

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 70-1069 - CIV - MORENO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOARD OF EDUCATION OF HENDRY  
COUNTY,

Defendant.

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**ORDER**

This Cause is before the Court upon the Joint Motion for Declaration of Partial Unitary Status and for Approval of Stipulation regarding Faculty and Staff Recruiting and Student Discipline (the "Joint Motion") submitted by the United States and the Board of Education of Hendry County, also known as the School Board of Hendry County (the "District") (collectively, the "Parties"). For the reasons given below, this Order grants the Joint Motion and approves the Parties' Stipulation regarding Faculty and Staff Recruiting and Student Discipline (the "Stipulation").

**I. Procedural History and Stipulated Facts**

The United States initiated this lawsuit against the District on July 8, 1970, alleging that the District continued to operate a dual school system based on race. On July 31, 1970, the Court issued a preliminary order that required conversion of the District from a dual to a unitary system in accordance with the requirements set forth in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), but reserved ruling on student assignment. The Court

adopted the District's student assignment plan on August 29, 1970, and issued a subsequent opinion and order on August 4, 1971 (the "August 1971 Order"), directing the District to make certain modifications to the plan.

On January 13, 1975, the Court entered an order (the "January 1975 Order") that dissolved the August 1971 Order and permanently enjoined the District from "operating a dual system of racially identifiable schools." January 1975 Order at 1. The Court also ordered the District to continue to: (1) take no action to segregate students or faculty between 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) ensure bus transportation is provided on a non-discriminatory basis; (4) ensure that all school construction, consolidation, and site selection are done to prevent the recurrence of a dual system; and (5) 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 Hendry or the other school district. *Id.* at 2-3. The Court retained jurisdiction to enforce the permanent injunction.

The District successfully desegregated its schools. During the 1969-70 school year, the District operated five schools and enrolled approximately 3,094 students (64.3% white, 25.3% black, and 10.4% other). One of the five schools, Harlem Academy, was a *de jure* black school. For the 2015-16 school year, the District enrolled 7,127 students in twelve schools, including two youth development academies. The District's overall enrollment is 15% black (1,042 students), 20% white (1,452 students), and 65% other (4,633 students). The following chart summarizes the enrollment at each school in the LaBelle and Clewiston communities during the 2015-16 school year:

School	Grades	Black	White	Other	Total
Westside ES	PK-5	127 (21%)	98 (17%)	366 (62%)	591
Eastside ES	PK-5	166 (29%)	73 (13%)	338 (58%)	577
Central ES	PK-5	134 (22%)	114 (19%)	357 (59%)	605
Clewiston MS	6-8	177 (25%)	122 (17%)	414 (58%)	713
Clewiston HS	9-12	218 (25%)	195 (22%)	470 (53%)	883
Clewiston YDA	6-12	18 (62%)	4 (14%)	7 (24%)	29
Clewiston Totals		840 (25%)	606 (18%)	1,952 (57%)	3,398

LaBelle ES	PK-5	21 (4%)	95 (16%)	475 (80%)	591
Country Oaks ES	PK-5	64 (8%)	143 (18%)	600 (74%)	807
Upthegrove ES	PK-5	19 (4%)	135 (28%)	324 (68%)	478
LaBelle MS	6-8	41 (5%)	171 (23%)	542 (72%)	754
LaBelle HS	9-12	53 (5%)	289 (28%)	707 (67%)	1,049
LaBelle YDA	6-12	3 (12%)	5 (19%)	18 (69%)	26
LaBelle Totals		275 (7%)	764 (21%)	2,666 (72%)	3,705
"ESE/Hospital Homebound"	PK-12	1 (4%)	8 (33%)	15 (63%)	24
<b>TOTAL</b>		<b>1,042 (15%)</b>	<b>1,452 (20%)</b>	<b>4,633 (65%)</b>	<b>7,127</b>

Although the District has experienced significant growth and changing demographics since the inception of the case, the District has maintained a desegregated student enrollment that reflects the overall racial composition of the District. Specifically, during the 2015-16 school year, all elementary, middle, and high schools fell within +/- 15% of the Districtwide average based on the percentage of black and white students enrolled in Clewiston and LaBelle schools.

There is no evidence of discrimination as it pertains to student assignment between schools, transportation, facilities, or extracurricular activities. For example, 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. The District also maintains non-discriminatory policies and practices with respect to

transportation and provides transportation to students in a non-segregative and non-discriminatory manner. Further, the District has not constructed or consolidated schools in a manner that would interfere with its desegregation obligations and does not have any new consolidation or construction plans in the near future. Finally, the District offers a wide variety of student extracurricular activities to all students without regard to race.

With respect to faculty and staff, the District assigns faculty and staff to schools throughout the District in an equitable manner. However, the District has experienced challenges with minority recruiting and hiring over the last several years. Most recently, in the 2015-16 school year, black faculty constituted only 6% of the District's total faculty personnel and there were no black Principals. The Parties agree that more progress can be made in the area of minority recruitment.

With respect to within school segregation related to student discipline, the District's 2014-15 school year data revealed notable disparities at several schools suggesting that black students are being punished with suspensions at considerably higher rates than white students. Moreover, black students are disproportionately represented at Clewiston Youth Development Academy. The Parties agree that more progress can be made in this area.

## **II. Legal Standards**

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.

### **III. Legal Analysis**

Based on the information and data provided by the District to the United States and the information in the Parties’ Joint Motion, the Court finds that the District has complied with the permanent injunction for a reasonable period of time and has eliminated the vestiges of past *de jure* discrimination to the extent practicable with respect to student assignment between schools, transportation, facilities, and extracurricular activities. The Court concludes, therefore, that the District has attained partial unitary status in the areas of student assignment between schools,

transportation, facilities, and extracurricular activities, and is entitled to dissolution of the permanent injunction and dismissal of this action in these areas. The Court agrees with the Parties that additional progress can be made in the areas of faculty and staff recruiting and within school segregation relating to student discipline. Therefore, the Court approves the Parties' Stipulation regarding Faculty and Staff Recruiting and Student Discipline and will retain jurisdiction pursuant to the terms of the Stipulation. *See* Ex. 1.

Accordingly, it is hereby **ORDERED** that:

- 1) The Joint Motion is **GRANTED**;
- 2) The District is declared partially unitary with respect to student assignment between schools, transportation, facilities, and extracurricular activities;
- 3) All prior injunctions in this case are **DISSOLVED** and jurisdiction is **TERMINATED** with respect to student assignment between schools, transportation, facilities, and extracurricular activities;
- 4) The Stipulation regarding Faculty and Staff Recruiting and Student Discipline is **APPROVED**, and the Court will retain jurisdiction as it pertains to faculty and staff recruiting and student discipline per the terms of the Stipulation.

ENTERED THIS 20<sup>th</sup> DAY OF January 2017.

  
United States District Judge

c: All counsel & rec'd

# Exhibit 1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 70-1069**

UNITED STATES OF AMERICA,

Plaintiff,

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BOARD OF EDUCATION OF HENDRY  
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**STIPULATION REGARDING FACULTY AND STAFF RECRUITMENT AND  
STUDENT DISCIPLINE**

Plaintiff, the United States of America (the "United States"), and Defendant, Board of Education of Hendry County, also known as the School Board of Hendry County (the "District") (collectively, the "Parties") hereby stipulate as follows:

**Faculty/Staff Recruiting and Hiring**

1. The District has taken steps to increase recruitment 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 Plan and will implement this plan through at least the 2018-19 school year. In particular, the District commits to the following:
  - a. The District will reach out to its contacts at student placement offices at universities in Florida and throughout the United States, including historically black colleges and universities such as Bethune Cookman University, Florida A&M University, Edward



candidates.

- b. The District will continue to make recruiting visits to college campuses and attend job fairs to recruit minority teachers.
- c. The District will continue to advertise and post job vacancies on the District website, Appletrac, and other sources and publications that reach diverse populations.
- d. The District will continue to implement its initiative to recruit more "homegrown" teachers, including its tuition reimbursement program.
- e. Beginning with the 2016-17 school year, the District will attend functions, career fairs, and promotional events coordinated by the Florida Fund for Minority Teachers.
- f. By January 1, 2017, the District will establish a Minority Recruiting Committee comprised of diverse administrators, instructional staff, and non-instructional staff who will meet with the Superintendent to discuss ways to increase minority recruitment and will participate in recruitment events. Committee members will assist with one or more recruiting visits to college campuses or job fairs.
- g. The District will encourage all principals to interview a diverse pool of applicants for all open positions and make available information about applicants' race, if available.
- h. The District will monitor the diversity of faculty, administrators, instructional staff, and non-instructional staff at each of its schools at the end of each school year.
- i. The District will conduct teacher satisfaction surveys at the end of each school year to inform its retention efforts.
- j. The District will, for teachers leaving the school district, conduct exit surveys that, *inter alia*, will inquire about the teacher's reason for leaving.

**Student Discipline**

2. The District has taken steps to address racial disparities 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. In particular, the District commits to the following:
  - a. The District will continue to implement a Positive Behavioral Support program and provide schools and their staff with the training and resources to improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
  - b. No later than July 1, 2017, in addition to Positive Behavioral Support, the District will implement other evidence-based practices, such as restorative practices, and provide schools and their staff with the resources and support to further improve school climate, teach school rules and social-emotional skills, reinforce positively appropriate behavior, and put in place early intervention strategies.
  - c. No later than July 1, 2017, the District will develop a mechanism for teachers and other school personnel to document intervention and support strategies prior to using an office disciplinary referral.
  - d. Beginning in the spring of 2017, the District and individual schools, including the youth development academies, will collect and review discipline data, on at least a semester basis to: identify changes in rates of office disciplinary referrals and discipline consequences issued (e.g., in-school suspension, out-of-school suspension, arrests) on the basis of race/ethnicity.

- e. Beginning in the spring of 2017, the District will conduct an annual end-of-year review of its youth development academies to evaluate the academies' effectiveness. 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 concern, such as disparities in referrals or discipline rates by race, the District will work with the alternative school to develop and implement changes to address the concerns by the start of the next school year.
3. The District will report annually to the United States and the Court on the District's implementation of the stipulation terms. The District will provide copies of the report to the United States and the Court 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. Each report shall 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 applicants by race; the number of interviewed applicants by race; and the race of the hired applicant;
- g. 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 infraction(s) for which the penalty was imposed.
- h. A summary of the District's annual review of the youth development academies, including whether any issues were identified and, if so, what changes will be made.

- i. A summary of the results of the teacher satisfaction surveys and exit surveys. Copies of the surveys will be made available upon request from the United States.


**Final Termination**

4. 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 June 30, 2019 (i.e., the end of the 2018-19 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 submitting its September 1, 2019 report for the 2018-19 school year provided the report is complete and timely and the United States has not voiced any objection.

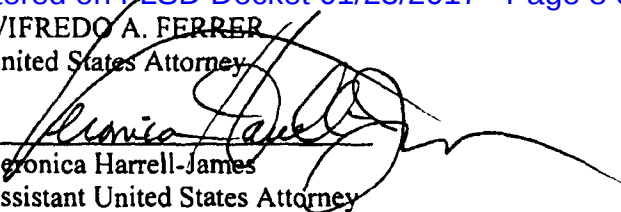
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