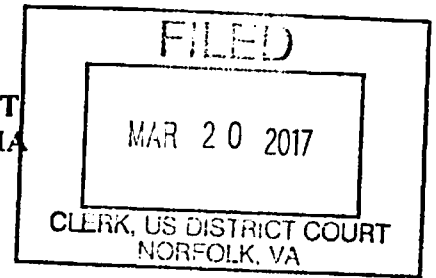


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SCHOOL BOARD OF THE CITY OF)
 SUFFOLK, *et al.*,)
)
 Defendants.)

Civil Action No. 2:70-cv-392

CONSENT ORDER

This Consent Order arises out of the good faith, arms-length negotiations of Plaintiff United States of America (the "United States") and Defendants School Board of the City of Suffolk and Superintendent of Schools of the City of Suffolk (the "Board") (collectively, the "Parties") to address and resolve the Board's remaining school desegregation obligations in its operation of the Suffolk Public Schools (the "District"). This Consent Order is jointly entered into by the United States and the Board. The Court, having reviewed the terms of this Consent Order, finds that the terms are fair, just, reasonable, and consistent with the Board's remedial obligations in this case and the objectives of the Fourteenth Amendment of the United States Constitution. The Court ORDERS as follows:

I. Background and Stipulated Facts

A. Background

The United States initiated this school desegregation lawsuit against the Board on May 27, 1970. *See* Complaint (Doc. 3, Ex. A). In a written order dated October 18, 1971, the Court approved the Board's school desegregation plan, which addressed student assignment, faculty

and staff assignment, transportation, and other aspects of the Board's operations. *See* Oct. 18, 1971 Order (Doc. 3, Ex. B); 1971-72 School Board Plan (Doc. 3, Ex. C). This case was consolidated with *Walston v. School Board of the City of Suffolk* (Civil Action No. 472-71-N). The Court removed both matters from the active docket in 1978 "with leave for any party upon Motion to have either case reinstated." May 24, 1978 Order (Doc. 3, Ex. D).

In 2009, while reviewing the Board's compliance with its desegregation obligations, the United States learned that the Board was planning to construct a new school named Pioneer Elementary School and close two other elementary schools. The Parties engaged in negotiations regarding these changes, which culminated in the entry of a Consent Order on December 18, 2014, and the approval of a modified student assignment plan that adopted a voluntary majority-to-minority ("M-to-M") transfer program at certain schools. (Doc. 7).

The Parties also have been working together to resolve outstanding issues in the desegregation case regarding other aspects of the Board's operations, including facilities, extracurricular activities, transportation, faculty and staff assignment, and student assignment. (*See* Doc. 10). During the 2014-15 school year, the United States initiated a comprehensive review of the Board's compliance with its desegregation obligations, which included analysis of the Board's 2015 and 2016 annual reports and the Board's responses to various information requests. The United States also conducted a site visit to the District in May 2016 to tour several schools and interview school and District-level personnel. The Parties have worked diligently to narrow the scope of any remaining issues and have negotiated the terms of this Consent Order as set forth below, which grants the Board a declaration of partial unitary status and outlines additional requirements for achieving full unitary status.

B. Student Assignment

During the 1969-70 school year, the Board operated 18 schools (10 all black and 8 majority white) and enrolled approximately 9,663 students (64% black and 36% white). In the 2016-17 school year, the Board operates 19 core schools: 12 elementary, four middle, and three high. Approximately 12,755 students are enrolled in these schools of which 7,259 (56.9%) are black, 4,434 (34.8%) are white, and 1,062 (8.3%) are other. The Board also operates an alternative school named Turlington Woods where current enrollment is 90.6% black, 7.5% white, and 1.9% other. School enrollment for the 2016-17 school year is as follows:

	Black	%	White	%	Other	%	Total
King's Fork	931	63.2%	437	29.7%	104	7.1%	1472
Lakeland	701	66.0%	322	30.3%	39	3.7%	1062
Nansemond River	765	50.9%	606	40.3%	133	8.8%	1504
High School Total	2397	59.4%	1365	33.8%	276	6.8%	4038
Forest Glen*	165	38.8%	231	54.4%	29	6.8%	425
John F. Kennedy*	387	76.2%	91	17.9%	30	5.9%	508
John Yeates	592	48.6%	487	40.0%	138	11.3%	1217
King's Fork	636	64.4%	258	26.1%	93	9.4%	987
Middle School Total	1780	56.7%	1067	34.0%	290	9.2%	3137
Booker T. Washington*	286	93.5%	11	3.6%	9	2.9%	306
Creekside	482	59.2%	232	28.5%	100	12.3%	814
Driver	144	35.8%	216	53.7%	42	10.4%	402
Elephant's Fork*	298	67.6%	117	26.5%	26	5.9%	441
Hillpoint	376	62.1%	169	27.9%	60	9.9%	605
Kilby Shores	164	42.5%	197	51.0%	25	6.5%	386
Mack Benn Jr.*	397	74.6%	105	19.7%	30	5.6%	532
Nansemond Parkway	237	55.2%	158	36.8%	34	7.9%	429
Northern Shores	306	42.1%	326	44.8%	95	13.1%	727
Oakland	199	51.2%	157	40.4%	33	8.5%	389
Pioneer*	145	29.2%	310	62.5%	41	8.3%	496
Elementary School Total	3034	54.9%	1998	36.1%	495	9.0%	5527

Turlington Woods	48	90.6%	4	7.5%	1	1.9%	53
TOTAL	7259	56.9%	4434	34.8%	1062	8.3%	12755

** Schools participating in the M-to-M transfer program*

As reflected in the chart above, most of the schools in the District reflect the overall racial composition at the elementary, middle, and high school levels. Moreover, as a result of the 2014 Consent Order, the Board has been able to take steps to further desegregation at the few schools that are not within plus/minus 15% or plus/minus 20% of the District-wide enrollment for that grade span.

The Consent Order furthers desegregation through a successful voluntary M-to-M transfer program that is in its third year of implementation. Most notably, as of the filing of the Board's October 2016 annual report, approximately 78 M-to-M students from Mack Benn, Booker T. Washington, and Elephant's Fork enrolled at Pioneer for the 2016-17 school year, increasing the black K-5 population at Pioneer from a projected 22% black, 72% white pre-Consent Order to 29.2% black, 62.5% white. (Doc. 11). Given the potential for further desegregation at other participating schools, the Parties seek to continue implementing the program until the Board has satisfied all of its obligations related to student assignment.

The Board also intends to open two new schools by the 2018-19 school year to accommodate population growth in North Suffolk. The Board anticipates that the new elementary school, which will replace Florence Bowser and Driver Elementary, will serve approximately 1,000 students and the new middle school will serve approximately 800 students. Because the Board will need to establish new attendance zones for those schools, the Parties agree that this matter should remain under the Court's supervision to ensure that such changes further and do not impede desegregation in the District.

Finally, in conjunction with the United States' review of student assignment, the Parties have engaged in discussions regarding student discipline. The United States analyzed student disciplinary data for the 2014-15 and 2015-16 school years, which revealed racial disparities in the Board's disciplinary practices. First, black students often are disproportionately disciplined at higher rates compared to their white peers. Black students at certain schools also were disproportionately subject to certain disciplinary consequences, such as in-school suspension and out-of-school suspension, compared to their white peers. Second, student enrollment at the alternative school, Turlington Woods, revealed further racial disparities. Out of the 88 students enrolled at Turlington Woods during the 2014-15 school year, 77% were black; only 19% were white. In addition, certain schools, such as King's Fork High School, JFK Middle School, and Lakeland High School, sent a disproportionate number of black students to Turlington Woods compared to their white peers. The percentage of black students increased to 90.6% during the 2016-17 school year even though black students make up less than 60% of the District's middle and high school population.

C. Faculty and Staff Assignment

During the 2016-17 school year, the Board employed 1,040 teachers (32.5% black, 66.6% white, and 8.7% other) and 48 administrators (58.3% black, 41.7% white). The Board has demonstrated a sustained good faith effort to recruit minority teachers and administrators in an effort to remedy the effects of any past discriminatory practices. These efforts have borne fruit. Every school has at least one black administrator and some schools have two or three black administrators. The Board also has taken affirmative steps to recruit black teachers and staff, including through outreach to Historically Black Colleges and Universities in Virginia and, in the last three years alone, has seen an increase in the number of black teachers employed by the

Board. Further, with respect to faculty and staff assignment, the evidence indicates that the black teachers and staff who work directly with students are assigned to schools in a non-discriminatory manner.

Based on the United States' review and the Board's record, in the areas of faculty and staff assignment, the Board has eliminated the vestiges of segregation to the extent practicable, has complied with its desegregation obligations for a reasonable period of time, and has demonstrated a good faith commitment to the whole of the Court's orders.

D. Remaining *Green* Factors

The Parties further stipulate that:

1. The Board provides all students an opportunity to participate in extracurricular activities on a non-discriminatory basis.
2. The Board provides transportation to all eligible students enrolled in the District on a non-discriminatory basis.
3. Although school facilities vary in age, the Board operates school facilities that are comparable and not discriminatory based on race. The Board also provides academic resources, such as computers and other forms of technology, to students on a non-discriminatory basis.
4. For the reasons stated above, the Board has eliminated the vestiges of the prior *de jure* segregation to the extent practicable and achieved unitary status in the areas of (i) extracurricular activities; (ii) transportation; and (iii) facilities.

II. Legal Standard

To obtain a declaration of unitary status, a school 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," that 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 (including the administration of student discipline); (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. See *Dowell*, 498 U.S. at 250 (discussing *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 435 (1968)). The Supreme Court also has approved consideration of other indicia, such as "quality of education," as important factors for determining whether the school district has fulfilled its desegregation obligations. *Freeman*, 503 U.S. at 492-93.

A district court may allow 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 Board and the United States and the information in the Parties' Joint Motion and accompanying Memorandum of Law, the Court finds that the Board has complied with the permanent injunction for a reasonable period of time and has

eliminated the vestiges of past *de jure* segregation to the extent practicable with respect to faculty and staff, extracurricular activities, transportation, and facilities. The Court concludes, therefore, that the Board has attained partial unitary status in the areas of faculty and staff, extracurricular activities, transportation, and facilities.

The Court agrees with the Parties that additional progress can be made in the area of student assignment. Specifically, the Parties have requested that the Court retain judicial supervision of the Board's operation of its schools as it pertains to the factor of student assignment, specifically: (1) the continued operation of the M-to-M transfer program; (2) any changes to attendance zone lines resulting from the two new schools being constructed in North Suffolk; and (3) the Board's disciplinary policies and practices. The Board has agreed, through at least the 2019-20 school year, to take the following steps in good faith to address the issues above.

The Parties agree, and the Court finds, that once the Board implements these steps fully and in good faith during this time period, the Board will have remedied the remaining student assignment issues and will be entitled to a full declaration of unitary status.

A. M-to-M Transfer Program

The Board will continue to implement the M-to-M transfer program in accordance with the terms of the 2014 Consent Order through at least the 2019-20 school year. (Doc. 7). The Board will, *inter alia*, continue to maintain a minimum enrollment of at least 75 M-to-M students at Pioneer, and also make a reasonable effort to increase the number of students in the program at Pioneer and in the other participating schools during this time period. Currently, there are 78 black students enrolled at Pioneer under the M-to-M transfer program. To that end, the Board will (1) make reasonable efforts to increase black student participation in the M-to-M transfer program at Pioneer; (2) encourage white students at Pioneer to participate in the M-to-M transfer program and

consider attending a participating school, particularly Booker T. Washington and Mack Benn, and (3) encourage more students participating in the M-to-M transfer program at the elementary school level to attend the middle school—either Forest Glen or John F. Kennedy—in the same feeder pattern. The Board will continue to provide an annual report to the Court by October 30 of each year.

B. New Attendance Zones

As soon as is reasonably possible, and no later than the beginning of the 2017-18 school year, the Board will provide the United States with the following updated information regarding the new school construction in North Suffolk and the relevant attendance zones: (1) the location of the new schools; (2) student capacity and projected enrollment at the new schools; (3) the grade configuration of the new schools; (4) the status of school construction and the expected school opening dates; and (5) information about the attendance zones, including the current zone lines for all schools in the District and any anticipated changes to the zone lines taking into account the new schools and the Board's obligation to consider desegregation. Prior to providing this data and information to the United States, the Board will consult with the United States to discuss the format of the data and information necessary for the United States' review (e.g., geocoding, etc.).

The Parties will engage in good faith negotiations to reach agreement on a modified student assignment plan. The Board will avoid re-establishing the dual system through new school construction and school closures and will further desegregation to the extent practicable given the geography and demographics of the school zones at issue. The Board must submit the final student assignment plan to the Court for final approval within six months of the new schools' anticipated opening date(s).

C. Student Discipline

The Board has agreed to the following remedial measures in a good faith effort to address continued racial disparities and other related concerns in the area of student discipline. The Board will formalize these actions in the Student Discipline Improvement Plan described below and implement them through at least the 2019-20 school year. The Board will retain a qualified consultant with expertise in the area of student discipline to assist with the development and implementation of the Student Discipline Improvement Plan.

First, no later than the beginning of the 2017-18 school year, the Board will develop and implement a plan that adopts best practices and makes available resources related to student discipline, effective classroom management skills, early intervention, and Positive Behavioral Interventions and Support (“PBIS”). The Board will develop a corresponding professional development plan regarding these practices that provides school personnel with three hours of training at the start of the 2017-18 school year and two hours of refresher training at the start of the 2018-19 and 2019-20 school years. The Board will submit these plans to the United States for review and consideration no later than May 15, 2017. The United States will have 45 days to raise objections, if any, to the plans. The Parties will work together to resolve any outstanding concerns before the start of the school year. By October 30 of each year, the Board will provide the United States proof of the trainings 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.

Second, beginning in the spring of 2017, the Board and individual schools, including the alternative school, 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) at each school disaggregated by race/ethnicity, sex, disability, and grade. The Board and individual schools will develop continuous improvement goals to address any identified disparities. As part of this process, no later than the beginning of the 2017-18 school year, the Board also will develop a mechanism for teachers and other school personnel to document intervention and support strategies utilized prior to using an office disciplinary referral. By October 30 of each year, the Board will provide to the United States a record, in a searchable, electronic format, for the prior school year that lists, by school, the total number of *individual* students by race/ethnicity, sex, disability, and grade who were disciplined, separately reporting the number of students who received one or more: (i) office referrals, (ii) in-school suspensions, (iii) out-of-school suspensions, (iv) expulsions, (v) placements in an alternative program, and (6) referrals to law enforcement or arrests; and indicate the infraction(s) for which the penalty was imposed.

Third, by April 15, 2017, the Board will review its discipline policies, taking into account its review of student data, to determine whether any particular policies, procedures, or disciplinary consequences are resulting in racial disparities. As part of this review, the Board will ensure that its student Code of Conduct includes clear and precise definitions of prohibited conduct and objective criteria for determining violations/infractions that are age appropriate and commensurate with the seriousness of the offense. The Board will submit any revisions to the Code of Conduct to the United States for review and consideration no later than May 15, 2017. The United States will have 45 days to raise objections, if any, to the revised Code of Conduct. The Parties will work together to resolve any outstanding concerns. The Board will adopt and implement its revised Code of Conduct by the beginning of the 2017-18 school year.

Finally, beginning at the end of the spring 2017 semester, the Board will conduct an annual end-of-year review of Turlington Woods. The Board's review will include an analysis of: the number of students referred and enrolled, disaggregated by race/ethnicity, sex, disability, and grade; discipline consequences (e.g., in-school suspension, out-of-school suspension, arrests) by infraction, disaggregated by race/ethnicity, sex, disability, and grade; average length of time spent at the alternative school, disaggregated by race/ethnicity, sex, disability, and grade; and availability and quality of supports provided to students. If the Board identifies issues, such as disparities in referrals or discipline rates by race/ethnicity, the Board will work with the alternative school to develop and implement changes to remedy these issues by the start of the next school year. By October 30 of each year, the Board will provide the United States with a summary of its review of the alternative school and measures taken to remedy any identified issues.

IV. Final Termination

Having found that the Board has satisfied its desegregation obligations in the areas of extracurricular activities, facilities, transportation, and faculty and staff assignment in the operation of its schools, the Court hereby declares that the Board has achieved unitary status in those areas and withdraws its jurisdiction over those areas of operation.

Continued judicial supervision of the Board in its operations will be limited to ensuring compliance with the terms set forth above regarding student assignment. The United States and the Board have committed to negotiate in good faith any disputes that may arise with regard to such issues, but either Party shall have the right to seek judicial resolution of any issue related to compliance with this Consent Order.

The Board retains the burden of eliminating any vestiges of *de jure* segregation which may

continue to exist in the areas still under this Court's supervision. The Parties have agreed and the Court finds that the Board will have met its desegregation obligations with respect to student assignment if it satisfies the above provisions through at least the 2019-20 school year. Therefore, upon demonstration of successful implementation of such provisions, on or after the start of the 2020-21 school year, the Board may move for a declaration of unitary status and final dismissal as to the remaining issue.

V. Conclusion

This Order and the December 14, 2014 Consent Order remain in full force and effect.

IT IS SO ORDERED, this 20th day of March 2017.

/s/

Henry Coke Morgan, Jr.
Senior United States District Judge

UNITED STATES DISTRICT JUDGE

