

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:70-cv-01616-MP
	)	Judge Mark E. Walker
JACKSON COUNTY SCHOOL BOARD, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	
_____	)	

CONSENT ORDER

This Consent Order arises out of the good faith efforts of Plaintiff United States of America (“United States”) and Defendant Jackson County School Board (“the District”) to resolve this school desegregation case. This Consent Order is jointly entered into by the United States and the District (collectively “the Parties”), and the Parties agree to comply with its terms. After reviewing the terms of this Consent Order, and finding them fair, just, and reasonable, it is the opinion of this Court that entry of the Consent Order comports with federal law and the Fourteenth Amendment to the United States Constitution and should further the orderly desegregation of the District.

I. PROCEDURAL HISTORY

This desegregation case originated on July 9, 1970, when the United States filed a suit against the Jackson County School Board and five other surrounding school districts (the Gadsden County School District, the Gulf County School District, the Jefferson County School District, the

Lafayette County School District, and the Wakulla County School District)¹ in a consolidated action to enjoin the district from operating a dual school system based on race.

On July 9, 1970 the Court entered an order *pendent lite*, requiring that the parties collaborate in preparing plans for the immediate conversion to a unitary non-discriminatory school system as required by the United States Court of Appeals for the Fifth Circuit in *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir. 1969) (en banc). On August 12, 1970, the Court issued an order (“August 1970 Order”) adopting the United States’ plan for desegregation, with the exception of a particular aspect involving school pairing of two schools, St. Paul School and Graceville School. August 1970 Order at 2-3.

On September 20, 1976, the Court issued a subsequent order (“September 1976 Order”) permanently enjoining the District from “operating a dual system of racially identifiable schools.” September 1976 Order at 1. The Court ordered the District to: (1) take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin; (2) ensure that staff and administrators are hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin; (3) permit majority to minority student transfers; (4) ensure bus transportation is provided on a non-discriminatory basis; (5) ensure that all school construction, consolidation, and site selection are done to prevent the recurrence of a dual system; and (6) ensure that all inter-district transfers are permitted on a non-discriminatory basis, except that they will not be permitted “where the cumulative effect will reduce desegregation” in Jackson or the other school district. *Id.* at 1-3. The Court retained jurisdiction to enforce the permanent injunction.

¹The Gulf, Lafayette, Wakulla and Jefferson County School Districts have already been declared unitary by this Court.

Since 2008, the United States has actively monitored the District and forwarded several requests for information to the District, most recently on June 20, 2017. These requests consisted of questions targeted at gathering data and other information related to the *Green* factors, discussed below, and the District's affirmative desegregation obligations. The District has responded to each of the United States' requests for information, and the United States has fully and carefully reviewed and analyzed these responses.

Representatives from the United States visited the District in April 2013 and May 2016. During the visits, the representatives toured several elementary, middle, and high schools, and interviewed relevant school and district personnel.

On November 2, 2016, the District filed a motion with the court requesting a declaration of unitary status regarding facilities or, in the alternative, permission to construct a new school in Marianna. ECF No. 68. On December 15, 2016, the United States filed a response opposing the motion requesting a declaration of unitary status pending a full review, but stating its lack of opposition to the requested construction. ECF No. 75. The court denied the District's motion for a declaration of unitary status but granted permission for the requested construction on December 29, 2016. ECF No. 76.

II. LEGAL STANDARD

To obtain a declaration of unitary status, the District must show that its schools have: (1) fully and satisfactorily complied with the Court's decrees for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* discrimination to the extent practicable; and (3) demonstrated a good-faith commitment to the whole of the Court's decrees and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

See *Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 248-50 (1991).

The Supreme Court has identified six areas, commonly known as the “*Green* factors,” which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated vestiges of the prior dual system to the extent practicable: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. *Green v. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 435 (1968); see *Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty.*, 244 F.3d 927, 942 (11th Cir. 2001) (stating that “for a district court to determine whether the vestiges of discrimination have been eliminated to the extent practicable, it must examine . . . the *Green* factors”). The Supreme Court also has approved consideration of other indicia, such as “quality of education,” as important factors for determining whether the District has fulfilled its desegregation obligations. *Freeman*, 503 U.S. at 492-93.

A district court may allow partial or incremental dismissal of the desegregation case before full compliance has been achieved in every area of school operations, thereby retaining jurisdiction over those areas not yet in full compliance and terminating jurisdiction over those areas in which compliance is found. *Freeman*, 503 U.S. at 490-91.

Parties in a school desegregation case should try to resolve issues through settlement “because the spirit of cooperation inherent in good faith settlement is essential to the true long-range success of any desegregation remedy.” *Jones v. Caddo Parish*, 704 F.2d 206, 221 (5th Cir. 1983) (internal quote omitted).

III. DECLARATION OF PARTIAL UNITARY STATUS

A. Student Assignment (between schools)

During the 1968-69 school year, the District operated seventeen schools and enrolled approximately 8,527 students (62.5% white and 37.5% black). Five of the seventeen schools, Jackson County Training School, St. Paul High School, Union Grove High School, Cottondale Elementary, and Graceville Elementary, were *de jure* black school. The following chart summarizes the enrollment at each school in Jackson County during the 1968-69 school year:

School	Grade	Black	White	Total
Alford Elementary	K-8	1 (0.63%)	159 (99.37%)	160
Golson Elementary	K-6	115 (14.45%)	681 (85.55%)	796
Graceville High School	K-12	12 (1.37%)	867 (98.63%)	879
Grand Ridge High School	K-12	52 (11.13%)	415 (88.87%)	467
Greenwood High School	K-12	63 (21.58%)	229 (78.42%)	292
Jackson County Training	K-12	997 (100%)	0 (0.0%)	997
Lillie Banks Elementary	K-8	131 (78.92%)	35 (21.08%)	166
Magnolia Elementary	K-8	0 (0.0%)	69 (100%)	69
Malone High School	K-12	32 (7.17%)	414 (92.83%)	446
Riverside Elementary	K-6	33 (7.47%)	409 (92.53%)	442
Union Grove High School	K-12	661 (100%)	0 (0.0%)	661
Cottondale Elementary	1-6	70 (100%)	0 (0.0%)	70
Cottondale High School	1-12	43 (6.64%)	603 (93.34%)	646
Graceville Elementary	1-6	82 (100%)	0 (0.0%)	82
St. Paul High School	1-12	691 (100%)	0 (0.0%)	691
Sneads High School	1-12	83 (14.09%)	506 (85.91%)	589
Marianna High School	7-12	130 (12.10%)	944 (87.90%)	1074
Total		3,196 (37.5%)	5,331 (62.5%)	8,527

For the 2014-15 school year, the Jackson County School District enrolled 7,107 students in twelve schools.² The District's overall enrollment was 59.54% white (3,721 students), 29.93% black (1,871 students), and 10.53% other (658 students). The following chart summarizes the enrollment at each school in the Jackson County System during the 2014-15 school year:

School	Grade	Black	White	Other	Total
Golson Elementary	K-2	292 (40%)	328 (44.93%)	110 (15.07%)	730
Graceville Elementary	Pk-5	154 (42.90%)	171 (47.63%)	34 (9.47%)	359
Graceville High School	6-12	142 (44.94%)	141 (44.62%)	33 (10.44%)	316
Grand Ridge HS	Pk-8	120 (19.29%)	455 (73.15%)	47 (7.56%)	622
Malone School	K-12	178 (34.43%)	272 (52.61%)	67 (12.96%)	517
Riverside Elementary	3-5	222 (34.21%)	356 (54.85%)	71 (10.94%)	649
Cottdale Elementary	Pk-5	73 (16.55%)	308 (69.84%)	60 (13.61%)	441
Cottdale High School	6-12	94 (21.96%)	286 (66.82%)	48 (11.21%)	428
Marianna Middle	6-8	203 (33.78%)	347 (57.74%)	51 (8.49%)	601
Marianna High School	9-12	242 (32.93%)	431 (58.64%)	62 (8.44%)	735
Sneads Elementary	K-5	92 (19.17%)	349 (72.71%)	39 (8.13%)	480
Sneads High School	9-12	59 (15.86%)	277 (74.46%)	36 (9.68%)	372
Total		1871 (29.93%)	3721 (59.54%)	658 (10.53%)	6250

Although the District has experienced changing demographics since the inception of this case, the District maintains a desegregated student enrollment that reflects the current overall racial composition of the District. Specifically, during the 2014-15 school year, all elementary, middle, and high schools fell within +/- 15% of the District wide average based on the percentage of black and white students enrolled in Jackson County School District.

² The district also includes five specialized schools, including early childhood and alternative, which are not included in this assessment.

The District has granted and denied student transfers in compliance with the District's transfer policy without discriminating on the basis of race. These transfers do not have a negative effect on desegregation in the District's schools.

B. Transportation

The District maintains non-discriminatory policies and practices with respect to transportation and provides transportation to students in a non-segregated manner. The District's 2014-15 school year data revealed apparent disparities among black and white students with respect to discipline of students for behavior on schools buses, including potentially disproportionate bus suspensions and expulsion of black students. To address these concerns, the District adopted a new bus disciplinary policy in January 2017 to ensure fair and equitable treatment of students on school buses. The District will maintain this policy under this Consent Order.

C. Facilities

The District has not constructed or consolidated schools in a manner that interferes with its desegregation obligations. The new facility currently under construction is consistent with this Court's order not to engage in construction that interferes with the desegregation of the school district.

D. Extracurricular Activities

The District offers a wide variety of student activities, and race is not a consideration for participation in those activities. Student participation in sports, student government, clubs, and extracurricular and co-curricular activities reflects that activities are available to all students in the District regardless of race.

Based on this information and data provided by the District, and on all the surrounding facts, the Parties agree and the Court finds that the District has complied with the Court's desegregation orders for a reasonable period of time, has eliminated the vestiges of past *de jure* discrimination to the extent practicable and is operating a unitary school system in the areas of: (1) student assignment (between schools); (2) transportation; (3) extracurricular activities; and (4) facilities.

In light of the forgoing, the Court ORDERS, ADJUDGES, and DECREES, therefore, that the Jackson County School District has met the legal standards for a declaration of partial unitary status and is entitled to dismissal of this action in these four areas. *Freeman*, 503 U.S. at 492. Accordingly, all injunctions or portions thereof pertaining to student assignment (between schools), transportation, extracurricular activities, and facilities are hereby dissolved.

IV. ADDITIONAL REMEDIES

Concerning staff and faculty recruitment and hiring and student assignment (within school), the Parties agree and the Board is ordered to effect the following plans:

A. Faculty and Staff Recruiting, Hiring and Promotion

The District has taken steps to increase recruitment, hiring, promotion, and retention of minority (including, but not limited to, black) faculty and staff, including administrators, instructional staff, and non-instructional staff. The District will formalize this plan as the Minority Recruiting and Hiring Plan and will implement this plan through at least the 2018-19 school year. In particular, the District commits to the following:

1. The District will continue its Minority Recruitment/Retention Committee comprised of diverse administrators, instructional staff, and non-instructional staff, which will hold public meetings at least nine times a year with a goal of monthly meetings.

2. By March 1, 2018, the Committee, which includes the Superintendent of Schools, will establish a schedule for regular meetings with the Superintendent to discuss ways to increase employment of black faculty and administrators. Committee members will have input into the selection of one or more recruiting visits to college campuses or job fairs.

3. The District will reach out to its contacts at student placement offices at major universities in Florida and all historically black colleges and universities in Florida, such as Bethune Cookman University, Florida A&M University, Edward Waters College, and Florida Memorial University, to identify and recruit minority candidates.

4. By March 1, 2018, or when the target universities release their schedules, the District will establish a schedule for its recruiting program, which includes visits to minority college campuses and attendance at job fairs to recruit teachers.

5. The District will continue to advertise and post job vacancies on the District website, the Teach in Florida website, and other sources and publications that reach diverse populations.

6. The District will establish a written plan regarding the implementation of its initiative to recruit more teachers to the area, including the District's stated goals and how it will measure outcomes of those goals. By March 1, 2018, the District will provide a copy of the recruitment initiative implementation plan for review and comment by the United States.

7. By April 1, 2018, the District will provide all employees with hiring decision responsibilities with training on how to consider their desegregation obligations when making all hiring decisions.

8. The District will create a uniform hiring / promotion evaluation form that enumerates each factor or qualification considered during the selection process, and a scale on

which each candidate is assessed at to each individual factor or criteria. By April 1, 2018, the District will provide a copy of the uniform hiring/promotion evaluation form for approval by the United States.

9. The District will monitor and assess the diversity of its faculty, administrators, instructional staff and non-instructional staff at each of its schools at the end of each school year.

10. For the pendency of this order, the District will eliminate its previous practice of giving sole or majority preference to internal transferees to fill a teaching vacancy.

11. The District will, for teachers leaving the school district, schedule exit surveys that, *inter alia*, will inquire about the teacher's reason for leaving.

12. The Parties agree that full compliance with the Plan through June 30, 2019, should support a finding that the District has achieved unitary status in the area of faculty and staff recruitment and assignment.

B. Student Assignment (Within School) – Discipline

The District has taken steps to improve school climate and its policies and practices with respect to student discipline. The District will formalize this program as the Student Discipline Improvement Plan and will implement this plan through at least the 2018-19 school year. This plan will include the continued provision of a system of positive behavior supports and classroom management to replace the District's use of exclusionary discipline as the initial primary response to student misbehavior.³ In particular, the District commits to the following:

³ Exclusionary discipline refers to any disciplinary consequence that removes a student from classroom instruction in his/her home school, including, but not limited to, In-School Suspension, Out-of-School Suspension, Expulsion and transfer to an Alternative Education program. It does not refer to positive interventions, corrective strategies or detention.

1. The District will undertake revision of its 2018-19 Code of Conduct and will provide a draft to the United States for review and comment prior to adoption. The revised Code of Conduct will apply for all schools in the District and will:

- a. ensure all schools continue to communicate expected positive behaviors for each age group, in language easily understood by students;
- b. include clear and precise definitions, illustrated by examples, of prohibited conduct, objective criteria for assessing and responding to violations/infractions, and consequences that are consistent, age-appropriate and commensurate with the severity of the offense;
- c. continue to use a district wide Student Behavior Referral Form to incorporate system of tiered consequences and interventions that only escalates discipline after less-intensive strategies have been tried, documented, and been ineffective at modifying student behavior except where student or staff safety is at issue;
- d. continue to limit the use of exclusionary consequences, particularly in response to low-level misbehaviors that do not threaten safety. For these offenses (under the District's current Code, Level 1 and many Level 2 offenses), the Code will continue to require use and documentation of corrective strategies in place of imposing exclusionary consequences. As set forth on Student Behavioral Referral Form, examples of corrective strategies include but are not limited to a reflective activity, a parent conference, time-out, a loss of privileges, in-school detention, and interventions by the Response to Intervention team and school counselors;
- e. continue to ensure that disciplinary consequences imposed for misbehavior minimize loss of instructional time and that students who do lose instructional

time as a result of exclusionary discipline are provided opportunities to make up missed work;

- f. specify the consequence (or range of possible consequences) for repeated violations of the same Code of Conduct provision. The sanction for repeated violations of the same provision will not exceed the maximum consequence allowable for that level of offense unless the administrator reviewing the incident reasonably determines and documents that any consequence available for that level would be ineffective because it has already been tried unsuccessfully to address previous violations by that student of the same provision; and
- g. continue to articulate specific criteria governing students' entitlement to return to their home schools following in-school suspension, out-of-school suspension, or placement in an alternative educational setting.

2. The District will provide training on classroom management to all new and/or incoming teachers during the first semester of each school year. The District will make the classroom management training available to all current District teachers and affirmatively invite said teachers to attend. The training will include efforts to standardize and make consistent referrals for subjective offenses (*e.g.*, "not following rules," "insubordination," "disrespect"). The District will provide additional training on classroom management for any teacher it determines needs such additional training based on a review of his/her record of disciplinary referrals.

3. The District will provide annual training to all faculty and staff who come into contact with students and who may report disciplinary infractions and/or administer discipline (*e.g.*, teachers, administrators, bus drivers) to ensure that discipline is imposed consistently, uniformly, and in a nondiscriminatory manner.

4. The District will provide classroom teachers with a wide variety of corrective strategies that do not remove students from valuable instructional time. These strategies will be designed to prevent the occurrence of student infractions, provide constructive feedback, teach alternative or replacement behaviors, and motivate students to demonstrate compliance with established school expectations outlined in the Code of Conduct and the District's positive behavior system.

5. By October 30 of each year, the Districts will provide the United States proof of the training required by this section by submitting, for each training, an agenda that states the topics covered, the date, and the duration of the training; copies of sign-in sheets; and copies of any presentations or other materials used as part of the trainings.

6. The District will continue the use of the Student Behavioral Referral Form as a mechanism for teachers and other school personnel to document intervention and support strategies prior to issuing an office referral.

7. By July 1, 2018, the District and each individual school will collect and review discipline data on at least a semester basis (disaggregated by type of infraction, faculty/staff, the race, gender, and disability status of student and the combination of those variables) in order to: identify and examine the cause of any disparities or other concerns raised by the data. The District will work with schools to address any unwarranted disparities or other concerns by taking appropriate remedial measures, such as more intensive supports for students, additional professional development for faculty or staff.

8. By July 1, 2018, the District will conduct an annual review of alternative school programs. The District's review will include: number of students referred and enrolled, disaggregated by race; discipline consequences (e.g., in-school suspension, out-of-school

suspension, arrests) by infraction, disaggregated by race; average length of time spent at the alternative schools, disaggregated by race; and availability and quality of supports provided to students. If the District review identifies any concerns, such as disparities in referrals or discipline rates by race, the District will work with the alternative school to identify and understand the underlying causes and to develop and implement changes, if appropriate, to address the concerns by the start of the next school year.

9. The District will continue its Discipline Focus Group, comprised of diverse administrators including the Superintendent of Schools, to meet at least once during each nine-week school period to discuss ways to address implement the requirements of the Student Discipline Improvement Plan and make recommendations for district-wide improvement.

10. The District will host student assemblies and classroom meetings at each school to communicate positive core values and behavior expectations, to explain the disciplinary rules in an age-appropriate manner, and to give students an opportunity to ask any questions or raise any concerns about the disciplinary process.

11. At least once during each school year, the District will continue to hold informational sessions for parents, guardians and other interested community stakeholders at a time and in a place that is convenient for attendees regarding the District's positive core values and behavior expectations, to explain the disciplinary rules (including due process rights and complaint procedures), and to provide an opportunity for parents to raise any questions or concerns about the disciplinary process.

C. MONITORING AND ENFORCEMENT

The District will report the United States and the Court on the District's implementation of the Consent Order's terms as follows:

1. For the requirements laid out in Section IV.A. regarding diversity in recruitment, hiring and promotions, the District will provide copies of their report to the United States and the Court twice-annually: first, no later than September 1 of each year, and the report will be based on information and data collected through June 30 of the prior school year; and second, no later than January 1 of each year, and the report will be based on information and data collected through September 30 of the prior school year.

2. For the requirements laid out in Section IV.B. regarding discipline, the District will provide copies of their report to the United States and the Court annually, no later than September 1 of each year, and the report will be based on information and data collected through June 30 of the prior school year.

3. Each report regarding the implementation of the requirements of Section IV.A. of this order will include:

- a. The total number and percentage of employees in each school by race/ethnicity and position in each of the following categories:
 - i. full-time teachers;
 - ii. part-time teachers;
 - iii. principals and assistant principals;
 - iv. other school-based certified personnel, including guidance counselors, librarians, etc. (identifying positions and indicating FTE at school facility if not full-time); and
 - v. non-certified staff.
- b. The total number and percentage of employees in the District by race/ethnicity and position in each of the following categories:

- i. central office administrators and staff (identifying the position held by each);
 - ii. other certified personnel not assigned to the central office and not reported in response to any preceding request (e.g., curriculum supervisors, etc.); and
 - iii. other non-certified staff not reported in response to any preceding request.
- c. A list of all recruitment activities, including the names of all colleges, universities, and job fairs visited, the dates of those visits, the names, race, and job titles of the district representatives who visited, and any other activities or efforts, including advertisements, used to recruit minority administrators, instructional staff, and non-instructional staff;
- d. A list of the members of the Minority Recruiting Committee by position and race/ethnicity;
- e. A list of all full-time teacher, principal, assistant principal, and central office administrator vacancy announcements for that school year;
- f. For each vacancy, the number of interviewed applicants by race; the race of the hired applicant; and the completed evaluation forms of all applicants.
- g. A summary of the results of the teacher exit surveys. Copies of the surveys will be made available upon request from the United States.

4. Each report regarding the implementation of the requirements of Section IV.B. of this order shall include:

- a. The number of students, by race and by grade, enrolled in each school in the District;
- b. A record, in a searchable, electronic format (e.g., Excel), for that school year that lists, by school, the total number of *individual* students by race/ethnicity and grade who were disciplined, separately reporting the number of students who received one or more: (i) in-school suspensions; (ii) out-of-school suspensions; (iii) expulsions; and (iv) placements in an alternative program; and indicate the underlying infraction for which the penalty was imposed.
- c. A list of Discipline Focus Group members by position and race/ethnicity.

5. If the United States determines that the District has failed to comply with the terms of this Order or if the District disagrees with any comments provided by the United States, the Parties agree to attempt to resolve the issue(s) in good faith. If the District and the United States are unable to reach a satisfactory resolution of the issue(s), the Parties may seek resolution of the matter with the Court.

D. FINAL TERMINATION

This Consent Order sets forth in detail the areas to be addressed and the actions to be undertaken by the District. In other words, this Consent Order represents “a roadmap to the end of judicial supervision” of the Jackson County School District. *NAACP V. Duval County Sch. Bd.*, 273 F.3d 960, 963 (11th Cir. 2001).

Absent evidence of racial discrimination in the District’s faculty and staff recruitment or student discipline practices, the Parties agree that full and good faith compliance with the Plans through December 31, 2019 (i.e., the middle of the 2019-20 school year) should support a

finding that the District has attained unitary status in the areas of faculty, staff, and within school segregation related to student discipline and that the Court may withdraw its supervision and dissolve the permanent injunction with respect to these remaining areas. The District may move for full unitary status and dismissal no sooner than 90 days after filing its January 1, 2020 report for the 2018-19 school year provided the report is complete and timely and the United States has had an opportunity to review the submissions and notify the District of its position on the motion for unitary status.

E. EFFECTS OF PRIOR ORDERS

The Court has reviewed the provisions of this Consent Order and adopts the Consent Order as the Order of the Court. All Orders not inconsistent herewith remain in full force and effect.

It is, therefore, ORDERED that the provisions of this Consent Order become the Order of this Court and this Court shall retain jurisdiction over this case until further Order of the Court.

SO ORDERED on February 23, 2018.

s/Mark E. Walker
United States District Judge