

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

MARGARET M. JOHNSON, ET AL.,)	
)	
Plaintiffs,)	
)	
and)	CIVIL ACTION NO. 65-11130
)	
UNITED STATES OF AMERICA,)	HON. ROBERT G. JAMES
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
JACKSON PARISH SCHOOL BOARD,)	
)	
Defendant.)	

CONSENT ORDER

Plaintiff-Intervenor United States of America (“United States”) and Defendant Jackson Parish School Board (the “District”), having engaged in good-faith negotiations, do voluntarily agree to the entry of this Consent Order by the Court. After reviewing the terms of this Consent Order, the Court concludes that the entry of this Consent Order comports with the objectives of the Fourteenth Amendment to the Constitution of the United States of America and applicable federal law, and will further the orderly desegregation of the Jackson Parish School District. The parties agree to comply with the terms of this Consent Order.

I. PROCEDURAL HISTORY

On March 31, 1967, after private plaintiffs initiated this litigation, this Court issued an order permanently enjoining the District from discriminating on the basis of race or color in the operation of the Jackson Parish school system and ordering it to “take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system.” The

United States intervened in 1970. Pursuant to the orders of the court, the United States has continued to monitor desegregation of the schools in the District. On July 29, 2013, the Court found that the Jackson Parish School Board is unitary in the areas of facilities, transportation, and extracurricular activities for the requisite period. The District remains under Court order for student, faculty, and staff assignment.

The United States has undertaken a comprehensive review of the District. To address the concerns of the United States following its review, the parties now approach the Court and request approval of this Consent Order.

II. LEGAL STANDARDS

“The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system.” *Freeman v. Pitts*, 503 U.S. 467, 485 (1992). A school district under a desegregation order is obligated to (1) fully and satisfactorily comply with the court’s desegregation Orders for a reasonable period of time; (2) eliminate the vestiges of the prior *de jure* segregation to the extent practicable; and (3) demonstrate a good-faith commitment to the whole of the court’s Orders and to the applicable provisions of the law and the Constitution. *See id.* at 491-92; *Bd. of Educ. of Oklahoma City Pub. Sch., Indep Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248-50 (1991); *N.A.A.C.P., Jacksonville Branch v. Duval County Sch.*, 273 F.3d 960, 966 (11th Cir. 2001); *Lockett v. Bd. of Educ. of Muscogee Cnty. Sch. Dist.*, 111 F.3d 839, 842 (11th Cir. 1997). The affirmative duty to desegregate is a continuing responsibility, and “[p]art of the affirmative duty. . . is the obligation not to take any action that would impede the process of disestablishing the dual system and its effects.” *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 537-38 (1979).

“Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment.” *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 458-59 (1979).

The proper measure of a district’s progress toward unitary status “is the effectiveness, not the purpose,” of its actions. *Brinkman*, 443 U.S. at 537-38; *see also Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 25 (1971). A district must show both past compliance with its desegregation obligations and a commitment to the future operation of the school system in a non-discriminatory manner. *See Dowell*, 498 U.S. at 247. To that end, a district must demonstrate its “affirmative commitment to comply in good faith with the entirety of a desegregation plan,” not simply that it “had [not] acted in bad faith or engaged in further acts of discrimination since the desegregation plan went into effect.” *Freeman*, 503 U.S. at 499.

The Supreme Court has identified six areas, commonly referred to as the “*Green* factors,” to be addressed in the determination of whether a school district has fulfilled its duties and eliminated vestiges of the prior dual school system to the extent practicable. These are: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. *Green v. Cnty. School Bd. of New Kent Cnty.*, 391 U.S. 430, 435-42 (1968); *Jenkins*, 515 U.S. at 88. The *Green* factors are not intended to be a “rigid framework,” as the Supreme Court has approved consideration of other indicia, such as “quality of education,” in determining whether a district has fulfilled its desegregation obligations. *See Freeman*, 503 U.S. at 492-93.

With respect to faculty and staff assignment, the seminal Fifth Circuit case, *Singleton v. Jackson Municipal Separate School District* held that “the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students.” 419 F.2d 1211, 1217-18 (5th Cir. 1969) (en banc), *rev’d in part on other grounds sub*

nom. Carter v. West Feliciana Parish Sch. Bd., 396 U.S. 290 (1970). Once the faculty racial composition at the schools is substantially similar to the district-wide faculty average, “[s]taff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.” *Id.*

Subsequently, in *Fort Bend Independent School District v. City of Stafford*, the Fifth Circuit stated that:

The proper inquiry to be undertaken in an effort to determine whether the [school district] is now unitary is two-fold: first, the district’s current employment practices must be non-discriminatory and in compliance with constitutional standards; second, the adverse effects of any earlier, unlawful employment practices must have been adequately remedied.

651 F.2d 1133, 1140 (5th Cir. 1981). To this end, one factor to be examined is whether the school district has made a “sustained good faith effort to recruit minority faculty members so as to remedy the effects of any past discriminatory practices.” *Id.* (citing *United States v. Tex. Educ. Agency*, 467 F.2d 848 (5th Cir. 1972)); *see also N.A.A.C.P., Jacksonville Branch*, 273 F.3d at 967 (finding a school board unitary in faculty and staff assignment because the Board, *inter alia*, “aggressively recruited black faculty and staff”).

This Court has determined that this Consent Order is fair, just, reasonable, and consistent with the objectives and requirements of the Fourteenth Amendment to the Constitution of the United States of America, and the extant orders in this case. The parties further agree that entry of this Consent Order, without further litigation, is in the public interest.

This Court thus **ORDERS, ADJUDGES, and DECREES** the following:

III. REMEDIAL MEASURES

A. Student Assignment

The District shall continue to ensure it does not discriminate on the basis of race or color in the operation of the Jackson Parish school system and, in addition, shall take the following specific actions set forth herein to eliminate vestiges of the prior dual school system.

1. School Assignment

The District currently operates five schools. Overall, the District is comprised of 2,240 students, 36% of whom are black, 62% are white, and 2% are other races. The District's November 6, 2015 status report to this Court (ECF No. 92) sets forth the individual school enrollments by race and grade level.

All of the District's schools have student enrollments that are more than 20% different from the Districtwide average by race. As a result, the parties have agreed to modify the student attendance zones and transfer criteria. For the 2016-2017 school year and beyond, the District shall modify its attendance zones and grade structures as set forth in Exhibit A. Exhibit A contains maps depicting the former and new zones as well as estimated enrollments of each school, by race, following the changes.¹ The student assignment changes will bring the enrollments of all of the District's schools to enrollments within 21% of districtwide averages.²

Implementation of the new student attendance zones, outlined in Exhibit A, will result in the reassignment of a number of students who begin their senior year in the 2016-17 school year. Any of those students who desire to graduate from their current schools may be granted "senior transfers" back to their original schools. Students receiving such senior transfers for the 2016-17

¹ The estimated enrollments of students are based on residential addresses alone and do not include majority-to-minority (M-to-M) or other student transfers.

² The enrollments of all schools except Jonesboro-Hodge High School will be within 20% of the districtwide average. The parties agreed to a plan that would result in a 21% difference in enrollment at Jonesboro-Hodge High School but consider it likely that M-to-M transfers may bring that school within the 20% range.

school year shall be immediately eligible to participate in athletics and other extracurricular activities at the schools to which they transfer (i.e., their schools prior to implementation of the student attendance zones outlined in Exhibit A).

2. Student Transfers

a. Majority-to-Minority Transfers

Consistent with the Court's order of August 20, 1970, the District shall continue to implement a majority-to-minority ("M-to-M") transfer program, which allows a student attending a school in which his/her race is in the majority to choose to attend another school where his/her race is in the minority; space shall be made available and free transportation shall be provided. By June 1, 2016 and by April 1 of each year of this order thereafter, the District shall publish a notice describing the majority-to-minority ("M-to-M") transfer opportunities in the local newspaper and on its website. The notice shall include the following:

- i. A statement that the District encourages M-to-M transfers, which allows any student attending a school at which his/ her race is the majority to transfer to another school where the student's race is in the minority;
- ii. Notification that the District provides transportation to all students granted an M-to-M transfer; and
- iii. Information describing the process to be used to apply for an M-to-M transfer, including the deadline for submitting the transfer request and identifying to whom/where the transfer shall be submitted.

3. Classroom Assignments

The District shall assign students to classrooms in ways that do not segregate or otherwise discriminate against students on the basis of race, color, or national origin. The District shall avoid the creation of racially identifiable classes to the extent practicable. The District shall have the right to offer electives and other optional courses to all of its students on an equal basis and may fill those classes with students based on student interest, even if that results in racially identifiable classes, provided no desegregative alternative (i.e., another section of same class) exists. Similarly, students may be assigned to special education classes consistent with their Individual Education Plans (“IEPs”), without consideration of race, and provided no desegregative alternative exists.

4. Certain Extracurricular Activities

As previously noted, the District was found to be unitary in the area of extracurricular activities by order of the Court dated July 29, 2013. (ECF No. 70). Implementation of the student attendance zones outlined in Exhibit A will, however, result in the reassignment of students to new schools beginning with the 2016-17 school year and may result in athletic eligibility issues. To address those concerns, the Court orders that those students transferred to new schools as a result of implementation of the student attendance zones outlined in Exhibit A hereto shall be immediately eligible to participate in athletics and other extracurricular activities at their new schools. In addition, since Jonesboro-Hodge High School is the only school in the parish that offers football for students in grade 9-12, any students who attend Quitman High School or Weston High School who desire to play high school football shall be immediately eligible to participate on the football team at Jonesboro-Hodge High School and the District shall provide transportation to facilitate that participation. For purposes of football only, and, for

purposes of classification by the Louisiana High School Athletic Association (“LHSAA”) only, high school students attending Quitman High School and Weston High School who are members of the football team at Jonesboro-Hodge High School shall be treated as if they live in the Jonesboro-Hodge High School attendance zone. For all other sports and activities, students attending Quitman High School and Weston High School will participate only at their respective schools. Students receiving M-to-M transfers shall continue to be immediately athletically eligible at the schools to which they transfer.

5. Student Discipline

The United States has some concerns about possible racial inequities in student discipline in the District, but the District denies that any racial inequities in student discipline exist within its schools. Nevertheless, the District agrees that, by July 1, 2016, it shall contract with the Intercultural Development Research Association (“IDRA”) South Central Collaborative for Equity or another similar organization to obtain technical assistance and training on cultural responsiveness and racial equity in student discipline. Technical assistance and training shall include, but shall not be limited to: training for teachers and administrators regarding cultural competency and implicit bias, and review (and recommendations for revising as necessary) of the student code of conduct. The parties agree that completion and good faith implementation of the training and technical assistance described above will satisfy the United States’ concerns with respect to discipline.

B. Faculty and Staff Assignment

Following final calculations of the anticipated student enrollments in the schools after implementation of the student attendance zones outlined in Exhibit A hereto, the District will evaluate the faculty and staffing needs in each school building and will develop a plan to assign

its faculty and staff in ways that do not reflect the racial identity of the student enrollment of the schools. The plan shall reflect the following: (1) Starting in the beginning of the 2017-2018 school year, the Board will set a diversity goal³ to ensure that the ratios of black to white teachers in each of the three K-12 zones (Quitman, Weston, and Jonesboro-Hodge (including Southside Elementary and Jonesboro-Hodge Middle and High Schools) are within the plus or minus 15% range of the black-to-white teachers ratio in the entire school system with a minimum of 15% black teachers at each of the respective schools. (2) With respect to administrators, the District's administrators shall be so assigned that in no case will the racial composition of an administrative staff indicate that a school is intended for black students or white students. *See Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211, 1217-18 (5th Cir. 1969).

The District shall submit this plan, which will also address teacher recruitment, to the United States by July 1, 2016, and the United States shall have 30 days to comment on or object to the plan. The parties will work together in good faith to resolve all disagreements. If the District and the United States are unable to resolve any disagreements in a reasonable period of time, either party may seek the assistance of the Court to resolve the disagreement.

V. MONITORING, REPORTING, AND MODIFICATIONS

On or before October 15 of each year during the term of this Consent Order, the District shall file with the Court a report, to include:

A. The total number and percentage of students, by race and grade level, enrolled in each school facility operated by the District, including alternative schools.

³ The parties agree and the Court finds that the Board's implementation of the measures provided are reasonable means to work toward the diversity goal. However, failure to meet the goal alone will not prevent a finding of unitary status. *See Anderson v. Sch. Bd. of Madison County, Ms*, 517 F.3d 292,303 (5th Cir. 2008) (failure to satisfy ratio goal did not prevent unitary status where evidence supported compliance with obligations).

B. For the prior school year, a list that includes each student's ID number, school, grade level, race, and name of teacher/employee referring the student for discipline, for all students who were suspended for more than 1 day for a single incident, transferred to an alternative school for disciplinary reasons, or expelled, indicating the infraction(s) for which the penalty was imposed.

C. The total number and percentage of teachers, administrators, and staff, by race and position, grade or subject(s) taught, in each school facility.

D. Copies of the newspaper and website notice(s) regarding the District's M-to-M program.

E. The number of students attending each school pursuant to an M-to-M transfer by race and zoned school.

F. A description of all efforts made in conjunction with the faculty and staff recruitment, hiring, assignment, and training efforts referenced above.

G. For each position open since the last report to the Court, a summary of recruiting efforts, the number of applicants to each position, by race, and the race of the person hired.

VI. MODIFICATIONS

All modifications of this Consent Order, including all zoning changes, opening/closure of school facilities, or expansion of current facilities, require approval of the Court through an appropriate motion.

VII. FINAL TERMINATION

The District retains the burden of eliminating the vestiges of *de jure* segregation which continue to exist in the areas still under this Court's supervision. The parties have agreed and the

Court finds that the Defendants will meet their desegregation obligations if they fully implement the requirements set forth in this Consent Order. Therefore, upon demonstration of full implementation of all provisions described in this agreement, the Defendants may move for a declaration of unitary status as to all remaining Green factors no sooner than sixty (60) days after the submission of its October 15, 2018 court report. The applicable provisions of the Federal Rules of Civil Procedure and the local rules of this Court will apply to all motions.

SO ORDERED, ADJUDGED AND DECREED, this 13 day of May, 2016.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

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