

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 CHARLES RIDLEY, et al.,) Civil Action No. 3009
)
 Plaintiff-Intervenor,)
)
 v.)
)
 STATE OF GEORGIA *et al.*,)
 (DUBLIN CITY SCHOOL DISTRICT & LAURENS)
 COUNTY SCHOOL DISTRICT),)
 Defendants.)
_____)

**UNITED STATES’ MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AGAINST THE DUBLIN CITY SCHOOL DISTRICT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiff United States hereby moves this Court to enter summary judgment against the Defendant Dublin City School District (“Dublin”) for its repeated violations of the transfer provision of the Order of July 16, 1971 (“1971 Order”). In support thereof, the United States submits the following.

I. Introduction

As a school district that has yet to achieve unitary status, Dublin remains under a legal obligation to obey its desegregation orders, see Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424, 439-40 (1976), and “to take all steps necessary to eliminate the vestiges of [its] unconstitutional de jure system.” Freeman v. Pitts, 503 U.S. 467, 485 (1992). One of the desegregation obligations to which Dublin is subject is the interdistrict transfer provision of the

1971 Order. See 1971 Order at 3 (Tab 2). This provision forbids Dublin from allowing more than 5% of its white students to transfer to public school districts that are either majority white or whose percentage of white enrollment exceeds that of Dublin, which is 20% white. See id. Oct. 2005 FTE data at http://app.doe.k12.ga.us/ows-bin/owa/fte_pack_ethnicsex.display_proc (Tab 6 at 1). Despite this clear limitation, the undisputed facts show that white transfers from Dublin to the Laurens County School District (“Laurens”) – a 65% white district, id. at 2 – have substantially exceeded the 5% limit in the 1971 Order since at least the 1997-98 school year. Dublin has violated the 1971 Order because it failed to take any action to halt these violative transfers and facilitated them by sending education records for these transfer students to Laurens.

The undisputed facts show that the white transfers from Dublin to Laurens have negatively affected desegregation in Dublin’s elementary schools. These transfers have contributed to the steady decline in the percentages of white students in these schools and thereby increased the racial identifiability of these schools as “black” schools. The increasing racial identifiability of these schools has deterred white parents from sending their children there and caused further white flight to Laurens. Almost all of the white elementary transfer students from Dublin to Laurens attend Northwest Laurens Elementary (“NWLE”), which is 75% white, id. at 6, even though East Laurens Elementary School (“ELES”), which is 57% white, id. at 3, is closer to Dublin’s city limits. Because the percentages of white students in Dublin’s elementary schools are presently so low, id. at 1 (Susie Dasher (K-1, 11% white), Saxon Heights (2-3, 17% white), and Moore Street (4-5, 14% white), allowing transfers to Laurens to continue risks turning these schools into one race schools – the very harm this case sought to remedy.

Accordingly, the Court should enter summary judgment against Dublin for violating the 1971

Order and enforce this Order by ordering Dublin to monitor the number and race of outgoing transfers and to enjoin Dublin from sending records to Laurens for students whose transfers exceed 5% of its resident white students.

II. Statement of the Facts

In accordance with Local Rule 56.1, the United States has submitted a separate statement of material facts to which the United States contends there is no dispute. See Statement of Facts (hereinafter “Facts”). Each statement of material fact is supported by citations to the record.

III. Legal Standards for Summary Judgment

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). On a summary judgment motion, the court “view[s] the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion.” Cast Steel Prods., Inc. v. Admiral Ins. Co., 348 F.3d 1298, 1301 (11th Cir. 2003). Once the moving party properly supports its summary judgment motion, the burden shifts to the nonmoving party to come forward with specific facts demonstrating a genuine issue of material fact for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

A court must enter summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Konikov v. Orange County, Fla., 410 F.3d 1317, 1321 (11th Cir. 2005). The party responding to the summary judgment motion may not rely solely on the pleadings, see Celotex,

477 U.S. at 324, and if that party’s response consists only of “conclusory allegations, the district court must enter summary judgment in the moving party’s favor.” Peppers v. Coates, 887 F.2d at 1493, 1498 (11th Cir. 1989).

IV. Argument Against Dublin

Applying the above principles shows that the United States is entitled to judgment as a matter of law against Dublin because there is no genuine issue of material fact with respect to the United States’ claim that Dublin repeatedly violated the transfer provision of the 1971 Order and that these violations are negatively affecting desegregation in its elementary schools. Even if this Court were to decide to move Dublin to the inactive docket, entering summary judgment against Dublin would remain appropriate because Dublin would become subject to the transfer provision applicable to inactive districts, see Order of Feb. 14, 1974, at 5 ¶ 1.f (Tab 1), and the undisputed facts show that transfers between Dublin and Laurens violate this provision as well because they have had a cumulative negative effect on desegregation in Dublin’s elementary schools.

A. Dublin Is Legally Obligated to Comply with the 1971 Order

This desegregation case began in 1969 when the United States filed suit against the State of Georgia in the Northern District of Georgia and that Court ordered Georgia to desegregate its schools. United States v. State of Georgia, C.A. No. 12,972 (N.D. Ga.); Order of Dec. 17, 1969 (“1969 Order”) (Tab 3). In 1971, that Court amended the 1969 Order in several areas and added the 5% transfer provision at issue in this motion. See 1971 Order (Tab 2). In 1972, that Court issued an order which, inter alia, joined each school district as a party defendant and transferred to this Court jurisdiction over twenty-one school districts located in the Southern District of Georgia, including Dublin. Order of Sept. 5, 1972, at 3 ¶ 2(a) & 4-5 ¶ 2(c) (Tab 4). The

September 5, 1972 Order also transferred the “general orders” of the Northern District of Georgia, including the December 17, 1969 Order and the 1971 Order, to this Court. Id. at 5 ¶ 2(d)(3) (Tab 4).

On February 14, 1974, this Court placed several school districts on the inactive docket subject to general desegregation injunctions, but retained Dublin and other districts on the active docket. Order of Feb. 14, 1974, at 6 (Tab 1). School districts on the active docket were ordered to “continue to comply with all of the requirements of the December 17, 1969 Order . . . , as subsequently, modified, with [certain] exceptions,” and none of the exceptions pertained to interdistrict transfers. Id. at 7. Because the 1971 Order modified the 1969 Order by adding the 5% limit on transfers, see 1971 Order at 3 § I(3) (Tab 2), active districts remained subject to it.

As a district that is still on the active docket, Dublin must comply with the 1971 Order’s transfer clause, which states, in pertinent part:

Transfers to students in one district for attendance at public schools in another district shall be granted only on a non-discriminatory basis. *In no event, shall more than 5% of the minority students be allowed to transfer to other districts where they are either in the majority or made a part of a larger minority percentage than in the district from which they have transferred,* excluding those instances where all students of both races in a certain category are transferred by contract approved by the State School Board.

1971 Order at 3, § I(3) (emphasis added) (Tab 2). “Minority” is defined as “the race, black or white, which constitutes less than half of the total pupil enrollment, in any school district for any one regular school year.” App. to 1971 Order at 1, ¶ I (Tab 2). Because white students are the numerical minority in Dublin, the 1971 Order prohibits Dublin from allowing more than 5% of its white resident students to transfer to “majority” white public school districts. See Laurens Ans. ¶ 23. The interdistrict transfer provision further requires the State of Georgia to “monitor

this provision” by “obtain[ing] the number of inter-district transfers in its reports.” 1971 Order at 3 n. 3A (Tab 2).

Compliance with the 5% limit is a prerequisite for moving to the inactive docket. See Order of Jan. 24, 1974, at 9-10 (Tab 5). The Court has kept school districts on the active docket whose biannual reports showed that they were “either sending or receiving nonresident students in excess of [the] five (5) percent [limit]” and subjected them to “[f]urther special orders.” Id. Dublin must comply with the 5% limit because it is on the active docket and the 1974 Order mandates continued compliance with this limit. See Order of Feb. 14, 1974, at 6-7 (Tab 1). Dublin previously argued that it need not comply with the 1971 Order due to the passage of time, see Dublin Initial Resp. at 4 & 6, but no support for this argument exists. See Pasadena, 427 U.S. at 439-40 (“those who are subject to the commands of an injunctive order must obey those commands, notwithstanding eminently reasonable and proper objections to the order, until it is modified or reversed”); see also Freeman, 503 U.S. at 518 (Blackmun, J., concurring) (“[A]n integrated school system is no less desirable because it is difficult to achieve, and it is no less a constitutional imperative because that imperative has gone unmet for 38 years.”).

To support its passage of time argument, Dublin emphasized two changes: its use of a single grade configuration and its transition from a majority white to a majority black district.¹ See Dublin Initial Resp. at 4. The first change, which went into effect in the 2003-04 school year, does not excuse Dublin from its court-ordered obligation to monitor interdistrict transfers and to stop those exceeding the 5% limit. See Pasadena, 427 U.S. at 439-40. The second change

¹ Black students were the minority in Dublin in 1971, and whites are now the minority. See Tab 6 at 1 (showing Dublin is 20% white as of October 2005).

provides no excuse either because the 5% limit applied to majority white and majority black districts throughout Georgia, see Tab 2, and applying the limit to Dublin continues to further the goal of desegregation, especially now that transfers to Laurens threaten to turn Dublin's elementary schools into all black schools. In short, Dublin has a legal duty to remedy its prior unconstitutional system by complying with its desegregation orders, and "[e]ach instance of a failure or refusal to fulfill th[e] affirmative duty [to eradicate the dual system] continues the violation of the Fourteenth Amendment." Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 459 (1979); United States v. Lawrence County Sch. Dist., 799 F.2d 1031, 1044 (5th Cir. 1986) (same).

B. Dublin Has Violated the 1971 Order Since At least the 1997-98 School Year

The undisputed facts clearly establish that Dublin has violated the 1971 Order because white transfers from Dublin to Laurens have substantially exceeded the 5% limit since at least the 1997-98 school year. See Laurens Ans. ¶ 24 (admitting violations). Districts on the active docket must file biannual reports, see Order of Feb. 14, 1974, at 7 ¶ 6(a) (Tab 1), and those filed by Dublin in the school years 1997-98 to 2002-03 show that the numbers of white transfers from Dublin to Laurens that violated the Order's 5% limit are approximately: 108 in the 1997-98 school year; 205 in the 1998-99 year; 239 in the 1999-2000 year; 260 in the 2000-2001 year; 287 in the 2001-02 year; 107 in the 2002-03 year. See Laurens Ans. ¶ 24; Fact 17. Because Dr. Schuber, who was Dublin's superintendent from January 1997 to June 2003, testified that non-white students, such as Asians, were included in the number of "white" transfer students listed in Dublin's biannual reports, see Fact 18, Dr. Mickey Schuber Dep. of July 6, 2005 ("Schuber II") at 79:18-80:5, 81:7-82:2 (Tab 8), the numbers of violative transfers derived from these reports

are slightly higher than the actual numbers of violative white transfers. For example, the 297 “white” transfers from Dublin to Laurens listed in Dublin’s May 18, 2001 court report include 13 students of other races who were not subject to the 5% limit. See Schuber II at 79:12-25 (Tab 8).

A more accurate calculation of the number of transfers violating the 5% limit of the 1971 Order can be generated from the October FTE data reported by the Georgia Department of Education (“GDOE”) for all public school districts in Georgia because these data allow one to count only white transfer students. See, e.g., Tab 6 at 1. There is no dispute over the numbers by race, grade, and school of Dublin residents in Dublin’s schools, non-Dublin residents in Dublin’s schools (incoming transfers), Dublin residents in schools of Laurens and other Georgia public school districts (outgoing transfers) derived from the October FTE data in the years 1998 to 2005 because Dublin and Laurens admitted their accuracy. See Dublin Admis. Nos. 1, 4, 6-12, & 13 (Tab 12); Laurens Admis. Nos. 1, 4, 6-12, & 13 (Tab 13). Dublin’s and Laurens’s enrollment data at the GDOE website, http://app.doe.k12.ga.us/ows-bin/owa/fte_pack_ethnicsex.entry_form, also are not in dispute. See Dublin Admis. No. 3 (Tab 12); Laurens Admis. No. 3 with respect to accuracy of Laurens’s data (Tab 13).

Adding the admitted number of outgoing transfers from Dublin to the admitted number of Dublin residents enrolled in Dublin’s schools yields what Dublin’s total resident enrollment would be if there were no interdistrict transfers (i.e., Dublin’s pre-transfer enrollment). Thus, there is no genuine issue about the following numbers derived from the October FTE data from 1998 to 2005: (i) what Dublin’s pre-transfer white enrollment was, (ii) what 5% of Dublin’s pre-transfer white enrollment was, or (iii) what the difference was between the 5% figure and the number of white transfers from Dublin to Laurens. This difference equals the number of white

transfers that exceeded 5% of Dublin's pre-transfer white enrollment in a given year. Although the numbers of Dublin residents enrolled in Dublin and transferring to Laurens and other Georgia school districts in the 2005-06 year could not be calculated in time to ask Dublin and Laurens to admit the numbers, there should be no genuine issue about the number of transfers in excess of the 5% limit in the 2005-06 year either because the calculations for the 2005-06 school year were done the same way as the calculations for the 1998-99 to 2004-05 school years.

The calculations of the United States shows that the number of transfers exceeding the 5% limit in the 1971 Order were: 164 in the 1998-99 school year; 214 in the 1999-00 school year; 230 in the 2000-01 school year; 267 in the 2001-02 school year; 112 in the 2002-03 school year; 92 in the 2003-04 school year; 117 in the 2004-05 school year; and 159 in the 2005-06 school year. See Numbers of Transfers Exceeding 5% Limit of 1971 Order from 1998-99 to 2004-05 (Tab 20). Thus, for at least the past eight years, the numbers of white transfers from Dublin to Laurens have violated the 1971 Order by exceeding the 5% limit.²

Dublin has violated the 1971 Order because it has taken no steps to stop the transfers that exceed the 5% limit.³ See Facts 113-123. Dublin has not sought the help of the GDOE to stop

² The United States seriously questions the accuracy of Dr. Rossell's analysis. See U.S. Mot. to Exclude Dr. Rossell's Report and Testimony (Feb. 17, 2006). If, however, this Court were to use her 5% calculations of Dublin's white pre-transfer enrollment, these calculations show that the numbers of white transfers violating the 5% limit were: 84 in 1997-98; 140 in 1998-99; 128 in 1999-00; 190 in 2000-01; 260 in 2001-02; 182 in 2002-03; 124 in 2003-04; and 152 in 2004-05. See Ex. 580 (transfers in excess of absolute 5% uses "Dublin White Enr. before Transfers" which subtracts incoming white transfers to Dublin from Dublin's actual white enrollment and adds only white Dublin transfers to Laurens, not those to other districts) (Tab 68); Rossell Dep. of 12/13/05 ("Rossell Dep.") (discussing how Ex. 580 calculates the 5%) (Tab 27).

³ The United States need not show intentional, discriminatory violations of the 1971 Order by Dublin to obtain relief. See *Pitts v. Freeman*, 755 F.2d 1423, 1426-27 (11th Cir. 1985) (lower court erred by requiring plaintiffs to prove discriminatory intent for violations of

these transfers. Dublin Admis. No. 18 (Tab 12). This is significant because GDOE is required to monitor such transfers and remains a defendant in this case. See 1971 Order at 3 n. 3A (Tab 2); Order of Feb. 14, 1974, at 6 (keeping State on active docket until all districts are placed on inactive docket) (Tab 1). Dublin also has not sought the help of this Court to stop the number of transfers violating the 1971 Order. See Dublin Admis. No. 19 (Tab 12). Worse yet, Dublin has facilitated the violative transfers by sending the student records to Laurens in the school years 1995-96 through 2005-06. See id. No. 14; Laurens Admis. No. 15 (Tab 13); Laurens Ans. ¶ 26. Although Georgia law requires school districts to transfer records upon request from a public or private school, see GA Rule 160-5-1-.14(2)(a), Dublin should not have transferred them to Laurens because federal court orders take precedence over state law. See U.S. Const. art. VI, cl. 2; see Valley v. Rapides, 646 F.2d 925, 944 (5th Cir. 1981) (ordering school district to withhold student's records from public schools to comply with desegregation order limiting interdistrict transfers).⁴

C. Transfers Exceeding the 5% Limit of the 1971 Order Have Had a Negative Quantitative Effect on Desegregation in Dublin's Elementary Schools

In addition to violating the 5% limit of the 1971 Order, the white transfers from Dublin to Laurens have negatively affected desegregation in Dublin's elementary schools over the past eight school years by reducing the white percentage at these schools. See Facts 32-85. The

desegregation order because such proof is required only after a finding of complete unitary status); United States v. Lowndes County Bd. of Educ., 878 F.2d 1301, 1302 n. 2 (11th Cir. 1989) (same); Ga. State Conf. of Branches of NAACP v. State of Ga, 775 F.2d 1403, 1414 (11th Cir. 1985) (same).

⁴ Cases decided by the Fifth Circuit prior to October 1, 1981, are binding precedent in the Eleventh Circuit. See Bonner v. City of Pritchard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

negative effect caused by violating the 5% limit can be calculated by comparing the actual white percentages of these schools in a given year with the white percentages that the schools would have had if only 5% of the white resident students in those schools had been allowed to transfer. See Rossell Dep. at 249:3-15 (acknowledging that this analysis could be done) (Tab 27); Lowndes, 878 F.2d at 1305 (determining quantitative cumulative effect of transfers on desegregation through “comparison of the racial composition of the . . . [s]chool as it would exist without the transfers with the [school’s] present enrollment including the transfers”); Lee v. Eufaula City Bd. of Educ., 573 F.2d 229, 233 (5th Cir. 1978) (“The ‘cumulative effect’ of the transfer program must be measured on a school-by-school basis.”).

In the 2005-06 school year, the 159 transfers in excess of the 5% limit reduced the white enrollment percentage by: -6.8 percentage points at Susie Dasher from 17.7% to 10.9% white; -5.5 percentage points at Moore Street from 19.8% to 14.3% white; and -4.7 percentage points at Saxon Heights from 21.8% to 17.1% white. See 2005-06 Changes in Dublin’s White Percentages Caused by Exceeding 1971 Order’s 5% Limit (Tab 21 at 1). In the 2004-05 school year, the 117 transfers in excess of the 5% limit reduced the white enrollment percentage by: -5.7 percentage points at Saxon Heights from 22.5% to 16.8% white; -4.4 percentage points at Moore Street from 21.3% to 16.9% white; and -3.3 percentage points at Susie Dasher from 18% to 14.7% white. 2004-05 Changes in Dublin’s White Percentages Caused by Exceeding 1971 Order’s 5% Limit (Tab 21 at 2). In the 2003-04 school year, the 92 transfers in excess of the 5% limit reduced the white enrollment percentage by at least:⁵ -4.4 percentage points at Moore

⁵ The percentage point decreases in the 2003-04 school year likely were greater because the above numbers are based on October 2003 FTE data, which show 127 white Dublin transfers to Laurens, see 2003-04 Outgoing Transfers at 3 (Tab 15); but Laurens’s November 6, 2003 data

Street from 21% to 16.6% white; -4.2 percentage points at Saxon Heights from 21.9% to 17.8% white; and -1.1 percentage point at Susie Dasher from 19.7% to 18.5% white. See 2003-04 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 3).

Although the United States contests the admissibility of Dr. Rossell's analysis, see U.S. Mot. to Exclude Dr. Rossell's Report and Testimony, whether her analysis or that of the United States is used for the 2003-04 and 2004-05 school years, the undisputed fact is that transfers to Laurens negatively impacted desegregation in Dublin's elementary schools. Dr. Rossell testified that her 2004-05 analysis found that transfers between Dublin and Laurens caused the percentage white to drop from 21% to 17% at Moore Street and from 24% to 18% at Saxon Heights. See Rossell Dep. at 272:11-21 (Tab 27); Ex. 597 (Tab 63). She testified that this drop of 6 percentage points at both schools had a negative effect on these schools. See Rossell Dep. at 272:11-21 (Tab 27); Ex. 597 (Tab 63). She also testified that her 2003-04 analysis found that transfers between Dublin and Laurens reduced the white percentage by -6 percentage points from 22% to 16% at Saxon Heights and by -6 percentage points from 23% to 17% at Moore Street, and that these decreases of -6 percentage points were negatively impacting desegregation in both schools. Id. at 219:24 at 221:1 (Tab 27); Ex. 590 (Tab 64).

For the 1997-98 to 2002-03 school years, the effect of transfers could not be calculated at the school level for grades K-5 because Dublin had two schools for grades K-2 (Susie Dasher and Saxon Heights) and two schools for grades 3-5 (Moore Street and Hillcrest). See Rossell Report at 6 (Tab 26); Rossell Dep. at 175:12-19 (Tab 27). For the 1997-98 to 2002-03 school years, a

show 150 white Dublin transfers to Laurens. See Tab 25 at 3; Laurens Admis. No. 16 (Tab 13).

grade-cluster level analysis using a grade cluster of K-2 and a grade cluster of 3-5 offered the closest approximation to a school-level analysis for these grade levels. Id. This grade cluster analysis also showed that the transfers exceeding the 5% limit were negatively impacting the white percentages in Dublin's elementary grade clusters, particularly in the 2001-02 and 2000-01 school years.

Based on October 2002 FTE data, the 112 transfers in excess of the 5% limit in the 2002-03 school year reduced the white enrollment percentage by at least:⁶ -3.8 percentage points in grade cluster 3-5 from 23.2% to 19.4% white; and -2.8 percentage points in grade cluster K-2 from 22% to 19.1% white. See 2002-03 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 4). For the 2002-03 school year, Dr. Rossell's analysis found transfers caused a -6 percentage point drop from 26% white to 20% white in grade cluster 3-5, see Ex. 588 (showing After Transfers % Wh = 20% for grade cluster 2 (i.e., grades 3-5) and Before Transfers % Wh = 26%) (Tab 65), and she testified that this -6 percentage point drop was having a negative effect on desegregation in that grade cluster. See Rossell Dep. at 188:6-12 (Tab 27). She also testified that the -2 percentage point drop from 28% white to 26% white in the district-level enrollment that she determined was caused by transfers in the 2002-03 year negatively affected desegregation at the district level. See id. 188:19-23 (Tab 27); Ex. 588

⁶ The percentage point decreases were likely higher because the 2002-03 school year is when Laurens began charging each non-resident student \$992 a year for tuition, see Fact 125, and the number of reported white Dublin transfers to Laurens dropped inexplicably from 310 to 150 in one year. See Tab 20. The undisputed facts show that some Dublin residents falsely claimed residence in Laurens that school year, and it is difficult to believe that all of the 160 white Dublin residents who attended Laurens in the 2001-02 school year returned to Dublin in the 2002-03 school year because Dublin's K-5 enrollment increased by only 16 students in the 2002-03 school year. See Facts 135-42, 151-53; Ex. 552 (Tab 50), Schuber II at 152:7-153:9, 153:24-154:7 (Tab 8).

(showing After Transfers Total % Wh = 26% for Before Transfers Total % Wh = 28%) (Tab 65).

In the 2001-02 school year, the 267 transfers in excess of the 5% limit reduced the white enrollment percentage by: -9.8 percentage points in grade cluster K-2 from 25.6% to 15.8% white; and -7.3 percentage points in grade cluster 3-5 from 26.2% to 18.8% white. See 2001-02 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 5). In the 2000-01 school year, the 230 transfers in excess of the 5% limit reduced the white enrollment percentage by: -8.4 percentage points in grade cluster 3-5 from 26.6% to 18.2% white; and -7.8 percentage points in grade cluster K-2 from 24% to 16.3% white. See 2000-01 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 6). In the 1999-00 school year, the 214 transfers in excess of the 5% limit reduced the white enrollment percentage by: -6.9 percentage points in grade cluster K-2 from 26.8% to 19.9% white; -6.5 percentage points in grade cluster 3-5 from 26.4% to 19.9% white; and -6.9 percentage points in Central Elementary School from 29.5% to 22.6% white. See 1999-00 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 7). In the 1998-99 school year, the 164 transfers in excess of the 5% limit reduced the white enrollment percentage by: -4.8 percentage points from 27% to 22.2% white in grade cluster K-2; -4.6 percentage points in grade cluster 3-5 from 28.3% to 23.7% white; and -5.6 percentage points in Central Elementary School from 31.9% to 26.2% white. See 1998-99 Changes in Dublin's White Percentages Caused by Exceeding 1971 Order's 5% Limit (Tab 21 at 8).

D. The Cumulative Quantitative Effect of Transfers Between Dublin and Laurens Has Reduced Desegregation in Dublin's Elementary Schools

Were this Court to decide to move Dublin to the inactive docket and no longer require

compliance with the 1971 Order's 5% limit, Dublin would have to comply with the interdistrict transfer provision to which all inactive school districts in this case are subject. See Order of Feb. 14, 1974, at 5 ¶ 1.f (Tab 1). This provision states: "If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district." Id. This language is known as a Singleton transfer clause because it mirrors the language in that case. See Singleton v. Jackson Mun. Separate Sch. Dist., 419 F.2d 1211, 1218-19 (5th Cir. 1969) (same except that "or reenforce the dual school system" follows at the end of the provision); Lowndes, 878 F.2d at 1302 (involving Singleton transfer clause). Even if this Court decides not to apply the 1971 Order's 5% limit, summary judgment should be entered against Dublin because the undisputed facts show that it cannot demonstrate compliance with a Singleton transfer clause.

"Even if transfers have been nondiscriminatorily granted or received, . . . the Singleton provision . . . obligates the school district to monitor the effect of such transfers, both on its own desegregation efforts and on the desegregation process of the school district from which it receives, or to which it sends, its students" and to forbid those transfers that would have a cumulative negative effect on desegregation. Lowndes, 878 F.2d at 1304. "The 'cumulative effect' . . . must be measured on a school-by-school basis." Eufaula, 573 F.2d at 233. One cannot calculate the cumulative effect on desegregation if one conducts "a district- or county-wide analysis," Lowndes 878 F.2d at 1305,⁷ because the school-level analysis "is the only

⁷ For this reason, Dr. Rossell's Report, which includes only a district-level analysis, tells us nothing about whether transfers to and from Dublin are negatively impacting desegregation therein. See Ex. 573: Rossell Report of 10/31/05, ("Rossell Report"), at 2-4, 7-10, Table 1,

operational level on which actual segregative effect can be measured, and upon which it can be determined whether the transfer policy reduces desegregation or reinforces the existence of a constitutionally impermissible dual school system.” Eufaula, 573 F.2d at 233. Determining whether the cumulative effect of the transfers reduces desegregation in the school requires comparing the pre-transfer racial composition of the school with its post-transfer racial composition (i.e., its actual enrollment) “and then a determination, from a qualitative standpoint, of whether the difference undermines desegregation efforts at the school.” Lowndes, 878 F.2d at 1305.

Although not needed to establish a violation of the 1971 Order, the Singleton analysis performed by the United States shows that the transfers between Dublin and Laurens have had a cumulative negative effect that has reduced desegregation in Dublin’s elementary schools and grade clusters. As explained above, Dublin and Laurens conceded the accuracy of the numbers of outgoing transfers from Dublin, incoming transfers to Dublin, and Dublin residents enrolled in Dublin in the school years 1998-99 to 2004-05 derived from the October FTE data. See Dublin Admis. Nos. 1, 4, 6-12, & 13 (Tab 12); Laurens Admis. Nos. 1, 4, 6-12, & 13 (Tab 13). Because the United States used these admitted numbers to calculate and compare the pre-transfer and post-transfer white enrollment percentages of Dublin’s schools and grade clusters, there is no genuine issue regarding his calculations of the cumulative net effect of transfers on the white percentages of Dublin’s schools or grade clusters. See Rossell Report at 7 (“[C]ompar[ing] the racial composition of the four grade clusters pre and post-transfer . . . [enables one] to determine the desegregation effect of interdistrict student transfers.”) (Tab 26).

Figure 2 (Tab 26).

For the 2003-04, 2004-05, and 2005-06 school years, the United States calculated the cumulative effect on Dublin's *schools* caused by: (a) transfers between Dublin and Laurens only; and (b) transfers between Dublin and all Georgia public school districts, including Laurens. The two calculations yielded very similar percentage point decreases in the elementary schools' white percentages because the vast majority of transfers in and out of Dublin involve Laurens, and both calculations show a negative effect on desegregation in these schools. In the 2005-06 school year, the cumulative negative effect of the transfers between Dublin and Laurens was: -6.7 percentage points at Susie Dasher from 17.4% to 10.7% white; -5.6 percentage points at Moore Street from 19.9% to 14.3% white; and -3.3 percentage points on Saxon Heights from 20% to 16.7% white. See 2005-06 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 1). The cumulative negative effect of the transfers between Dublin and all Georgia public school districts in that same school year were very similar: -6.5 percentage points at Susie Dasher from 17.3% to 10.9% white; -5.8 percentage points at Moore Street from 20.1% to 14.3% white; and -2.9 percentage points on Saxon Heights from 20% to 17.1% white. See 2005-06 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 1). Therefore, whether the Singleton analysis includes only transfers between Dublin and Laurens or all transfers in and out of Dublin, the cumulative negative effect of the transfers in the 2005-06 school years is roughly -7 percentage points on Susie Dasher, -6 percentage points on Moore Street, and -3 percentage points on Saxon Heights.

In the 2004-05 school year, the cumulative negative effect of the transfers between Dublin and Laurens only was: -6.6 percentage points on Saxon Heights from 23% to 16.3% white; -4.1 percentage points at Moore Street from 20.6% to 16.5% white; and -2.1 percentage

points on Susie Dasher from 16.4% to 14.3% white. See 2004-05 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 2). In the 2003-04 school year, the cumulative negative effect of the transfers between Dublin and Laurens was: -5.1 percentage points on Saxon Heights from 22.8% to 17.8% white; -4.2 percentage points at Moore Street from 20.8% to 16.6% white; and -1.1 percentage points on Susie Dasher from 18.3% to 17.2% white. See 2003-04 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 3). The cumulative negative effect of transfers between Dublin and all Georgia public school districts was quite similar in both the 2004-05 and 2003-04 school years.⁸

For the school years 1998-99 to 2002-03, the United States calculated the cumulative effect on Dublin's grade cluster K-2 and grade cluster 3-5, and the effect was muted because the individual effects on the two schools in the grade cluster were effectively averaged. In the 2002-03 school year, when reported transfers dropped inexplicably from 310 to 150, see Tab 20, the cumulative negative effect of transfers between Dublin and Laurens was at least: -3.6 percentage points on grade cluster 3-5 from 22.8% to 19.2% white; and -1.5 percentage points in grade cluster K-2. See 2002-03 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 4). Only one year before, in the 2001-02 school year, the cumulative

⁸ In the 2004-05 school year, the cumulative effect of the transfers between Dublin and all Georgia school districts were: -6.2 percentage points at Saxon Heights from 23% to 16.8% white; -3.7 percentage points at Moore Street from 20.6% to 16.9% white; and -1.7 percentage point on Susie Dasher from 3.3% from 16.4% to 14.7% white. See 2004-05 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 2). In the 2003-04 school year, the cumulative negative effect of the transfers between Dublin and all Georgia public school districts was higher at Saxon Heights (-6.2 percentage points from 23% to 16.8% white) and Susie Dasher (-1.7 percentage points from 3.3% from 16.4% to 14.7% white) and lower at Moore Street (-3.7 percentage points from 20.6% to 16.9% white). See 2003-04 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 3).

negative effect of the transfers between Dublin and Laurens had been much larger: -9.1 percentage points in grade cluster K-2 from 24.5% to 15.4% white; and -6.2 percentage points in grade cluster 3-5 from 24.7% to 18.5% white See 2001-02 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 5). The cumulative negative effect of transfers between Dublin and all Georgia public districts was almost the same in the 2002-03 and 2001-02 school years.⁹

In the 2000-01 school year, the cumulative negative effect of the transfers between Dublin and Laurens was: -6.8 percentage points in grade cluster 3-5 from 22.7% to 16.1 white; and -6.6 percentage points in grade cluster K-2 from 22.7% to 16.1% white. See 2000-01 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 6). In the 1999-00 year, the cumulative negative effect of the transfers between Dublin and Laurens was: -5.7 percentage points in grade cluster K-2 from 25.4% to 19.7% white; -4.3 percentage points in grade cluster 3-5 from 24% to 19.6% white; and -4.5 percentage points in Central Elementary School from 27.3% to 22.7% white. See 1999-98 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 7). In both school years, the cumulative negative effect of the transfers between Dublin and all Georgia districts was virtually the same,¹⁰ and in the

⁹ In the 2002-03 school year, the cumulative negative effect of the transfers between Dublin and all Georgia districts was: -3.4 percentage points in grade cluster 3-5 from 22.8% to 19.4% white; and -1.1 percentage points in grade cluster K-2 from 20.3% to 19.1% white. See 2002-03 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 4). In the 2001-02 school year, the cumulative negative effect of the transfers between Dublin and all Georgia districts was: -8.7 percentage points in grade cluster K-2 from 24.5% to 15.8% white; and -5.9 percentage points in grade cluster 3-5 from 24.7% to 18.8% white. See 2001-02 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 5).

¹⁰ In the 2000-01 school year, the cumulative negative effect of the transfers between Dublin and all Georgia public school districts was: -6.6 percentage points in grade cluster 3-5

1998-99 school year, the negative effect was 1 to 2 percentage points. See 1998-99 Percentages Changes Caused by Incoming & Outgoing Laurens Transfers (Tab 23 at 8).

In Lowndes, the Eleventh Circuit found a -9.3 percent point drop in the McKenzie School's white percentage from 63.9% to 55.1% coupled with other evidence demonstrating a qualitative negative effect on desegregation in the school established a Singleton transfer violation. See 878 F.2d at 1306 & n. 10. Although the drop in the 2001-02 school year was -9.1 percentage points in Dublin's grade cluster 3-5, the percentage point decrease need not reach -9 to establish a Singleton violation.¹¹ As the Eleventh Circuit explained, "[t]he fact that the McKenzie School is 9.3% more white than it would be without the transfers from Conecuh and Covington Counties is not per se indicative of a Singleton violation. What compels our decision in this case is whether that increment of change is likely to aggravate or alter popular perceptions of McKenzie's racial identity and whether it affects the decisionmaking process of white students considering where to attend school." Id. (footnote omitted); see also Eufaula, 573 F.2d at 232

from 24.8% to 18.2% white; and -6.4 percentage points in grade cluster K-2 from 22.6% to 16.3% white. See 2000-01 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 6). In the 1999-00, the cumulative negative effect of the transfers between Dublin and all Georgia public school districts was: -5.5 percentage points in grade cluster K-2 from 25.4% to 19.9% white; -4.1 percentage points in grade cluster 3-5 from 24% to 19.9% white; and -4.5 percentage points in Central Elementary School from 27.2% to 22.6% white. See 1999-00 Percentages Changes Caused by Incoming & Outgoing Transfers (Tab 24 at 7).

¹¹ A court recently found that transfers between the Hearne and Mumford school districts had a cumulative negative effect on desegregation in Hearne in six school years (1998-99 to 2003-04) where the cumulative effect in most years was below -9. U.S. v. State of Texas (Hearne Indep. Sch. Dist.), 2005 WL 1868844, at *22 (E.D.Tex. 2005). The cumulative effect of all transfers was: -3.61 from 26.18% to 22.57% white in 1998-99 and -6.43 in 2003-04, the most recent year under court review. Id. & Table F. Likewise, the cumulative effect of the transfers to Mumford only was -3.13 in 1998-99 and -5.78 from 18.76% to 12.98% white in 2003-04. Id. at *25 & Table J. The 2003-04 effects are strikingly similar to those in Dublin in the 2005-06 year.

“In measuring the cumulative effect of a student transfer program on desegregation, the Court must do so from a qualitative viewpoint, without blind deference to an objective mathematical formula.”).

When schools are already predominantly one race, as Dublin’s elementary schools are, “the range of deviation” caused by transfers need not be as large to have a “qualitative segregative effect.” Eufaula, 573 F.2d at 233 n. 9 (noting that “a transfer program which has the effect of increasing the black student population in a particular school from 90% to 100% may be more suspect than a corresponding 10% increase from 50% to 60%”); see Hearne, 2005 WL 1868844, at *37 (“Given the decreasing white student resident population in Hearne, any transfer of white students is magnified and makes it more likely that the transfers will impede desegregation.”). The cumulative negative effects in the current school year, which are -7 percentage points on Susie Dasher and -6 percentage points on Moore Street, and the -7 percentage point effect on Saxon Heights last school year, coupled with the undisputed facts summarized below about the qualitative negative effect on Dublin’s elementary schools amply establish a Singleton violation and the urgency of remedying Dublin’s violations of the 1971 Order.

E. Transfers from Dublin to Laurens Have Had a Negative Qualitative Effect on Desegregation in Dublin’s Elementary Schools

A violation of a Singleton transfer clause requires not only quantitative proof that the transfers have changed the racial composition of a particular school, but also a qualitative determination that the transfers have “increased the racial identifiability of th[at] school.” Lowndes, 878 F.2d at 1305. Thus, the proof needed to establish a Singleton violation exceeds

that required to establish a violation of the 1971 Order, which requires only proof that the 5% limit has been exceeded. Although the proof needed to prove a Singleton transfer violation differs, the 5% limit in the 1971 Order serves the same purpose as “[t]he *Singleton* transfer provision [which] was designed to prevent white students from fleeing predominantly black, often urban schools to majority white public schools in neighboring counties [because] [t]his pattern of ‘white flight’ often results in de facto resegregation.” Lowndes, 878 F.2d at 1305.

The undisputed facts show that transfers from Dublin to Laurens in the school years 1997-98 to 2005-06 have increased the racial identifiability of Dublin’s elementary schools as “black” schools. Dublin Admis. No. 20 (Tab 12). Dublin admitted that “[s]ome parents/guardians of white Dublin resident students have expressed to Dublin’s employees or board members in the years 1997 to 2005 that the students have transferred or will transfer to Laurens because of the racial identifiability of Dublin’s elementary schools.” Dublin Admis. No. 21 (Tab 12). Dublin also admitted that “[s]ome parents/guardians of white Dublin resident students have expressed to Dublin’s employees or board members in the years 1997 to 2005 that their children have transferred or will transfer to Laurens because there were too few white students assigned to their children’s classes. Dublin Admis. No. 22 (Tab 12). These admissions alone can establish a Singleton violation. See Lowndes, 878 F.2d at 1307 (“A Singleton violation has still occurred if the 9.3% increment of change has resulted in a perception of the school as being more ‘white.’”).

The deposition testimony of Dublin’s superintendents, board members, and principals and exhibits showing that white flight from Dublin’s schools has been overwhelmingly to Laurens, not to private schools, undergird these admissions. See Facts 86-108. These undisputed exhibits

and testimony show that transfers to Laurens have increased the racial identifiability of Dublin's elementary schools, "aggravate[d]" community perceptions of these schools as "black" schools, and "affect[ed] the decisionmaking process of white students considering where to attend school." Lowndes, 878 F.3d at 1306; see Hearne, 2005 WL 1868844, at *32, *37 (finding similar testimony from school district officials established requisite community perception). Even Laurens's expert views Dublin's schools as "black schools" and concedes that transfers negatively affected desegregation in the elementary schools and could influence parents' school choices. See Facts 109-112. That the vast majority of white Dublin transfers to Laurens were to Laurens's whitest elementary school even though its least white elementary school is closer to the Dublin city limits highlights the degree to which the racial identifiability of Dublin's schools is influencing parents' choices. See Fact 162-163. Transfers that are "not explained by convenience" because the school is "equidistant, if not closer," is evidence of a Singleton violation. Lowndes, 878 F.3d at 1307.

Laurens's prior practice of sending buses into Dublin to pick up students, see Fact 164, 166, further shows Singleton violations in those school years dating back to 1998. In addition, Laurens's 2005-06 practice of knowingly picking up white Dublin residents who are privately transported to Laurens's bus stops shows a Singleton violation. See Fact 165. In Lowndes, evidence that eleven white children were "privately transported by car to designated ... pick-up points [in the receiving school district], despite the proximity of ... bus routes [in the sending district]" was "highly suspect" and "strong suggest[ed]" that the school's racial composition had influenced those students' choices. 878 F.3d at 1307.

Lastly, the transfers from Dublin to Laurens also "undermine[d] desegregation efforts at

[Dublin’s elementary and middle] schools,” id. at 1305, because Dublin’s principals engaged in race-based class assignment practices to dissuade white Dublin residents from transferring to Laurens for the past eight years. See Dublin Admis. Nos. 23-25 (Tab 12); Facts 101-107. The relationship between class assignment practices and transfers supported the court’s finding in Hearne that transfers were negatively affecting desegregation and that Mumford’s acceptance of white transfers from Hearne could be enjoined because the transfers were interfering with the desegregation order. See 2005 WL 1868844, at *7-*8, *38. In that case, “increasing numbers of parents began to transfer their children out of Hearne” after the superintendent stopped ability grouping students in the elementary school. Id. at *7. This is similar to what happened in Dublin when parallel block scheduling reduced ability grouped classes in the elementary schools in 1997, because white transfers to Laurens jumped and increased each year. See Facts 79-80, 96-98. In Hearne, the court found “the increasing proportion of Hearne’s white students [who] transferred . . . [since ability grouping ceased] . . . hamper[ed] Hearne’s ability to realize the benefits of a unitary system . . . [and that] [t]he transfers impair[ed] Hearne’s ability to remedy its prior unconstitutional invalidity and otherwise fulfill its desegregation obligations.” 2005 WL 1868844, at *38. Nothing could be more true in Dublin’s case.

IV. Summary Judgment Should Be Entered Against Dublin for Its Violations of the 1971 Order and this Order Should be Enforced by Requiring Dublin to Monitor Transfers and to Withhold Records for Students Whose Transfers Exceed the 5% Limit

In light of the plethora of undisputed facts establishing violations of the 1971 Order and the their negative effect on desegregation in Dublin’s elementary schools, this Court should enter summary judgment against Dublin. These violations support court enforcement of the 1971

Order. The Order should be enforced by requiring Dublin to monitor the number and race of outgoing transfers and by enjoining Dublin from sending records to Laurens for students whose transfers exceed 5% of Dublin's resident white students. See Rapides, 646 F.2d at 944 (court may order districts to withhold student's records from public schools but not private schools).

V. The Undisputed Facts Show that Dublin's Motion for Unitary Status with Respect to Interdistrict Transfers Is No Bar to Summary Judgment or Enforcement of the Order

When the United States expressed its concerns to Dublin about the violations of the 1971 Order, Dublin first indicated that it "would agree to an Order requiring it not to comply with state law and, instead, prohibiting it from sending records of students residing within the Dublin City School District to the Laurens County School District or any private school." Letter from Pearson to McCarthy of 11/24/03, at 2 (Ex. 48) (Tab 48). In an about face, Dublin then moved for a declaration of unitary status regarding all issues, including transfers. See Dublin Mot. for Unitary Status (June 10, 2004). The legal standards for achievement of unitary status are well-established by the Supreme Court and Eleventh Circuit and already have been fully briefed by the United States. See U.S. Opp. to Dublin's Mot. for Unitary Status (July 21, 2004). Those standards plainly cannot be met by Dublin with respect to interdistrict transfers due to the undisputed facts demonstrating repeated violations of the 1971 Order and no good faith effort to halt them.

The first inquiry raised by a unitary status motion is equivalent to the one raised by the United States' Motion to Enforce: "whether the Board has complied in good faith with the desegregation decree since it was entered." Freeman, 503 U.S. at 492 (quoting Bd. of Educ. v. Dowell 498 U.S. 237, 249-50 (1991)). The undisputed facts provide a resounding no to this

inquiry. See Facts 28-78, 113-123. The second inquiry is “whether the vestiges of past discrimination had been eliminated to the extent practicable.” Freeman, 503 U.S. at 492 (quoting Dowell 498 U.S. at 249-50). The third and last inquiry is “whether the school district has demonstrated . . . its good-faith commitment to the whole of the courts’ decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.” Missouri v. Jenkins, 515 U.S. 70, 89 (1995) (quoting Freeman, 503 at 491). Dublin cannot make the second or third showing due to the undisputed facts showing its utter failure to comply with the 1971 Order’s transfer clause. See Facts 113-123. Thus, Dublin’s motion for unitary status is no bar to entering summary judgment against Dublin.

When a school district cannot satisfy the good faith inquiry due to violations of its orders, enforcement of the orders and/or further relief by the Court is entirely warranted. See Freeman, 503 U.S. at 499. Because the undisputed facts clearly establish repeated violations of a valid order, this Court should enter summary judgment against Dublin and enforce the 1971 Order in the manner requested above. See, e.g., United States v. State of Ga., 19 F.3d 1388, 1390-91 (11th Cir. 1994) (affirming district court order granting U.S. motion to enforce 1973 order and “halt[ing] all intra-district transfers as well as new inter-district transfers”); Lowndes, 878 F.2d 1301 (granting United States’ motion to enforce 1973 transfer provision and enjoining transfers).

VI. Conclusion

For the all of the reasons stated, the United States respectfully moves this Court for judgment as a matter of law against Dublin and for the injunctive relief requested herein.

Respectfully submitted,

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DATED: February __, 2006

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing United States' Motion for Summary Judgment Against the Dublin City School District and Supporting Memorandum were served on February __, 2006, via Federal Express upon counsel for the Dublin City School District and the first counsel listed for the Defendant Laurens County School District, and by first-class mail, postage prepaid, upon the remaining counsel for Defendant Laurens County School District and the State Defendants:

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