IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
	)	
v.	)	
	)	**2:70-CV-00010GH**
	)	
COTTON PLANT SCHOOL	)	
DISTRICT #1, ET AL.	)	
(WATSON CHAPEL SCHOOL	)	
DISTRICT #24),	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION FOR FURTHER RELIEF AND REQUEST FOR PRELIMINARY INJUNCTION

INTRODUCTION

Since 1970, the Watson Chapel School District (District or WCSD) has been under a court order to desegregate its schools and eliminate the vestiges of segregation to the extent practicable. Notwithstanding this Order and applicable federal law, the WCSD has failed to take the necessary steps to desegregate the historically all-white Sulphur Springs Elementary School (Sulphur Springs). To the contrary, the WCSD has pursued policies that have perpetuated Sulphur Springs as an all-white school in a majority black district. Specifically, the District has (1) adopted a *de facto* freedom of choice plan; (2) gerrymandered Sulphur Springs attendance lines that effectively exclude black students within close

proximity to the school; (3) maintained a far smaller enrollment than the District's other elementary schools; and (4) maintained a virtually all-white faculty. These discriminatory actions have successfully discouraged and/or precluded black student participation at Sulphur Springs.

After receiving a complaint about Sulphur Springs and conducting an investigation, the United States notified the District of its noncompliance with this Court's Order and federal law and sought to negotiate a resolution. The United States was amenable to an interim plan for the 2001-02 school year, which would require reasonable and practicable steps on the part of the District to desegregate the school, to be followed by a final plan for the 2002-03 school year and beyond that would alter the attendance zone, require mandatory attendance and ensure minority enrollment. The District, however, refused to implement meaningful interim measures for the 2001-02 school year.

Plaintiff United States therefore moves the Court for further relief and requests a preliminary injunction to immediately enjoin WCSD from operating Sulphur Springs in a discriminatory manner in violation of this Court's order and applicable federal law.

BACKGROUND

A. Current Student Enrollment

The District served approximately 3,400 students for the 2000-01 school year. (See Table below). The District operates six schools - three elementary, one intermediate, one junior high and one high school. With the exception of students in grades K-3, who attend either Sulphur Springs or Edgewood and Owen, students in all other grades attend the same schools.

For the 2000-01 school year, the District had the following school enrollment by race:

School	Black	White	Other	Total
Edgewood (K-1)	286 (65%)	148 (34%)	4 (1%)	438
Owen (2-3)	266 (60%)	174 (39%)	5 (1%)	445
Sulphur Sp (K-3)	0	75 (100%)	0	75
Coleman (4-6)	445 (58%)	319 (42%)	1 (.1%)	765
WCJH (7-9)	471 (56%)	364 (43%)	2 (.2%)	837
WCHS (10-12)	430 (55%)	347 (45%)	0	777
Total	1,898(57%)	1,427(43%)	12 (.4%)	3,337

(District Data compiled by United States, Exhibit 7).

The racial composition of the District for the 2000-01 school year was 57% black (1,898 students) and 43% white (1,427 students). In contrast, the black student population for the 1974-75 school year was 49% (1,645) of the total student population (3,390), indicating a growing black student population. (October 1974 Report to the Court).

B. Historical Background

The WCSD has operated under a desegregation order since 1970. (Order, 11/17/70, Exh. 1).[1] The 1970 Order required Sulphur Springs to serve "all students in grades 1-4 who live in the nearby rural area in which the school is located." (Id., at 1). Although the 1970 Order did not prescribe an attendance zone for Sulphur Springs, the parties and the Court anticipated that the District would serve a sizeable number of black students at this historically white school. Specifically, it was projected that 25 out of 100 Sulphur Spring students would be black. United States v. Watson Chapel Sch. Dist. No. 24, et al., 446 F.2d 933, 935 (8th Cir. 1971) (affirming this Court's 11/17/70 Order).

The District, however, has never come close to meeting this enrollment goal. Indeed, according to District annual

[1] There have been no supplemental orders that have changed the District's obligations under the 1970 order.

reports, Sulphur Springs has remained virtually all-white for the last 31 years.[2] Black families have resided in the Sulphur Springs attendance zone since 1970; over the years more black families have moved into the area.[3] Though there has been an increase in the number of black families in the Sulphur Springs attendance zone, the school enrollment has remained all white.

Located in a small building several miles from the main campus, Sulphur Springs houses four classrooms - each serving one grade. The District originally served grades 1-4, but now serves grades K-3. Though the enrollment has fluctuated over the years, Sulphur Springs has rarely enrolled, especially in recent years, more than 90 students. Because of its small size, Sulphur Springs has never had a formal principal, but has shared one with Owen Elementary School.

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[2] Based on interviews with district officials and community members, the United States received statements to the effect that several black students have attended Sulphur Springs for short periods of time during the last 31 years. We do not possess all the reports to confirm whether, in fact, Sulphur Springs has ever enrolled a black student.

[3] Our conclusion is based on information obtained during our investigation, including interviews with black parents residing in Sulphur Springs attendance zone and nearby areas.

C. Docket Activity Since 1970 Order

The District provided reports to the Court immediately following the implementation of its desegregation plan and thereafter. In later reports to the Court, however, the District listed Sulphur Springs' student enrollment data with Owen Elementary School.[4] The District provided no notice to the Court or United States of this reporting change. Other than providing reports to the Court, there has been little activity in the case over the years.

In 1990, the District filed a motion requesting to be relieved from filing annual reports, which the Court granted.

D. Investigation by the United States

On August 1, 2000, the U.S. Department of Education, Office for Civil Rights (OCR), forwarded to the Department of Justice a complaint against the WCSD. This complaint alleged, among other things, that the WCSD discriminates on the basis of race by transporting black students from the Sulphur Springs attendance zone to other schools in the District to

[4] Our files show that in 1988 the District reported Sulphur Springs with Owen Elementary student enrollment. (Report to the Court, May 1988). We do not possess all court reports, so earlier files may also show joint student enrollment numbers for Sulphur Springs and Owen.

maintain a racially identifiable school. (OCR Complaint, Exh. 2).

The United States began investigating the complaint in September 2000. The investigation comprised touring the District, meeting with interested community members and requesting and analyzing data from the District. During a visit to the WCSD, the United States met with black community members and interviewed a number of black residents residing in the Sulphur Springs Community. The interviews entailed specific questions as to why black parents have not sent their eligible school-age children to Sulphur Springs.

Following the on-site investigation, on October 12, 2000, the United States sent an informal information request to the District. The District responded to our information request by providing, among other things, names and addresses of students, by race, who attended Sulphur Springs for the past 5 years; names and addresses of students, by race, who attended Owen or Edgewood Elementary Schools for the past 5 years; the Sulphur Springs attendance policies; and, the Sulphur Springs attendance zone, including lay-out of streets and boundaries of the zone. (Information Request of 10/12/00, Exh. 3).

After reviewing the District's data, the United States wrote to the District on March 5, 2001, identifying several

desegregation-related issues, including concerns about the operation of Sulphur Springs:[5] (1) Sulphur Springs serves an out-of-zone student population that is exclusively white; (2) black students living within the Sulphur Springs attendance zone do not attend the school but are bussed past the school to other elementary schools in the District; (3) the District's attendance zone boundaries for Sulphur Springs exclude streets on which black families reside; (4) the District has determined cut-off points in the attendance zone which appear to be arbitrary, contrary to stated reasons for the cut-off points, and have the ultimate effect of excluding clusters of black families; (5) based on information and belief, only one black teacher has been assigned to Sulphur Springs in the last thirty-one years; and (6) because of the District's practices and policies concerning Sulphur Springs, the school is perceived in the black community as one that serves exclusively white students. (Letter from K. Ahuja to M. Dennis of 3/5/01, Exh. 4).

On April 20, 2001, the District provided a response to United States' letter. In the letter, the District did not offer any specific remedies for addressing the United States'

[5] The other areas of concern set forth in the letter are not germane to this motion and are not described herein.

concerns. (Letter from M. Dennis to K. Ahuja of 4/20/01, Exh. 5).

In May 2001, the United States visited the District, toured the District schools, including Sulphur Springs, and met with District officials. At that time, the United States again detailed its concerns relating to Sulphur Springs, stated that the situation would need to be addressed promptly, and suggested appropriate remedies.

E. Findings of United States Investigation

1. "Opt-in Policy"

Though the district-wide student enrollment is majority-black, Sulphur Springs has remained exclusively a school for white students, in part because of the District's *de facto* "freedom of choice" plan. (Student Attendance Policy, Exh. 6). Under this discretionary attendance policy, students within the Sulphur Springs attendance zone must "opt-in" and affirmatively request assignment. Id. If a student within the zone fails to "opt-in," the student is automatically bussed to one of two other elementary schools, Owen (2-3) and Edgewood (K-1). Id. The policy also allows students from outside the Sulphur Springs attendance zone to attend. Id. They must "opt-in" as well to receive an assignment at the school.

Based on our review of data for the last four school years, only white students within and outside the zone have taken advantage of Sulphur Springs' freedom of choice plan. Specifically, for school years 1996-97 through 1999-00, Sulphur Springs had an all-white enrollment. Though black students resided within the attendance zone, they did not attend Sulphur Springs. The table below shows the Sulphur Springs' enrollment, by race, for these years, in contrast to the number of black students who reside within the Sulphur Springs attendance zone.

SCHOOL YEAR	**Total # of students at Sulphur Springs (all white student body)**	**White students (outside the zone) attending Sulphur Springs**	**Black students w/in the zone attending other elem. schools**
1999-00	76	6	11
1998-99	80	7	8
1997-98	77	9	8
1996-97	69	9	5

(District data compiled by United States, Exh. 8).

Although the Order requires Sulphur Springs to serve the nearby rural area, it served 31 out-of-zone white students over the last four years. (See Table above). A number of students attending from outside the zone live a considerable

distance from Sulphur Springs and much closer to the other elementary schools.[6]

In contrast, over the past four years, 21 black students within the zone attended other WCSD elementary schools. (See Table above). The District initially indicated that no black students attend Sulphur Springs because few black families live within in the zone. Our investigation showed, however, that a number of black families live in the zone, including some who have lived there for more than 20 years.

Furthermore, during the investigation, the United States interviewed black parents living in the Sulphur Springs and WCSD community. Many parents believe Sulphur Springs is a private school, a school not within the WCSD, or a school that serves white students exclusively. Misperceptions linger about the school because the District does little, if anything, to publicize the Sulphur Springs attendance policy.

When requested, the District provided no information or documents to prove it advertises the eligibility requirements for Sulphur Springs, or that it otherwise informs eligible families. During an on-site visit to the District, informal interviews with District officials revealed that during

[6] It is unclear from the District's data whether the District provides transportation to these students.

registration students and their parents must (1) know that two separate lists exist of students who wish to attend Sulphur Springs, one at Edgewood Elementary School and one at Owen Elementary School; (2) know that a parent must request placement on this list; (3) know that students are listed in the order they sign-up; and (4) know that the Owen Elementary principal makes the final determination of which students will attend Sulphur Springs.

2. Attendance Zone Policy

The District has set arbitrary boundaries and cut-off streets for the Sulphur Springs attendance zone. In effect, the District has gerrymandered attendance lines that effectively exclude small black enclaves within the Sulphur Springs community and nearby. For example, the District has excluded Dyson Road, where a number of black families reside. Dyson is situated in the heart of the Sulphur Springs Community and well within the attendance zone. (District data compiled by United States (map form), Exh. 11).

Finally, the United States examined the various cut-off points in the attendance zone, specifically along Shannon-Petty and Sulphur Springs Roads. (See WCSD Map, Exh. 11). Though the Sulphur Springs' student enrollment over the past years has fallen consistently below building capacity, the

District indicates that transportation considerations and limited space at the school determined cut-off points along these roads. The attendance zone includes "all of Shannon-Petty Road and all connecting roads extending around to Mary Drive." (Student Attendance Policy, Exh. 6; See also WCSD Map, Exh. 11). But the boundary only includes Sulphur Springs Road, beginning at Farm Lane; Sulphur Springs Road does not extend as far west as Shannon-Petty Road. (See WCSD Map, Exh. 11). Though Sulphur Springs Road runs parallel to Shannon-Petty and some connecting streets are situated fairly close to Mary Drive, they are not included in the Sulphur Springs attendance zone. A number of black families live in a neighborhood near Mary Drive, known as Scenic Village; they are not included in the attendance zone.

3. Enrollment Capacity

For a number of years, Sulphur Springs enrollment has been below capacity.[7] For example, in the 2000-01 school year, only 75 students attended Sulphur Springs, though the school can accommodate 95 students. (District data compiled by United States, Exh. 7). Moreover, Sulphur Springs cannot accommodate all K-3 elementary students living within the

[7] See supra Table for Sulphur Springs enrollment, years 1996-97 through 1999-00.

zone; approximately 50% of them are bussed to other elementary schools. (District data compiled by United States, Exhibit 10). The other elementary schools remain under capacity as well and can easily accommodate all students from the Sulphur Springs community. (District data compiled by United States, Exh. 7). For example, building capacities for Edgewood and Owen are approximately 575 and 650, respectively. Id. Both schools were below capacity for the 2000-01 school year.

4. Faculty and Staff Assignment Policy

Finally, on information and belief, the District has employed only one black teacher at Sulphur Springs since the 1970 Order. Though approximately 34% of the District faculty is black, the District has maintained Sulphur Springs racially identifiable by the assignment of only white faculty and staff to the school.

F. Efforts by the United States to Resolve Matters Amicably

Following the site visit, the parties agreed that the District would provide a proposal for addressing the continued and historic absence of black students at Sulphur Springs. The United States made clear a number of ways the District could remedy the situation and was amenable to an interim plan

for the upcoming school year while the District devised a permanent remedy for the 2002-03 school year and beyond.

Though the District has agreed to cease placing white students from outside the zone at Sulphur Springs, it has otherwise refused to implement any meaningful steps for the upcoming school year by which to bring about black student attendance at Sulphur Springs.

The United States suggested, for example, a limited majority-minority transfer program as an interim plan for the 2001-02 school year. (Letter from K. Ahuja to M. Dennis of 7/2/01, Exh. 9). The transfer program would allow minority students from anywhere in the school district, and particularly kindergarten students, the option of enrolling in Sulphur Springs for the 2001-02 school year. As a voluntary program, the District would be required to publicize the program and guarantee a certain number of slots for eligible transferees. The District refused to implement the program, offering only to have the district superintendent contact black families in the Sulphur Springs attendance zone to encourage them to place their children at Sulphur Springs for the upcoming school year. (Letter from M. Dennis to K. Ahuja of 7/10/01, Exh. 10).

Though the District has agreed to revise the attendance zone to make it mandatory to ensure minority attendance for the 2002-03 school year, the United States has little assurance of the plan's success considering the District's refusal to implement reasonable and appropriate interim measures for this school year.

DISCUSSION

A. Legal Standard for Seeking Further Relief in a Desegregation Case

As a formerly segregated school district that has not been found by this Court to have achieved unitary status, WCSD has an affirmative obligation to eradicate all vestiges of past discrimination to the extent practicable. Board of Educ. of Oklahoma City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50 (1991); Liddell v. Board of Educ. of the City of St. Louis, 121 F.3d 1201, 1216 (8th Cir. 1997); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 778 F.2d 404, 410 (8th Cir. 1985). Thus, prior to being relieved from a desegregation order, the District has the burden to demonstrate that the vestiges of the dual system have been eliminated. Dayton Bd. of Educ. v. Brinkman (Dayton II), 443 U.S. 526, 537 (1979); Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 211, n.17 (1973). And, where a racial imbalance remains, the

District bears the burden of showing that it is not traceable, in a proximate way, to the prior violation. Freeman v. Pitts, 503 U.S. 467, 494 (1992); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 26 (1971), reh'g denied, 403 U.S. 912 (1971) ("the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part").

Racial patterns of faculty assignment traceable to the former dual system also must be remedied. Singleton v. Jackson Municipal Separate Sch. Dist., 419 F.2d 1211, 1218 (5th Cir. 1969), rev'd in part on other grounds, 396 U.S. 290 (1970) (reversing lower court's decision to further delay transfer of students and thus prevent the immediate disestablishment of the segregated school systems in this case). A vestige of the *de jure* system exists if the racial composition of the faculty indicates that the school is intended for black or white students. Id.

As significant, attendance boundaries, even if discretionary, must be enforced and reviewed periodically; a district has a good faith obligation to determine if attendance lines assist in the further desegregation of a school, or otherwise impede it. Davis v. Board of Sch.

Commissioners of Moblie County, 430 F.2d 883, 888 (5th Cir. 1970), aff'd in part and rev'd on other grounds, 402 U.S. 33 (1971).

Finally, the Supreme Court has determined that a district's efforts to desegregate may encompass, at a minimum, a majority-to-minority transfer plan. Such a voluntary program is an "indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation." Swann, 402 U.S. at 27.

B. The District's Operation of Sulphur Springs Violates this Court's Order and Applicable Federal Law.

1. The District is Violating the 1970 Order.

The 1970 Order requires Sulphur Springs to serve elementary students in grades 1-4 who reside in the nearby rural area in which the school is located. This requirement is the Order's only reference to Sulphur Springs; the Order does not specify attendance boundaries, nor does it set forth an attendance policy. In sum, the Order makes clear two principles regarding Sulphur Springs: (1) the school is to serve the nearby rural area; and (2) the school is to operate on a desegregated basis.

The District is violating the Order on its face by serving students from outside the zone. Though there is an attendance zone, it functions less as one, for it does not mandate attendance of students within it. Rather, this discretionary attendance policy is no more than a freedom of choice plan that has created the following pattern: white students from within and outside the zone "opt-in" and request assignment; black students from within and outside the zone do not. Thus, assignment of white students from outside the zone not only violates the Order, but also impedes desegregation and allows the District to maintain an all-white enclave in a majority-black district.

2. The District is Violating Federal Law.

The District is obligated not only by this Court's Order but by applicable federal law to fully desegregate its schools. The Supreme Court has made clear that districts operating under a desegregation order have an affirmative duty to eradicate all vestiges of past discrimination to the extent practicable. Dowell, 498 U.S. at 249-50. In this case, the District has an obligation to ensure full desegregation of Sulphur Springs by, among other things, enforcing and monitoring attendance zones, Davis, 430 F.2d at 888, and avoiding racial identification of the school by student and

faculty and staff assignments. See Green v. County Sch. Bd. of New Kent County, 391 U.S. 430, 435 (1968); see also Singleton, 419 F.2d at 1218.

The District has disregarded its affirmative duties and impeded the desegregation of Sulphur Springs in several ways. First, the District essentially created a *de facto* freedom of choice plan, albeit an inscrutable one, complete with separate enrollment lists and an unpublicized assignment policy. Indeed, the District has done little, if anything, to inform WCSD parents about eligibility requirements for Sulphur Springs, although throughout the years a sufficient number of white parents have clearly known how to enroll their children at Sulphur Springs.

Second, the District gerrymandered attendance boundaries that excluded black enclaves or individual black families from the attendance zone. Though the Sulphur Springs attendance zone was not enforced, the District could "legitimately" exclude black students who lived outside the zone by claiming a school attendance zone. Unless black families were aware of the discretionary attendance policy - that they could "opt-in" though they lived outside the zone, their children were bussed to other elementary schools a farther distance away.

Third, the District inexplicably has maintained Sulphur Springs as an under-enrolled, under-utilized school, and has made no effort to accommodate more students from the Sulphur Springs area. With four classrooms and only 75 students, the school's enrollment is considerably smaller than those at Owen and Edgewood, yet the District has quietly continued these limited assignments to Sulphur Springs. Given the excess capacity at Sulphur Springs, the District's failure to provide for a desegregated education there cannot be excused.

Finally, in addition to its discriminatory student assignment policy, the District has assigned faculty and staff in a manner that has contributed to the identification of Sulphur Springs as a one-race school. The District's faculty is over 30% black and yet, on information and belief, only one black teacher in 31 years has been assigned to Sulphur Springs. These practices not only show a failure by the District to desegregate Sulphur Springs, but, even more troubling, indicate efforts by the District to maintain historically white Sulphur Springs as a one-race school.

C. Further Desegregation is Practicable.

There are practicable measures the District can implement, and implement now, to desegregate Sulphur Springs. For example, the District could redraw the Sulphur Springs

attendance zone and require mandatory attendance, thereby eliminating the current freedom of choice policy that has perpetuated a one-race school. Alternatively, the District could reconfigure the grades served at Sulphur Springs – e.g., limit enrollment to grades K-1 – and thereby serve all students in those grades who reside in the Sulphur Springs community. This alternative would eliminate the current anomaly in which only some of the area's K-3 students are assigned to Sulphur Springs while the majority are bussed to other elementary schools. Finally, the District could assign all elementary students to Owen and Edgewood – the District's two other elementary schools, both of which have excess capacity – and use Sulphur Springs for other purposes. These are but three options – there may be others as well – that are reasonable, practicable and immediately available to the District; all would further desegregation and eliminate Sulphur Springs as a one-race school.

D. Legal Standard for a Preliminary Injunction

In the Eighth Circuit, Dataphase v. Systems, Inc. v. C L Systems, Inc., sets forth a four-part test for determining whether to grant a request for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure. 640 F.2d 109 (8th Cir. 1981) (en banc). The 4-part standard requires a

balancing of factors: (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest. Id. at 113.

No single factor is determinative, and a mathematical analysis of the factors runs contrary to the balancing of equities that must take place. Id.; Sanborn Manufacturing Co., Inc. v. Campbell Hausfield/Scott Fetzer Co., 997 F.2d 484, 486 (8th Cir. 1993); Calvin Klein Cosmetics v. Parfums de Couer, Ltd., 824 F.2d 665, 667 (8th Cir. 1987). Specifically, "the question is whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." Dataphase, 640 F.2d at 113; United Indus. Corp. v. Clorox Co., 140 F.3d 1175, 1179 (8th Cir. 1998); Velek v. Arkansas, 198 F.R.D. 661, 662-63 (E.D. Ark. 2001). Therefore, a finding of success on the merits alone is "meaningless" and must be examined with respect to the other factors. Dataphase, 640 F.2d at 113. For, if the movant has shown the balance of equities are in her favor, the "showing of success on the merits can be less." Id. Most importantly, the movant must

make a showing of irreparable harm. Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367, 371 (8th Cir. 1991).

E. A Preliminary Injunction Should be Entered.

1. Irreparable Harm

When the Supreme Court held in Brown I that segregated schools violated the Fourteenth Amendment to the Constitution of the United States, it emphasized that racial discrimination per se is irreparable harm to the minority group. Brown v. Bd. of Educ. (Brown I)), 347 U.S. 483, 493-95 (1954); see also Kelley v. Metro. County Bd. of Educ., 687 F.2d 814, 822 (6th Cir. 1982) (citing United States v. School Dist. of Ferndale, 577 F.2d 1339 (6th Cir. 1978) (a desegregation case requiring elementary students be incorporated into the desegregation plan because "black students, particularly in the elementary grades, suffer irreparable harm from the maintenance of a segregated school system"); Small v. Hudson, 322 F. Supp. 519, 529, fn. 37 (M.D. Fla. 1971) (challenge against a segregated nursing home in Florida in which the court cited to Brown I, emphasizing the irreparable effects of racial discrimination).

Here, the black community in WCSD and the community at-large has suffered irreparable harm by the continued operation of Sulphur Springs. The injury is evident: through the District's secretive and subjective freedom of choice plan,

its gerrymandered attendance zone lines and the other discriminatory actions described above, the black community has continued to suffer the "injury and stigma" of being the "disfavored race." Freeman, 503 U.S. at 485. Indeed, Sulphur Springs is perceived in the black community as a school that serves exclusively white students. In the year 2001 - thirty-one years after this Court ordered the desegregation of the Watson Chapel schools, Sulphur Springs remains a vestige of the former dual system.

Moreover, the passage of time does not render this harm less severe. See Freeman, 503 U.S. at 518 (Blackmun, J., concurring)("[A]n integrated system is no less desirable because it is difficult to achieve, and it is no less imperative because that imperative has gone unmet for 38 years.") The District has a continuing obligation to demonstrate "to the public and to the parents and students of the once disfavored face, 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." Jenkins v. Missouri, 103 F.3d 731, 739 (8th Cir. 1997) (citing Freeman, 503 U.S. at 491). That obligation cannot be delayed for another school year when practicable remedies are available now; to permit

this vestige of segregation to continue is to irreparably harm another entering class of students – both white and black.

2. Balance of Harms

The balance of harms weighs in the United States' favor; the continued operation of Sulphur Springs violates the Order, applicable federal law and has stigmatized the WCSD black community.

Harm to the District is minimal. The District has known at least since March 2001 of the United States' concerns but has taken no steps to address them. Arguably, the District has known for many years of the effect of its practices. Having permitted this vestige to continue, the District cannot now - in July 2001 - assert that it will be harmed by removing it.

Since receiving a complaint about Sulphur Springs in fall 2000, the United States moved promptly to investigate the allegations, to notify the District of its determinations, and to seek an informal resolution of the problems it identified. For the 2001-02 school year, the District simply offered to make telephone calls to black parents within the Sulphur Springs attendance zone. But telephone calls from a representative of the District that has operated a one-race school are not sufficient nor likely to persuade black parents to send their children to Sulphur Springs after so many years

of exclusion. The United States suggested a more pro-active and practicable solution that had a greater likelihood of working, but the District refused to accept it.

3. Likelihood of Success on the Merits

There is a strong likelihood that the United States will succeed on the merits of this case. The District has the burden, while under a desegregation order, to show that any racial imbalance is not traceable, in a proximate way, to the original violation. Freeman, 503 U.S. at 494 (1992). Here, the District has not only violated this Court's order but has perpetuated the exclusivity of Sulphur Springs.

The Supreme Court has stated that a district's remedial plan is to be "judged by its effectiveness." Davis v. Board of Sch. Commissioners of Mobile County, 402 U.S. 33, 37 (1971). The District has continued to operate a one-race school and has rejected practicable remedial measures. It is unlikely to prevail on the merits.

4. Public Interest

The public interest even beyond the irreparable harm the black community has suffered militates against the operation of Sulphur Springs, particularly when practicable alternatives are available now. The public interest mandates enforcement of federal civil rights laws. Here, the District, by

maintaining a segregated school in the year 2001, has violated its desegregation order and federal law for the last 31 years.

CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court grant the United States' Motion for Further Relief and Request for Preliminary Injunction by immediately enjoining the WCSD from further operation of Sulphur Springs until such time as the District formulates, adopts and implements a plan approved by this Court that promises realistically to work now to fully desegregate Sulphur Springs to the extent practicable.

Respectfully submitted,

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