

**NOTICE OF HEARING OF MOTION FOR UNITARY STATUS
IN STATEWIDE LEE v. MACON CASE**

**TO ALL SCHOOL AGED AFRICAN AMERICAN CHILDREN RESIDING WITHIN
THE STATE OF ALABAMA AND THEIR PARENTS AND/OR LEGAL GUARDIANS**

The Alabama State Board of Education, the Superintendent of the State Board, and other State officials who are parties to this action have asked the Court to enter an order granting unitary status and termination of the special education portion of the case originally known as Lee v. Macon. The motion asserts that those officials and the State have met the terms of a consent decree approved by the Court in August 2000. Notice is being provided for the benefit of those whose interests are affected.

The consent decree sets forth numerous specific responsibilities of the State which are designed to ensure that any vestiges of the *de jure* segregated system are eliminated to the extent practicable from the statewide special education program, and to demonstrate the good faith commitment of the State and its officials to the whole of the Court's orders. It further provides that, once its provisions are met, the State is authorized to ask the Court to declare it unitary.

The motion and the consent decree are available for review on the State Department of Education's website at <http://www.alsde.edu/html/home.asp>. The motion will also be posted at the central office of each local school board with copies to be distributed to local school principals with the request to post the motion locally as well.

Judge Myron Thompson, United States District Court Judge, has scheduled a hearing for December 19, 2006, at 9:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson, Jr. Federal Courthouse Complex, One Church Street, in Montgomery, Alabama, to determine whether the Motion for Unitary Status should be granted. The hearing is open to the public. Members of the public who wish to speak at the hearing must submit written comments before the hearing date and indicate that they wish to address the Court at the hearing. Forms for this purpose are available on the website of the State Board of Education website (<http://www.alsde.edu/html/home.asp>) and at the central office of your local school board. All written comments must be submitted to the court at the address provided on the form and must be postmarked no later than December 8, 2006.

If you have any questions, you may contact counsel for the private plaintiffs, Ernestine Sapp at (334) 727-4830 or Norman Chachkin at (212) 965-2259; counsel for the United States, Pauline Miller at (202) 514-2179; or counsel for the State Department of Education, Whit Colvin at (877) 705-8101.

THIS NOTICE IS TO BE PUBLISHED IN THE LEGAL NOTICE SECTION OF THE BIRMINGHAM NEWS, THE MONTGOMERY ADVERTISER, THE MOBILE REGISTER, THE HUNTSVILLE TIMES, THE ANNISTON STAR, THE DOTHAN EAGLE, THE TUSCALOOSA NEWS, AND THE DECATUR DAILY ON SUNDAY, NOVEMBER 26, 2006, AND ON SUNDAY, DECEMBER 3, 2006. THE NOTICE IS TO BE PUBLISHED IN THE BIRMINGHAM TIMES AND THE MOBILE BEACON FOR TWO WEEKS BEFORE THE HEARING, PREFERABLY DURING THE WEEKS OF NOVEMBER 26 AND DECEMBER 3, 2006.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ANTHONY T. LEE, et al

Plaintiffs,

UNITED STATES OF AMERICA

Plaintiff-Intervenor and Amicus Curiae,

NATIONAL EDUCATION ASSOCIATION, INC.,

Plaintiff-Intervenor,

v.

**LEE COUNTY BOARD OF EDUCATION,
RUSSELL COUNTY BOARD OF EDUCATION
TALLAPOOSA COUNTY BOARD OF EDUCATION,
ALEXANDER CITY BOARD OF EDUCATION,
AUBURN CITY BOARD OF EDUCATION,
OPELIKA CITY BOARD OF EDUCATION,
PHENIX CITY BOARD OF EDUCATION,
ROANOKE CITY BOARD OF EDUCATION,
BUTLER COUNTY BOARD OF EDUCATION,
COVINGTON COUNTY BOARD OF EDUCATION,
ELMORE COUNTY BOARD OF EDUCATION, et al.,**

Defendants.

ANNIE YVONNE HARRIS, et al.,

Plaintiffs,

UNITED STATES OF AMERICA

Plaintiff-Intervenor and Amicus Curiae,

NATIONAL EDUCATION ASSOCIATION, INC.

Plaintiff-Intervenor,

v.

**CRENSHAW COUNTY BOARD OF EDUCATION,
et al.**

Defendants.

Civil Action Nos. 845-
E, 848-E, 849-E, 850-E,
851-E, 851-E, 853-E,
854-E, 855-E, 3099-N,
3102-N, 3103-N

Civil Action No.
2455-N

MOTION FOR UNITARY STATUS

COME NOW the State Defendants¹ to this action, and move this honorable Court for an order granting unitary status in the area of Special Education and further ending Court supervision of the State Defendants with respect to Special Education. In support of its motion, Defendants would show the Court as follows:

1. The *Lee v. Macon County Bd. Of Educ.* litigation was filed in 1963 to desegregate the public schools in Macon County, Alabama. Shortly after the litigation was commenced, the United States was added as a party, Plaintiff-Intervenor and *amicus curiae*. In 1964, a supplemental complaint was filed adding the State Superintendent of Education, the State Board of Education, its members and the Governor, as President of the State Board of Education, as party defendants and requesting the Court to enjoin the defendants from operating a racially dual system throughout the State of Alabama. The Court, in a series of rulings granted the requested relief, and the State Defendants operated under those decrees, but largely without direct court supervision for almost twenty years.

2. In 1997, this Court reminded the parties that the State Defendants remained parties to the school desegregation litigation and maintained continuing obligations thereunder. *Lee v. Macon Co. Bd. of Educ.*, 963 F.Supp. 1122, 1124 (M.D.Ala 1997). The Court specifically found that the State Defendants had not yet met their burden under *Green v. County Sch. Bd. of New Kent County* of showing that school attendance, faculty, staff, transportation, extracurricular activities, and facilities were free from racial discrimination, that there had been full and

¹ The State Defendants include the Alabama State Board of Education, the Governor of the State of Alabama, as President *ex officio* of the State Board of Education, the Superintendent of the State Board, the individual members of the State Board, and all other State Defendants in this action. See, *Lee v. Macon*, 963 F.Supp. 1122 (M.D. Ala. 1997).

satisfactory compliance with earlier orders, that retention of judicial control was not necessary or practical to achieve compliance with the Court's orders, or that they demonstrated to the public and to African-American parents and students their good faith commitment to the whole of applicable orders. *Lee v. Macon*, 963 F.Supp at 1130, citing *Freeman v. Pitts*, 503 U.S. 467, 486.

3. By Order dated February 3, 1998, the Court directed the parties to report to the Court on the status of all statewide issues. On July 31, 1998, following a period of discovery and analysis, the parties submitted a joint statement to the Court, wherein the parties identified two statewide issues that remained unresolved. The two areas identified were: (1) special education and (2) facilities.² The special education issues centered on the overrepresentation of African-American students in the mental retardation and emotional disturbance classifications and the underrepresentation of African-American students in the specific learning disabilities and gifted and talented classifications. The parties agreed to discuss approaches to address these disparities and other related issues.

4. The parties jointly drafted a Consent Decree designed to address all remaining issues concerning special education and submitted it for the Court's consideration in 2000. The Court approved the Decree on August 30, 2000, and the State Defendants have been operating under and in compliance with that Decree since that time.

5. The Consent Decree set forth numerous specific responsibilities of the State Defendants which were designed to ensure that any vestiges of the *de jure* segregated system were eliminated to the extent practicable from the statewide special education program and to demonstrate the good faith commitment of the State Defendants to the whole of this Court's

² The issue of facilities was recently addressed by this Court and a Consent Decree designed to address remaining issues regarding statewide facilities was approved on April 20, 2006.

orders. The provisions of the Decree contained specific goals, programs, components, obligations and reporting requirements so that the parties and the Court could measure progress throughout the term of the Decree.

6. The Consent Decree further contained provisions concerning termination of the Decree and the litigation with respect to special education. The Decree declared that the Board could petition the Court for a determination that it complied in all respects with the terms and conditions of the Decree after both: (i) a one-year period in which it designs, develops and implements the various programs, policies and regulatory changes set forth in the Decree, and (ii) conducts two full two-year monitoring cycles, beginning with the 2001-2002 school year, during which each public school district in the state will be monitored twice by the Board to determine compliance with the terms and conditions of the Decree. (Consent Decree, pg. 20, ¶ V). The Board has complied fully with these requirements:

- A. During the first year of implementation of the Decree (2000-2001), the State Board of Education revised the Alabama Administrative Code provisions pertaining to special education so as to fully implement the Consent Decree. Specifically, modifications were made to sections concerning the prereferral process and eligibility criteria in the exceptionality areas of mental retardation, emotional disturbance and specific learning disabilities. The State developed professional development training modules designed to increase awareness about overrepresentation and underrepresentation of minorities in special education. In addition, the State designed and implemented additional training modules to complement some of the prereferral and strategic programs being developed and

implemented. The State required local education agencies to submit Building-Based Student Support Team (BBSST)³ tracking log data to determine the effectiveness of prereferral interventions and the frequency of referrals for special education evaluation. Baseline data was established to determine the degree of overrepresentation and underrepresentation in the exceptionality areas emphasized in the Consent Decree. A continuous monitoring program that focused on student outcomes as well as federal compliance was developed. The State continued to implement strategies and initiatives developed during the first year of the Decree throughout the term of the Decree. The specific steps taken are reflected in the annual and midyear reports to the Court, which contain comprehensive materials illustrating the efforts and commitment of the State Board as well as efficacy of the strategies which were implemented.

B. In addition, the Board has completed two two-year monitoring cycles required by the Decree.

7. The Annual Reports filed with the Court show most completely the compliance efforts by the State. Earlier this year, after completion of the monitoring cycles and receipt of pertinent data, the State Department of Education developed a report for the State Board which provides a synopsis of both the efforts and the outcome of the Department's programs. That report, styled "The Sixth Annual Report on the Implementation of the *Lee v. Macon* Special Education Consent Decree," has been provided to the parties, and is attached hereto for the

³ The Building Based Student Support Team (BBSST) is a prereferral program designed to provide building-based professionals with the structure to use their individual, professional strengths in solving instructional and behavioral problems of students. The BBSST is a model for best practice problem-solving implemented at the local school level.

Court's consideration as Exhibit "A." The report shows that the initiatives prescribed by the Consent Decree have been largely successful, and have resulted in measurable progress in reducing overrepresentation and underrepresentation of minorities in special education. The report also identifies statutory enactments, procedures and programs which are designed to continue the initiatives set forth in the Decree and to ensure that the special education program will not be operated in a discriminatory manner.

8. Involvement of local boards of education was essential to ensure that the Decree was fully implemented, and resulted in permanent, meaningful changes to the special education program. Accordingly, the Board has fully integrated local boards in the implementation of the Consent Decree. The cooperation between the Board and local boards has resulted in a significant reduction of racial disparities in the exceptionality areas of mental retardation (MR), emotional disturbance (ED), specific learning disabilities (SLD) and gifted programs while fostering appropriate evaluation, identification, and services. The results of these efforts are as follows:

- A. The ratio of African-American to White students in MR programs from 1999 to 2005 has decreased from 3.24:1 to 2.18:1.
- B. The ratio of African-American to White students in ED programs from 1999 to 2005 has decreased from 1.14:1 to 1.11:1.
- C. The ratio of African-American to White students in SLD programs from 1999 to 2005 has increased from 0.96:1 to 1.52:1.
- D. African-American representation in gifted programs has more than doubled since implementation began.

9. Throughout this process, the State Defendants have observed a marked shift in the attitudes, beliefs, and practices among local school officials regarding students with disabilities. This shift, combined with the progress obtained through implementation of the Decree, continued oversight by the State under its own initiatives, and the regulations in the No Child Left Behind Act and the Individuals with Disabilities Education Improvement Act of 2004 will ensure that special education in Alabama will continue to be administered in conformity with the purposes of the Decree. Further, the State Board of Education has expressed its commitment to continue implementing initiatives, directives, and improvement strategies that will further reduce disproportionality in Alabama.

10. The Supreme Court has determined that in order to achieve partial unitary status, the defendant must show that (1) the vestiges of discrimination in that area have been eliminated to the extent practicable; (2) there has been a full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; (3) retention of judicial control is not necessary or practicable to achieve compliance with the decree in other facets of the system; and (4) it has demonstrated, to the public and to the parents and students of the once disfavored race, its good faith commitment to the whole of the court's decree and to those provisions of the law and the constitution that were the predicate for judicial intervention in the first instance. *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). The State Defendants have met each of the requisite factors.

WHEREFORE, the State Defendants respectfully request that this Court issue an Order granting unitary status with respect to special education and further dismissing any and all claims against Defendants with respect thereto.

Respectfully submitted on this 27th day of October, 2006.

OFFICE OF GENERAL COUNSEL
STATE DEPARTMENT OF EDUCATION
5103 Gordon Persons Building
50 North Ripley Street
Post Office Box 302101
Montgomery, Alabama 36130
Phone : (334) 241-1899
Fax : (334) 242-0982

s/ Reginald L. Sorrells
Reginald L. Sorrells (ASB #1249-E61R)

s/ Larry E. Craven
Larry E. Craven (ASB #8610-N51L)

s/Juliana T. Dean
Juliana T. Dean (ASB #0388-N72D)

BISHOP, COLVIN, JOHNSON & KENT
1910 First Avenue North
Birmingham, Alabama 35203
Phone : (205) 251-2881
Fax : (205) 254-3987

s/ Whit Colvin
Whit Colvin (ASB # 3137-C51G)

CERTIFICATE OF SERVICE

I hereby certify that there are no known non-CM/ECF participants for mailing by United States Postal Service, and that I electronically filed the foregoing State Defendants' Motion for Unitary Status with the Clerk of the Court using the CM/ECF system on this 27th day of October, 2006, which will send notification of such filing to the following:

LEURA GARRETT
United States Attorney
WAN J. KIM
Assistant Attorney General

JEREMIAH GLASSMAN
PAULINE A. MILLER
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Avenue, N.W.
PHB 4300
Washington, DC 20530

CONSTANCE S. BARKER
Capell & Howard P.C.
150 South Perry Street
P.O. Box 2069
Montgomery, AL 36102

FRED D. GRAY
ERNESTINE S. SAPP
FRED D. GRAY, JR.
STANLEY F. GRAY
Gray, Langford, Sapp, McGowan, Gray &
Nathanson
104 West Northside Street
Tuskegee, AL 36083-0239

THEODORE M. SHAW, Director-Counsel
NORMAN J. CHACHKIN
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, 16th floor
New York, NY 10013
Phone : (212) 965-2200
Fax : (212) 219-2052
For Private Plaintiffs and Plaintiff-Intervenors.

s/ Reginald L. Sorrells
Reginald L. Sorrells

THE SIXTH ANNUAL REPORT

ON THE IMPLEMENTATION OF THE

***LEE V. MACON* SPECIAL EDUCATION**

CONSENT DECREE

SUBMITTED BY

THE ALABAMA DEPARTMENT OF EDUCATION

SPECIAL EDUCATION SERVICES

JULY 11, 2006

**THE SIXTH ANNUAL REPORT ON THE IMPLEMENTATION OF THE
LEE V. MACON SPECIAL EDUCATION CONSENT DECREE
Executive Summary**

**Total Population of Students in Special Education
Based on Child Count 2000, 2001, 2002, 2003, 2004, 2005
By Exceptionality and Race/Ethnicity
(Identified in the Lee v. Macon Special Education Consent Decree)**

	Emotional Disturbance		Mental Retardation		Specific Learning Disabilities		Gifted	
	African American	White	African American	White	African American	White	African American	White
2000	1,959	2,851	13,368	6,704	15,106	26,232	2,870	18,076
2001	1,737	2,419	10,695	5,959	15,668	24,697	3,549	21,414
2002	1,519	2,101	9,351	5,271	16,316	23,238	4,480	24,217
2003	1,194	1,807	7,807	4,692	17,332	22,216	5,164	24,809
2004	1,007	1,540	6,337	4,205	18,782	21,736	5,751	25,282
2005	782	1,152	5,328	3,968	19,308	20,903	6,030	25,881

1. The current ratio of African-American students to White students in the exceptionality area of emotional disturbance (ED) is 1.11:1.0.
2. The current ratio of African-American students to White students in the exceptionality area of mental retardation (MR) is 2.18:1.0.
3. The current ratio of African-American students to White students in the exceptionality area of specific learning disabilities (SLD) is 1.52:1.0.
4. The Department of Education (DOE) will continue to monitor the exceptionality areas of ED, MR, and SLD with the objectives of minimizing racial disparity and assuring that students continue to be appropriately identified, placed, and served.
5. Sixty-five (65) LEAs were monitored on site during the 2005-2006 school year.
6. The DOE provides technical assistance to the LEAs based on the findings from the Focused Monitoring Review. LEAs may also request technical assistance as needed.
7. The percentage of African-American students identified as GT from 1999 to 2005 has increased from 12% to 17.76%.
8. The *Individuals with Disabilities Education Improvement Act of 2004* (IDEA 2004) requires selected local education agencies (LEAs) to fund early intervening services (EIS) if significant disproportionality is determined by the state to exist for certain students with disabilities.

INTRODUCTION

The State of Alabama, Department of Education (DOE), is pleased to submit the Sixth Annual Report on the Implementation of the *Lee v. Macon* Special Education Consent Decree (Consent Decree). The initiatives of the DOE and all local education agencies (LEAs) have resulted in a significant reduction of racial disparities in the exceptionality areas of mental retardation (MR), emotional disturbance (ED), specific learning disabilities (SLD), and gifted (GT) programs, while fostering appropriate evaluation, identification, and services. The ratio of African-American to White students in MR programs from 1999 to 2005 decreased from 3.24:1 to 2.18:1. The ratio of African-American to White students in ED programs from 1999 to 2005 decreased from 1.14:1 to 1.11:1. The ratio of African-American to White students in SLD programs increased during the same period from 0.96:1 to 1.52:1. The percentage of African-American students identified as GT during this same period has increased from 12% to 17.76%. As evidenced by the report, the DOE is in compliance with all areas of the Consent Decree. Many positive outcomes for students in Alabama are the result of the unified efforts of teachers, administrators, evaluators, parents, and other stakeholders in each LEA.

This report will focus on current disproportionality data, training efforts, and roles and responsibilities of school personnel in meeting the needs of all students. The reauthorization of the *Individuals with Disabilities Education Improvement Act of 2004* (IDEA 2004) and the implementation of *The No Child Left Behind Act of 2001* (NCLB) require a continuation of the directives, initiatives, and commitments addressed in this Consent Decree. The DOE, when appropriate, will review, revise, and/or amend its processes and procedures to promote equitable educational opportunities in its public schools.

The Office of Management and Budget (OMB) within the United States Department of Education (USDOE) is currently reviewing the final regulations on the directives of how to implement the IDEA 2004 and anticipates an August release date of the regulations to states. NCLB expands the federal role in public education and provides an unprecedented increase in federal resources to states to improve low-performing schools. In exchange, the federal government expects more accountability from state education agencies. To meet this end, states are required to increase student assessments; collect and disseminate disaggregated assessment results, including students with disabilities; ensure a highly qualified teacher in every classroom; and ensure that all students achieve a "proficient" level of education by the 2014-2015 school year regardless of socioeconomic factors, race and/or ethnicity, disability, or language barriers. These challenging goals of IDEA 2004 and NCLB support a continuation of the directives, initiatives, and commitments of this Consent Decree.

Questions regarding the content of the report can be addressed to the Alabama Department of Education, Special Education Services, Gordon Persons Building, Room 3317, Post Office Box 302101, Montgomery, Alabama 36130-2101.

Total Population of Students in Special Education
Based on Child Count 2000, 2001, 2002, 2003, 2004, 2005
By Exceptionality and Race/Ethnicity
 (Identified in the *Lee v. Macon* Special Education Consent Decree)

	Emotional Disturbance		Mental Retardation		Specific Learning Disabilities		Gifted	
	African American	White	African American	White	African American	White	African American	White
2000	1,959	2,851	13,368	6,704	15,106	26,232	2,870	18,076
2001	1,737	2,419	10,695	5,959	15,668	24,697	3,549	21,414
2002	1,519	2,101	9,351	5,271	16,316	23,238	4,480	24,217
2003	1,194	1,807	7,807	4,692	17,332	22,216	5,164	24,809
2004	1,007	1,540	6,337	4,205	18,782	21,736	5,751	25,282
2005	782	1,152	5,328	3,968	19,308	20,903	6,030	25,881

OVERREPRESENTATION OF MINORITIES IDENTIFIED WITH EMOTIONAL DISTURBANCE (ED)

The December 1, 2005, Child Count data confirmed a continuation of a positive downward trend relative to the disparity of African-American students to White students in the exceptionality area of ED. In 1999, the total number of students identified with ED was 5,345. The numbers decreased in 2000 and 2001 from 4,860 (1,959 African-Americans) to 4,210 (1,737 African-Americans). In the 2002 school year, 3,675 students (1,519 African-Americans) were identified as having emotional disturbance. In the 2003 school year, 3,001 students (1,194 African-Americans) were identified as having ED. In the 2004 school year, 2,547 students (1,007 African-Americans) were identified as having ED. Data based on the December 1, 2005, Child Count indicate that of 1,934 students identified in this exceptionality area, 782 are African Americans. The ratio of African-American to White students in ED programs from 1999 to 2005 decreased from 1.14:1 to 1.11:1. The DOE supports the belief that professional development related to positive behavior supports, appropriate prereferral interventions, the use of appropriate evaluation instruments, and the appropriate interpretation of evaluation results are responsible for the increase in the accuracy of identifying these students. This reduction in both African-American and White students identified in this exceptionality area indicates that best practices supported by the initiatives are occurring and positively impacting all students.

OVERREPRESENTATION OF MINORITIES IDENTIFIED WITH MENTAL RETARDATION (MR)

In 1999, the total number of students identified with MR was 21,382. The numbers decreased in 2000 to 20,260 students (13,368 African-Americans). In 2001, 16,832 students (10,695 African-Americans) were identified with mental retardation. In 2002, 14,622 (9,351 African-American) were identified with MR. In 2003, 12,652 students

(7,807 African-Americans) were identified with MR and 10,754 (6,337 African-Americans) were identified in 2004. Data based on the December 1, 2005, Child Count indicate that of the 9,451 students identified with MR, 5,328 are African-Americans. The ratio of African-American to White students in MR programs from 1999 to 2005 decreased from 3.24:1 to 2.18:1. The DOE is committed to continue efforts to decrease this ratio.

Since the inception of the Consent Decree, the state has decreased the total enrollment of students identified with MR by approximately 12,000 students. While the numbers of African-American students identified with MR continue to decline, so do the numbers of White students identified with MR. This indicates that best practices supported by the initiatives are occurring and positively impacting all students.

UNDERREPRESENTATION OF MINORITIES IDENTIFIED WITH SPECIFIC LEARNING DISABILITIES (SLD)

African-American students are no longer underrepresented in the exceptionality of SLD. In 1999, the total number of students identified with SLD was 41,841. The numbers increased in 2000 to 42,107 (15,106 African-Americans). In 2001 and 2002, the numbers decreased to 41,208 (15,668 African-Americans) and 40,441 (16,316 African-Americans), respectively. In 2003 and 2004, the numbers increased to 40,581 and 41,666 (17,332 and 18,782 African-Americans), respectively. Data based on the December 1, 2005, Child Count indicate that of the 40,211 students identified as having specific learning disabilities, 19,308 of them are African-Americans. The ratio of African-American to White students in SLD programs increased from 0.96:1 to 1.52:1. The DOE supports the premise that appropriate prereferral interventions, the use of appropriate evaluation instruments, and the appropriate interpretation of evaluation results are responsible for the increase in the accuracy of identifying, placing, and serving these students. This indicates that best practices supported by the initiatives are occurring and positively impacting all students. The DOE further attributes the decrease in the disparity of students identified as having SLD to effective professional development, focused monitoring, and the implementation of Building-Based Student Support Teams (BBSST).

The DOE anticipates exceeding the requirements of this Consent Decree, by meeting the mandates of IDEA 2004 and NCLB, and continuing to address the following:

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004 (IDEA 2004)

The *Individuals with Disabilities Education Improvement Act of 2004* (IDEA 2004) at Section 618(d) requires each state to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the local educational agencies (LEA) of the state with respect to the identification of children as children with disabilities (includes the exceptionality areas of concern under *Lee v. Macon*) or the placement of such children in particular educational settings. In the case of determination of significant disproportionality, the state shall: (a) provide for the review

and, if appropriate, revision of the policies and procedures used in identification or placement; (b) require any identified LEA to use 15 percent of its IDEA allocation under Part B to provide comprehensive coordinated early intervening services (EIS) to serve children in the LEA, particularly children in the groups that were significantly overidentified; and (c) require the LEA to publicly report on the revision of policies and procedures. In implementing early intervening services, activities may include professional development for teachers and other school staff to deliver scientifically based academic instruction, including scientifically based literacy instruction, and, where appropriate, instruction in the use of adaptive and instructional software, and in providing educational and behavioral evaluations, services, and supports.

NO CHILD LEFT BEHIND ACT OF 2001 (NCLB)

• HIGH ACADEMIC STANDARDS FOR ALL STUDENTS

The DOE is committed to provide standards-based instruction that is aligned to the state courses of study for all students. Academic standards are public statements of what students should know and be able to do. In standards-based instruction, the focus of special education services is to provide students the necessary support to work toward the standards. Standards-based instruction sets clear performance expectations that drive special education services and supports for students. It reflects student learning and ensures that educational goals address areas determined to be beneficial to the students both in and out of school. Standards-based instruction provides opportunities for students with disabilities to work toward standards in a variety of environments and includes assessments and accountability of progress of students toward the standards.

The DOE requires that all students with disabilities participate in the general education curriculum to the greatest extent possible. The DOE requires that Individualized Education Program (IEPs) are developed according to the general education curriculum standards when appropriate. All special education coordinators have been trained to prepare administrators, teachers, parent advocates, parents, and students in developing standards-based IEPs. The DOE will continue to provide professional development related to standards and hold LEAs accountable through the monitoring process.

• ANNUAL STATE ASSESSMENTS FOR ALL STUDENTS

Alabama's students, including those with disabilities, are required to participate in the Alabama Reading and Mathematics Test (ARMT), and the Alabama High School Graduation Exam or the Alabama Alternate Assessment (AAA) to determine adequate yearly progress (AYP). This requirement of NCLB will significantly impact the environment and methods in which students with disabilities will receive services. An increase in the participation of students receiving services in the general education environment will positively impact student achievement, suspensions and expulsions, and graduation rates. The Office for Special Education Programs (OSEP) requires the disaggregation of data regarding least restrictive environment (LRE) by race, ethnicity,

and exceptionality area. An analysis of the disaggregated data will be used to determine the existence of disparities or disproportionality in student achievement.

The DOE has significantly increased participation of students with disabilities in state assessments as required by IDEA 2004. Baseline data from the 2004-2005 school year indicated the overall participation rate for students with disabilities was 97.82 percent. The overall proficiency rate for students with disabilities was 35.6 percent. The targets are to increase the number of students with disabilities in statewide assessments to 100 percent and the number of students scoring proficient by four percent annually. Special Education Services (SES) is committed to continuing to review and analyze this data and to provide professional development as a part of its focused monitoring to those LEAs that fail to meet the targets.

• HIGHLY QUALIFIED TEACHER IN EVERY CLASSROOM

IDEA 2004 and NCLB require all special education teachers in elementary, middle, and secondary schools to be highly qualified no later than the end of the 2005-2006 school year. To be considered highly qualified, the teacher must hold at least a bachelors degree, must have obtained full state certification as a teacher (including certification obtained through alternative routes), and hold a license to teach in the state. In addition, they must be able to demonstrate content mastery in each core academic subject they teach. Having highly qualified general and special education teachers will positively impact the efficiency of the prereferral, appropriately reduce referrals for special education evaluation, and increase accuracy in identifying students needing specially designed instruction. The DOE further anticipates a positive impact relative to suspension and expulsion rates, drop-out rates, and graduation rates for all students including students with disabilities. The DOE has provided professional development to all special education coordinators regarding appropriate service delivery models (consultative/collaborative) to assist LEAs in making appropriate decisions regarding placement. The DOE will continue to provide professional development related to highly qualified teachers and hold LEAs accountable through the monitoring process.

ROLES AND RESPONSIBILITIES OF KEY SCHOOL PERSONNEL IN ADDRESSING DISPROPORTIONALITY

The local superintendent of schools is primarily responsible for assuring that students are provided a high-quality curriculum and instructional program in a safe environment that supports cultural and linguistic differences. The superintendent is responsible for promoting a climate in which families may be appropriately and sensitively involved and teachers have the professional development and support they need. They are also charged with creating equitable opportunities for all students, including students with disabilities, by supporting the implementation of BBSSTs in all schools within the LEA and ensuring that students who are identified as students with disabilities are appropriately served.

The BBSST coordinator oversees the facilitation of an effective prereferral program. The BBSST coordinator is responsible for organizing and directing professional development activities and initiatives associated with the BBSST. Coordinators are required to review the tracking logs frequently, to determine the existence of patterns within the LEA that may lead to inappropriate referrals for special education evaluations, to report such instances to appropriate LEA authorities, and to determine corrective actions.

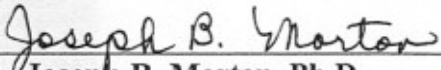
The general education teachers, counselors, and administrators are responsible for identifying appropriate intervention strategies, for implementing the strategies, and for monitoring the fidelity of the implementation of the intervention strategies in the general education classroom. Parents may share information regarding the child's cultural background, strengths, needs, and provide strategies that work outside of school. Parents may also be of assistance in implementing strategies found helpful during the school day away from school.

SUMMARY

The DOE is encouraged by the successes of this state. Alabama has experienced a shift; not only in the numbers of students identified with SLD, ED, MR, and GT, but in the attitudes, beliefs, and practices regarding students with disabilities. The DOE is committed to continue compliance monitoring and providing professional development in order to continue the positive trends that have proven to reduce disproportionality in SLD, ED, MR, and GT.

CERTIFICATION BY THE
ALABAMA STATE SUPERINTENDENT OF EDUCATION

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS ANNUAL REPORT IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF. I FURTHER CERTIFY THAT A COPY OF THIS REPORT HAS BEEN ADOPTED BY THE STATE BOARD OF EDUCATION.



Joseph B. Morton, Ph.D.
State Superintendent of Education

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ANTHONY T. LEE, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff - Intervenor and Amicus Curiae,

NATIONAL EDUCATION ASSOCIATION, INC.

Plaintiff-Intervenor

v.

LEE COUNTY BOARD OF EDUCATION

RUSSELL COUNTY BOARD OF EDUCATION

TALLAPOOSA COUNTY BOARD OF EDUCATION

ALEXANDER CITY BOARD OF EDUCATION

AUBURN CITY BOARD OF EDUCATION

OPELIKA CITY BOARD OF EDUCATION

PHENIX CITY BOARD OF EDUCATION

ROANOKE CITY BOARD OF EDUCATION

BUTLER COUNTY BOARD OF EDUCATION

COVINGTON COUNTY BOARD OF EDUCATION

ELMORE COUNTY BOARD OF EDUCATION

CRENSHAW COUNTY BOARD OF EDUCATION

Defendants

CIVIL ACTION NUMBERS

3:70-cv-845-MHT

3:70-cv-848-MHT

3:70-cv-849-MHT

3:70-cv-850-MHT

3:70-cv-851-MHT

3:70-cv-853-MHT

3:70-cv-854-MHT

3:70-cv-855-MHT

2:70-cv-3099-MHT

2:70-cv-3102-MHT

2:70-cv-3103-MHT

2:66-cv-2455-MHT

**OBJECTION / COMMENT TO MOTION FOR UNITARY STATUS
CONCERNING STATEWIDE SPECIAL EDUCATION ISSUES**

1. Please print

Name : _____

Address : _____

Telephone No. : _____

2. Are you a Student? _____

Parent of a Student? _____

Concerned Citizen? _____

3. Do you plan to attend the fairness hearing on December 19, 2006? * ☐ Yes ☐ No

4. If you do plan to attend the fairness hearing, are you requesting an opportunity to speak at the hearing? ☐ Yes ☐ No

IN ORDER TO SPEAK AT THE FAIRNESS HEARING, YOU MUST PROVIDE WRITTEN COMMENTS CONCERNING THE SUBJECTS ABOUT WHICH YOU WISH TO SPEAK.

5. Please state your objections/comments to the Motion:

You may attach additional sheets, if needed. Please put your name on each sheet.

SIGNATURE

MAIL TO:

**Office of the Clerk
United States District Court
Middle District of Alabama
Post Office Box 711
Montgomery, Alabama 36101**

FORMS MUST BE POSTMARKED NO LATER THAN DECEMBER 8, 2006.

*** THE FAIRNESS HEARING WILL BE HELD BEFORE THE HONORABLE MYRON H. THOMPSON, ON DECEMBER 19, 2006, AT 9:00 A.M., IN COURTROOM 2FMJ, FRANK M. JOHNSON, JR. FEDERAL COURTHOUSE COMPLEX, ONE CHURCH STREET, MONTGOMERY, ALABAMA**