UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

UNITED STATES OF AMERICA	**CIVIL ACTION NO. 66-12071**
VERSUS	**JUDGE ROBERT G. JAMES**
LINCOLN PARISH SCHOOL BOARD, ET AL.	**MAG. JUDGE KAREN L. HAYES**

SUPPLEMENTAL CONSENT ORDER

This Consent Order ("Supplemental Consent Order") supplements and extends the Superseding Consent Order ("2012 Consent Order") approved by the Court on May 24, 2012, and arises out of the good faith efforts of Plaintiff United States of America (the "United States") and Defendant Lincoln Parish School Board (the "Board") (together, the "Parties") to address and resolve any school desegregation obligations the Board might have regarding the assignment of students to classrooms within four Board-operated elementary schools located in the Ruston attendance zone. The United States and the Board jointly enter into this Supplemental Consent Order, and the Parties agree to comply with its terms.

The Court, having reviewed the terms of this Supplemental Consent Order, finds that it is consistent with the objectives of the Fourteenth Amendment to the United States Constitution and applicable federal law and, if properly implemented, will complete the orderly desegregation of the Lincoln Parish Schools (the "District") and result in the District being declared unitary on the issue of student assignment. Thus,

IT IS ORDERED that the Joint Motion to Approve Supplemental Consent Order [Doc. No. 150] is **GRANTED**.

IT IS FURTHER ORDERED as follows:

I. PROCEDURAL HISTORY

Since this desegregation lawsuit was initiated by the United States in 1966, the Court has issued several orders to disestablish the Board's dual system of schools. In a decree dated August 5, 1970, the Court specifically "prohibited [the Board] from maintaining any classroom . . . on a segregated basis, so that no student is effectively excluded from attending any class . . . on the basis of race, color, or national origin."

Most recently, on May 24, 2012, the Court approved the 2012 Consent Order which (1) granted partial unitary status and dismissed the case against the Board in the areas of faculty assignment, staff assignment, facilities, transportation, and extracurricular activities in the operation of the Board's schools,[1] and (2) sought to address and resolve outstanding student assignment issues. Pursuant to the 2012 Consent Order, the Board reconfigured the grade levels and attendance zones for Cypress Springs Elementary School ("Cypress Springs"), Glen View Elementary School ("Glen View"), Hillcrest Elementary School ("Hillcrest"), and Ruston Elementary School ("Ruston"). The Board also established a revised student transfer policy to ensure that student transfers do not impede desegregation by permitting intra-district transfers only under a limited set of conditions.

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[1] In the 2012 Consent Order, the United States and the Board specifically agree and the Court found that the 2012 Consent Order would have no effect upon any issues related to the desegregation of the laboratory schools operated at Louisiana Tech University and/or Grambling State University, including 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 that the Board will remain a party to this case until it has satisfactorily complied with all such obligations. *See* 2012 Consent Order at 2 n.3 & 19. This Supplemental Consent Order similarly does not affect or alter the Board's obligations, if any, to desegregate the laboratory schools, which at the time of entry of this Order is the subject of ongoing proceedings before this Court.

Before the Board implemented the 2012 Consent Order, Cypress Springs, Glen View, Hillcrest, and Ruston each served students in kindergarten through grade 5. After reviewing the Board's compliance with its obligations under the operative court orders, the United States determined that three of the four K-5 elementary schools had racially identifiable[2] student populations. Specifically, Cypress Springs (85.0 percent black) and Ruston (92.3 percent black) were schools with black student populations exceeding the zone-wide average by 29.1 and 36.4 percentage points, respectively. The student population at Hillcrest was 25.5 percent black, 30.4 percentage points below the zone-wide average.

To eliminate the concerns of the United States about student racial percentages at the elementary schools in Ruston, the Board agreed to reconfigure the schools by implementing a pairing plan, which changed the grade levels that each school serves. Therefore, starting in the 2012-2013 school year, Hillcrest and Ruston began serving students in grades K-2 and 3-5, respectively, in the newly created Hillcrest-Ruston attendance zone. Glen View and Cypress Springs were reorganized to serve students in grades K-2 and 3-5, respectively, in the new Glen View-Cypress Springs attendance zone. The Court, on May 24, 2012, approved the implementation of the pairing plan and commended the Board for its agreement to do so. The Court also indicated that successful implementation of the pairing plan would resolve the only remaining issue in the case and entitle the Board to a declaration of unitary status and dismissal of the case (with reservation only of the lab school issue).

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[2] The United States defines the term "racially identifiable student population" at the school level as one that is 15 percent or more above or below the parishwide percentage of white and black students in the school system. The Board does not accept this definition, nor does it consider the existence of a school outside this arbitrary racial percentage to be a constitutional violation or a vestige of prior segregation.

The Board implemented the pairing plan beginning with the 2012-2013 school year, and all four (4) of the Ruston elementary schools have had approximately the same school-wide percentage of black and white students since that time. However, after reviewing the Board's October 15, 2013 court report, the United States notified the Board in writing on November 15, 2013 that it had identified what it considered to be significant disparities in the racial composition of homeroom classes at the four elementary schools.[3] The United States was concerned that racial disparities were being perpetuated through a classroom assignment process that is inconsistent with the 2012 Consent Order and the Court's August 5, 1970 Decree prohibiting the Board from operating segregated classrooms. Therefore, the United States sought additional information from the Board, obtained responses to certain of its information requests, and commenced negotiations to resolve its concerns regarding the Board's classroom assignment practices, including ability grouping.

Though the Board contends that ability grouping of students (which had been in effect in Lincoln Parish for many years and had been educationally successful) is not legally prohibited, the Board, in a show of good faith and with a desire to bring this lengthy litigation to conclusion, agreed to discontinue this practice. In any case, the United States maintains that the longstanding use of a practice is not a basis for continuing that practice when it is inconsistent with applicable federal law. The Board maintains that the practice of grouping students by ability (not race) for purposes of instruction is not inconsistent with applicable federal law.

Beginning with the 2014-2015 school year, the Board asserts that it assigned students to homerooms in a racially desegregated manner and without ability grouping. However, on November 20, 2014, after analyzing the Board's October 2014 classroom assignment data, the

[3] There is no language in the 2012 Consent Order specifying how students attending the four (4) elementary schools in Ruston are to be assigned to homeroom classes.

United States sent the Board a letter listing twenty-two (22) homerooms in Ruston elementary schools (out of a total of 87 homerooms) that it determined were racially identifiable,[4] including five (5) homerooms (out of 87) serving only black students.[5] Additionally, the United States expressed concern regarding the racial identifiability of classrooms serving special education inclusion students.

The United States also raised concerns that, despite the purported assignment of Ruston elementary students to homeroom classes on a desegregated basis, a number of the classes had student populations where the black student percentage and/or the white student percentage did not fall within plus or minus 15 percent of the racial composition of that race of students in that grade of that school. The Board does not agree with that position, nor does it feel that such position is supported by case law. The Board contends that, before the Court could order relief, it would first have to determine if a "racially identifiable" homeroom class was a vestige of discrimination and, if so, whether that class is susceptible to further practicable desegregation efforts.[6]

Against this background, the Parties continued to negotiate the classroom assignment process at the Ruston elementary schools. Those negotiations resulted in the classroom assignment process

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[4] The racial make-up of 9 of 22 of the homerooms found by the United States to be "racially identifiable" included the following: Glen View - 2nd Grade (Martin) - 10 B, 9 W; Hillcrest Kindergarten (Adkins) - 7 B, 6 W; Hillcrest 2nd Grade (Colvin) - 10 B, 10 W; Hillcrest 2nd Grade (Oakley) - 11 B, 9 W; Hillcrest 2nd Grade (Williams) - 11 B, 9 W; Ruston 3rd Grade (Owen) - 9 B, 13 W; Ruston 3rd Grade (Sutherland) - 9 B, 12 W; Ruston 4th Grade (Smith) - 8 B, 12 W; Ruston 5th Grade (Beavers) - 10 B, 11 W.

[5] These classrooms included special education inclusion students who were grouped together so that they could be served by the same inclusion teacher.

[6] *Freeman*, 503 U.S. at 498; *Board of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 249 (1991).

described below. The plan seeks to assign elementary students in Ruston to mixed-ability, desegregated homeroom classes.

II. STIPULATED FACTS

The United States conducted an investigation of the Board's classroom assignment practices at Cypress Springs, Glen View, Hillcrest, and Ruston for the 2012-2013 and 2013-2014 school years. During the course of its investigation, the United States analyzed information and data produced by the Board, retained consultants with expertise in classroom assignment, and interviewed the four elementary school principals and other appropriate District administrators. Ultimately, the United States concluded that the District had engaged in a variety of student assignment practices—including grouping students by assigned ability levels, creating "reverse" special education inclusion classes,[7] and implementing an Advanced Learning Academy ("ALA") program—which together resulted in a significant number of racially identifiable and/or racially isolated homerooms at the four elementary schools during the 2012-2013 and 2013-2014 school years. Specifically, with respect to the ALA program, the United States concluded that black students were significantly underrepresented and white students were significantly overrepresented in the program at all four schools during the 2013-2014 school year, which prompted the United States' concerns regarding the ALA program's eligibility and selection criteria, selection process,

[7] Special education inclusion is a practice commonly used by districts to administer support services to special education students within the mainstream setting to provide the least restrictive learning environment required by federal and/or state law. In other words, inclusion allows students with disabilities to learn alongside their mainstream peers. By contrast, the District defined "reverse" inclusion classrooms as classrooms in which special education inclusion students comprised 40 percent or more of the students in the class. Most of these classrooms were comprised of all black or nearly all black students, and the District voluntarily agreed to refrain from creating "reverse" inclusion classrooms in the future.

and process of assigning students to classrooms.

The Board acknowledged that it had grouped students in classrooms by ability for many years, and that such grouping of students had been educationally successful for its students. The Board acknowledged that it had used inclusion classes[8] for most of its special education students rather than self-contained or resource classes[9] and that it had done so successfully for many years. The Board further acknowledged that it began the ALA program during the 2013-2014 school year for students whose parents wanted them to receive higher level learning opportunities during the school day.[10] Though the Board denied that utilization of those classroom assignment practices was improper or resulted in a statistically significant number of "racially identifiable" homeroom classes, it agreed, in the spirit of compromise, to discontinue ability grouping, change the method for utilizing special education inclusion students, and only continue the ALA program as a school-wide enrichment program for all students, beginning with the 2014-2015 school year. As noted below, these concessions by the Board form the basis of the student assignment process before the Court for approval.

III. STIPULATED REMEDIAL MEASURES

The Board agrees to take the following measures to further address the outstanding concerns of the United States relative to assignment of students to homeroom classes at the four (4)

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[8] Inclusion classes are regular classes into which groups of special education students go to receive their instruction from the regular classroom teacher and from a special education teacher who accompanies the students into that classroom.

[9] Self-contained or resource classes are "pull-out" classes where only special education students receive their instruction.

[10] The ALA program was open to all students at the school who read one or more levels above grade level. Any underrepresentation of black students or overrepresentation of white students (as suggested by the United States) resulted from reading level and parental choice.

elementary schools in Ruston. The Board also agrees to take no actions that serve to re-establish its dual system or to impede the implementation of the 2012 Consent Order, this Supplemental Consent Order, or the orderly desegregation of its schools. The Parties agree, and the Court finds, that such relief, as detailed below, if fully and properly implemented, will address the remaining student assignment issues and result in the unitary operation of the District's schools in the area of student assignment.

A. Classroom Assignment Plan

The Board shall assign students at Cypress Springs, Glen View, Hillcrest, and Ruston so as to create racially desegregated, mixed-ability homeroom classes. All students shall be placed in homeroom classes by the school principal. In making such assignments, each principal shall ensure that:

1. There shall be no ability grouping of students and students of all academic levels shall be assigned to each homeroom;

2. If there is an ALA program at the school, it shall be operated as a school-wide, racially diverse enrichment program designed to develop the gifts and talents of all students;

3. Students shall be assigned to each homeroom with a goal that the percentage of black students and white students in each class approximates the percentage of black students and white students in that grade at that school.[11] A homeroom with a percentage of black students and white students that is within plus

[11]Section III.A.1-6 of the Supplemental Consent Order does not apply to students with Individual Education Plans ("IEP") requiring services in self-contained special education classrooms or special education resource rooms for 50 percent or more of the school day.

or minus 15 percent of the black student percentage and the white student percentage of that grade at that school shall be deemed to have met this goal;

4. Students who enroll in a school after the first day of school shall be assigned to the homeroom in the appropriate grade with the fewest number of students. After all classes at a grade level have the same number of students, additional late assignments shall be made in a fashion that is consistent with the goal that each homeroom have a black student percentage and a white student percentage that is within plus or minus 15 percent of the black student percentage and white student percentage at that grade at that school;

5. No homeroom class shall have more than forty (40%) percent special education inclusion students; and

6. The principals and administrative staff at the four elementary schools shall not solicit homeroom assignment requests from students, parents, guardians, and/or teachers. However, to the extent that the schools receive homeroom assignment requests or become aware of preferred homeroom assignments, the principals shall only grant such requests or preferences if the desired homeroom assignment does not impede the desegregation of the elementary school homerooms.

IV. MONITORING AND REPORTING

A. Preliminary Reports Based on Projected Assignments

After completing the initial classroom assignment process described above, each principal shall separately calculate (1) the percentage of black students in each grade level within the school; (2) the percentage of black students assigned to each homeroom within the school; (3) the percentage of white students in each grade level within the school; and (4) the percentage of white

students assigned to each homeroom within the school.[12]

The Board shall submit its calculations to the United States in the form of a written report (the "Preliminary Report"), including supporting data in the form of a list of all students with separate columns identifying each student's assigned homeroom teacher, name, race, grade, physical home address (no P.O. boxes), and whether the student is a special education inclusion student and/or a student with a disability, in an electronic format such as a Microsoft Excel spreadsheet or a compatible program. If the percentages of black and white students in a homeroom are projected to be more than or less than 15 percent of the percentages of black and white students in that respective grade level, the Board shall include in the Preliminary Report a detailed explanation describing the reasons why such class falls outside the plus or minus 15 percent range. In the Preliminary Report, the Board shall also state whether it will re-implement the ALA program at any of the four elementary schools for the upcoming school year. If the Board plans to re-implement the ALA program, the Board shall describe in detail how the program has been remodeled to operate as a school-wide, racially diverse enrichment program. The Board shall submit the Preliminary Report to the United States not later than 14 days before the first day of school. In the event the United States objects to the projected assignments or needs additional information, it will notify

[12] The percentage of black students in each grade level within the school shall be calculated by (1) adding the total number of black students in that grade level at that school divided by (2) the total number of all students in that grade level at that school. The percentage of white students in each grade level within the school shall be calculated by (1) adding the total number of white students in that grade level at that school divided by (2) the total number of all students in that grade level at that school. Students whose IEPs require instruction in self-contained special education classrooms or special education resource rooms for 50 percent or more of the school day shall be excluded from this calculation. If a special education student is assigned to a mainstream or inclusion homeroom but is "pulled out" to receive instruction in a self-contained special education classroom or a special education resource room for less than 50 percent of the school day, such students shall be included in this calculation.

counsel for the Board. If the Parties cannot resolve the issue, the Parties reserve their rights respectively to bring the issue to the attention of the Court.

B. Supplemental Reports Based on Actual Assignments

On or before October 15 and April 15 of each year during the term of this Supplemental Consent Order, the Board shall produce to the United States reports ("Supplemental Reports") containing the following information:

1. For each of the Board-operated elementary schools located in the Ruston attendance zone, a spreadsheet in an electronic format such as Microsoft Excel or a compatible program containing a list of all students with separate columns identifying each student's assigned homeroom teacher, name, race, grade, physical home address (no P.O. boxes), whether the student transferred to the school after submission of the Preliminary Report to the United States and the date on which the transfer occurred, whether the student is a special education inclusion student and/or a student with a disability, and a column indicating students' assessment scores as follows:

a. Kindergarten students' scores on the Developing Skills Checklist, which generally will be administered and scored the week before the first day of school;

b. For students entering grades 1-4, the composite scores and the score levels (e.g., benchmark, strategic, and intensive) from the Dynamic Indicators of Basic Early Literacy Skills ("DIBELS") test administered at the end of the previous school year; and

c. For students entering 5th grade, the scaled scores of the

science and social studies sections of the LEAP exam administered in the spring of the previous school year.

2. For the October 15 Supplemental Report only, a separate affidavit by each of the principals at the four schools that specifically and completely describes the process by which students were assigned to their actual homerooms and explains the results of the assignment process, including a detailed description of the reasons why any homeroom falls outside of the plus or minus 15 percent range.

C. Special Education Inclusion Program

To the extent that the Board operates a special education inclusion program, the Board agrees to administer the program in a non-discriminatory manner consistent with applicable federal law.

D. Objections

If the United States has any objections to the Board's implementation of the classroom assignment plan, such objections will be made, in writing, within sixty (60) days of receipt of the report. 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.

E. Site Visits

The Board acknowledges that the United States may conduct on-site reviews of the Board's schools to evaluate compliance with the terms of this Supplemental Consent Order upon giving reasonable notice to and in consultation with the District to minimize disruption to the educational process in the schools.

F. Modifications

All modifications to the terms of this Supplemental Consent Order require the moving party to seek the consent of the other party and the approval of the Court through an appropriate motion, which may be filed with or without consent.

G. Prior Orders

The 2012 Consent Order, including its reporting requirements, and all other orders of this Court not inconsistent herewith shall remain in full force and effect, except the 2012 Consent Order's final termination provision shall be amended and extended as stated in Section V.

V. FINAL TERMINATION

This Supplemental Consent Order may be terminated, and the termination provision governing the duration of the 2012 Consent Order shall be amended and extended, as follows: "The Board may move for a declaration of unitary status on the issue of student assignment no sooner than sixty (60) days after the submission of its October 15, 2016 court report. The United States will not object to or oppose such motion if the United States determines that the Board has successfully implemented the provisions of the 2012 Consent Order and Supplemental Consent Order."

SO ORDERED, ADJUDGED, AND DECREED,

MONROE, LOUISIANA, this 1st day of June, 2015.

Robert G. James

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE