IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DIANE COWAN ET AL., **PLAINTIFFS**

and

UNITED STATES OF AMERICA, **PLAINTIFF-INTERVENOR**

v. **CIVIL ACTION NO.: 2:65-CV-00031-GHD**

BOLIVAR COUNTY BOARD OF EDUCATION ET AL., **DEFENDANTS**

THE CLEVELAND SCHOOL DISTRICT'S RESPONSE IN OPPOSITION TO THE UNITED STATES' MOTION FOR FURTHER RELIEF

The Cleveland School District ("the District") files this Response in Opposition to the United States' ("the Government") Motion for Further Relief. In support thereof, the District would show unto the Court the following:

1. The District presently operates ten schools. Among them, only one non-magnet school is majority white, with a 59% white enrollment. The overall student enrollment in the District is 66.4% black, 30.2% white and 3.4% other. Despite this relatively low white population, six of the District's schools have statistically significant white enrollments. The 1969 court order[1] and the 1989, 1992, and 1995 consent decrees in this case describe the District's desegregation obligations. The District has complied with each of these orders, implementing attendance zones, magnet schools, and a majority to minority transfer program.

[1] The District has noticed that the 1969 order appearing on this Court's docket is incorrect. It refers to Bolivar County School District Number 2. The Cleveland School District was formerly Bolivar County School District Number 4. The correct order is attached as Exhibit 5 to this Response.

2. The Government's apparent standard for measuring constitutional compliance defies the longstanding mandate against racial balancing. *Swann v. Charlotte-Mecklenburg Bd. of Educ*., 402 U.S. 1, 12 (1971). The case law is clear that "[r]acial balance is not to be achieved for its own sake." *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). Instead, it is only to be pursued when it is caused by a constitutional violation—when the racial imbalance is the result of past state-imposed segregation. *Id*. More sophisticated measures actually considering students' interracial exposure and the distribution of students of each race throughout the District show the success of its desegregation efforts.

3. The orders governing the District's desegregation obligations do not set forth any particular racial quota or balance that must be reached to demonstrate compliance. The Supreme Court has stated that a school district is "entitled to a rather precise statement of its obligations under a consent decree." *Missouri v. Jenkins*, 515 U.S. 70, 101 (1995) (citing *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 246 (1991)). Here, the District's obligations are detailed in the this Court's 1969 desegregation order and consent decrees issued in 1989, 1992 and 1995. None of these orders require racial balance.

4. Dr. Christine Rossell, one of the nation's leading experts on school desegregation, has prepared a report outlining the success of the District's current desegregation plan. Dr. Rossell's scientific method of measuring integration establishes that the District has achieved what the constitution requires. This report shows that the District currently has an overall racial balance greater than five southern school districts already declared unitary, including Mobile, Alabama; DeKalb County; Georgia, Fulton County, Georgia; Kansas City, Missouri; and Dallas, Texas. Additionally, Cleveland is one of the few school districts in the country with *increasing*

interracial exposure, despite the fact that its overall percentage of white students has steadily declined.

5. The District's magnet programs and robust majority to minority transfer initiative further prove its good faith in attempting to achieve desegregation. The fact that some of these initiatives have experienced more success than others is not constitutionally significant. As of 2011, both of the District's dedicated magnet schools had met their benchmark racial makeup goals. Additionally, 229 students took advantage of the District's majority to minority transfer program, which permits students in the majority race in their school to transfer to any school where they would be in the minority.

6. The Government's "balancing" approach undercuts the District's efforts to maintain a stable enrollment for students of all races. While private decisions may not enter the Court's analysis, the Fifth Circuit has permitted the stability of desegregated enrollment to play a role in a district court's ruling. *Flax v. Potts*, 864 F.2d 1157, 1160 (1989). Ultimately, the court noted that "the long term effect [of a desegregation policy] is a relevant consideration." *Id*. at 1162 (citing *Pitts v. Freeman*, 755 F.2d 1423, 1427 (11th Cir. 1985)). Here, the long term effect of any mandatory desegregation plan proposed by the government would ultimately be the loss of desegregation.

7. The District has eradicated the vestiges of *de jure* segregation, and may not be held responsible for de facto segregation resulting from demographic changes within the District. *Ross v. Houston Independent School District*, 699 F.2d 218 (5th Cir. 1983). When changes in a school district's racial makeup result from residential patterns unrelated to prior state imposed segregation, no constitutional violation may be found. *Id*.

8. The District has made good faith efforts to comply with the faculty and staff assignment plan. In accordance with the 1989 consent decree, and using a ± 20% measure of deviation, 60% of the District's schools strictly comply with the terms of the order. Because elementary and secondary school teachers are not fungible, attaining rote compliance with a specific quota is particularly different. However, as directed in the consent decree, the District has undertaken extensive recruitment of minorities, particularly at predominantly African-American colleges and universities. The results of these efforts show in the comparison of black teachers in the District to the statewide percentage of black teachers. The District has a 35% black instructional staff, while the state of Mississippi as a whole has only 25% black teachers.

9. The District relies on its Memorandum in Support of this Response and incorporates the arguments stated therein as if set forth fully in this Response. The District also relies on the following Exhibits.

Exhibit 1: Report prepared by Slaughter and Associates

Exhibit 2: Affidavit of Jaquelyn Thigpen, Superintendent of the Cleveland School District.

Exhibit 3: Report prepared by Former Cleveland City Administrator, Jerome Norwood

Exhibit 4: Report prepared by Dr. Christine Rossell, including CV and compensation information

Exhibit 5: 1969 Order

10. For the reasons stated herein, and as described more fully in its Memorandum in Support of this Response, the District respectfully asks this Court to dismiss the Government's Motion for Further Relief.

Respectfully Submitted, this the 18th day of August, 2011

CLEVELAND SCHOOL DISTRICT

By: /s/ Holmes S. Adams
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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2011, I served copies of the District's Response in Opposition to the United States' Motion for Further Relief to counsel of record by electronic service through the court's electronic filing system, otherwise via electronic or first class mail, postage pre-paid to:

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This the 18th day of August, 2011.

/s/ Holmes S. Adams
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