

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

<b>JOANN GRAHAM, ET AL.,</b> <b>Plaintiff,</b>	)	
	)	
	)	
<b>UNITED STATES OF AMERICA,</b> <b>Plaintiff-Intervenor,</b>	)	<b>CIVIL ACTION NO: 11,053</b>
	)	
<b>vs.</b>	)	<b>HON. TUCKER L. MELANCON</b>
	)	
<b>EVANGELINE PARISH SCHOOL BOARD, ET AL.,</b> <b>Defendants.</b>	)	
	)	
	)	

**UNITED STATES’ MOTION FOR FURTHER RELIEF**

The United States hereby submits this Motion for Further Relief, and states the following:

1. On March 26, 2004, this Court approved the parties’ Reorganization Plan requiring the Defendant, inter alia, to reorganize its schools to conform to either a K-4/5-12 or K-8/9-12 grade structure; to continue its Majority to Minority program; and to establish a magnet program at Ville Platte High School for science.

2. In September 2004, the United States, at the direction of this Court, utilized a facilities expert to assess the District’s progress in addressing the concerns of Ville Platte High. The expert published a report indicating the District’s substantial failures to improve the facilities at Ville Platte High.

3. Frustrated with the District’s lack of progress in effectuating the provisions of the March 26, 2004 Reorganization Plan, the Court ordered all remaining funds be directed to Ville Platte consistent with Mr. Brewer’s November 2004 report. See 11/04/2004 Order.

4. In June 2006, the facilities expert returned to conduct a site visit at the district schools and published a report indicating that the facilities at Ville Platte High undermine the goals of the Reorganization Plan.

5. The United States attempted to resolve this issue through the employment and recommendations of its expert, but was unable to do so. Unless this Court grants the relief requested in this Motion, the District will continue to disregard its desegregation responsibilities.

**WHEREFORE**, for the reasons set forth herein and in the accompanying memorandum in support, the United States respectfully requests that this Court grant the United States' Motion for Further Relief, which might include, inter alia, an order for a new school facility at Ville Platte High, grade restructuring or desegregating Ville Platte High by mandatory reassignment of students from other schools to Ville Platte High.

Respectfully submitted,

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Dated: November 30, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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<b>vs.</b>	)	<b>HON. TUCKER L. MELANCON</b>
	)	
<b>EVANGELINE PARISH SCHOOL</b>	)	
<b>BOARD, ET AL.,</b>	)	
<b>Defendants.</b>	)	
_____	)	

**MEMORANDUM IN SUPPORT OF UNITED STATES’  
MOTION FOR FURTHER RELIEF**

In October 2004, the United States conducted a review of the Evangeline Parish School District’s facilities at Ville Platte High in response to complaints from parents whose children attended school at the facility. Upon the completion of the review, the United States’ expert published a report that was filed with this Court.<sup>1</sup> The report noted several facilities issues at Ville Platte High and suggested the District either replace the facility with a new school or complete appropriate renovations in order to fully and successfully implement this Court’s March 26, 2004 Reorganization Plan. 11/04/2004 U.S. Facilities Rep. at 5-6. On November 4, 2004, and March 17, 2005, this Court ordered the District to implement the facilities recommendations identified in the report. To date, the District has failed to fully implement the

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<sup>1</sup> See Def. Mot. at 11/04/04 at Ex. 1.

recommendations of the report to effectuate the March 26, 2004 Reorganization Plan,<sup>2</sup> accordingly, the United States requests this Court grant the United States' Motion for Further Relief.

## **I. Background**

Plaintiffs Joann Graham, et al., initiated this action on May 4, 1965, alleging that the Defendant Evangeline Parish Board of Education ("Board" or "Defendant") operated a racially segregated school system.<sup>3</sup> The Plaintiffs asserted that the system was established as a dual system under operation of state law which continued as a matter of policy, custom, and usage. The complaint alleged discrimination in the areas of faculty and staff, student assignment, facilities, and transportation. In its June 4, 1965 Order, this Court ruled, "The schools operated by the Evangeline Parish School Board are and have been operated on a racially segregated manner." 6/4/1965 Order at 2.

The Court adopted a plan on August 5, 1969, over the objections of the Board, that was created by the United States Office of Education, United States Department of Health, Education and Welfare. See 8/5/1969 Order. The plan required the District to, inter alia, eliminate its dual student assignment and further ordered: "All construction, school consolidation, and site selection (including location of any temporary classrooms) in this parish shall be done with the objective of eradicating the vestiges of the dual system, and so as to prevent the recurrence of the dual school structure." 8/5/1969 Order at 5.

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<sup>2</sup>The Reorganization Plan was developed by the District after a year long review of its programs.

<sup>3</sup>On August 28, 1969, the United States intervened in the case.

“[T]he white power structure, the Evangeline Parish School Board and many of Evangeline Parish’s parish-wide and other elected officials . . . resisted with a vengeance.” 223 F.R.D. 407, 414 (Sept. 2004). For the 1968-1969 school year, prior to the Court’s order, Ville Platte High School enrolled 1,224 students, of whom 1,215 (99%) were white. See July 5, 1969 Plan. “With the reopening of school on September 12, 1969, a large percentage of white students, particularly in the town of Ville Platte, refused to enroll in public school transforming Ville Platte High from a majority white school to a majority black school within weeks of the desegregation order.” 223 F.R.D. 407, 419 (Sept. 2004). “On September 2, 1969, all public schools in the Parish were officially opened, with only 20% of the students in attendance.” See 223 F.R.D. 407, 418 (Sept. 2004). At a school board meeting that night, the Board passed a resolution closing schools in defiance of the Court’s order. Id. The District preferred to cease operations rather than operate a desegregated school system. The schools remained closed for one week until the Court ordered the Board to reopen the schools on September 12, 1969. Id.

In response to the order to desegregate, white parents founded a private school, Evangeline Academy on September 24, 1969, and on October 20, 1969:

[White] students began attending classes in several temporary and renovated structures at several locations in and around Ville Platte. The school, which enrolled 2,149 white students in grades 1-12, and employed 81 white teachers, was comprised 99% of Evangeline Parish residents. The white flight from the Evangeline Parish School District resulted in a substantial decline in the School System's enrollment, most notably in Ville Platte. For the Ville Platte area schools, the white student enrollment declined from 2,056 students in the 1968-1969 school year to 440 students in the 1969-1970 school year. The number of black students remained substantially the same during this period. In the 1970-71 school year, the Evangeline Academy enrolled 1868 students, all white, while the number of white students in the Ville Platte area public schools increased slightly to 597.

See 223 F.R.D. 407, 419 (Sept. 2004). “The entire school system was embroiled in controversy in every conceivable form until the middle of October.” 7/6/1970 Mem. Op. at 2. Further, the Board continued to undermine the Court’s order to desegregate by providing financial aid, material support, transportation, books, and other property to the white students attending Evangeline Academy. See 7/28/1972 Order. In aiding the establishment and operation of Evangeline Academy, the Board created the Ville Platte schools, inclusive of Ville Platte High, as racially identifiable black.

Initially, the Board failed to implement a constitutionally viable desegregation plan to address the problem. Subsequently to date, the Board failed to take the appropriate action to desegregate. As a result, when Ville Platte High became majority black, the Board, upon information and belief, failed to adequately maintain the facilities. The United States has received continuous complaints about the facilities in the majority black Ville Platte schools, particularly Ville Platte High School (“VPHS”).

**A. 1993 Investigation of the VPHS Facilities**

In March 1992, the United States received complaints from concerned parents regarding, inter alia, the state of disrepair of the Ville Platte High School. For example, in a complaint letter sent to the Court (J. Shaw), parents complained of bathrooms with “floors hav[ing] water near ankle deep. Mixed in this water is fecal material and urine. There is dried feces and urine on the walls and toilets.” Letter of March 12, 1992 to Judge Shaw at 2.

In response to several citizen complaints, the United States hired an expert, Frank Brewer, to review the schools in the District, including Ville Platte High. In 1993, the expert concluded:

After touring [Evangeline] schools and reviewing considerable information provided by the superintendent's office, I find that the quality and quantity of educational facilities provided to students at the Parish's black majority schools is inferior to those provided to its students at white majority schools. . . . Further, those students who have attended black majority schools in the Parish have received a significantly smaller share of both the Parish's expenditures for building equipment, supplies, and utilities (Table F), and its expenditures for major new school additions or renovations (Table G), compared to those students who have attended majority white schools in the parish.

1993 U.S. Facilities Rep. at Section IV. Mr. Brewer's conclusion was based on several observations about the substandard facility at Ville Platte High, including but not limited to:

(1) substandard classroom floors with no architectural finish - revealing bare concrete, (2) unrepaired holes in the classroom walls, (3) classroom doors locked by padlocks, (4) broken computers, (5) stairwells missing safety rails, and (6) an inoperable fire alarm. 1993 U.S.

Facilities Rep. at Section III B. After reviewing the facilities in the Ville Platte Area, including Ville Platte High School, the United States informed the Evangeline Parish School Board that the Board had not fully dismantled the prior dual system of public education. See Letter of Aug. 28, 1992 from Assistant Attorney General John R. Dunne to A. Bruce Rozas; see also Letter of Dec. 7, 1992 from Assistant Attorney General John R. Dunne to A. Bruce Rozas (stating concerns about "deficiencies in [the Ville Platte High] facility: some walls have water marks, peeling plaster and holes; . . . the gym needs renovations . . . students were using dilapidated desks and chairs; the science lab is poorly equipped with only 4 microscopes, . . . and the library is not well stocked and contained used, out-dated books.").

On July 20, 1995, the United States sent a subsequent letter assessing the District's progress and noting very little improvement of the facilities by the District. Indeed, the United States identified the following as areas of concern: (1) the disparate number of portable buildings at the predominantly black schools ("55% of the district's portable teaching facilities w[ere]

located in the Ville Platte cluster”), (2) inequitable distribution of resources and equipment to black schools, and (3) discriminatory construction practices (e.g. while 62% of the parish population attended school in Ville Platte, 91% of the parish monies went to construction at schools outside of Ville Platte.). See Letter of July 20, 1995 from Assistant Attorney General Deval Patrick to A. Bruce Rozas. The District responded by indicating that “[d]ue to the refusal of parish voters to fund proposals for construction in Ville Platte, the Board was forced to respond to increased student populations with portable facilities.” Letter of January 29, 1996 from A. Bruce Rozas to Franz R. Marshall. Rather than reassign black students to adjacent schools in the system in order to further desegregation, the District added capacity through the use of portables thereby maintaining racially identifiable and deficient majority black schools in Ville Platte.

**B. 2004 Assessment of the VPHS Facilities**

In an effort to avoid protracted litigation, the parties agreed to develop a plan to address, among other things, facilities concerns at Ville Platte High. On March 26, 2004, with the Court’s approval of the Student Reorganization plan developed by the District, the District proposed, inter alia, to reorganize its schools to conform to either a K-4/5-12 or K-8/9-12 grade structure; continue its Majority to Minority program; and establish a magnet program at Ville Platte High school for science in order to “improve the educational programs at [Ville Platte High] and to enhance desegregation of the schools by attracting students of the minority race.”<sup>4</sup>

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<sup>4</sup>In this instance, minority race refers to white students.

10/1/2003 School Reorganization Plan at 57. In an effort to further desegregate Ville Platte High, the District, as part of the plan, proposed to offer advanced placement courses exclusively at Ville Platte High:

Ville Platte High School will offer programs of study designed to prepare students in advanced coursework in science and math [as a part of its Medical Science Academy]. Course offerings will be expanded to include but not limited to the following examples: Chemistry II, Physiology, Anatomy, Calculus, and Trigonometry, Health Occupations, Certified Nurse Assistant . . . . Additionally, Ville Platte High School will be the sole site for Advanced Placement Courses.”

10/1/2003 School Reorganization Plan at 57.

Despite the Court’s orders and the parties’ agreement, when Mr. Brewer conducted a site visit at the Court’s request in Fall 2004, he noted ongoing disparities at VPHS. In his 2004 report, Brewer posits, “The conditions I observed at Ville Platte High School on July 29, September 13 and September 14, 2004 are, in important ways, unchanged from those I observed when I first visited the school in December, 1992.” 11/04/2004 U.S. Facilities Rep. at 3. He later concluded, “it is my opinion that the physical condition of Ville Platte High School prevents it from successfully achieving the roles and goals established for it in the [March 26, 2004] Reorganization.” 11/4/2004 U.S. Facilities Rep. at 5. Brewer explained the basis for his conclusion:

Because of its small existing site, the poor quality of many of the existing buildings/building systems, and poor size and adjacency of existing spaces within this facility, it is my opinion that the construction of a new school facility is the only way the Evangeline Parish School Board will be able to assure itself that it has a first class school facility capable of achieving the roles and goals identified for it in the [March 26, 2004] Reorganization Plan.

11/4/2004 U.S. Facilities Rep. at 5-6. Frustrated with the District's lack of progress, the Court ordered all remaining funds be directed to Ville Platte consistent with Mr. Brewer's November 2004 report. See 11/04/2004 Order.

**C. 2006-2007 Assessment of VPHS Facilities**

As of the March 14, 2007 status conference, two years after the District began implementing the Reorganization Plan, the Board reported that the first phase of the March 26, 2004 Reorganization Plan relating to renovation at Ville Platte High was incomplete. In September 2007, the United States was informed that the construction was complete but that no students enrolled in the advanced placement classes for the 2007-2008 school year, perhaps because of the Board's slow implementation of the plan for the 2005-2006 and 2006-2007 school years, including: a failure to hire qualified teachers, a failure to offer the Advanced Placement Test to students enrolled in the class as required by the College Board in order to receive proper school credit, a failure to offer courses required under the Reorganization Plan, and a failure to adequately promote or advertise its program to students in the district.

The United States now seeks further relief in this case because the District has failed to fully and effectively implement the plan. The District has failed to operate Ville Platte High School as proscribed in the 2004 Reorganization Plan.

**II. Legal Discussion**

On November 4, 2004, this Court ordered the Evangeline Parish School District to address the issues enumerated in the November 2004 United States Facilities Report because the

District had neglected VPHS facilities from the date it was ordered to desegregate.<sup>5</sup>

See 11/04/2004 Order. Further, deficient facilities at VPHS undermined the March 26, 2004 Reorganization Plan which the Court ordered to further the desegregation process.

This Court's order is consistent with desegregation case law which states that a school system that was previously segregated by law and that has not yet achieved unitary status, such as the Evangeline Parish School District, has the affirmative duty to eliminate all vestiges of past discrimination to the extent practicable. See Board of Educ. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237, 249-50 (1991); Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 458-59 (1979)(explaining that school boards that operated dual systems were "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch")(quoting Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430, 437-38 (1968)); see also Vaughns v. Board of Educ. of Prince George's County, 758 F.2d 983, 988 (4th Cir. 1985)(citing Columbus and Green).

The affirmative duty to desegregate is a continuing responsibility, and "[p]art of the affirmative duty . . . is the obligation not to take any action that would impede the progress of

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<sup>5</sup>The Court's order was in response to the District's "Motion By Evangeline Parish School Board For Authorizing to Begin School Construction/Renovation Projects and Commitment to Address Facilities Needs at Ville Platte High School." In its motion, the District, acknowledge[d] that the facility at VPHS is old and, like others is in need of repair and/or renovation." 11/4/2004 Def. Mot. at 2. Moreover, it stated, "[i]t is the intention of, as well as the goal of, the Evangeline Parish School Board and of its members, to the extent practicable, to make such repairs and/or renovations to Ville Platte High School so that Ville Platte High School is truly able to meet its mission as the parish's math/science magnet site and the Parish's sole site for advanced placement courses as provided for in the School Reorganization Plan adopted by the Evangeline Parish School Board." Def. Mot. at 5.

disestablishing the dual system and its effects.” Dayton Bd. of Education v. Brinkman, 443 U.S. 526, 537-38 (1979). “Each instance of a failure or refusal to fulfill this duty continues the violation of the Fourteenth Amendment.” Columbus, 443 U.S. at 458-59; see also Vaughns, 758 F.2d at 988 (“Until a school system has discharged its duty to liquidate the dual system and replace it with a unitary one, the school’s duty remains in place.”).

Where a party (the United States, in this case) alleges that racial disparities remain in a former dual school system not adjudicated as unitary, the party is “entitled to a presumption that the current disparities are causally related to prior segregation, and the burden of proving otherwise rests on” the defendant school district. Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 327 (4th Cir. 2001)(en banc); see also Freeman v. Pitts, 503 U.S. 467, 494 (1992)(“The school district bears the burden of showing that any current [racial] imbalance is not traceable, in a proximate way, to the prior violation.”).

In meeting its burden, a school district often must go beyond demonstrating mere compliance with its original desegregation plan or the court’s orders, because “in some desegregation cases simple compliance with the court’s orders is not enough for meaningful desegregation to take place.” Belk, 269 F.3d at 334 (explaining that a desegregation order or plan “entered in the 1960s or 1970s could have underestimated the extent of the remedy required, or changes in the school district could have rendered the decree obsolete”); see also Columbus, 443 U.S. at 459-460 (noting that, in Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971), the school district implemented a court-approved desegregation plan in 1965, but, in connection with its affirmative duty to desegregate, was required to develop a more effective plan in 1969); see also Pitts v. Freeman, 755 F.2d 1423, 1426 (11th Cir. 1985)(detailing

that a previously segregated dual school system does not automatically become desegregated just because a constitutionally acceptable plan is adopted and implemented).<sup>6</sup> A school district must show, beyond mere compliance with the original decree, that the vestiges of the dual system have been eliminated to the extent practicable. Belk, 269 F.3d at 334; see also Davis v. Bd. of Sch. Comm'rs of Mobile County, 402 U.S. 33, 37 (1971) (“The measure of any desegregation plan is its effectiveness.”); Green, 391 U.S. at 439 (explaining that a district court should assess a desegregation plan by examining the effectiveness of the plan in achieving desegregation).

### III. Argument

#### A. This Court should grant the United States' Motion for Further Relief because the District has failed to fully implement the Reorganization Plan.

Beginning in 1969, the District has refused to fully desegregate the system especially at the Ville Platte High School. After the Court's 1969 order to desegregate, there was a significant exodus of white students from the Ville Platte area schools which was encouraged and aided by the Board's assistance in the establishment and operation of the Evangeline Academy.<sup>7</sup> Prior to the order to desegregate VPHS was 99% white, however, for the 2006-2007 school year, VPHS enrolled 887 students, of whom, 647 (73%) are black.

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<sup>6</sup> As previously noted, the desegregation plan in this case was drafted and approved in 1969, before the Supreme Court explained, in Swann, that district courts have broad equitable powers that they may invoke in school desegregation cases to remedy past wrongs. See Swann, 402 U.S. at 9 (noting that the federal courts have revised desegregation plans to conform with Swann's expanded scope of remedies).

<sup>7</sup>Even if the desegregation of the Evangeline Parish School District has failed because of the establishment or operation of private schools and without the slightest participation by the state, parish or city, the Board simply cannot ignore that failure. Lee v. Autauga County Bd. of Educ., 514 F.2d 646, 648 (5th Cir. 1975); Hereford v. Huntsville Bd. of Educ., 504 F.2d 857 (5th Cir. 1974), cert. denied, 4 U.S. 913 (1975); Ellis v. Bd. of Public. Instr., 465 F.2d 878 (5th Cir. 1972), cert. denied 410 U.S. 966 (1973).

**1. The Evangeline Parish School District has failed to renovate the Ville Platte High School facility in order to support a Magnet School.**

The District has worked very slowly to address the facilities issues at Ville Platte High. Beginning in 1992, the United States' expert visited the campus numerous times and noted minimal improvement. In the November 2006 report, facilities expert Frank Brewer noted, "The conditions observed at Evangeline Parish high schools on April 6, 2006 are largely unchanged from those I observed when I last toured these schools on September 13 and 14, 2004." Report at 1. For example:

[T]he physical condition of Ville Platte High School is substantially inferior in its overall quality to the physical condition of Pine Prairie and Basile High Schools. . . . The physical condition of Ville Platte High School sends a clear message to parents, students and teachers: the Parish does not value the educational success of VPHS students as much as it values the educational success of students at PPHS and BHS.

Further, for the reasons identified in Section B above, it is my opinion that the Ville Platte High School is not a workable location for a magnet school, and in fact its poor physical condition prevents it from playing the roles established for it in the March 26, 2004 Reorganization Plan.

11/2006 U.S. Facilities Rep., Ex. A at 3.<sup>8</sup>

Brewer made the same observations in 2006, two years following the Court's order to implement the plan and after repeated reminders at ten quarterly conferences by the Court of the Board's outstanding obligations in this case. At one such status conference, the Court reviewed the U.S. Facilities Report at length after the Board was held in civil contempt in March 2005 for failing to comply with the Court's extant remedial orders. The Board was frequently reminded

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<sup>8</sup>It is proper to compare the "relative quality of education offered to black and white students" in determining whether the school system is unitary. See Pitts, 503 U.S. at 492.

of its obligations to complete construction and renovation projects delineated in the 2004 U.S. Facilities Report. See e.g. 3/17/05 Status Conference R. at 24, 113, 114.

Even the Evangeline Parish School Board concedes that the Ville Platte High School facility is an inferior facility. Board Member, Gervis Lafleur noted, “The upkeep. They just haven’t been kept up like they should have been. And I think they have been neglected to a good extent. Anybody that visits the schools in that area can determine that.” See Gervis Lafleur Dep. at 25:17-20. Board Member John David Landreneau noted, “And we’ve still got- Ville Platte is probably the worst still out here. They’ve got the old Ville Platte High School building which is in very bad shape. We purchased land several years ago, especially down the line for one day to build a new high school in Ville Platte out of town.” See John David Landreneau Dep. at 18:10-15. Former Superintendent Rayford Fontenot stated, “So basically, I like to call it the band-aid approach. We stop the leaks and we move on. Then the leak comes back. We move it someplace else. But the board is spending funds, you know, to correct large projects. But our facilities as a whole, in several communities, and especially Ville Platte, the conditions are really bad.” See Superintendent Rayford Fontenot Dep. at 53:3-9. Board Member Wanda Skinner opined, “I feel that the schools in Ville Platte, the high school in Ville Platte, has been left out.” see Wanda Skinner Dep. at 23:1-2; and “They’ve neglected the Ville Platte schools. I mean, so much that that’s why it’s in the condition that they’re in now.” See Wanda Skinner Dep. at 24:20-22. The Defendant admits that Ville Platte High School is under-functioning in its capacity as a school which prevents its magnet program from attracting other race transfer students in accordance with the March 26, 2004 Reorganization Plan.

In another example of the Board's neglect of VPHS, as late as June 2007, the Board was forced to close the building where the magnet's Nursing program was offered because it was condemned for safety reasons. The District was required to take appropriate remedial action with regard to the building to ensure that it would not collapse. Not having space elsewhere at the facility, the Board relocated the magnet Nursing program from its classroom space to inadequate classroom space in the gymnasium - a facility with substantial problems identified in the Brewer report:

[O]n my April 6, 2006 visit to the VPHS' science labs I observed: water stained and missing ceiling tile; antiquated, exposed-bulb ceiling light fixtures; water damaged walls; badly worn, cracked and missing floor tiles; peeling paint, antiquated and worn lab tables and lab equipment; broken, worn and miss-matched student desks and seating; lab supplies piled haphazardly at various locations throughout the labs (due to lack of storage for these materials) and a mildew odor. In contrast, at BHS and PPHS I observed science labs with new or like new: ceilings, lighting, walls, floor coverings, lab tables and equipment, student furniture and no haphazard piles of lab supplies because of the storage areas provided.

U.S. Facilities Rep. at 4. The Board significantly undercut its efforts to provide an attractive magnet program by housing its Nursing class in the campus' gym rife with facilities and resource problems. The relocation of the magnet class to one of the most deficient buildings at Ville Platte High indicates that its commitment to a successful program is, at best, perfunctory.

More disturbing, while Frank Brewer and another expert were present to inspect the faulty Nursing classroom facility in its previous location, Brewer observed that there was a danger of persons being electrocuted due to the close proximity of the electrical power line to the stadium seating above the condemned building. The facilities at Ville Platte High School continue to be a vestige of past discrimination because the District fails to maintain the school consistent with the orders of this Court and applicable case law. See Swann v. Charlotte-

Mecklenburg Bd. of Educ., 402 U.S. 1, 9 (1971); Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430, 437-38 (1968).

The failure of the Board to adequately address the facilities' issues at Ville Platte High is exacerbated by its past allowance of white students, zoned for VPHS, to attend school at predominantly white schools. In fact, the District allowed so many impermissible white student transfers from the Ville Platte area schools that the Court issued an order requiring students to attend school within their attendance zone. See 6/4/1987 Order. Even with this Court's order, the United States found after it investigated allegations of zone-jumping that "the district has followed a practice of allowing impermissible student transfers . . . inconsistent with the desegregation order and well-established school desegregation law." Letter of August 18, 1992 from Assistant Attorney General John R. Dunne to A. Bruce Rozas; see also Letter of Dec. 7, 1992 from Assistant Attorney General John R. Dunne to A. Bruce Rozas. Thus, white students avoided attending racially identifiable black Ville Platte High School by crossing attendance zone lines to majority white schools thereby perpetuating the District's neglect and racial identifiability of Ville Platte High.

**2. The Ville Platte High School facilities' poor condition undermines the success of the Reorganization Plan, and thus impedes the desegregation process.**

The test against school districts under an unsatisfied duty to liquidate a dual system is whether there has been compliance with the desegregation decree since it was entered, and whether the vestiges of past discrimination have been eliminated to the extent practicable. See Board of Educ. Of Oklahoma City v. Dowell, 498 U.S. 237, 249-50 (1991). In applying the test, it is necessary to measure of the conduct of a school board and the effectiveness, not the purpose, of the actions in decreasing, increasing or maintaining the segregation caused by the dual system.

See id.; see also Dayton Board of Educ. v. Brinkman, 443 U.S. 526, 538 (1979), Wright v. Council of City of Emporia, 407 U.S. 451, 459 (1972). When this Court issued the order to implement the March 26, 2004 Reorganization Plan, it did so in an effort to further the desegregation process and to address facilities issues first identified but unaddressed over a decade ago in March 1992. The goal of the plan was to provide an equal educational opportunity for students at the majority black Ville Platte High. Further, the District proposed to upgrade the facilities and enhance the resources in order to attract white students to VPHS either under the majority-minority program or alternatively through the science magnet program.<sup>9</sup> Although it has been nearly three years since the Order requiring implementation of the Reorganization plan, the facilities at Ville Platte High remain deficient, frustrating the purpose of this Court's order. In 2006, according to the United States facilities expert:

It is my opinion, that the very poor condition of the science facilities at VPHS sends a strong message to parents and students that the Parish is not committed to a science program at VPHS. Additionally these conditions convey to VPHS students the message that their success in the sciences is not important to the Parish. VPHS students will not want to be in these labs, nor will they feel excited or challenged by their environment when they are there. Regrettably the clarity of this message is amplified as the months and years pass without the Parish addressing the condition of these poor facilities. VPHS has by far the poorest science facilities of any high school in the Parish. Yet it has now been more than 2 years since the Board of Education, as part of the March 26, 2004 Reorganization Plan, assigned to VPHS the role of the Parish's Medical Science Academy and sole Parish site for advanced placement science courses. This disconnect undermines the credibility of the Board of Education's March 26, 2004 Reorganization Plan and discourages parent and student interest in VPHS as a science magnet.

11/2006 U.S. Facilities Rep., Ex. 1 at 4. In fact, there is little evidence that the Board has provided any incentive for academically advanced students of any race to attend Ville Platte

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<sup>9</sup> In August 2007, Ville Platte High School, the only school identified in the school district, was determined to be an academically unacceptable school needing improvement under the criteria established by the No Child Left Behind Act of 2001, Pub. L. No. 107-110 (2002).

High School. All the information provided suggests that, to the contrary, gifted students at Ville Platte High most of whom are black, are expected to go to other predominantly white schools to obtain the required courses.

In addition to agreeing to improve the facilities at Ville Platte High, the District agreed to add advanced placement classes at Ville Platte High. However, to date, the Defendant's actions and inactions, appear to have contributed to Ville Platte High's problems.<sup>10</sup> While the Court's order requires a competitive science curriculum, including Advanced Placement classes, the District has offered only two Advanced Placement courses to date. Although the District offers these two Advanced Placement courses, it has failed to provide enrolled students an opportunity to sit for the Advanced Placement exam. This enervates the purpose of enrolling in the course, which is to receive college credit, and thereby renders these classes unattractive to students.<sup>11</sup>

More troubling, it appears that the District has ignored its obligations to offer advanced courses as part of the science magnet. The March 26, 2004 Reorganization Plan states:

Ville Platte High School will offer programs of study designed to prepare students in advanced coursework in science and math. Course offerings will be expanded to include but not limited to the following examples: Chemistry II, Physiology, Anatomy, Calculus, and Trigonometry, Health Occupations, Certified Nurse Assistant, Pharmacy Technician, and First Responder.

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<sup>10</sup>It is well-settled that magnet schools are attractive to other-race students, or students generally, only if the school is "unique" and can offer students or their parents something that they cannot obtain at their regularly assigned schools. Here, the District failed to make Ville Platte High School unique because they have not fully implemented the 2004 Reorganization plan. The District failed to provide the designated classes on a quality level capable of drawing student enrollment and, more specifically, opposite race students.

<sup>11</sup>College credit is received only by successfully sitting for the exam and achieving a certain score. See About AP, <http://www.collegeboard.com/student/testing/ap/about.html> (Last visited Nov. 29, 2007).

Plan at 57. The District's obligations are very clearly delineated in the plan. Yet, when the United States requested a status report on the implementation of the math and science classes as described above, the District responded that "Calculus . . . and Trigonometry are not listed in the School Reorganization Plan as additional courses to be offered at the medical science academy." See Letter of July 16, 2007 from R. Hammonds to L. Taylor at 2. Three years after the District's purported implementation of the plan, it still fails to implement the basic requirements of the plan. More importantly, the District fails to comply with the spirit of the plan - which is to offer a competitive science magnet at Ville Platte High School. The purpose of the plan is to provide a starting point from which the District could expand its course offerings rather than serve as a means to limit classes offered.

While it opened its renovated science facilities in August 2007, there are numerous outstanding construction projects left uncompleted, see Projects to be Completed at Ville Platte High School, infra, at 21-22, which result in a failed attempt to offer an attractive, appropriate, and competitive academic environment. The failures of the District are borne out in its enrollment figures for the science magnet program:

**2006-2007 Ville Platte High Magnet Course Offerings<sup>12</sup>**

<b>Course Required by the March 26, 2004 Reorganization Plan</b>	<b>Enrollment for the 2006-2007</b>
Chemistry II	Not Offered
Biology II	8

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<sup>12</sup>Though we requested the enrollment information, by race, the District failed to provide the information. In previous reports by the District, the student enrollment of these classes, consisted solely of students currently attending school at Ville Platte High.

AP Biology	3 (No AP TEST Administered)
AP Chemistry	6 (No AP TEST Administered)
Physiology	Offered - Enrollment Figures Not Provided
Anatomy	Not Offered
Calculus	Not Offered
Trigonometry	Not Offered
Health Occupations	Offered - Enrollment Figures Not Provided
Certified Nurse Assistant	9

See 3/15/2007 Report to the Department of Justice from Desegregation Office Brenda Totson.

For the 2007-2008 school year, the Advanced Placement portion of the magnet program appears to be marginally successful because the Board surrendered to demands from white students to be allowed to attend the AP classes on the condition they be allowed to return to their initial zoned school because they were unwilling to remain at Ville Platte for an entire school day - part time desegregation at best. The evidence indicates that the parts of the magnet program which were implemented were of such questionable quality (see e.g. footnote 9, supra, at 16, or unqualified teachers in the magnet program) that they were not successful in drawing opposite race students. Consequently, Ville Platte High's racial identifiability has not improved in any significant respect.

**B. Because the District failed to fully implement the March 26, 2004 Reorganization Plan Aimed to Eliminate the Vestiges of Past Discrimination, further relief is warranted.**

The Evangeline Parish School District has an affirmative duty to eliminate all vestiges of past discrimination to the extent practicable. The March 26, 2004 Reorganization Plan ordered by this Court does not relieve the Board of its duty to eliminate the vestiges of state-imposed

segregation and to counteract the continuing effects of past discrimination. See Davis v. East Baton Rouge Parish Sch. Bd., 721 F.2d 1425, 1435 (5th Cir. 1983); see also Valley v. Rapides Parish School Board, 646 F.2d 925, 937 (5th Cir. 1981). The duty remains until such time as the District is declared unitary. Since 1992, when the United States became aware of the District's failure, inter alia, to address the poor conditions at Ville Platte High School, the school has operated far below the standards of the other existing schools. It is apparent that once Ville Platte High became majority black in 1970, the District has continued its effort to defy the Court's order to desegregate by ignoring the facilities at Ville Platte High.

The mere opening of the doors of former "white" schools to black children and former "black" schools to white children does not disestablish a dual system. See Green, 391 U.S. at 437-438. The use of attendance zones to desegregate is acceptable only if it disestablishes rather than reimposes or perpetuates the dual system. Neutrality is not enough in a formerly dual system. School officials must undo past discrimination and prevent further discrimination, they must do more than establish rules fair on their face which perpetuates the effects of segregation. See Swann, 402 U.S. at 9 (1971); see also Green, 391 U.S. at 437-438 (1968).

The District contends that it has met its obligations by recently spending \$12 million on VPHS, solely as a result of the Court's adoption of the Reorganization Plan. However, such an assertion is disingenuous. Since the inception of this case, the District has spent millions more on the majority white schools. Ville Platte High is the only high school in the District which has maintained a racially identifiable black student population since the Court's 1968 order to desegregate the school system. Moreover, the District fails to mention that the United States' facilities expert noted that to make VPHS a competitive magnet school, requires at a minimum

of \$20 million.<sup>13</sup> The disparity in expenditures, initially identified in 1992, is evident in the poor state of the buildings at Ville Platte High. No other school has had a building condemned because of poor structural integrity, no other school has a library with make-shift shelves, age - inappropriate books and broken computers, no other campus has been identified as a possible site for electrocution of students. The evidence shows that the majority white high schools have far superior facilities and that the District has failed to eliminate the vestiges of past discrimination.

Though the Reorganization Plan was ordered on March 26, 2004, with all of the renovations to be completed at VPHS by Fall 2007, only three of the seventeen projects identified in the expert's report are complete:

**Projects to be Completed at Ville Platte High School**

<b>Project Description</b>	<b>Status</b>
Construction of new centrally air-conditioned multistory wing attached to main building housing new elementary and high school	Incomplete
Construct new computer labs with new computers	Incomplete
Construct new library	District renovated existing library
Construct new science building	Complete
Upgrade A/C in main building	Complete
Construct new central lobby and main office	Incomplete
Construct new student restrooms	Incomplete

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<sup>13</sup>Indeed, the figure has since grown due to the rising cost of construction in Louisiana in the aftermath of Hurricanes Katrina and Rita.

Construct elevator	Incomplete
Construct a new corridor connecting to 5 <sup>th</sup> and 6 <sup>th</sup> grade wing	Incomplete
Construct a new a/c building for gym. Locker rooms, coaches offices, equipment storage areas, concession areas, band room and classroom.	Incomplete
Develop an air-conditioned multi-purpose room with a stage for students	Incomplete
Renovate classrooms in tow two story front of the building	Incomplete
Connect Main building to the gym	Incomplete
Improve the condition of the architectural finishes, furnishings, and equipment throughout	Incomplete
Renewing the finishes, seating, and fixtures of the auditorium	Incomplete
Remove correctional institutional fencing and install security surveillance	Incomplete
Air condition and renovate stadium building	Incomplete

See October 2004 U.S. Facilities Report at Attachment A.

The fact that a tax has not been approved by Evangeline parish voters throughout the history of this case does not excuse the District from fulfilling its constitutional obligations. The case law is clear that when a District's plan to desegregate is unsuccessful, especially in instances as here where the District has failed to fully and effectively implement the plan, and where the District created the racial identifiability of the VPHS the burden to eliminate the vestiges of past discrimination remains. The "lingering effects" of segregation do not "magically dissolve" without affirmative efforts by the school district, and the Constitution "does not permit the courts to ignore today's reality because it is temporally distant from the

initial finding that the school system was operated in violation of the constitutional rights of its students.” Brown v. Board of Educ., 978 F.2d 585, 590 (10th Cir. 1992). See also Pitts, 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.”). Moreover, a district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future. See Dowell, 498 U.S. 237, 249. Accordingly, the Board’s obligations to desegregate remain even though its tax measure failed. The District must “take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.” Green v. County School Board of New Kent County, 391 U.S. 430, 438 (1968).

#### **IV. Conclusion**

For the reasons set forth above, the United States respectfully requests that this Court grant the United States’ Motion for Further Relief, which might include, inter alia, an order for a new school facility at Ville Platte High, grade restructuring or desegregating Ville Platte High by mandatory reassignment of students from other schools to Ville Platte High. The United States requests this Court to order relief that promises realistically to work now to eliminate the

vestiges of discrimination and effectuate the provisions of the March 26, 2004 Reorganization Plan. The Court may wish to convene a conference with the parties to develop an appropriate schedule for discovery, negotiations and an evidentiary hearing.

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Dated: November 30, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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