U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

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September 5, 2014

Via Email & U.S. Mail
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Re: Investigation of the Robertson County Schools

Dear Ms. Sanders:

The United States has completed its investigation into allegations that the Robertson County Schools ("District") and the Robertson County Board of Education ("Board") have discriminated on the basis of race through their student assignment practices, including failing to desegregate the District's schools. The United States considered these allegations in light of the District's and Board's obligations as a prior *de jure* segregated school system to dismantle and not reestablish its segregated system. These obligations include those set out in federal case law and statutes since *Brown v. Board of Education*, 347 U.S. 482 (1954), prohibiting discrimination on the basis of race and requiring equal educational opportunities in public schools. As explained in detail below, the United States has determined that the District has yet to desegregate its schools and eliminate the vestiges of its prior segregated school system.

The United States appreciates the District's cooperation throughout the investigation and proposes a voluntary resolution of the District's noncompliance out of court through the enclosed settlement agreement ("Agreement"). Please have the District review the Agreement and let us know as soon as possible if you would like to discuss any of the terms in the Agreement. We request that the District sign the Agreement no later than the first week of October and look forward to hearing from you.

District transfers as well as faculty hiring and assignment. In conducting this investigation, the United States reviewed hundreds of pages of documents from the District and conducted site visits to the District and the local community. These site visits entailed touring several District schools,[2] interviewing school and District staff, and attending community meetings. The United States also conducted over a dozen of interviews, including with former school and District officials, parents, teachers, and community members.

After reviewing the information gathered from District documents, site visits, and interviews, the United States has determined that the District has not met its obligations to desegregate its schools with respect to student assignment under federal law. As a once *de jure* segregated system, the District has a continuing, affirmative obligation to engage in school construction and student assignment decisions that further the desegregation of its system, and upon its desegregation, do not reestablish a dual system. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.* 402 U.S. 1 (1971). The United States concluded that the District has engaged in a longstanding pattern of decisions that have hindered, rather than furthered, the desegregation of its schools. Below is a summary of the District's actions, a discussion of the District's obligations under the 441-B plan, the applicable legal standards, the United States' detailed determinations of noncompliance, and a summary of a proposed resolution.

II. Historical Background

During state-mandated segregation in Tennessee, the Robertson County Schools operated as a segregated, dual school system, requiring separate schools for black and white students. (*See HEW Decision* at 2, 5.) After the passage of the 1964 Civil Rights Act, in July 1965, the District submitted a "Freedom of Choice" desegregation plan to the United States Department of Health, Education, and Welfare ("HEW"), which is now the Department of Education. (*Id.* at 6.) This desegregation plan allowed students and/or their parents to select the school in the District they wanted to attend. This plan was ineffective and resulted in only 2% of the District's black students transferring to formerly all-white schools. (*Id.*) Following the failure of the Freedom of Choice plan, the District began closing some of its all-white and all-black schools to promote desegregation. (*Id.* at 6-7.) On April 28, 1966, the District filed an assurance on HEW Form 441-B that, in carrying out its desegregation plan, it would abide by policies and procedures in HEW's revised guidelines for school desegregation. (*Id.* at 6.) The assurance included an understanding that the District's plan was subject to review to ensure its adequacy to accomplish desegregation. (*Id.*)

In March 1968, HEW issued amended guidelines that directed schools to abolish their dual systems of all-white and all-black schools by the beginning of the 1969-1970 school year. (*Id.* at 8.) The District submitted a plan to desegregate its schools in August 1968. (*Id.*) Upon HEW's request, the District revised this plan in July 1969 to pair schools in the City of Springfield. (*Id.* at 10.) However, before the start of the 1969-1970 school year, the District rescinded the pairing plan

[2] Representatives from the United States visited Coopertown Elementary School, Krisel Elementary School, Watauga Elementary School, Westside Elementary School, Coopertown Middle School, Greenbrier Middle School, Springfield Middle School, Jo Byrns High School, Springfield High School, and White House Heritage High School.

> system as a whole; the recruitment and employment of staff must be on a nondiscriminatory basis; and all programs and activities in the system must be nondiscriminatory and nonracial. In addition, any new construction of buildings or additions must be such that resegregation will not occur. Where it appears there is a possibility that the location for school facilities or additions may reduce desegregation, [HEW] should be notified prior to any commitment being made for construction.

(*Id.*) The District's obligations to ensure that new construction, additions to schools, and related student assignment do not resegregate students or reduce desegregation are the focus of this letter and our proposed Agreement.

It is further important to recognize that the 441-B Plan was adopted by the District and approved by the Department of Education prior to the Supreme Court's seminal decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). *Swann* established that a formerly segregated school district must, "make every effort to achieve the greatest possible degree of actual desegregation," and provided "amplifi[ied] guidelines" for schools and courts to follow. 402 U.S. 1, 14, 26 (1971). The Supreme Court explained that where school districts have yet to meet this "affirmative duty to take whatever steps might be necessary to convert to a unitary system" "judicial authority may be invoked" and "the scope of a district court's equitable powers to remedy past wrongs is broad." *Id.* at 15. This holding prompted the courts to direct many school districts to develop and implement revised desegregation plans that included the expanded remedies called for in the decision.[4] The Court, in *Swann* and subsequent cases, recognized that desegregation plans may need to be revisited and revised, and that "the measure of any desegregation plan is its effectiveness." *Davis v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 402 U.S. 33, 37 (1971).

III. Legal Standards

The United States conducted this investigation in light of the District's desegregation obligations under Title VI, Title IV, the EEOA, and applicable federal case law. All three statutes prohibit public school districts from discriminating against students on the basis of race, through, among other things, segregation and failing to remove the vestiges of a dual school system. These obligations of school districts are elaborated upon in the case law, including in *Green v. County School Board of New Kent County*, 391 U.S. 430, 435 (1968), in which the Supreme Court enumerated six factors that a district must address to eliminate a dual system: student assignment, faculty assignment, staff assignment, transportation, extracurricular activities, and facilities.[5] This

[4] *See, e.g., Lee v. Tuscaloosa City Sch. Sys.*, 576 F.2d 39, 40-41 (5th Cir. 1978) (requiring a new plan to address racially identifiable schools despite compliance with order); *United States v. Bd. of Educ. of Valdosta*, 576 F.2d 37, 38-39 (5th Cir. 1978) (same); *Tasby v. Estes*, 572 F.2d 1010, 1014-15 (5th Cir. 1978) (remanding a second time with instructions to devise a desegregation plan that considers the techniques outlined in *Swann*); *United States v. Desoto Parish Sch. Bd.*, 574 F.2d 804, 807 (5th Cir. 1978) (remanding with instructions to replace pre-*Swann* plan); *Gaines v. Dougherty Cnty Bd. of Educ.*, 465 F.2d 363, 364 (5th Cir. 1972) (same); *Stout v. Jefferson Cnty. Bd. of Educ.*, 448 F.2d 403, 404 (5th Cir. 1971) (same).

[5] The list factors enumerated in *Green* is not exhaustive and school district may also need to address other factors that

B. *Site Selection & Construction*

The District's affirmative duty to desegregate includes considering desegregative objectives in school site selection and construction decisions.[8] Recognizing the central importance of school site selection in desegregation, the Supreme Court has stressed that formerly *de jure* school districts must "see to it that future school construction and abandonment are not used and do not serve to perpetuate or re-establish the dual system." *Swann*, 402 U.S. at 21. The Supreme Court further recognized that building new schools in the outer areas of a district, far away from the minority-student population, can promote segregated neighborhoods that perpetuate segregated schools. *Id.* The Court held that this pattern of site selection should be given great weight in determining whether the district is engaging in segregation. *See id.* Thus, where a school district has maintained a pattern of opening new schools in areas that lead to virtually one-race schools, the district has failed in its duty to dismantle the dual system.

The District also must ensure that building additions and the placement of portable classrooms do not perpetuate or re-establish a dual system. A district has not fulfilled its duty to desegregate where the district engages in a pattern of constructing additions or locating portable classrooms at virtually one-race schools instead of expanding more desegregated schools.[9] Moreover, "school officials are obligated not only to avoid any official action that has the effect of perpetuating or reestablishing a dual school system, but also to render decisions that further desegregation and help to eliminate the effects of the previous dual school system." *Harris v. Crenshaw Cnty. Bd. of Educ.*, 968 F.2d 1090, 1095 (11th Cir. 1992) (footnote omitted). "Thus, the duty to desegregate is violated if a school board fails to consider or include the objective of desegregation in decisions regarding the construction and abandonment of school facilities." *Id.* (footnote omitted). A school district contravenes these obligations if it places permanent or portable additions at predominantly minority schools instead reassigning students among its schools in practicable ways that would further desegregation.

IV. The District Has Yet to Meet Its Obligations to Desegregate

The District has not satisfied its legal obligations to desegregate its schools and eliminate the vestiges of the dual system in student assignment. The District has engaged in a pattern of student assignment decisions over decades that have not furthered desegregation and in many instances serve to maintain or re-establish the dual system. Specifically, the District has maintained historically white schools as virtually all white schools, constructed seven almost all-white schools, and placed new schools, building additions, and portable classrooms in locations that impede

[8] *See Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 529 (1979); *Swann*, 402 U.S. at 20–21; *United States v. Bd. of Pub. Instruction of Polk Cnty., Fla.*, 395 F.2d 66, 70 (5th Cir. 1968); *Kelley v. Altheimer, Ark. Pub. Sch. Dist. No. 22*, 378 F.2d 483, 496-97 (8th Cir. 1967); *Wheeler v. Durham City Bd. of Ed.*, 346 F.2d 768, 775 (4th Cir. 1965).

[9] *See Dayton*, 443 U.S. at 540 (holding that the district did not meet its duty to desegregate where 78 of 86 additions were made to schools that were 90% or more of one race); *Oliver v. Michigan St. Bd. of Educ.*, 508 F.2d 178, 184 (6th Cir. 1974) (a district may not add "portable classrooms to White schools in cases where there [is] a significant amount of space available in racially identifiable Black schools with the obviously foreseeable and actual effect of perpetuating the segregated conditions").

The United States appreciates that the District has more recently determined to build a new elementary school, Crestview Elementary, at a site that will permit the District to further desegregation through revised attendance zone lines for the new school and adjacent schools. As set forth in the proposed Agreement, we hope to reach a voluntary resolution with the District to ensure that the opening of the new school, related attendance zone changes, and other upcoming student assignment decisions further desegregation, consistent with the District's legal obligations.

B. *Student Assignment*

The data show that the majority of the District's schools are racially identifiable. For the 2013-2014 school year, the District's elementary enrollment was 71.1% white, 15% Hispanic, 9.6% black, 2.9% multi-racial, and 1.4% other. Middle school and high school enrollment was 81.5% white, 9.4% black, 7.7% Hispanic, 0.8% multi-racial, and 0.6% other. Thirteen of the District's nineteen schools have racial enrollments outside of the ±15% deviation of the District-wide demographics. All of the District's elementary schools are racially identifiable, and Springfield Middle and High, serving the majority of the District's black students, are also racially identifiable. While the District's remaining middle and high schools do not fall outside the +/- 15% deviation, they are all over 90% white and their enrollment demographics contrast starkly with those of Springfield Middle and High School. It is particularly problematic that a large number of schools across grade levels are almost exclusively "white" schools.

School	**White Enrollment**	**Deviation**
Bransford Elementary	21.3%	50.4
Chetham Park Elementary	35.3%	36.4
Coopertown Elementary	92.1%	20.4
East Robertson Elementary	88.3%	16.6
Greenbrier Elementary	92.2%	20.5
Jo Byrns Elementary	87.3%	15.6
Krisle Elementary	47.2%	24.5
Robert Woodall Elementary	91.4%	19.7
Watuga Elementary	91%	19.3
Westside Elementary	25.8%	45.9
White House Heritage Elementary	91.2%	19.5
Coopertown Middle	94.5%	13
Greenbrier Middle	94.2%	12.7
Springfield Middle	39.4%	42.1
East Robertson High School	93.6%	12.1
Greenbrier High School	94.1%	12.6
Jo Byrns High School	92.2%	10.7
Springfield High School	60.1%	21.4
White House Heritage High School	91.8%	10.3

an internal and external marketing plan to improve the current perception of Springfield schools; temporarily adjust the Springfield zone lines; and continue to seek funding for an elementary school in south Springfield. In presenting the recommendations to change the zone lines and build a new school, the Committee noted that the plans would provide an opportunity for the District to create more "equitable demographics" in the schools. The School Board approved a resolution to purchase property to build a new elementary school in Springfield and agreed to alter the District's zone lines with the new school, but in May 2013, the District did not receive the necessary funding from the County Commission. This denial of funding further delayed and jeopardized the District's ability to desegregate.

The District has since secured funding for the new elementary school, Crestview Elementary, which is planned to open for the 2015-2016 school year. Fortunately, the District decided to open this new school at a site that will enable the District to assign students to this school and adjacent schools in a manner that furthers desegregation . The opening of Crestview Elementary presents an opportunity to remedy the effects of prior school construction and student assignment decisions that have hindered desegregation in the District.

Proposed Resolution

We appreciate the District's cooperation throughout the United States' investigation and recognize the District's recent effort over the past year to account for its desegregation obligations in the opening of its new elementary school. To resolve the concerns identified in this letter and avoid the expenses of litigation for both parties, the United States proposes that the District voluntary enter into the enclosed Settlement Agreement. The Agreement incorporates a specific plan for student assignment in Attachment A that would ensure the new elementary school and the required attendance zone line changes for this school and adjacent schools further desegregation; includes cultural competency training of teachers and staff to facilitate a smooth transition of reassigned students; and requires that future construction and rezoning decisions over the next five school years, including anticipated changes at the secondary school level, comport with the District's desegregation obligations. In addition, the Agreement ensures that any assignment, hiring, or recruitment of faculty, administrators, and staff associated with the new elementary school and any other future school changes are consistent with these obligations.

We look forward to hearing from you regarding the enclosed Agreement and hope to be able to resolve this matter cooperatively, consistent with our interactions throughout this investigation.

Sincerely,

/s/Sarah Hinger

Sarah Hinger
Trial Attorney