
 11 resegregated schools now show 70% or more of one race/ethnicity, and 11 schools show 80% or  
 12 more of one race/ethnicity at one or more grade levels.<sup>3</sup>

13  
 14 Among the most egregious examples of this resegregation are the schools in Bayview-  
 15 Hunters Point, where all the elementary schools (with the exception of Bret Harte) are severely  
 16 resegregated across all grade levels.

17  
 18 In the Mission, all the comprehensive middle schools are severely resegregated across all  
 19 grade levels. And the elementary schools are among the most highly resegregated of all the  
 20 schools in the city, including Bryant (89.7% Latino at Grade 5), Chavez (88.5% Latino at Grade  
 21 2), Marshall Elementary (84.8% Latino at Grade 4), and Sanchez (84.8% Latino at Grade 1).

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 23 In Chinatown, Jean Parker is now 97.5% Chinese American at Kindergarten, and Chin is  
 24 now 86.4% Chinese American at Grade 4, numbers that were unheard of just a few years ago.

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 27 <sup>2</sup> See *infra*, Appendix 1, where we identify the 49-52 schools severely resegregated at one or more grade levels. The  
 28 number is approximate because seven of the 52 schools appear initially to be slightly below the “severe  
 resegregation” benchmark of 60%, but the “decline to state” figures (whereby parents, pursuant to the Ho settlement,  
 decline to state their child’s race or ethnicity) appear to indicate a strong likelihood that the actual enrollments  
 reflect severe resegregation.

<sup>3</sup> See *id.*

1 With the addition of Maxwell to the resegregation list this year, every “dream school” in  
2 every neighborhood (with the exception of Revere) is now severely resegregated at one or more  
3 grade levels.

4  
5 Finally, the two most popular comprehensive high schools in the city, Lincoln and  
6 Washington, are both severely resegregated at one or more grade levels. And Lowell, which is  
7 also resegregating, is not far behind Lincoln and Washington.

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9 We note again, as we have in many of our recent reports, that we have found a direct  
10 relationship between this resegregation and the disparities in academic achievement documented  
11 below.<sup>4</sup> The effect is corrosive and widespread, impacting not only the quality of the education  
12 at individual school sites, but also the culture of the community.

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14 The complete SFUSD Fall 2005 CBEDS enrollment figures, for every school across  
15 every grade level by race/ethnicity, English learner status, special education status, and gifted  
16 and talented (GATE) status, will be available on the Monitoring Team Web site.

### 17 18 **III. Academic Achievement Update**

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20 While the final Academic Performance Index (API) figures derived from the Spring 2005  
21 standardized test results are not scheduled to be released until 2006, the Monitoring Team has  
22 conducted an analysis of the figures posted online by the California Department of Education  
23 and is able to present an overview of the most current trends.

24  
25 In disaggregating the California Standards Test (CST) results by race/ethnicity for each  
26 of the seven major urban districts in California, we have found that once again while SFUSD as a  
27 whole has the highest percentage of students scoring at *proficient or above* when compared with  
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<sup>4</sup> See, e.g., Report #20 at 48-53; March 2004 Supplemental Report at 17-18.

1 the other major urban districts, San Francisco’s African American students score the lowest  
2 overall when compared with their African American counterparts in these same districts:<sup>5</sup>

3  
4 **Table 2**  
5 **African American Student Performance on the California Standards Test (Spring 2005)**  
6 **Percentage of African American Students Scoring at Proficient or Above**

English-Language Arts	Math
1. San Diego – 33.6%	1. San Diego – 31.7%
2. Long Beach – 31.1%	2. Long Beach – 31.4%
3. Sacramento – 27.3%	3. Sacramento – 27.6%
4. Los Angeles – 25.2%	4. Los Angeles – 24.4%
5. Oakland – 22.7%	5. Oakland – 21.9%
6. Fresno – 21.5%	6. Fresno – 20.6%
7. San Francisco – 20.7%	7. San Francisco – 20.1%

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11 In this context, it must be noted that SFUSD’s test scores have “gone up” every year  
12 during the nine years that this Monitoring Team has been submitting independent reviews to this  
13 Court. Indeed, during the entire tenure of the past three District administrations (dating back to  
14 1992), the test scores have “gone up” every year.

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16 It was not until additional data was available online pursuant to the “No Child Left  
17 Behind” Act that we were able to go beyond this basic reality and determine more precisely what  
18 the test scores actually said. Clearly, it is imperative that we continue to look beyond the test  
19 scores for an entire District and examine the disaggregated results. It is also imperative that we  
20 continue to examine other objective indicators, including but not limited to GPA, GATE and AP  
21 enrollment, attendance figures, suspension and expulsion figures, and graduation rates.

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23 We urge continued vigilance in the community in this regard. In this era, substantial  
24 relevant data is available online, data that provides a much more complete picture of current  
25 realities than anything that might be included in District press releases and on District Web  
26 pages. We urge members of the community to continue to look beyond the basic overall  
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<sup>5</sup> See *infra*, Appendix 2.

1 numbers...especially given the fact that the District overall continues to do so well, even as  
2 certain sub-groups continue to do substantially worse than their counterparts in other places.  
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#### 4 **IV. The Unresolved Issues Are Not Intractable**

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6 In Report #22, filed with this Court on August 1, 2005, we presented an updated Consent  
7 Decree Balance Sheet listing ten enduring achievements and ten unresolved issues that remain.<sup>6</sup>  
8 As the Consent Decree ends and we submit our final report to the Court and the community, we  
9 wish to emphasize that while the unresolved issues that we have documented are difficult, they  
10 are not intractable. Examples can be found throughout the state and across the country of bold  
11 leaders in the education community who have tackled these issues head-on and have achieved  
12 great success. Indeed, as we have pointed out in report after report, there are numerous examples  
13 of just this sort of success at individual school sites right here in San Francisco.<sup>7</sup> We have  
14 continually urged the District to look to its own educators who have consistently and tirelessly  
15 stood for equity for every student, and to build on their efforts and successes. *See, e.g.*, Report  
16 #22 at Page 8:

17  
18 As we have done many times in the past when we have documented District successes,  
19 we urge the community to build on these successes and seek to publicize, disseminate,  
20 and replicate the noteworthy steps taken by these educators to achieve their goals.

21 Also in Report #22, we presented a detailed examination of 13 schools that exemplified  
22 success under the mandate of the Consent Decree. And in our recent filings urging the Court to  
23 extend the Decree and direct the parties to develop a new student assignment plan, we requested  
24 that the Court direct SFUSD to focus on these successes and provide a mechanism for  
25 disseminating details regarding innovative strategies and successful approaches that have worked  
26 right here in San Francisco. *See Independent Statement of Consent Decree Monitor Regarding*

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28 <sup>6</sup> See Report #22 at Pages 2-4 (also available at <http://www.gseis.ucla.edu/courses/edlaw/cdbalancesheet05.pdf>).

<sup>7</sup> As we have reported, these successes were not only evident at the beginning of the Decree (under Phase One), but continue to be evident at schools throughout the city today.

1 the Parties' August 25, 2005 Settlement Agreement, at Pages 4-5:

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3 We urge the Court to approve the Settlement Agreement but also require an enhanced  
4 transition plan.... We recommend that such a plan include...[a] roadmap for site-based  
5 professional development that embodies a structured, ongoing, sharing process which  
6 would enable District educators to learn from and explicitly build on the achievements of  
7 fellow educators at other schools.<sup>8</sup>

8 As the Decree ends, we not only urge current and future District leaders to build on the  
9 successes of its own educators, but also to build on the successes of the Decree itself and move  
10 forward to overcome the stalemate that has so impeded the ability of the District to move  
11 forward in recent years.

12 We look forward to new and creative efforts from local political leaders and from within  
13 both the legal community and the education community that can break this stalemate and enable  
14 this great city to become the shining example of education success that everyone knows it can  
15 be.

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17 Dated: December 28, 2005

Respectfully submitted,

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STUART BIEGEL  
Consent Decree Monitor

<sup>8</sup> The Court has chosen not to do this. *SFNAACP v. SFUSD*, 2005 U.S. Dist. Lexis 30189 (filed Nov. 8, 2005). We share the Court's exasperation with the lack of movement in recent years, and we agree with the Court's determination that "the decree has drifted too far." However, we do not share the Court's conclusion that there is no longer a need for judicial supervision because relevant decisions are "better left in the hands of education professionals." *Id.* at \*66. The Consent Decree was necessary because these very professionals were not addressing central issues of equal access and equal opportunity to the extent practicable. And we have found that the same lack of movement that has so exasperated the Court, the Monitoring Team, and the community as a whole in recent years can be traced directly to the inability and/or unwillingness of these same professionals to take the bold steps necessary to tackle these problems head-on.