THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DIANE COWAN *et al.*, Plaintiff, and UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. BOLIVAR COUNTY BOARD OF EDUCATION *et al.*, Defendants.	)	Civil Action No. 2:65-CV-00031-GHD

REPLY BRIEF IN SUPPORT OF UNITED STATES' OBJECTIONS TO DEFENDANT'S PROPOSED DESEGREGATION PLAN

In its Response to the Objections of the Department of Justice [Doc. 51] ("Response"), the Cleveland School District ("Cleveland" or the "District") abandons any pretense of defending the legality of its proposed plan to integrate East Side High School ("East Side") and D.M. Smith Middle School ("D.M. Smith"). Instead, the District relies on a supplemental report by a non-lawyer expert, Dr. Christine Rossell, that is not grounded in the particular facts of this case and repeats what Dr. Rossell has already submitted to the Court. Furthermore, given its submission at nearly the twelfth hour, the report is procedurally improper, prejudicial, and seeks to justify the proposed plan almost exclusively on policy grounds. Meanwhile, the District fails to add its own brief to address the legal shortcomings of its magnet programs already recognized by the Court in its March 28, 2012 Opinion [Doc. 43] ("Opinion") and Order [Doc. 42] ("Order").

Indeed, Dr. Rossell's report [Doc. 51-1] ("Second Supplemental Report")—the third she has submitted in this case—constitutes the District's only response to the United States' clear legal arguments challenging the District's proposal to repeat a failed magnet school approach. Yet it conspicuously fails to address the key concerns raised by the United States in its objections. See generally Doc. 48.

Premised on the notion that the District has already done enough to integrate East Side and D.M. Smith, the Second Supplemental Report disregards the Order and Opinion, which, consistent with the overwhelming weight of authority, ordered more integration at these schools. See Second Supplemental Report at 28 ("I believe that most courts would approve unitary status for CSD on its current record since there are not enough whites in the public schools to racially balance the east side schools at a level that is both stable and educationally advantageous"); id. at 15 ("In short, the courts do not require perfection. They require a good faith effort that the Cleveland School District has shown in faithfully maintaining its court approved neighborhood school plan, implementing magnet programs in . . . two formerly black secondary schools, and supporting an M to M program").

Finally, as discussed below, the Second Supplemental Report is plagued with omissions and methodological flaws. It focuses on critiquing mandatory desegregation measures, without offering any new analysis to explain how the District's tried-and-failed magnet proposals are calculated to achieve the integration mandated in the Order. In sum, the District's response badly misses the mark, and offers little to suggest that its "more of the same" approach in the proposed plan will work.

I. THE COURT SHOULD REJECT CLEVELAND'S RESPONSE BECAUSE IT IS MERELY AN UNTIMELY EXPERT REPORT OFFERING LITTLE NEW INFORMATION TO THIS COURT.

Pursuant to the Order, the District was directed to submit a desegregation plan to the United States for its review by May 15, 2012. The Order further specified that the United States, if unable to resolve disagreements with the District within thirty days, would file objections to the proposed plan within an additional twenty days. The District timely filed its plan on May 15, 2012 [Doc. 44], attaching its 38-page first supplemental expert report prepared by Dr. Rossell [Doc. 44-3]. The United States promptly notified the District of its objections to the plan. The District then requested that the United States delay filing objections until after the beginning of the 2012-2013 school year, by which time the District indicated to the United States that it would provide further data and information in support of its plan. Agreeing to review such information, the United States filed a motion for enlargement of time to file its objections, which the Court granted on June 21, 2012. Unfortunately, the only additional information ultimately produced by the District in purported support of its plan was a single page of data listing enrollment statistics for certain courses at East Side High School open to Cleveland High School students, as well as a one-paragraph email from the District's counsel providing follow-up information on that data. Finding this data and the information previously produced by the District to be unpersuasive, the United States filed its Objections to Defendant's Proposed Desegregation Plan [Doc. 48] ("Objections") on August 30, 2012.

On September 12, 2012, without seeking or receiving the United States' advance consent,[1] the District unilaterally filed its Motion for Additional Time to Confer and File

[1] The District's failure to seek the United States' consent on its motion, or to advise the Court on whether the motion was opposed, appears to contravene Rule 7(b)(10) of the Local Uniform Civil Rules of this Court, which requires that "[a]ll non-dispositive motions must advise the court whether there is opposition to the motion."

Response [Doc. 49] ("Motion"). In the Motion, the District represented to the Court that it would use the additional time to "continue to confer with the United States about its objections to the District's plan," and, in the event the parties failed to agree on a plan, to file a response to the United States' Objections. Motion at 1-2. Except for a short telephone call to undersigned counsel, during which the District's counsel repeated that the District wished to confer further on its plan, the District never initiated any such follow-up conversations with the United States. Instead, it evidently used its newly-allotted time to ask Dr. Rossell, yet again, to prepare another supplemental report. By the District's own representation, Dr. Rossell's 82-page Second Supplemental Report is intended to serve as the District's "response" to the United States' Objections, see Response at 1, in lieu of a response from the District's counsel to the United States' arguments.

The Second Supplemental Report is an inappropriate vehicle for responding to the United States' Objections as it was filed late in the case, provides little new information to the Court, and cannot competently address the legal disputes surrounding the District's obligation to integrate East Side and D.M. Smith. As discussed more fully below, the Second Supplemental Report provides only limited new information not available at the time of her two previous reports to the Court, is peppered with impermissible legal conclusions, and, most significantly, merely reiterates previous policy arguments rather than providing new information and analysis to address the United States' objections.

A. Dr. Rossell's report provides only limited new information not available at the time of her previous reports.

Federal courts typically consider supplemental expert reports only when they provide new information. See Cooper Tire & Rubber Co. v. Farese, No. 3:02CV210-SA-JAD, 2008 WL

5104745, at *4 (N.D. Miss. Nov. 26, 2008) (citing Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., 73 F.3d 546, 569 (5th Cir. 1996)). In the absence of new information, expert reports may not be used simply to reiterate or improve previously argued points, particularly where, as here, the time taken to prepare the report has effectively served to delay the final resolution of the case at hand. See Reliance Ins. Co. v. Louisiana Land & Exploration Co., 110 F.3d 253, 258 (5th Cir. 1997) (holding that "[d]istrict judges have the power to control their dockets by refusing to give ineffective litigants a second chance to develop their case" by refusing to consider supplemental reports filed late in a case); Cooper Tire, 2008 WL 5104745, at *4 ("Courts have made it clear that supplemental expert reports cannot be used to 'fix' problems in initial reports.")

Here, Dr. Rossell's report serves mainly to rehash arguments she made in her first two reports. The only new information, contained exclusively on pages 5, 6, and 8 of the Report and accompanying exhibits, is updated enrollment data for Cleveland's schools for the 2012-2013 school year. The remainder of the report either repeats information and analysis from Dr. Rossell's earlier reports, presents historical data from other school districts that was unquestionably available at the time she submitted her earlier reports, or attempts to respond to the United States' objections and legal arguments like a legal brief, which, for the reasons set forth below, is an inappropriate function for an expert witness and irrelevant to the Court's consideration of the United States' Objections to the District's proposed plan.

B. Dr. Rossell is not an authority on legal issues raised by the United States' objections and the Court should reject the District's invitation to defer to a policy expert on questions of law.

In its short Response, Cleveland states upfront that "[t]he District's response is contained in the attached Second Supplemental Report of Dr. Christine Rossell." Response at 1. Indeed, Dr. Rossell, a Ph.D. in political science with no legal training, asserts in the introductory paragraphs to her Report "that [the District's proposed] programs are constitutional," and that she bases her conclusions and opinions, in part, on her "analysis of court documents and legal briefs in this and other cases." Report at 1-2. The Second Supplemental Report is interspersed with purported legal analysis and conclusions.[2]

Although an expert may provide factual information and analysis helpful to support a party's legal arguments, the District's decision to abdicate its responsibility to prepare a detailed legal response or memorandum of law is impermissible as a matter of law. It is well-established that Rule 704 of the Federal Rules of Evidence prohibits an expert witness from asserting legal conclusions. See Fed. R. Evid. 704 advisory committee's note (noting "opinions must be helpful to the trier of fact" and may not "merely tell the jury what result to reach"); Askanase v. Fatjo, 130 F.3d 657, 673 (5th Cir. 1997) (finding that an expert report that proffered an opinion on whether a corporation's officers and directors fulfilled their fiduciary duties to be "legal opinion and inadmissible," noting "[i]t is not for [the expert witness] to tell the trier of fact what to decide"); Snap-Drape, Inc. v. C.I.R., 98 F.3d 194, 198 (5th Cir. 1996) (upholding lower court's refusal to admit into evidence an expert report it determined "improperly contain[ed] legal

[2] E.g., Report at 4 (applying Brown v. Board of Education to the District's plan); id. at 14-15 & n. 16-17 (addressing a case cited by the United States and interpreting the basis for the Fifth Circuit's reasoning in that case); id. at 17 & n.21 (analyzing courts' use of an established standard for assessing desegregation in student assignment); id. at 18-19 & n.22 (discussing, citing, and analyzing courts' reasoning in various school desegregation decisions); id. at 28 n.28 (criticizing the United States' citation of a case).

conclusions and statements of mere advocacy . . . [and] would be of no assistance in making findings of fact"); Owen v. Kerr-McGee Corp., 698 F.2d 236, 239-40 (5th Cir. 1983) ("[A]llowing an expert to give his opinion on the legal conclusions to be drawn from the evidence both invades the court's province and is irrelevant."); BNY Mellon, N.A. v. Affordable Holdings, Inc., No. 1:09CV226–SA–JAD, 2011 WL 2746301, at *1 & n.1 (N.D. Miss. July 12, 2011) (not reported) ("Federal courts have consistently held that legal opinions are not a proper subject of expert testimony because they do not assist the trier of fact in understanding the evidence, instead merely telling the trier of fact what result to reach.") (citing cases from Fifth Circuit and other jurisdictions).

Dr. Rossell's Second Supplemental Report, in effect, fulfilled the District's intent that it serve as their legal brief in response to the United States' objections. This is unacceptable and, more critically, unhelpful to the Court's ultimate analysis of the important questions before it in this case. For the reasons set forth above, the United States respectfully requests that the Court limit its consideration of the Second Supplemental Report to the new enrollment data contained on pages 5, 6, and 8 of the Report and accompanying exhibits.

However, to the extent the Court considers the remaining portions of the Second Supplemental Report, the United States will address and rebut Dr. Rossell's key conclusions in the next section.

II. DR. ROSSELL'S SECOND SUPPLEMENTAL REPORT FAILS TO ADDRESS THE UNITED STATES' CRITICISMS OF THE DISTRICT'S PROPOSED DESEGREGATION PLAN.

In its Objections, the United States raised three significant concerns with the District's proposed plan to integrate East Side and D.M. Smith. First, the District's new plan bears a

strong resemblance to previous magnet initiatives that indisputably failed to integrate the two schools. See Objections at 4-6, 9-10. Second, the plan is silent as to the number of students the proposed magnet programs will accommodate, which makes it impossible for the Court to ascertain (even on paper) whether the proposed programs are designed to spur the requisite integration. Id. at 3, 5 nn.2, 9. Finally, the type of integration resulting from the "program-within-a-school (PWS)" proposed by the District is not durable, because the integration is tethered to the within-school program, not embedded in the school itself. Id. at 2-3, 10.

The Second Supplemental Report wholly fails to address a fundamental concern with the District's plan; that is, that the plan relies exclusively on a strategy that has already failed. Dr. Rossell emphasizes that, in preparing the Second Supplemental Report,

> I talked extensively to the principals of each school about what they thought had made their magnet successful (if that was the case) or not successful. We also talked about what would make magnets in D.M. Smith and East Side successful and how black parents would feel about a mandatory reassignment plan. I, along with school district counsel, also talked to school board members and the superintendent, Dr. Jacquelyn C. Thigpen, about these and other issues on Monday, April 16.

Second Supplemental Report at 2-3. However, the report itself makes no attempt to explain—either from Dr. Rossell's perspective or the perspective of the principals and administrators she interviewed—why the previous magnet programs at East Side and D.M. Smith failed to attract white students, or why the new programs proposed in the District's plan are likely to be more successful. Nor, tellingly, did counsel for the District opt to separately brief a response to these questions, which are squarely implicated by the United States' Objections and central to the determination of whether the District's proposed plan is legally sufficient.

Second, neither Dr. Rossell nor the District attempts to clarify major ambiguities in the District's plan, not least of which is the very basic question of how many students these

programs will serve. The Second Supplemental Report includes a perfunctory statement that Dr. Rossell "ha[s] not made any predictions regarding magnet program enrollment as the current schedule does not allow enough time for that," Second Supplemental Report at 27, but this excuse should be rejected. More than six months elapsed between the time the Court issued its Order calling for a new plan (on March 28, 2012) and the time the District filed its Response to the United States' Objections (on October 3, 2012); moreover, the District never requested more time for Dr. Rossell to complete a predictive analysis. As the Court has stated, a desegregation plan must "promise[] realistically to work, and promise[] realistically to work now," and "have real prospects for dismantling the state-imposed dual system at the earliest practicable date." Opinion at 17 (quoting Green v. Cnty. Sch. Bd. of New Kent Cnty., 391 U.S. 430, 436, 439 (1968) (internal quotation marks omitted)). An integration plan that says nothing about the scope of the planned integration manifestly fails these requirements, and provides no standard for evaluating the District's performance under the plan. That Dr. Rossell would attest to the adequacy of a desegregation plan with these gaping omissions, see Second Supplemental Report at 1, 28, is troubling, but consistent with her view that integrating East Side and D.M. Smith is unnecessary and not worthwhile if there is any risk of white flight. But see United States v. Mississippi & McComb Mun. Separate Sch. Dist., No. 70-4706, at 22 (S.D. Miss. Apr. 18, 2008)[3] ("McComb") ("No one would argue that it is constitutionally permissible to maintain all-black schools solely for the purpose of preventing white flight.") (emphasis omitted).

Finally, the United States expressed concern about the nature and quality of the integration produced by the District's plan. See Objections at 2-3, 10. Dr. Rossell responds to

[3] A copy of the McComb decision is attached hereto as Exhibit A.

these concerns, in part, by applying a definition of "integration" that is considerably more elastic than what courts countenance:

> At Eastside High, there is more integration occurring than can be seen by just analyzing school enrollment . . . . If a white student from Cleveland High wants to take [IB, AP, or advanced math] classes, he or she is bused to East Side High . . . White, Black, Hispanic, and Asian students from both East Side and Cleveland High attend these classes and so they are integrated, but this integration is not reflected in the . . . enrollment statistics because enrollment statistics only show the child's full-time school of residence.

Second Supplemental Report at 6.

The District has never argued, nor could it, that an all-black school is legally "integrated" where white students are bused to the school for one class or two classes a day before being bused back to their disproportionately white "full-time school." To the contrary, a recent desegregation decision from the United States District Court for the Southern District of Mississippi underscores that true integration occurs only where there are opportunities for meaningful racial interaction outside a single classroom or homeroom. See McComb at 28-29. Accordingly, the measure of whether East Side and D.M. Smith are integrated is the number of white students enrolled full-time at each school, not the number of white students who may be bused from Cleveland High School to attend one class or two classes at East Side with other students from Cleveland High.

III. THE DISTRICT OFFERS NO DIRECT EVIDENCE THAT SPECIFIC MANDATORY MEASURES, SUCH AS SCHOOL CONSOLIDATION, WOULD NOT WORK IN CLEVELAND.

Because the Court has already ruled that Cleveland has failed to desegregate East Side and D.M. Smith, the narrow goal, at this stage of the case, is to identify a remedy that will effectively integrate these schools, thereby putting the District on a path to unitary status. This

case is not, and has never been, a referendum on the effectiveness of mandatory desegregation measures generally, though the District and Dr. Rossell continue to treat it as such. Distracted by the broader academic question of whether mandatory desegregation measures are ever appropriate, Dr. Rossell devotes inordinate time in the Second Supplemental Report to the desegregation experiences of other, dissimilar school districts without addressing the specific circumstances in Cleveland.

One glaring weakness in the Second Supplemental Report is Dr. Rossell's failure to directly survey or investigate the attitudes of parents in Cleveland toward school consolidation, or other steps the District could potentially take to integrate East Side and D.M. Smith. It is patent from the Second Supplemental Report that Dr. Rossell believes parent attitudes are a crucial determinant of whether desegregation measures will encourage white flight, and she published a number of books and articles on the subject between 1995 and 2002. See Second Supplemental Report at 1 n.1. Given the obvious importance of parent attitudes to her professional work generally, and to her approach here, Dr. Rossell's report suffers from a conspicuous lack of any research into the views of parents in the Cleveland schools. Instead, she represents the attitudes of parents in the District based upon nothing more than hearsay from school administrators and surveys of parents in other school districts featured in work published more than a decade ago. Id. While Dr. Rossell attempts to excuse this oversight by noting that "parent surveys are not only potentially expensive, but they might have to include random digit dialing to find the private school parents," see Second Supplemental Report at 27, it strains credulity to presume that an expert with her experience and qualifications, given more than six months to work, could not, at a minimum, conduct interviews with parents in order to validate her opinion.

Unlike Dr. Rossell, the United States did speak with parents in Cleveland about potential remedies after the Court's decision and order in this case. On June 4, 2012, counsel for the United States attended a community meeting organized by private plaintiffs' counsel and local advocates at the Solomon Chapel AME Church in Cleveland, Mississippi, to solicit feedback on the District's proposed plan. The meeting was attended by numerous Cleveland residents, including a number of parents and family members of students at D.M. Smith and East Side. The United States heard virtually unanimous opposition to the District's proposed plan, and broad support for a plan that would pair or consolidate the District's two high schools and two middle schools. The United States is prepared to call parents and other attendees to the stand at an evidentiary hearing in this case, or to submit affidavits from attendees of the June 4 meeting.

Also telling is Dr. Rossell's decision to evade the question of whether consolidating the District's middle schools and high schools could successfully resolve the Court's concerns. Since school consolidation was suggested by the Court itself as "one obvious remedy," Opinion at 40 n.9, one would expect Cleveland's expert to address this possibility in any expansive discussion of how mandatory desegregation remedies could impact the District. Instead, Dr. Rossell limits her analysis in the Second Supplemental Report to the scenario in which there is no school consolidation, and students at the middle school and high school level are involuntarily reassigned between existing schools. See Second Supplemental Report at 21-22.

Because courts universally hold the view that fear of white flight cannot excuse a school district's failure to dismantle a de jure segregated school, see, e.g., Davis v. E. Baton Rouge Parish Sch. Bd., 721 F.2d 1425, 1438 (5th Cir. 1983) ("[F]ear that white students will flee the system is no justification for shrinking from the constitutional duty to desegregate the parish schools."); McComb at 22, the United States' position throughout has been that Dr. Rossell's

opinions on white flight are not relevant to the Court's analysis. See Memorandum of Law in Support of the United States' Motion for Further Relief [Doc. 6], at 32-33 (citing additional Fifth Circuit and other cases). That said, there are many examples of desegregation plans with mandatory measures that succeeded in integrating segregated schools without triggering massive white flight.

Indeed, one of the most recent desegregation consent orders entered into by the United States provides an apt example. See Consent Order, United States v. Lincoln Parish Sch. Bd., No. 66-12071 (W.D. La. May 24, 2012) ("Lincoln Parish Consent Order") (attached hereto as Exhibit B). That case involved the desegregation of four K-5 elementary schools in Ruston, Louisiana, which, somewhat similar to Cleveland, has a city-wide student enrollment that is 41.2 percent black and 54.0 percent white.[4] Pursuant to the Consent Order, the District agreed to eliminate the racial identifiability of the elementary schools by creating two pairs of K-2 and 3-5 schools, with each pair including a formerly predominantly black school with a formerly predominantly white school. Id. at 10-11. This is precisely the type of structural remedy that Dr. Rossell vigorously opposes, and that she incorrectly claims has never been implemented in school districts since 1989. See Second Supplemental Report at 4-5.

The Lincoln Parish Consent Order, approved by the Court on May 24, 2012, went into effect at the beginning of the 2012-2013 academic year. Lincoln Parish Consent Order at 10. Enrollment data for the 2012-2013 school year submitted by the District on October 24, 2012 (summarized and excerpted in relevant part in Exhibit C), reflects the immediate success of the plan and the lack of any significant white flight. In fact, at the K-5 level, the percentage of white students actually increased slightly, from 37.8 percent in 2011-2012 (before the pairing plan was

[4] At the K-5 level, the student demographics are 37.9 percent black and 56.1 percent white. See Exhibit C.

implemented) to 37.9 percent in 2012-2013 (after the plan was implemented). See Exhibit C. Moreover, the intended desegregation occurred successfully: last year, the percentage of black students at each elementary school ranged from 25.5 to 92.3 percent; this year, the range is 52.0 to 58.9 percent black. Id. As the case of Lincoln Parish demonstrates, Dr. Rossell's sweeping assertion that any reassignment plan will result in massive white flight is simply incorrect.

CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court reject the portion of the proposed plan addressing the integration of East Side and D.M. Smith, and either order, or direct the District to devise, a new plan that ensures East Side and D.M. Smith will be fully integrated by the beginning of the 2013-2014 school year.

Dated: October 26, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2012, I served copies of the foregoing Reply Brief in Support of United States' Objections to Defendant's Proposed Desegregation Plan to the following counsel of record by electronic service through the court's electronic filing system:

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA — PLAINTIFF

VS. — CIVIL ACTION NO. 70 CV 4706

THE STATE OF MISSISSIPPI ET AL. — DEFENDANTS

AND

MCCOMB MUNICIPAL SEPARATE SCHOOL DISTRICT, ET AL. — DEFENDANTS-INTERVENORS

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of the McComb Municipal School District (the District) for declaration of unitary status and for dismissal. The United States has responded to the motion, objecting to a declaration of unitary status in the areas of student assignment and extracurricular activities, and has separately moved for a permanent injunction barring the District from assigning students on the basis of race to classrooms at the District's two elementary schools, Otken Elementary (K-2) and Kennedy (3-4) Elementary Schools. Following publication of notice, a hearing was held before the court on both motions, and now the court, based on the evidence and arguments of the parties in support of their respective positions, makes the following findings and conclusions.

169-41-60

Background

Thirty-seven years ago, on April 5, 1971, this court entered a consent decree approving a desegregation plan agreed to by the United States and the McComb School District and enjoining the District "from failing or refusing to take such steps as are necessary to terminate the operation of a racially dual school system and to operate, now and hereafter, a non-racial, unitary system of public schools." The court retained jurisdiction over the case "to insure full compliance with this order and to modify or amend the same as may be deemed necessary or desirable for the operation of a unitary school system." By its motion for declaration of unitary status, the District contends that it has fully complied with its desegregation obligations under the consent decree and federal law and now operates a fully unitary school system. It submits that there remains no further need for judicial supervision, and asks, therefore, that the case be dismissed and control over the school system be returned to local officials.

Unitary Status

The charge of a school district under a desegregation order is "'to take all steps necessary to eliminate the vestiges of the unconstitutional de jure system'" so that the school system is "unitary." Hull v. Quitman County Bd. of Educ., 1 F.3d 1450, 1453-1454 (5th Cir. 1993) (quoting Freeman v. Pitts, 503 U.S.

467, 485, 112 S. Ct. 1430, 1443, 118 L. Ed. 2d 108 (1992)). The Supreme Court has held that a school district is unitary when it is devoid of racial discrimination in the composition of its student bodies, faculty, staff, transportation, extracurricular activities and facilities. See Green v. New Kent County Sch. Bd., 391 U.S. 430, 435, 88 S. Ct. 1689, 1693, 20 L. Ed. 2d 716 (1968). To prevail on its motion to be declared unitary, the District must show that it (1) has met its constitutional obligation to eliminate the vestiges of de jure segregation to the extent practicable; (2) has complied in good faith with the court's desegregation decrees for a reasonable period of time; and (3) has demonstrated its good faith commitment to the constitutional rights which were the original predicate for the injunctive relief ordered by this court. See Freeman v. Pitts, 503 U.S. 467, 491, 112 S. Ct. at 1446; Board of Educ. of Oklahoma City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50, 111 S. Ct. 630, 637, 112 L. Ed. 2d 715 (1991).

In response to the District's motion, by which it asserts it has achieved unitary status in all areas of school operations, the Government advises it has no objection to a declaration of partial unitary status with respect to faculty and staff hiring and assignment, transportation, and facilities and resource allocation. See Freeman, 503 U.S. at 471, 112 S. Ct. at 1436 (holding that a "district court need not retain active control

over every aspect of school administration until a school district has demonstrated unitary status in all facets of its system"); Cavalier ex rel. Cavalier v. Caddo Parish School Bd., 403 F.3d 246, 254 (5th Cir. 2005) (stating, "the law is clear that the School Board's obligation under the Consent Decree may be reduced or eliminated in some respects even if the entire school system is not totally in compliance with the Consent Decree or has not been declared unitary.").[1] However, it objects to unitary status for the District in two areas, student assignment and extracurricular activities. As to each of these two areas, the Government raises an objection to a specific aspect of the District's operations. One such objection involves student assignment at the District's two elementary schools, Otken Elementary (K-2) and Kennedy Elementary 3-4); the Government has no objection to student assignment at the District's remaining schools. The Government's other objection involves the selection of senior superlatives for the yearbook and the selection of the homecoming court and queen at McComb High School.

The McComb School District

Since entry of the desegregation orders in 1971, the District has not had separate student attendance zones; rather, it is "linear," in that all students going to school within the

[1] The fact that the Government does not object confirms what the proof shows, which is that the District has indeed become unitary in the uncontested areas.

District attend the same school as all other students of the same grade level. The District operates five schools, which serve all students residing within the City of McComb: Otken Elementary (K-2), Kennedy Elementary (3-4), Higgins Middle School (5-6), Denman Junior High School (7-8), and McComb High School (9-12).

When the desegregation orders were entered, enrollment in the McComb School District was only slightly majority black. For the 1971-72 school year, the total number of students enrolled in District schools was 3,653. Of that number, 1,915/52% were black, and 1,738/48% were white. Over the years, the District has experienced a decline in overall enrollment of around 20%, but a dramatically higher decline in white enrollment, around 70%. Data furnished by the District for school year 2003-04 established a total enrollment of 2,905; the number of white students had dropped to 512, while the number of black students had increased, to 2,313, so that the ratio of black to white students was around 80% black to 20% white. The decline in white enrollment has been even more pronounced in the District's two elementary schools. For school year 2003-04, enrollment at Otken Elementary, which serves kindergarten through second grade, was 681, of which 563/83% were black, 117/17% were white, and 1/0% was another race. At Kennedy Elementary, serving third and fourth grades, total enrollment in 2003-04 was 494, of which

422/85% were black, 70/14% were white, and 2/1% were other races.[2] This contrasts sharply with the population of the City of McComb, which is approximately 60% black and 40% white.

The Challenged Practices:

Student Assignment at Otken and Kennedy Elementary Schools

Around 2000, the Government began looking into classroom assignment practices at the District's elementary schools after data reported for the 1999-2000 school year showed a significant number of all-black homerooms in those schools. Upon inquiry of the District, the Government was informed that the District had a policy and practice of "grouping" of "clustering" white children in homerooms which, due to the relatively small number of white students in these schools, resulted in the creation of a number of all-black homerooms. Taking the position that this policy and practice violates the 1971 desegregation orders, federal law governing the District's desegregation obligation and the Equal Protection Clause of the Constitution, the Government filed a motion "for further relief and request for permanent injunction," asking the court to "fully enforce the terms of the 1971

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[2] For the 2005-2006 school year, the District picked up around 200 Hurricane Katrina "refugee students," and thus had an increase in enrollment for that year, with a total of 3,066 students, broken down as follows: 2,525/82.4% black, 512/16.7% white and 29/.9% other races. Enrollment in the elementary schools was mixed; Okten experienced an increase, with 802 students enrolled, (669/84% black, 132/16% white and 1 other race), but Kennedy had a decline in enrollment, with 441 students (376/85% black, 63/14% white and 2/1% other.

(desegregation) Order with respect to class assignments" and to "enjoin[] [the McComb School District] from assigning students by race, so as to create all black classrooms." The District defends the challenged practice and contends that it should be found unitary in the area of student assignments.

As framed by the parties, the question presented by the parties' competing motions is whether the District's student assignment practice by which it clusters or groups white students in homerooms for grades kindergarten through fourth grade at Otken and Kennedy Elementary Schools violates the desegregation orders, federal desegregation law and/or the Equal Protection Clause.[3]

The parties agree that the District's practice of "clustering" or "grouping" of white students in homerooms results in some homerooms in which white students are represented disproportionately in the classrooms to which they are assigned, while numerous black students are relegated to all-black classrooms. The Government maintains that the District's assignment policy violates its desegregation obligation under the desegregation orders and federal law and precludes a finding that the District has achieved unitary status with respect to this aspect of student assignment. The District, on the other hand,

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[3] The Government does not challenge the District's student assignment policies at its middle school, junior high or high school.

contends that while its assignment practice does consider the race of some white children for grouping and that its practice results in some all-black classrooms, the practice violates neither the desegregation orders, federal law nor the Constitution. It submits that the purpose of the challenged assignment practice is not to avoid integration, but rather to keep whites in the school and to draw more whites to the public schools and thereby ultimately enhance integration. It points out that the practice does not result in any classrooms that are all white, or even majority white, as it has capped the percentage of white children in any classroom at 20% above the percentage of white students in that particular grade. It argues that its assignment practice cannot be found to violate the terms of the consent decree, as the consent decree does not expressly prohibit its assignment practice. It asserts, moreover, that no constitutional violation has been shown, as it has no constitutional duty to achieve maximum desegregation, or to achieve ideal racial balance.

The record establishes that at some point during the 1990s, or perhaps even earlier, the District began a practice or policy at Otken and Kennedy Elementary Schools of "grouping" or "clustering" white students in classes; its purpose in doing this, as explained by former Superintendent Patrick Cooper, was both to keep from losing more white students and to draw white

students to the public schools by ensuring that white students were placed in classes having at least 30% white students.[4] In a number of instances, in fact, at least until the practice was challenged by the Government, these classes were more than 40% white (and in a few cases, more than 50% white). This practice resulted in a large number of all-black classes. For example, in the 1999-2000 school year, when the white population in the elementary schools was around 20% white, half of all the K-4 classes (30 of 60) were all black. The District was of the view that although this practice did create a number of all-black classrooms, the practice was necessary to keep white students in the public school system.

In February 2001, after it had reviewed the District's classroom assignment data which showed there were a number of all-black classrooms in the elementary schools, the Government advised the District that its practice of grouping or clustering white students in this manner was prohibited by the consent

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[4] In response to the Government's early inquiries, former Superintendent Cooper repeatedly asserted that the District's interest was in preventing the loss of white students. Subsequently, after the Government responded that avoiding white flight was not a permissible purpose for challenged practice, Dr. Cooper's changed the focus somewhat, and began to insist that the real purpose was not to avoid losing white students, but rather to draw more white students into the public schools so that the schools would be reflective of the community they serve. It is manifest that the District seeks both to keep from losing more white children, and to try to get as many white students into the schools as it can, the latter of which is just another aspect of its effort to prevent white flight.

decree and federal law governing the District's desegregation obligations. Although the District disagreed and maintained that this practice was not prohibited by the consent decree or otherwise, the District initially decided it would move to a random assignment policy for the 2001-2002 school year. When a number of white parents objected and threatened to remove their children from the schools, however, the District reverted to its previous policy for that school year. At the same time, at the urging of the Government, it began exploring alternative methods for student assignment that would address the Government's concerns and assuage white parents and thereby maintain white enrollment.

For the 2002-03 school year, the District eliminated the practice of race-conscious assignments and instead, with the assistance of the Southeastern Equity Center, developed and implemented a "team" teaching concept, pursuant to which students were assigned to teams of teachers and moved between teachers for instruction in various subject so that the students were only in their homerooms for about fifteen to twenty minutes of the day. Although the Government had no objection to the policy, the District abandoned this concept after a year, because it concluded that shuffling the children between teachers was inimical to the children's educational interests.

At that point, the District did not return to its former policy of affirmatively grouping or clustering white children in relatively high numbers. Instead, it adopted a new policy, which it described in a letter to the Government as follows:

> All elementary students at the District's two elementary schools will be randomly assigned to homeroom classes. The principal and/or teachers may make adjustment to the random assignments based upon their assessment of the best interest of the child, including social adjustment, behavior concerns, and parental requests. After such adjustments, final homeroom assignments will not vary more than +/- 20% from the racial makeup of the grade for a particular homeroom. . . .[5]

This is the current policy/practice by which the District purports to assign elementary students to their homeroom classes.

Under this policy, as with the former policy, there remain a significant number of all-black homerooms at Otken and Kennedy. In the 2004-05 school year, 26 of the 59 homerooms were all black. As a result, 37% of the black students at Otken and 47% of black students at Kennedy were in all-black homerooms. The number of white students in the non-black classrooms ranged from

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[5] Although the District seemed to indicate in this letter that the +/- 20% variance was a new policy, Dr. Cooper testified in his deposition and at the hearing that he had used this 20% cap since he became superintendent in 1997, and he suggested that it may have been in place before then. However, assuming such a limit was previously in place, it seems apparent that it was not strictly observed.

one to nine. In the 2005-06 school year, 18 of 54 classes were all black.[6]

The Government submits that while this policy is ostensibly race-neutral, it in fact has the same purpose and effect as the District's prior explicitly race-based assignment policy because, by allowing for assignments based on parental requests and a child's "best interest, . . . including social adjustment," the District has assumed the prerogative to once again group or cluster white children by accommodating the racial preferences (and prejudices) of parents in the interest of what many white parents and District officials perceive to be in the best interest of these white children's "social adjustment" to a predominantly black educational environment.[7]

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[6] In 2005-06, of the 33 classrooms at Otken, 11 were all black; of the remaining 22 non-black classrooms, only one (which was an inclusion class) had a single white child; one had two white children; one (an inclusion class) had three white children; four homerooms had four white children; five had five white children; three had six white children; three had seven white children; and four had eight white children.

At Kennedy, 7 of 21 classes were all black. Of the remaining 14 non-black classes, one (an inclusion class) had a single white child; one (also an inclusion class) had two white children; two had three white children; three had four white children; two had five white children; four had six white children; and one had seven white children.

[7] When asked in his deposition what "social adjustment" meant in this policy, Dr. Cooper responded:

> A. Social adjustment meant [to parents] that we absolutely want our children to go to school with - in the case of a white parent - with black students. But we don't want them - and they didn't use these words - in fact, we don't want them [d]umped into a classroom

Prior to the hearing on the parties' motions, the Government and District stipulated that under the current policy, the District generally assigns students to homerooms for kindergarten through the fourth grade based upon the following factors: (a) the requirements of individualized education programs (IEPs) for special education students; (b) recommendation of the Health and Wellness Team; (c) parents' requests for particular teachers or placement in classes with a particular friend or friends; and (d) the District's practice of grouping or clustering of white students. Priority is given to the requirements of students' IEPs[8] and to recommendations of the Health and Wellness Team;[9] but

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> that is totally foreign to their own - relative to what they've been used to growing up. And in essence what they were talking about there was, they just - socially - they wanted their children to be able to gradually adjust to other races, other cultures.

(Cooper dep. 177-178)

[8] All students who qualify for special education services have an IEP, and by law, these students must be placed with a teacher who has the necessary certification to meet the educational needs of that child. Moreover, the District strives to place each special needs child with a teacher who is viewed as strong in the area in which the particular child has the greatest difficulty. Students with special needs, by law, are generally required to be placed in regular classes as much as possible. For practical and sound educational reasons, these classes, known as "inclusion" classes, are assigned fewer students. How many inclusion classes there are in a given grade will depend on how many special needs children are in that grade.

[9] Each school has a Health and Wellness Team, which is headed by the assistant principal, and in all cases includes the school guidance counselor and school nurse. For a given child, it may also include a mental health therapist, a probation officer, and/or a representative from the Mississippi Department of Human

in fact, these affect only a small number of students and thus account for a very small percentage of the placement decisions.[10] Consideration is given next to parental requests.

Although the District does not publicize its policy of allowing parental requests, by all accounts, this is a long-standing practice and one that is widely known. In practice, the policy works as follows: Using a form provided by the respective school or by simply writing a letter to the principal, parents may list, in order of preference, three teachers in whose class they would like their child placed, and/or may request that their child be placed with a friend or friends. Principals have been instructed by the superintendent to honor these requests whenever possible, subject to the qualification that the racial makeup of any homeroom may not vary more than +/- 20% from the racial

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Services if that agency is involved with that child. As explained by Superintendent Cooper, every child in the McComb County School District is "case managed," meaning that each child is evaluated for emotional, behavioral or academic difficulties and/or needs, and an effort is made by the Health and Wellness Team to match each child with a teacher who is best suited to meet that child's needs. For example, whereas one child may need a teacher who is more nurturing, another may need one who is a strict disciplinarian.

[10] Although student assignments take into account the recommendation of the Health and Wellness Team, it appears from the evidence that few such recommendations are in fact made. For example, Kennedy Elementary Principal Linda Young described a recent school year in which she received a Health and Wellness recommendation for only two students, both involving disciplinary issues. Similarly, there was consistent testimony that students with IEPs typically account for only around 5% of placements.

makeup of the grade, which is to say, the percentage of white children in any classroom may not exceed the percentage of white students in that grade by more than 20%. Principals take the requests in the order received and assign students to the requested teacher and/or with the friend(s) requested, bearing in mind that they may not exceed the +/- 20% cap. After parental requests have been taken into account, if there is any class in which a white child is "racially isolated," the principal typically will move that child to another class with other white children, unless the parent prefers that the child remain in that class.[11]

Although parents who make placement requests do not indicate on their request forms/letters the basis for their requests, it

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[11] Although Dr. Cooper has testified, and the parties have stipulated that the District has a policy of grouping or clustering white children, it is clear from the proof that the District no longer has an affirmative policy of ensuring that white children are grouped or clustered so as to achieve a minimum percentage of white children in homerooms; no effort is made to ensure that the number of white children in classes reaches the 20% variance cap. Rather, the principals of both schools, who are responsible for making homeroom assignments, have explained that after taking into account IEPS, Health and Wellness recommendations and parental requests, they look to make sure that the number of white children that have ended up in any given homeroom does not exceed the 20% cap. They also testified that they try to avoid "racial isolation" of white children; but they do not have as a goal a certain percentage of white children in homerooms. Given this testimony, it is not clear to the court what is intended by the District's stipulation that grouping or clustering of white children is a consideration in homeroom assignments. Presumably, it is a recognition only that the District strives to insure that white children are not "racially isolated" in a given class.

is clear from the record that the District understands that such requests by white parents are nearly always racially motivated; these parents want their children in classes with other white children. Thus, according to the Government, notwithstanding that the District has abandoned its previous policy of affirmatively assigning white children to classes in groups or clusters of a minimum 30%, the District, in violation of the desegregation orders and federal law, still uses race to assign students to classrooms by knowingly accommodating the racial preferences (and prejudices) of white parents.[12]

For its part, the District does not deny it has done this; but it argues that its policy/practice violates neither the consent decree nor federal law. The District submits that although its assignment practice has produced some homerooms that are all black, the practice cannot be in violation of the consent

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[12] In defense of its practice, the District points out that both black and white parents exercise the option to request teacher/friend assignments. However, it implicitly acknowledges that parental choice by white parents, from the perspective of the white parents and of the District, is primarily the choice by white parents to ensure that their children are placed in classes with other white children. Thus, the District is undeniably accommodating white parents' racial preferences.

However, the court would note that the record does not support the conclusion that all such requests are racially motivated. Principal Young at Kennedy Elementary testified to one instance in which parents asked that their request for a particular teacher be honored, even though it meant their child would be the only white child in the class. She also testified that parents frequently request their child be placed with both white and black friends.

decree because the consent decree does not clearly prohibit the practice.

The District notes that under the law, it is "entitled to a rather precise statement of [its] duties under a desegregation decree," Board of Ed. of Oklahoma Public Schools v. Dowell, 498 U.S. at 249-50, 111 S. Ct. at 637-38, and it insists that the desegregation orders to which it is subject simply do not set out any precise or clear-cut prohibition of an elementary homeroom assignment policy like that used by the District. The Government, on the other hand, argues that the District's assignment policy, which intentionally excludes substantial numbers of black students at Otken and Kennedy from attending class with white students, clearly violates the desegregation order.

It is true, as the District notes, that the consent decree and incorporated desegregation plan do not dictate any particular student assignment policy; but contrary to what the District seems to be implying, the fact that the consent decree does not reach this degree of specificity does not leave the District free to do whatever it chooses. The April 5, 1971 order broadly enjoins the District from "failing or refusing to take such steps as are necessary to terminate the operation of a racially dual system and to operate, now and hereafter, a non-racial, unitary

system of public schools." The parties' desegregation plan incorporated in the decree provides:

> The school district shall be prohibited from maintaining any classroom, non-classroom, or extracurricular activity on a segregated basis, so that no student is effectively excluded from attending any class or participating in any non-classroom or extracurricular activity on the basis of race, color, or national origin.

As the court understands its position, the District reasons that while this provision would prohibit it from segregating students strictly by race and having all-white classrooms from which black students are excluded, it does not clearly prohibit the District from grouping or clustering white children in some homerooms, even if the result of that practice is the creation of all-black classes. It may be debatable whether the District's practice violates the letter of the consent decree, but it does strike the court that the practice, which operates to exclude large numbers of the District's black elementary students not only from attending homeroom class with white children but potentially limits their exposure to white children throughout the school day,[13] is not what was envisioned by the court's order.

It is well settled that under federal law, a school district that is subject to a desegregation order has a duty "'to take all steps necessary to eliminate the vestiges of [its prior] unconstitutional de jure system'." Hull, 1 F.3d at 1453-1454

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[13] See infra p. 28-29.

(quoting Freeman, 503 U.S. at 485, 112 S. Ct. at 1443). To remove the vestiges of the prior dual system, a district must eliminate "not only segregated schools, but also segregated classes within the schools." Johnson v. Jackson Parish Sch. Bd., 423 F.2d 1055, 1056 (5th Cir. 1970). See also Montgomery v. Starkville Mun. Sep. Sch. Dist., 854 F.2d 127, 130 (5th Cir. 1988) (the Fifth Circuit has "made it clear . . . desegregation could not be circumvented through the device of transferring pupils from segregated schools to schools with segregated grades"); Adams v. Rankin County Bd. of Educ., 485 F.2d 324, 327 (5th Cir. 1973) ("It goes without citation that a school board may not direct or permit segregation of students within classrooms). As one commentator has written:

> Segregation within a school that is racially balanced overall may be as troubling as segregation between schools. For instance, within-school segregation arguably prevents students from receiving a constitutionally or morally mandated level of education. Similarly, within-school segregation is a barrier to a state of affairs that many individuals believe is good in and of itself--complete racial integration. And, finally, within-school segregation constitutes a failure to correct the effects of state-imposed segregation.
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> Congress, the courts, and academics of various backgrounds have generally assumed that classroom desegregation will be an integral component of the more general enterprise of desegregation. While courts have disagreed over exactly what it means to desegregate, they have been consistent in identifying the entities they are trying to desegregate--"grades and classrooms" as well as school buildings. For instance, in Milliken, the Supreme Court spoke of "schools, grades, or classrooms." The court in Coalition To Save Our

> Children v. Buchanan noted classroom segregation as evidence of failure on the part of a school district to advance "toward the maximum practicable desegregation." Moreover, Congress' definition of desegregation as nondiscriminatory assignment of students applies to classrooms as well as schools.

West, Kimberly C., A Desegregation Tool That Backfired: Magnet Schools and Classroom Segregation 103 Yale L.J. 2567, 2581-2583 (1994) (citations omitted).[14]

As the District points out, this is not a case in which a school district has placed all of its students in the same school building, but maintained classroom segregation by placing all the white students and all the black students in separate classrooms. Moreover, as it also notes, there is no requirement that the classrooms within a school be perfectly racially balanced, any more than it is constitutionally required that a district's schools be perfectly racially balanced:

> The constitution does not require school districts to achieve maximum desegregation; that the plan does not result in the most desegregation possible does not mean that the plan is flawed constitutionally. "The constitutional command to desegregate schools does not mean that every school in every community (or here, every classroom within the school) must always reflect the racial composition of the school system as a whole."
> "The school board's constitutional duty is to cure the continuing effects of the dual school system, not to achieve an ideal racial balance."

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[14] Thus, the fact that each of the District's school's student body is perfectly racially balanced is beside the point.

Monteilh v. St. Landry Parish School Bd., 848 F.2d 625, 632 (5th Cir. 1988) (citations omitted). The court does recognize, as the District contends, that there is a substantial degree of racial integration. At the same time, however, there is an appreciable degree of racial separation and isolation for a substantial number of black students placed in homerooms which are all-black as a result of the District's assignment policy.

The court fully credits the District's assertion that its purpose is not to segregate black children from homerooms with white children, but rather to maintain white enrollment and to draw whites to the public schools so that the schools more closely reflect the community of McComb. Indeed, the court has no doubt that the District's motivation in having this practice is to "keep the few white students" it has and to try to draw white students into the schools and to perhaps thereby achieve, or at least maintain, some degree of integration over the long-term. While its position in this respect is not unreasonable, the law does not countenance such a motivation, given that the District is operating under desegregation orders compelling it to do all that it practically can to desegregate its schools. See Freeman, 503 U.S. at 485, 112 S. Ct. at 1443. The courts have repeatedly recognized that "those charged with desegregation must not shrink from the threat of white flight." Ross v. Houston Independent School Dist., 699 F.2d 218, 225 (5th Cir. 1983); U.S.

v. Desoto Parish School Bd., 574 F.2d 804, 816 (5th Cir. 1978) (holding that "white flight 'cannot (be) . . . accepted as a reason for achieving anything less than complete uprooting of the dual public school system") (quoting United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484, 491, 92 S. Ct. 2214, 2218, 33 L. Ed. 2d 75 (1972)).

> This is not to say that a school board or Court must ignore a likely danger of an exodus of white students from a school system. "(I)n choosing between various permissible plans a chancellor may . . . elect one calculated to minimize white boycotts. . . . He may not refuse to adopt a permissible plan and elect or confect one which preserves a dual system because of such fears." Stout v. Jefferson County Bd. of Educ., 1976, 5 Cir., 537 F.2d 800, at 802.

U.S. v. Desoto Parish School Bd., 574 F.2d at 816. Thus, where there is a choice between two constitutionally permissible plans, the District is free to choose the plan that will minimize white flight, even if it does not maximize desegregation.

No one would argue that it is constitutionally permissible to maintain all-black schools solely for the purpose of preventing white flight.[15] The question thus arises, is it any less objectionable to maintain all-black homerooms within a

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[15] See U.S. v. Pittman by Pittman, 808 F.2d 385, 391 (5th Cir. 1987) (rejecting school district's proposed plan to keep two elementary schools segregated and limiting number of black students in remaining magnet schools "to make those magnet schools more attractive to the white community" in the hope of reducing white flight, and declaring, "This concern, legitimate when choosing among constitutionally permissible plans, cannot be 'accepted as a reason for achieving less than complete uprooting of the dual public school system'.").

school solely in the name of preventing white flight. The District argues that it is not affirmatively seeking to maintain all-black classrooms, but that instead, given the relatively small number of white students in these two schools, the creation of some all-black classrooms is a necessary byproduct of its policy/practice of honoring white parents' requests to place a sufficient number of white children in other classes to keep those parents from pulling their children out of the public schools. It emphasizes that its practice does not result in any all-white homerooms, or even any majority white homerooms; all white students are assigned to homerooms where blacks are in the majority.[16]

The Government insists the District's homeroom assignment practice is not constitutionally permissible, because it excludes

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[16] The District argues that this fact distinguishes this case from Christian v. Board of Ed. of Strong School Dist. No. 83 of Union County, 440 F.2d 608, 611 (8th Cir. 1971), in which the Board of Education, after experiencing a mass exodus of white students from its schools following integration, moved to prevent the loss of the few white children who remained by authorizing reassignment of students in the elementary grades so that in at least one classroom in each grade white students predominated over blacks; as a result, other sections in each grade then became all black. The Eighth Circuit held that "this kind of pupil assignment constitutes discrimination in the public schools in violation of the Constitution." Id. at 611. See also Jackson v. Marvell School District No. 22, 425 F.2d 211, 212 (8th Cir. 1970) ("It is settled doctrine that segregation of the races in classrooms constitutes invidious discrimination in violation of the Fourteenth Amendment to the Constitution.") (quoted in Christian).

black children from homerooms with white children on account of their race, in violation of the Equal Protection Clause. "[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995). "In order to satisfy this searching standard of review, the school districts must demonstrate that the use of individual racial classifications in [its] assignment plans . . . is 'narrowly tailored' to achieve a 'compelling' government interest." Parents Involved in Community Schools v. Seattle School Dist. No. 1, 127 S. Ct. 2738, 2752 (2007) (citing Adarand, supra, at 227, 115 S. Ct. 2097 (a racial classification is unconstitutional unless its proponent can establish, first, that the policy furthers a compelling state interest, and second, that it is narrowly tailored to achieve that interest). The burden of proving a compelling interest and narrow tailoring rests on the defendant. Keyes v. School Dist. No. 1, Denver, Colorado, 413 U.S. 189, 209, 93 S. Ct. 2686, 37 L. Ed. 2d 548 (1973).

The District's sole proclaimed interest is the prevention of any further loss of white students and to draw white students to the pubic schools. It fairly can be said that the District has an interest in preventing white flight and in increasing white enrollment so that the schools are more reflective of community

demographics. But the District has not seriously argued that this is a compelling interest.[17] Even if this were a compelling interest, however, the District has not shown that its practice is narrowly tailored to address the parental concerns that motivate the practice.

The District has not demonstrated that there are no alternative means of accomplishing its purpose in some other way that does not lead to racial isolation for a significant number of the District's black children.[18] As for its interest in

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[17] In Parents Involved in Community Schools v. Seattle School Dist. No. 1, 127 S. Ct. 2738, 2752 (2007), the Supreme Court, while not attempting to set forth all the interests a school district might assert, noted that its prior cases evaluating the use of racial classifications in the school context, had recognized "two interests that qualify as compelling." Id.

> The first is the compelling interest of remedying the effects of past intentional discrimination. See Freeman v. Pitts, 503 U.S. 467, 494, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992). . . .
>
> The second government interest we have recognized as compelling for purposes of strict scrutiny is the interest in diversity in higher education upheld in Grutter, 539 U.S., at 328, 123 S.Ct. 2325. The specific interest found compelling in Grutter was student body diversity "in the context of higher education." Ibid. The diversity interest was not focused on race alone but encompassed "all factors that may contribute to student body diversity." Id., at 337, 123 S. Ct. 2325.

[18] The court acknowledges the Government's argument that the District successfully integrated its classrooms during the 2002-2003 school year by implementing the "team teaching" concept without experiencing any resulting decline in white enrollment. The court, however, also acknowledges the District's position that it did not find this practice to be in the children's best

drawing white students into the public schools, the District has not shown that its homeroom assignment practice is designed to do anything more than appease a few white parents who might "be on the borderline" about whether to send their white children to the public schools. Moreover, the proof clearly shows that notwithstanding the District's long-standing policy/practice of affirmatively clustering white children or allowing the clustering of white children indirectly by way of allowing parental choice, white enrollment has continued to decline. The policy was in place before Dr. Cooper became superintendent in 1997 and has been in place since that time, and yet there has still been a decline-albeit gradual--in white enrollment with an accompanying increase in black enrollment.

To the extent the District has urged preventing white flight as a basis for its practice, the District has likewise failed to establish that the challenged assignment practice has had, or is likely to have much effect. Principal Young, in fact, attributed the loss of white students to growth in other parts of the county, and opined that parent requests have not had a significant effect on white enrollment at Kennedy, either in the decisions of parents to send their children to the public schools or to keep them there. She considered it merely "possible" that

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educational interest. The District, though, has not shown that it explored other alternatives.

termination of the policy would result in the loss of some white students, and did not believe it likely that whites would all "rush out the door" if the policy were terminated.

Finally, even if there were evidence to support the notion that white flight could only be avoided by grouping or clustering of white children in classrooms, there is still nothing in the record to suggest that the District has implemented its grouping or clustering policy in a way that is narrowly tailored to serve its interest in avoiding white flight. The District has insisted that by placing the 20% cap on the percentage of white students in any given homeroom, it has narrowly tailored or restricted the effect of its assignment policy/practice to draw whites into the school and prevent them from leaving. But no one has suggested that parents will only send their children to these schools if they can be in classes that are 35% or more white; and even with what is undeniably a generous variance, there have been instances in which the District has exceeded the 20% cap in assigning white children to homerooms.[19] In fact, there have been homerooms with

[19] The 20+/- variance was drawn from an Office of Civil Rights policy that applies to identify disparate racial impact in the context of ability grouping. In that context, the 20% variance is used to evaluate racial identifiability of classes grouped by academic ability. In that context, there is a nonracial purpose for the classification. The advisability of the District's importing that variance to its overtly racial policy for classroom assignments is doubtful, particularly given that the schools at issue are less than 20% white (and more than 80% black) so that use of the 20% variance will inevitably tend to lead to the creation of all-black classes.

only one white child, and at the same time, homerooms with seven, eight and nine white children. The court cannot fathom a reasonable explanation for this that is arguably consistent with the District's proclaimed purpose and its obligation to narrowly tailor its assignment practice to achieve that purpose. Indeed, when asked at the hearing whether he knew of any reason that some number of white children could not have been moved out of a homeroom with eight or nine white children and into a classroom that would otherwise be all black, Superintendent Cooper could think of none. Neither can the court.

The court acknowledges the District's argument that the Government's challenge to the students' homeroom assignments fails to adequately consider that students at Otken and Kennedy do not spend the entire school day in their homerooms, and that they do have ample opportunities during the school day for interaction with students of other races. For example, students in the first through fourth grades are assigned to reading groups, which meet for ninety minutes each school day. In addition, all elementary homerooms are mixed together for other relatively small parts of the rest of the school day for activities such as lunch, recess, physical education or music. The fact is, all students spend the majority of their day in their homerooms. The lunch period lasts only twenty minutes and the evidence is to the effect that lunch times are staggered so

that no two classes share exactly the same time slot; and there is no proof as to the existence or extent of opportunity for racial interaction during the lunch period. The time for recess is also quite limited, and even during that time, no affirmative effort is made to ensure that students in the all-black classes share recess with classes that have white students. The same is true of the reading groups. The proof showed that students in the first through fourth grades spend ninety minutes each day in reading groups, to which the children are assigned on the basis of their reading level; the reading groups are adjusted every nine weeks. The record shows that a number of the reading groups are all black, and significantly, there is no assurance that students in all-black homerooms are assigned to reading groups with white children. While providing other opportunities, outside of homeroom, for meaningful racial interaction, particularly in the reading group (an academic setting) would mitigate the effect of the District's homeroom assignment policy, the proof simply does not support a conclusion that this, in fact, occurs.

Clearly, in light of the foregoing, the court cannot conclude that the District is unitary in the area of student assignment at the two elementary schools and its motion for unitary status will be denied as to this facet of student assignment. The issue remains whether the District should be

enjoined "from assigning students by race, so as to create all black classrooms," as requested by the Government in its motion for injunctive relief.

The Government is correct that based on the most recent enrollment figures provided by the District, it is possible, given the number of white children in each grade at these two schools, to put at least two or three white children in each class, so that there are no all-black classes.[20] That will not long be the case if the current enrollment trend continues. Indeed, if the gradual decline in white enrollment continues unabated, there will come a time before long when there are not even enough white students left in these schools to have one white child in each class. The District's purpose, while not fully sustainable, is not entirely misguided. If there were no white children left in these schools and all the classrooms were all black, the schools would be hypothetically perfectly integrated. But the level of segregation would be palpable - the black city schools, the white private and suburban schools. What purpose is served by such integration for its own sake?

It is fair to ask whether black children in these schools would secure any real benefit from an educational standpoint or

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[20] Of course, the District is not required by law or by the desegregation decree to assign students to homerooms so that their numbers in homeroom approximate their numbers in the grade. Even subject to the desegregation order, the District is not required to achieve perfect racial balance.

from the standpoint of experiencing racial diversity or meaningful racial interaction, by having one white child, or even two white children, in their homerooms. The answer may be debatable, but in the court's view, is likely no, especially if those same children are given other meaningful opportunities for racial interaction in other settings in the school day.

The answer is clearly no if the question is whether there is any educational benefit. It is apparent to the court that the quality of education provided in these schools is the same for all the children. The District has shown that it is committed to providing the best education it can to every student in its schools; the notion that black children receive greater educational benefit in class with one or two white children does not hold true.

The interest in experiencing racial diversity is not likely served by having a white child or two in the classroom, either. Cf. Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003) (accepting notion that there is some "meaningful number" (albeit undefined) necessary to achieve a genuinely diverse student body, and finding that a "critical mass" of diverse students was necessary for the University of Michigan Law School to effectively achieve its mission of educating students, "preparing [them] for work and citizenship," and cultivating leaders). And it is highly doubtful that having

a white child or two in the classroom results in much meaningful racial interaction, or any more meaningful racial interaction than these children would have than if they shared a reading group, or lunch, or recess or physical education with a number of white children.

All of this is to say, this court is reluctant to mandate that the District cannot make assignments in such a way that result in all-black classrooms. The District's charge should be instead to devise an assignment policy that results in meaningful racial interaction for all its students.[21]

Extracurricular Activities:

In response to the District's motion for declaration of unitary status, the Government objected that the District should not be declared unitary in the area of extracurricular activities because the District uses race as a factor in the selection of McComb High School's homecoming court and class superlatives for the high school yearbook so as to equalize the number of black and white students selected/recognized for these accolades. In reply, the District agreed that it would immediately eliminate the use of race in the annual staff's selection of senior

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[21] The Government has advised that it would not object to a random assignment policy, even if that policy results in some all-black classrooms, which it acknowledges would not be unlikely. The District may choose to do this, or it may choose instead to take steps to ensure that all black and white students have the opportunity for integration in the school setting, if not in the homeroom setting.

superlatives, and that has been done. The District further advised that it would devise another method for selection of the homecoming queen and senior court, implicitly conceding that the process that had been used violated the desegregation orders and/or the Equal Protection Clause.[22]

The record now reflects that prior to the 2006-07 school year, the District promulgated new homecoming court selection procedures to address the Government's objection. The new method permits students and faculty to separately select female students as class representatives on the homecoming court. Students in each grade 9 through 11 nominate one female student from their grade for maid; the student receiving the highest number of nominations is a class maid. The faculty for each grade also nominates one female student, and the student with the highest number of faculty nominations is the second class maid. The process is the same for senior class nominations, except that the

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[22] The process is described in the following stipulation by the parties:

> To select the homecoming queen and senior court each year, seniors receive ballots on which they nominate a classmate for homecoming queen. After tallying the nominations from the ballot by the senior class, a second ballot is distributed to the entire high school student body. The second ballot lists the names of the two black students and the two white students who receive the most nominations. The high school student body votes the second ballot. The student receiving the most votes from the student body on the second ballot is elected queen. The runner-up is the maid of honor, and the remaining students are senior maids.

seniors and the faculty for all grades each nominate two female students. The entire student body votes to elect the homecoming queen from among the senior maids.

After review of the policy, the Government, criticizing the involvement of faculty in the selection process as "novel" and "unorthodox," advises that it cannot agree that the new procedure comports with the mandate of the desegregation order or the Constitution. According to the Government, the nomination data from the first year the procedure was used contain "some indications that the faculty voting protocols were manipulated to improperly boost the membership of white students" on the homecoming court. It asks, therefore, for discovery to ascertain whether "certain irregularities" observed in documents produced by the District "reflect misuse of the faculty voting procedure." It argues, though, that even if the new procedure is found to be race-neutral, the District still cannot be found unitary as to its procedures for selection of the homecoming court because the policy has not been in place for a reasonable period of time, and certainly not long enough that its effects can be meaningfully assessed. Finally, although the homecoming court selection procedure is the only aspect of the broader category of extracurricular activities to which the Government has an objection, it submits that the District ought not be declared unitary in the area of extracurricular activities until the

parties can observe the impact of the new election procedures over at least two additional homecoming cycles.

Regardless of the reason the District has chosen to involve the faculty in the process of selection of members of the homecoming court, the procedure itself is race neutral on its face, and so far as the evidence to date shows, in application as well. There is nothing to suggest any "irregularities" in the voting by faculty members," i.e., any racial component in faculty members' nominations.[23] And while the Government has expressed concern that faculty votes may have been tallied and applied in a way designed to increase white representation on the homecoming court, in the court's opinion, the evidence does not support this concern. The Government complains that when the same individual was the top nominee of both the faculty and the students, that individual, Brittany Jackson, was placed on the ballot as a student nominee, rather than as a faculty nominee or a joint faculty-student nominee. As a result, the white student who finished third in the faculty ballot was added to the final

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[23] It is true that the 2006 senior homecoming court had two black and two white members, the two black members having been nominated by the student body and the two white members nominated by the faculty. However, the top nominee of both the faculty and of the student body was Brittany Jackson, a black student. Ms. Jackson, in the words of the Government, "dominated the faculty vote for senior homecoming court by receiving 22 votes from teachers." Had Ms. Jackson not also been the top nominee by the students, she would have been one of the faculty's two nominees. The faculty also nominated a black junior maid and black freshman maid.

ballot rather than the black student who finished third in the student ballot. Obviously, when Ms. Jackson was the top nominee of both the faculty and students, a decision had to be made as to how to proceed. While the District should have anticipated this situation and could have provided for this eventuality in formulating the new selection procedure, there is no fair basis for assuming that its response was motivated by race.[24]

That being said, the court does agree that the District has not shown that it has complied with its desegregation obligations in the selection of the homecoming court for a reasonable period of time, and therefore, the court must decline to terminate supervision over this aspect of the District's extracurricular activities for at least another school year. See Dowell, 498 U.S. 237, 248 (1991) (it is proper to "dissolve[] a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time"); Lemon v. Bossier Parish Sch. Bd., 444 F.2d 1400, 1401 (5th Cir. 1971) ("We think at a minimum [unitariness] means that the district in question must have for several years operated as a unitary system."); Anderson

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[24] The Government has also contended that the addition to the ballot of Karrie Simpson, the faculty's third choice, "is suspect," arguing that it appears from the tally sheets produced by the District that the number of votes for Ms. Simpson may have been altered to make her the third choice, instead of a black student, Tiffany Shacklefoot. The court has reviewed the tally sheets and is not persuaded.

v. School Bd. of Madison Cty., 517 F.3d 292, 297 (5th Cir. 2008) (same).[25]

The evidence is otherwise uncontroverted that with the limited exception of nominations for homecoming court, the District has not maintained any extracurricular activity on a segregated basis or excluded any student from participating in any extracurricular activity on the basis of race; all activities are open to all students without regard to race. There is clearly racial diversity across the board in the nearly 100 extracurricular activities sponsored by the District at the high school and junior high, including sports, clubs, band and other activities. In the court's opinion, there is no need for continued oversight as to any of these other aspects of the "extracurricular activities" category. See Freeman, 503 U.S. at 493, 112 S. Ct. 1430 (noting that "the Green factors need not be a rigid framework" and that the partial relinquishment of judicial supervision is consistent with the district court's exercise of its "equitable discretion": "By withdrawing control over areas when judicial supervision is no longer needed, a district court can concentrate both its own resources and those of the school district on the areas when the effects of de jure

[25] No evidence has been presented as to the 2007 homecoming court, although the District has asserted in a supplemental memorandum that the 2007 homecoming queen was black and the senior court had only one white member.

discrimination have not been eliminated and further action is necessary in order to provide real and tangible relief to minority students.").

Conclusion

Based on the foregoing, it is ordered that the motion of the McComb School District for declaration of unitary status is granted in part and denied in part as set forth herein. It is further ordered that the motion of the United States for permanent injunction is denied for the reasons set forth herein. However, it is ordered that 45 days prior to implementation of any homeroom assignment policy for the Otken and Kennedy Elementary Schools, the District shall submit same to the United States for review and comment. Should the United States take the position that such policy or plan is objectionable on its face, it shall inform the District and this court of its position within 15 days thereafter.

SO ORDERED this 18th day of April, 2008.

UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 3:66-cv-12071
v.	)	CHIEF JUDGE ROBERT G. JAMES
LINCOLN PARISH SCHOOL BOARD, *et al*.,	)	
Defendants.	)	

SUPERSEDING CONSENT ORDER

This Superseding Consent Order arises out of the good faith efforts of Plaintiff United States of America (the "United States") and Defendant Lincoln Parish School Board (the "Board") to address and resolve the Board's school desegregation obligations in its operation of the Lincoln Parish Schools (the "District"). This Consent Order is jointly entered into by the United States and the Board, and the parties agree to comply with its terms.

The Court, having reviewed the terms of this Consent Order, finds that it is consistent with the objectives of the Fourteenth Amendment to the United States Constitution and federal law, and will facilitate the orderly desegregation of the District. Thus,

IT IS ORDERED that the Joint Motion to Approve Superseding Consent Order [Doc. No. 53] is GRANTED.

IT IS FURTHER ORDERED as follows:

I. PROCEDURAL HISTORY

This school desegregation lawsuit was initiated by the United States on June 8, 1966. On August 1, 1969, the Court issued a decree ("1969 Decree") approving a school desegregation plan

proposed by the Board, which was "designed to . . . disestablish the defendants' dual system of schools based upon race."[1] The Court "permanently enjoined [the Board] from discriminating on the basis of race or color in the operation of their Parish school system," and ordered the Board to "take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system."[2] The desegregation plan was subsequently modified by the Court's August 5, 1970 Decree ("1970 Decree"). The Court ordered further modifications to certain provisions of the plan in the July 23, 1971 Consent Decree and an Order dated August 14, 2008.[3]

On November 13, 2009, the Court initiated discussions regarding the Board's progress toward attaining unitary status. Since that date, the United States, with the cooperation of the Board, has undertaken a comprehensive review of the Board's compliance with its obligations under the operative court orders in this case, including reviewing the Board's annual court reports in this case, reviewing the Board's responses to the United States' various requests for information, and conducting a site visit of the District's schools in April 2011. In a Status Report filed on May 24, 2011 (the "Status Report"), the United States reported on the results of its unitary status review with respect to the District's schools, preliminarily identifying those areas in which the Board remained out of compliance with its desegregation obligations.[4] The Board filed a

[1] 1969 Decree at 1.

[2] *Id.* at 1-2.

[3] In a decision dated July 13, 1979, the Fifth Circuit permitted the addition of the laboratory schools operated by Louisiana Tech University and Grambling State University as defendants in this case. A Consent Decree approved by the Court on July 13, 1984 addressed the roles and obligations of the various parties with regard to the desegregation of the laboratory schools. The Board's obligations regarding the laboratory schools, if any, are subject to ongoing proceedings before the Court and are not addressed or affected by this Consent Order.

[4] Rec. Doc. 25.

response to the Status Report on September 15, 2011.[5] The Board subsequently filed its October 2011 annual court report and produced other documents in response to the United States' requests.

Based on the foregoing, the United States has determined that, with respect to its operation of the District, the Board has satisfied the requirements for unitary status in the areas of faculty assignment, staff assignment, facilities, transportation, and extracurricular activities, and is entitled to a declaration of partial unitary status and partial dismissal of this case in those areas. The United States has further determined that the Board has not yet satisfied its obligations in the area of student assignment. This Consent Order is intended to (1) grant partial unitary status and dismiss this case in the areas of faculty assignment, staff assignment, facilities, transportation, and extracurricular activities, and (2) address and resolve the outstanding student assignment issues in the District.

II. LEGAL STANDARDS

The ultimate inquiry in determining whether a school district is unitary is whether the district has (1) fully and satisfactorily complied in good faith with the court's desegregation orders for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* segregation to the extent practicable; and (3) demonstrated a good faith commitment to the whole of the court's order and to those provisions of the law and the Constitution which were the predicate for judicial intervention in the first instance.[6] The Supreme Court has identified six areas, commonly referred to 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 school system to the extent

[5] Rec. Doc. 34.

[6] *See Missouri v. Jenkins*, 515 U.S. 70, 88-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248-50 (1991).

practicable. These factors are: (1) student assignment; (2) faculty assignment; (3) staff assignment; (4) transportation; (5) extracurricular activities; and (6) facilities.[7] A court may allow partial or incremental dismissal of a school 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 was found.[8]

III. STIPULATED FACTS

A. Student Assignment

The 1969 Decree ordered the Board to adopt a desegregation plan "designed to . . . disestablish the defendants' dual system of schools based upon race."[9] That plan, as modified by the 1970 Decree, made student assignment changes to disestablish the dual system of schools in each of the four geographic zones comprising the District: Choudrant, Dubach-Hico, Ruston, and Simsboro. The 1969 and 1970 decrees limited intra-district student transfers to three circumstances: (1) majority-to-minority transfers,[10] (2) special needs transfers,[11] and

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[7] *Green v. Cnty. School Bd. of New Kent Cnty.*, 391 U.S. 430, 435-42 (1968); *Jenkins,* 515 U.S. at 88; *Dowell*, 498 U.S. at 250.

[8] *Freeman*, 503 U.S. at 490-91.

[9] 1969 Decree at 1.

[10] "The school district shall permit a student attending a school in which [the student's] race is in the majority to choose to attend another school where [the student's] race is in the minority. All such transferring students are to be given priority for space and thus the transfer is not to be dependent on space being available. All such transferring students must be given transportation if they desire it." 1970 Decree at 4.

[11] "Any student who requires a course of study not offered at the school to which [the student] has been assigned may be permitted, upon [the student's] written application at the beginning of any school term or semester, to transfer to another school which offers courses for [the student's] special needs." 1969 Decree at 3.

(3) transfers to special classes or schools.[12] To the extent the Board consented to incoming or outgoing inter-district transfers, the 1970 Decree required that such transfers be granted on a non-discriminatory basis, and that they not be granted "where the cumulative effect will reduce desegregation in either district or reinforce the dual school system."[13]

In the 2011-2012 school year, the Board operated twelve schools in the four geographic zones listed above. Of the 5,687 students enrolled in the District, 49.3 percent are white, 46.7 percent are black, and 4.0 percent are another race. The 2011-2012 student demographics are set forth in Table 1 below.

Table 1: Student Enrollment (2011-2012)

Zone	School	White	Black	Other	Total
Choudrant	Choudrant ES (K-6)	389 (89.4%)	30 (6.9%)	16 (3.7%)	**435**
	Choudrant HS (7-12)	288 (88.3%)	32 (9.8%)	6 (1.8%)	**326**
	Zone-wide	*677 (89.0%)*	*62 (8.1%)*	*22 (2.9%)*	***761***
Dubach-Hico	Hico ES (K-5)	122 (61.0%)	63 (31.5%)	15 (7.5%)	**200**
	Dubach HS (6-12)	74 (45.4%)	79 (48.5%)	10 (6.1%)	**163**
	Zone-wide	*196 (54.0%)*	*142 (39.1%)*	*25 (6.9%)*	***363***
Ruston	Cypress Springs ES (K-5)	50 (10.9%)	391 (85.0%)	19 (4.1%)	**460**
	Glen View ES (K-5)	352 (54.4%)	255 (39.4%)	40 (6.2%)	**647**
	Hillcrest ES (K-5)	323 (71.0%)	116 (25.5%)	16 (3.5%)	**455**
	Ruston ES (K-5)	22 (5.3%)	384 (92.3%)	10 (2.4%)	**416**
	I.A. Lewis ES (6)	96 (33.2%)	191 (66.1%)	2 (0.7%)	**289**
	Ruston Jr. HS (7-8)	229 (39.0%)	341 (58.1%)	17 (2.9%)	**587**
	Ruston HS (9-12)	548 (48.4%)	549 (48.5%)	36 (3.2%)	**1133**
	Zone-wide	*1620 (40.6%)*	*2227 (55.9%)*	*140 (3.5%)*	***3987***
Simsboro	Simsboro School (K-12)	310 (53.8%)	225 (39.1%)	41 (7.1%)	**576**
	Zone-wide	*310 (53.8%)*	*225 (39.1%)*	*41 (7.1%)*	***576***
	District-wide	***2803 (49.3%)***	***2656 (46.7%)***	***228 (4.0%)***	***5687***

[12] "If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted children, the defendants may allow children to transfer to such schools or classes on a basis related to the function of the special class or school. Provided that no such transfers shall be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color." 1969 Decree at 3.

[13] 1970 Decree at 5.

The Board operates the schools in the Choudrant, Dubach-Hico, and Simsboro zones in a single-grade structure, such that each of the schools in those zones serves a different range of grade levels. In the Ruston zone, the Board operates one school serving the sixth grade (I.A. Lewis Elementary School), one junior high school (Ruston Junior High School), and one high school (Ruston High School). Because all of these schools are operated in a single-grade structure, the Board operates those schools on a desegregated basis and in accordance with federal law and the operative court orders in this case.

Additionally, the Board operates four K-5 schools in the Ruston attendance zone. The seven (7) schools in the Ruston zone currently serve a total of 3,987 students, of whom 40.6 percent are white, 55.9 percent are black, and 3.5 percent are of another race. The United States determined that three of the four K-5 elementary schools currently have racially identifiable student populations. The United States determined that Cypress Springs Elementary School (85.0 percent black) and Ruston Elementary School (92.3 percent black) are racially identifiable black schools, with black student populations exceeding the zone-wide average by 29.1 and 36.4 percentage points, respectively. In contrast, the student population at the predominantly white Hillcrest Elementary School is 25.5 percent black, 30.4 percentage points below the zone-wide average. The United States also identified concerns regarding transfers of white students from majority-black to majority-white schools for reasons others than those permitted by the 1969 and 1970 decrees.

To address the student assignment issues identified by the United States, the Board has agreed to take certain actions prior to the start of the 2012-2013 school year, including pairing the

elementary schools in the Ruston zone and revising its student transfer policy, as discussed in greater detail in Section IV.A. below.

B. Faculty Assignment and Staff Assignment

Under the 1970 Decree, "principals, [] teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for black students or white students."[14] In the 2011-2012 school year, the Board employs 435 teachers, of whom 87.1 percent are white, 12.4 percent are black, and 0.5 percent are of another race. The 2011-2012 faculty demographics are set forth in Table 2 below.

Table 2: Faculty Demographics (2011-2012)

Zone	School	White	Black	Other	Total
Choudrant	Choudrant ES (K-6)	27 (96.4%)	1 (3.6%)	0 (0.0%)	**28**
	Choudrant HS (7-12)	28 (93.3%)	2 (6.7%)	0 (0.0%)	**30**
	Zone-wide	*55 (94.8%)*	*3 (5.2%)*	*0 (0.0%)*	***58***
Dubach-Hico	Hico ES (K-5)	15 (88.2%)	2 (11.8%)	0 (0.0%)	**17**
	Dubach HS (6-12)	16 (80.0%)	4 (20.0%)	0 (0.0%)	**20**
	Zone-wide	*31 (83.8%)*	*6 (16.2%)*	*0 (0.0%)*	***37***
Ruston	Cypress Springs ES (K-5)	30 (90.9%)	3 (9.1%)	0 (0.0%)	**33**
	Glen View ES (K-5)	40 (87.0%)	6 (13.0%)	0 (0.0%)	**46**
	Hillcrest ES (K-5)	24 (80.0%)	6 (20.0%)	0 (0.0%)	**30**
	Ruston ES (K-5)	22 (73.3%)	8 (26.7%)	0 (0.0%)	**30**
	I.A. Lewis ES (6)	17 (85.0%)	3 (15.0%)	0 (0.0%)	**20**
	Ruston Jr. HS (7-8)	45 (91.8%)	4 (8.2%)	0 (0.0%)	**49**
	Ruston HS (9-12)	81 (88.0%)	9 (9.8%)	2 (2.2%)	**92**
	Zone-wide	*259 (86.3%)*	*39 (13.0%)*	*2 (0.7%)*	***300***
Simsboro	Simsboro School (K-12)	34 (85.0%)	6 (15.0%)	0 (0.0%)	**40**
	Zone-wide	*34 (85.0%)*	*6 (15.0%)*	*0 (0.0%)*	***40***
	District-wide	***379 (87.1%)***	***54 (12.4%)***	***2 (0.5%)***	***435***

As the percentage of black faculty at all schools in the District is within plus/minus fifteen percentage points of the District-wide average, the United States has determined that the Board

[14] 1970 Decree at 2.

assigns faculty to schools on a nondiscriminatory basis in accordance with its desegregation obligations. Through faculty reassignment and the closure of its two alternative schools prior to the 2011-2012 school year, the Board addressed the faculty issues identified in Section I.B. of the United States' Status Report. The projected faculty 2012-2013 demographics in the Ruston zone under the new grade-level configurations are consistent with the Board's obligations. There are no staff assignment issues. Thus, the Board has eradicated the vestiges of segregation in the areas of faculty and staff, and is entitled to a declaration of partial unitary status in those areas.

C. Transportation

The 1969 Decree prohibited the Board from segregating or discriminating against any student on account of race or color in any service, facility, activity, or program, including transportation.[15] With respect to transportation, the 1970 Decree further required that "[b]us[] routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis," and that "[t]he transportation system of the school district shall be completely re-examined regularly by the superintendent, his staff, and the school board."[16]

The United States reviewed transportation data provided by the Board, including pupil locator data for the 2011-2012 school year. Based on that information, the United States has determined that the Board provides transportation to all eligible students enrolled in the District on a nondiscriminatory basis. Upon review of information provided by the Board after the United States' Status Report, including 2011-2012 student enrollment data and geographic information system (GIS) data, the United States determined that the concerns expressed in Section I.C. of the

[15] 1969 Decree at 4.

[16] 1970 Decree at 4.

Status Report were no longer an issue. Thus, the Board is entitled to a declaration of partial unitary status in the area of transportation.

D. Extracurricular Activities

The 1970 Decree prohibited the Board "from maintaining any . . . non-classroom, or extra-curricular activity on a segregated basis, so that no student is effectively excluded from . . . participating in any non-classroom or extra-curricular activity on the basis of race, color, or national origin."[17] The United States reviewed information provided by the Board concerning extracurricular activities. The District provides all students an opportunity to participate in extracurricular activities on a nondiscriminatory basis. Thus, the Board is entitled to a declaration of partial unitary status in the area of extracurricular activities.

E. Facilities

The 1969 and 1970 decrees further required that the Board eliminate the vestiges of segregation in its school facilities. The United States reviewed facilities information provided by the Board and conducted a site visit of all school facilities in the Ruston zone in April 2011, and has determined that the Board operates all of the District's school facilities in a nondiscriminatory manner in compliance with its desegregation obligations. Thus, the Board is entitled to a declaration of partial unitary status in the area of facilities.

IV. STIPULATED REMEDIAL MEASURES

The Board agrees to take the following measures to address the outstanding student assignment issues in this case, as described above in Section III.A. The Board has agreed to implement, as a practicable tool to address and correct these issues, the following plan for the 2012-2013 school year. The parties agree, and the Court finds, that such relief, as detailed below,

[17] 1970 Decree at 5.

if fully implemented, will correct the remaining student assignment issues and result in the unitary operation of the District in the area of student assignment.

A. Elementary School Student Assignment in the Ruston Zone

The Board has approved and agrees to implement, by the beginning of the 2012-2013 school year, a student assignment plan that will eliminate the racial identifiability of Cypress Springs Elementary School, Hillcrest Elementary School, and Ruston Elementary School, three of the four elementary schools currently serving grades K-5 in the Ruston zone. Under this plan, the Board will create two pairs of schools using existing attendance zone boundaries and transportation routes. Each pair will contain a K-2 school and 3-5 school. Additionally, the existing "freedom of choice" zone, which currently enables students who reside within that zone to choose to attend school in either Simsboro or Ruston, will be abolished. As indicated on the map in Exhibit A, that zone will be divided such that students residing in that zone will be assigned to attend either the Simsboro or Ruston zone.

In the first pair, to be known as the "Hillcrest-Ruston" attendance zone, Hillcrest Elementary School will serves grades K-2 and Ruston Elementary School wills serve grades 3-5. Unless granted a transfer for one of the permissible reasons set forth below in Section IV.B., all students who reside in the existing Ruston and Hillcrest zones will attend the schools in the new Hillcrest-Ruston attendance zone. In the second pair, to be known as the "Glenview-Cypress Springs" attendance zone, Glenview Elementary School will serve grades K-2 and Cypress Springs Elementary School will serve grades 3-5. Unless granted a transfer for one of the permissible reasons set forth below in Section IV.B., all students who reside in the existing Cypress Springs and Glenview zones (except for those students in the former "freedom of choice"

zone who will now be assigned to the Simsboro zone) will attend the schools in the new Cypress Springs-Glenview attendance zone. All Ruston students in grades 6 through 12 will continue to attend I.A. Lewis Elementary School, Ruston Junior High School, and Ruston High School under the existing grade level configurations.

The projected student demographics at the elementary schools in the Ruston zone are set forth below in Table 3.

Table 3: Projected 2012-2013 Ruston Zone Elementary Student Enrollment*					
Pair	**School**	**White**	**Black**	**Other**	**Total**
Glenview-Cypress Springs	Glenview (K-2)	293 (44.0%)	345 (51.8%)	28 (4.2%)	**666**
	Cypress Springs (3-5)	241 (40.0%)	321 (53.2%)	41 (6.8%)	**603**
	Total K-5	*534 (42.1%)*	*666 (52.5%)*	*69 (5.4%)*	***1269***
Hillcrest-Ruston	Hillcrest (K-2)	208 (39.9%)	284 (54.5%)	29 (5.6%)	**521**
	Ruston (3-5)	176 (41.0%)	238 (55.5%)	15 (3.5%)	**429**
	Total K-5	*384 (40.4%)*	*522 (54.9%)*	*44 (4.6%)*	***950***

* *Projections are based on 2011-2012 enrollment figures.*

The projected ratios of black and white students at all Ruston schools will approximate zone- and District-wide averages. To the extent faculty reassignments between schools are necessary to implement this student assignment plan, the Board will ensure that the percentages of black and white faculty at each school remain within plus/minus 15 percentage points of the District-wide averages. Based on these projections, the United States has concluded that, if realized, the Board will meet its obligation to ensure that each of its Ruston zone schools will no longer be racially identifiable beginning in the 2012-2013 school year.

A. Student Transfers

The Board has approved and will immediately implement the following student transfer policy. No student transfer will be permitted other than those approved, according to the provisions herein, by the Transfer Committee, which will be composed of three supervisory staff

members appointed by the Superintendent. The decision of the Transfer Committee on student transfer requests will be made in compliance with the provisions stated below and will be final and without appeal to the School Board. All transfer requests for the upcoming school year will be accepted and considered during the period of May 1 through July 30, 2012, and May 1 through June 30 of each year thereafter. The Transfer Committee may approve transfer requests submitted after July 30, 2012 or June 30 of subsequent years only if such requests are based upon one of reasons (1) through (6) below which did not arise or was not known to the applicant prior to the deadline, as evidenced by supporting documentation, and if the request otherwise complies with the other terms of these provisions. No transfer will be approved that does not meet at least one of the following six approved reasons for transfer.

1. Majority-to-Minority

A student attending a school where the student's race is in the majority may elect to attend a school of appropriate grade level in any attendance zone in the District where the student's race is in the minority, subject to the following requirements.

a. To determine whether a transfer is, in fact, one that is eligible as a Majority-to-Minority transfer, the Transfer Committee will calculate the student racial percentages at each school based on the student enrollment data on the last day of the school year prior to school year in which the student seeks to enroll in the receiving school.

b. A Majority-to-Minority transfer will automatically continue year-to-year until the student completes the last grade level at the school, or until the student notifies the Transfer Committee of an intent to return to the school to which the student would normally be assigned based on the student's home address.

c. A Majority-to-Minority transfer request will be given priority for space at the receiving school among other students requesting transfers to the same school for other reasons, and the Majority-to-Minority transfer is not to be dependent on space being available.

d. The Board will provide transportation to and from the receiving school for any student granted a Majority-to-Minority transfer unless it is rejected by the student.

e. Students who transfer pursuant to this section will be immediately eligible to participate on athletic teams at the first high school to which they transfer under this provision.

f. The Board will provide transportation to facilitate participation in athletics and other extracurricular activities to students who transfer under this provision.

2. Specialized Academic, Vocational, Athletic, or Special Education Curriculum Not Offered in the School of Residence

The Transfer Committee may grant any student who elects or requires a course of study or other specialized academic, vocational, athletic, or special education program or curriculum not offered at the school to which the student has been assigned a transfer to another school that offers such program or curriculum, subject to the following requirements.

a. The student's transfer application must include (1) a verification signed by the principal of the sending school that the specific program and/or curriculum is not available at his school, and (2) by the principal of the receiving school that the specific program or curriculum is available at his school and that the student has qualified for such program or curriculum.

b. An application for such a transfer based on non-academic programs may be denied if it is determined by the Transfer Committee that the cumulative effect of all transfer requests for the given year would reinforce a perception that either the sending school or receiving school is intended for a particular race, or would otherwise frustrate the Board's desegregation obligations in this case.

c. Under Louisiana High School Athletic Association rules, any student who transfers based on the unavailability of an athletic program at the sending school will not be immediately eligible to participate in competitive high school athletics, unless such transfer qualifies and is designated as a Majority-to-Minority transfer, as provided above.

3. Health of the Student

The Transfer Committee may grant a transfer to a student whose attendance at the student's assigned school would place the student's physical or mental health in jeopardy and where attendance at another school would better meet the student's health needs. The student's application for such a transfer must include a statement of support signed by at least two non-associated medical doctors or mental health providers certifying the student's health condition, explaining in detail why attendance at the sending school places the student's health in jeopardy, and explaining in detail why attendance at the requested school is better for the student's health condition. At least one of the doctors providing a supporting letter must be the student's treating physician.

4. Safety of the Student

The Transfer Committee may grant a transfer to any student whose safety is in jeopardy if attendance continues at the sending school. A student's application for such a transfer

must include a statement signed by the student's parent/guardian and/or the principal of the sending school outlining the potential harm to the student in that school, together with any supporting documentation that may be available, and a statement on how the transfer would address the student's specific safety concerns.

5. Child of a full-time certificated employee.

The Transfer Committee may grant a transfer to any student enrolled in grades K-12 who is the child of a full-time, certificated school district employee, and is verified as actually living with said employee, to attend a school of applicable grade level within the attendance zone of the school where the parent/guardian works, subject to the following requirements.

a. A student's application for such a transfer must include a verification from the District's personnel office of the parent's/guardian's employment status with the Board, job title, and school assignment for the next school year.

b. A certificated employee's child who is also eligible for a Majority-to-Minority transfer will be granted a Majority-to-Minority transfer in lieu of a transfer as a child of a certificated employee and may, therefore, elect to attend any school in the District for which the student is eligible under that transfer provision.

6. Exceptional hardship

The Transfer Committee may grant a transfer for an exceptional hardship arising from a situation that does not fall within any of the student transfer provisions listed above, but which warrant the transfer of that student to another school in the District (including, but not limited to, a natural disaster, incarceration of the custodial parent/guardian, severe illness of a

parent/guardian, domestic abuse in the student's home, neglect or other child welfare needs). A transfer may be granted to a student where an exceptional hardship is demonstrated, subject to the following requirements.

a. The student's parent/guardian and/or an appropriate child welfare official may apply for an exceptional hardship transfer and must include in such application a signed, dated, and notarized statement providing a detailed explanation of the exceptional hardship, why the hardship requires a transfer from the sending school, why the receiving school can best accommodate the exceptional hardship, and supporting documentation, if any is reasonably available to the applicant.

b. In addition to many other circumstances that may also not qualify as an exceptional hardship, child care needs will not qualify as an exceptional hardship under this provision.

4. Term of Transfers. All transfers (except Majority-to-Minority transfers, as provided above) will be effective for one school year only. A student must submit an application and be reconsidered and approved by the Transfer Committee for each succeeding year.

5. Transportation of Transfer Students. Majority-to-Minority transfer students will be entitled to transportation provided by the School Board. All other transfer students must provide their own transportation.

C. Training

To facilitate the transition and effective implementation of the student assignment changes required by this Consent Order, the Board will provide training to staff and parents during the

2012-2013 school year on issues related to racial diversity. The Board will seek the assistance of and, if available, will work cooperatively with the Intercultural Development Research Association (IDRA) South Central Collaborative for Equity[18] to the extent it is able to provide assistance to the Board in such training.

D. Monitoring and Reporting

1. Reports. On or before October 15 and April 15 of each year during the term of this Consent Order, the Board will file with the Court a report containing the following information related to the Ruston zone attendance plan and the Board's student transfer policies:

a. A table listing the number and percentage of students, by race, at each school in the Ruston zone, as well as Ruston zone-wide and District-wide student demographics.

b. For each of the four K-5 elementary schools in the Ruston zone, a list of all students, by assigned homeroom teacher, listing each student's name, race, and physical home address (no P.O. boxes). For this reason, the October 15 and April 15 reports SHALL be filed under seal.

c. For each of the four K-5 elementary schools in the Ruston zone, a list of all administrators, teachers, and certificated staff, indicating each employee's job title, position, and race.

d. A spreadsheet providing the following information for all transfer requests made since the prior report for or during the current school year: (a) the name, race, and physical address of the requesting student; (b) the basis for the request; (c) whether the request was granted or denied; and, if the request was denied, the basis for that decision. The Board agrees to

[18] The IDRA South Central Collaborative for Equity is the federally-funded equity assistance center for the region including Louisiana which provides technical assistance, training, and other resources on equity and diversity issues to school districts free of charge.

submit the transfer information in the form of a spreadsheet which, if possible, will be submitted to the United States in an electronic format utilizing Microsoft Excel or a compatible program.

e. A narrative description of the Board's efforts to implement the new student assignment plan since the date of the previous report.

2. Objections. If the United States has any objections to the Board's implementation of the Ruston zone attendance plan or the transfer policy during a given reporting period, such objections will be made, in writing, within thirty (30) days of receipt of the report for subject period. The parties will attempt to resolve any disputes voluntarily but either party may seek the assistance of the Court if they are unable to resolve any issues within a reasonable period of time.

3. Prior Reporting Requirements Superseded. The reporting requirements outlined above will supersede and replace all other reporting requirements ordered by the Court.

E. Modifications. For any modifications to any of the terms of this Consent Order related to the Ruston zone attendance plan or the transfer policy, the Board must seek the United States' consent and obtain approval of the Court through an appropriate motion, which may be filed with or without consent.

V. FINAL TERMINATION

Having found that the Board has satisfied its desegregation obligations in the areas of faculty assignment, staff assignment, transportation, extracurricular activities, and facilities in the operation of the District's schools, the Court hereby declares the Board unitary in those areas, dismisses the permanent injunction as to those issues, and withdraws its jurisdiction over those areas of operation of the District's schools.

Continued judicial supervision of the Board, in its operations of the District's schools, will be limited to ensuring compliance with the terms set forth above regarding the implementation of the Ruston zone attendance plan and the transfer policy. The United States and the Board have committed to negotiate in good faith any disputes that may arise, but either party will 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 meet its desegregation obligations in the remaining areas of its operation of the District's schools if it implements the Ruston attendance zone plan and the transfer policy, both as set forth above. Therefore, upon demonstration of successful implementation of such provisions, the Board may move for a declaration of unitary status on the issue of student assignment no sooner than thirty (30) days after the submission of its October 15, 2013 court report. The applicable provisions of the Federal Rules of Civil Procedure and the local rules of this Court will apply to any such motion.

The United States and the Board specifically agree and the Court finds that this Consent Order will have no effect upon any issues related to the desegregation of the laboratory schools operated at Louisiana Tech University and/or Grambling State University. Particularly, this Consent Order will not affect, in any way, any issues related to any obligation of the Board under or its compliance with any provision of the 1984 Consent Decree relative to the desegregation of the laboratory schools, and the Board will remain a party to this case until it has satisfactorily complied with all such obligations.

SO ORDERED, ADJUDGED, AND DECREED,

this 24th day of May, 2012.

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE

EXHIBIT C

Table 1

Student Demographics in Lincoln Parish, LA (Ruston Zone) Schools
Before and After Implementation of Court-Ordered Elementary Pairing Plan

School	Grade Levels		White		Black		Other	
	2011-12	***2012-13***	***2011-12***	***2012-13***	***2011-12***	***2012-13***	***2011-12***	***2012-13***
Cypress Springs Elem.	K-5	3-5	10.9%	37.0%	85.0%	58.1%	4.1%	5.0%
Glen View Elem.	K-5	K-2	54.4%	41.3%	39.4%	52.0%	6.2%	6.7%
Hillcrest Elem.	K-5	K-2	71.0%	36.7%	25.5%	56.9%	3.5%	6.4%
Ruston Elem.	K-5	3-5	5.3%	35.1%	92.3%	58.9%	2.4%	5.9%
I.A. Lewis Elem.	6	6	33.2%	39.0%	66.1%	53.4%	0.7%	7.6%
Ruston JHS	7-8	7-8	39.0%	39.3%	58.1%	58.9%	2.9%	1.8%
Ruston HS	9-12	9-12	48.4%	48.3%	48.5%	48.3%	3.2%	3.4%
Total K-5			37.8%	37.9%	57.9%	56.1%	4.3%	6.0%
Total			40.6%	41.2%	55.9%	54.0%	3.5%	4.7%

Sources: October 23, 2012 Report by Lincoln Parish School Board, Exhibit 1, at 2 (relevant excerpt appended to this exhibit); Consent Order; United States v. Lincoln Parish Sch. Bd., No. 66-12071, at 5 (W.D. La. May 24, 2012) (attached supra as Exhibit B)

LINCOLN PARISH SCHOOL BOARD

Official October 1 Student Enrollment Report

EXHIBIT 1

ETHNIC/GENDER by SITE for LEA 031
Special Ed Using JSPED

RUN TIME: Tuesday, October 09, 2012 at 08:07

JPAM'S STUDENT INFORMATION SYSTEM
ETHNIC/GENDER BY SCHOOL
AS OF 10/01/2012
SCHOOL SESSION 1213

School	WHITE				BLACK				HISPANIC				ASIAN				USA INDIAN				TOTALS						
	M	F	SUM	%	M	F	SUM	%	M	F	SUM	%	M	F	SUM	%	M	F	SUM	%	M	%	F	%	?	%	SUM
031003 CHOUD	145	136	281	89.8	19	7	26	8.3	4	1	5	1.6					1		1	0.3	169	54.0	144	46.0			313
031004 CYPRE	112	74	186	37.0	146	146	292	58.1	8	10	18	3.6	3	3	6	1.2	1		1	0.2	270	53.7	233	46.3			503
031005 DUBAC	49	35	84	48.0	38	42	80	45.7	4	6	10	5.7		1	1	0.6					91	52.0	84	48.0			175
031006 GLEN	122	114	236	41.3	149	148	297	52.0	11	10	21	3.7	6	10	16	2.8					288	50.4	282	49.4	1	0.2	571
031007 HICO E	54	57	111	64.2	24	27	51	29.5	2	8	10	5.8		1	1	0.6					80	46.2	93	53.8			173
031008 HILLCR	86	69	155	36.7	137	103	240	56.9	14	5	19	4.5	4	3	7	1.7	1		1	0.2	242	57.3	180	42.7			422
031009 I.A. Le	53	60	113	39.0	68	87	155	53.4	4	11	15	5.2	5	2	7	2.4					130	44.8	160	55.2			290
031012 RUSTO	58	72	130	35.1	119	99	218	58.9	8	8	16	4.3	3	2	5	1.4					188	50.8	181	48.9	1	0.3	370
031013 RUSTO	288	267	555	48.3	228	327	555	48.3	15	13	28	2.4	6	3	9	0.8		2	2	0.2	537	46.7	612	53.3			1149
031014 SIMSB	148	149	297	51.9	113	115	228	39.9	22	23	45	7.9						2	2	0.3	283	49.5	289	50.5			572
031018 RUSTO	114	123	237	39.3	178	177	355	58.9	5	4	9	1.5	1	1	2	0.3					298	49.4	305	50.6			603
031020 CHOUD	171	165	336	87.7	16	15	31	8.1	3	12	15	3.9					1		1	0.3	191	49.9	192	50.1			383
? Other																											
Total	1400	1321	2721	49.3	1235	1293	2528	45.8	100	111	211	3.8	28	26	54	1.0	4	4	8	0.1	2767	50.1	2755	49.9	2		5524