

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 392-70-N
)	
SCHOOL BOARD OF THE CITY OF)	
SUFFOLK, <i>et al.</i> ,)	
)	
Defendants.)	

CONSENT ORDER

This Consent Order arises out of the good faith, arms-length negotiations of Plaintiff United States of America (“the United States”) and Defendants School Board of the City of Suffolk and Superintendent of Schools of the City of Suffolk (the “Board”) (collectively, the “Parties”) regarding changes to the Board’s student assignment plan necessitated by the opening and closing of certain schools. The Parties maintain that their agreed upon changes set forth in this Consent Order aim to further desegregation in the affected elementary schools, consistent with the Board’s obligations in this case.

The Court, having reviewed the terms of this Consent Order, finds that they are fair, just, reasonable, and consistent with the Board’s remedial obligations in this case and the objectives of the Fourteenth Amendment of the United States Constitution. IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Board, together with its school board members, agents, officers, employees, successors, and all those in active concert or participation with them are hereby directed to implement the provisions herein.

I. Background

During the 2013-14 school year, the City of Suffolk school district (the “District”) had a total enrollment of 14,300 students. The racial composition of the students in the District was 56.4% black, 36.0% white, and 7.6% other. Of the 7,154 elementary school students, 55.2% were black, 36.7% were white, and 8.2% identified as other. The racial composition of each elementary school is provided below:

2013-14 Elementary School Data¹

School	Black		White		Other		Total
Booker T. Washington Elementary School	416	87.76%	34	7.17%	24	5.06%	474
Creekside Elementary School	570	56.32%	297	29.35%	145	14.33%	1012
Driver Elementary School	137	41.39%	178	53.78%	16	4.83%	331
Elephant's Fork Elementary School	428	63.69%	202	30.06%	42	6.25%	672
Florence Bowser Elementary School	97	41.45%	111	47.44%	26	11.11%	234
Hillpoint Elementary School	512	62.75%	242	29.66%	62	7.60%	816
Kilby Shores Elementary School	256	45.80%	271	48.48%	32	5.72%	559
Mack Benn Jr. Elementary School	567	77.46%	125	17.08%	40	5.46%	732
Nansemond Parkway Elementary School	316	57.88%	200	36.63%	30	5.49%	546
Northern Shores Elementary School	303	38.55%	389	49.49%	94	11.96%	786
Oakland Elementary School	233	45.96%	227	44.77%	47	9.27%	507
Southwestern Elementary School	111	22.89%	346	71.34%	28	5.77%	485
Elementary School Total	3946	55.16%	2622	36.65%	586	8.19%	7154

In 2009, the Board informed the United States that it was in the preliminary stages of siting and constructing a new elementary school, which would impact the Board’s student assignment plan. The new school, which has been named Pioneer Elementary School

¹ The data was obtained on March 26, 2014.

("Pioneer"), has opened for the 2014-15 school year. In anticipation of Pioneer's opening, the Board determined that two schools would need to close: Robertson Elementary School ("Robertson") and Southwestern Elementary School ("Southwestern"). Robertson (55% black, 37% white, and 8% other) closed at the end of the 2011-12 school year, and Southwestern (23% black, 71% white, and 6% other) closed at the end of the 2013-14 school year. To ensure that these closures and the new school complied with the Board's desegregation obligations, the Parties engaged in good faith negotiations regarding potential rezoning plans.

The Board has a continuing duty to comply in good faith with its desegregation obligations and to eliminate the vestiges of past discrimination to the extent practicable. This duty extends to the Board ensuring that new school construction and rezoning efforts further desegregation and do not perpetuate or recreate racially identifiable schools. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 21 (1971) ("[I]t is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used and do not serve to perpetuate or re-establish the dual system."); *Harris v. Crenshaw Cnty. Bd. of Educ.*, 968 F.2d 1090, 1095 (11th Cir. 1992) ("[T]he duty to desegregate is violated if a school board fails to consider or include the objective of desegregation in decisions regarding the construction and abandonment of school facilities."). A district's rezoning plan should always move it "toward unitary status." *Everett v. Pitt Cnty. Bd. of Educ.*, 678 F.3d 281, 288-90 (4th Cir. 2012); *see also Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 324 (4th Cir. 2001) (concluding the board had fulfilled its obligations with respect to school sitings because the district had "to the extent practicable, continually endeavored to site schools in order to foster integration").

After engaging in a series of negotiations, the Parties agreed on the plan described below, which includes new attendance zone lines for Pioneer and its adjacent elementary schools, as well as a voluntary majority-to-minority (“M-to-M”) transfer program for these schools. M-to-M transfer programs with free transportation remain a viable desegregative remedy that enable students “in the majority racial group of a particular school to [transfer to] other schools where they will be in the minority.” *Swann*, 402 U.S. at 26. This plan takes into account the Board’s original rezoning goals² while also furthering the goals of desegregation. On May 1, 2014, the Board approved the plan. Since that time the Parties have been negotiating certain terms regarding M-to-M and other transfers, which are reflected in this Consent Order.

II. New Student Assignment Plan

By implementing the negotiated plan, the Board has taken steps to avoid re-establishing the dual system through new school construction and school closures and to further desegregation to the extent practicable given the geography and demographics of the school zones at issue.

A. Rezoning Component

Beginning with the 2014-15 school year, all of the students formerly assigned to Southwestern (approximately 485 students), students in the Southernmost part of the Booker T. Washington Elementary School (“Washington”) attendance zone who live in what was formerly the Robertson attendance zone (approximately 16 students), and students from the Southernmost part of the Elephant’s Fork Elementary School (“Elephant’s Fork”) attendance zone (approximately 23 students) shall be assigned to Pioneer. The Board shall modify its residential

² The Board informed the United States that its goals included: ensuring that seats were reserved for all former Southwestern students and some of the former Robertson students; maintaining a contiguous attendance zone and respecting established neighborhood boundaries to the greatest extent possible; and reducing mobile unit usage at affected schools.

attendance zones for these schools in accordance with the lines depicted in the map attached as Exhibit A and thereafter shall enforce these attendance zone lines. The Board shall ensure that student assignments to Pioneer are made on the basis of residence in the Pioneer attendance zone for the duration of the consent decree except as necessary to comply with the McKinney-Vento Education Assistance Improvements Act of 2001 (“McKinney-Vento”), 42 U.S.C. §§ 11431 *et seq.*,³ to provide necessary accommodations as required by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*; and where the Board has approved a valid M-to-M, employee, or childcare transfer application as discussed below.

B. The M-to-M Transfer Program and Other Transfer Requests

Beginning in the 2014-15 school year, the Board shall implement a voluntary M-to-M transfer program that shall be phased-in over a three-year period. The Board shall make available at least 75 seats for M-to-M transfer students at Pioneer. This number of seats may be increased in subsequent years depending on building capacity and residence-based enrollment at Pioneer. For the 2014-15 school year, the Board shall permit any student in the majority racial group at Washington to transfer to Pioneer. In the 2015-16 school year, if projected enrollment for M-to-M students at Pioneer is less than 75, the Board shall permit any student in the majority racial groups at Washington and either Mack Benn Elementary School (“Mack Benn”) or Elephant’s Fork to voluntarily transfer to Pioneer. In the 2016-17 school year, if projected enrollment for M-to-M students at Pioneer is still less than 75, the Board shall permit any student in the majority racial groups at Washington, Mack Benn, and Elephant’s Fork to voluntarily

³ Children who are assigned to Pioneer on this basis must meet the statutory definition of “homeless children and youth” as provided under McKinney-Vento. 42 U.S.C. § 11434a.

transfer to Pioneer. Students in the majority racial group at Pioneer shall be permitted to voluntarily transfer to Washington beginning with the 2014-15 school year.

Once granted, the Board shall renew M-to-M transfers automatically each year until the students matriculate to the next school level (e.g., middle school) or voluntarily return to their zoned school. The Board shall ensure that M-to-M students have the option to attend the middle school that the majority of the students at their receiving elementary school attend. Thus, the Board shall provide the following options: M-to-M students who choose to attend Pioneer shall have the option of attending Forest Glen Middle School; and M-to-M students who choose to attend Washington shall have the option of attending John F. Kennedy Jr. Middle School. If students opt out of the M-to-M program for middle school, the Board shall assign them to their zoned school based on their residence. When this Consent Order is dismissed, students who have received M-to-M transfers will be grandfathered in and permitted to matriculate through middle school.

The Board shall give siblings preference to participate in the M-to-M transfer program in the event of a waitlist. The Board shall admit other waitlist applicants into the program on a first-come, first-served basis. The Board shall provide free transportation to M-to-M students, and bus routes to Pioneer and Washington shall be reasonable in length.

Each year, the Board shall broadly disseminate information about the availability of the M-to-M transfer program at the participating schools and encourage and permit such transfers for eligible students. The Board shall mail a letter and an accompanying transfer request form with all relevant deadlines to the parents and guardians of all students who are in the majority race at the participating schools based on school enrollment data of the same year. This letter shall inform the parents and guardians that their children are eligible for M-to-M transfers the next

school year and that the Board provides free transportation for M-to-M transfers, and that M-to-M students are permitted to complete the highest grade offered at the receiving elementary school or to return to their zoned school. The Board shall hold information sessions for parents and guardians of eligible students at the participating schools and publicize the M-to-M transfer program through the District's website, the Suffolk News-Herald, and the local education television station.

The Board shall prioritize space at Pioneer for M-to-M transfer requests. Once all approvable M-to-M transfers have been granted, the Board may consider employee transfer requests followed by childcare transfer requests and allocate available space for those transfers. Employee transfers include children of full-time District employees assigned to Pioneer who are verified as actually living with said employees. Parents/guardians seeking employee transfers for their children must complete the employee transfer section of the transfer application. Transfers to Pioneer based on childcare needs may be granted to students if their parents/guardians can demonstrate all of the following: (1) the parents/guardians cannot provide childcare due to their work hours or can provide childcare only at their place of work; (2) the parents/guardians tried, but cannot obtain childcare in the assigned school zone, unless the caretaker is the parent/guardian or an immediate relative of the student who can provide care only at the relative's residence; (3) the location where childcare is to be provided is verified to be within Pioneer's attendance zone; and (4) the student cannot obtain transportation from the assigned school to the location where the childcare is to be provided. Parents/guardians and the childcare provider must complete the Pioneer childcare transfer request forms and sign the affidavits therein. The Board will verify the information in such forms and may approve such transfers only if they comply with the terms of this Order. Parents/guardians and the childcare

provider may be asked to provide supporting documentation if additional information is needed for verification purposes (e.g., letters from employers, documents establishing that the childcare location is within the desired school zone).

The Board shall inform parents and guardians that all M-to-M, employee, and childcare transfer requests to Pioneer shall be submitted to the Board by June 1.⁴ The Board shall submit to the United States by no later than June 15 of each year: (1) a copy of each transfer request to Pioneer, including all supporting documentation, and (2) a list of the proposed transfers by type (e.g., M-to-M, employee, childcare), sending school and receiving school, and the race and grade of the student. For each transfer request, the list will include whether the Board proposes to deny or approve the request. The United States will have until July 15 to raise any objections to the proposed transfers on the bases that the requests do not meet the terms of this Order or have a negative effect on desegregation. The parties will work to resolve all objections before the start of the school year.

During the school year on an as-needed basis, the Board may grant M-to-M, employee, and childcare transfer requests only on the basis of changed circumstances that were not foreseeable by the June 1 application deadline (e.g., parent/guardian was hired to work at Pioneer after the school year started; childcare provider quits or parents' job hours change and necessitate a transfer; student moves to a new attendance zone and establishes eligibility for M-to-M transfer) and if the request otherwise complies with the terms of this Order. The Board will have seven days to review these midyear applications and submit to the United States (1) a copy of

⁴ If the Board hires a new full-time employee at Pioneer after the June 1 transfer application deadline but before the start of the upcoming school year and that employee requests an employee transfer for their child to attend Pioneer, the Board may immediately forward any such application to the United States for review. The United States will have fourteen days to raise any objections.

each transfer request to Pioneer, including all supporting documentation, and (2) a written description of the proposed transfer by type (e.g., M-to-M, employee, childcare), sending school and receiving school, and the race and grade of the student. For each transfer request, the written description will include whether the Board proposes to deny or approve the request. The United States will have fourteen days to raise any objections to the proposed midyear transfer on the bases that the request does not meet the terms of this Order or has a negative effect on desegregation. The Board may deny any transfer requests that are received by the Board when there are 30 instructional days or less remaining in the school year.

Transfers granted to Pioneer (with the exception of M-to-M transfers) will be valid only for the school year for which they were approved. Transfer students who wish to continue to attend Pioneer must reapply for a transfer each year and submit a new request form, including any required documentation.

C. Projected Enrollment

If enrollment figures were derived solely from the students who reside within Pioneer's attendance zone, the anticipated enrollment at Pioneer would be approximately 525 students and the racial composition of the student body would be 22% black, 72% white, and 6% other. These figures, however, do not take into account the desegregative benefits of the M-to-M transfer program. If M-to-M transfer students fill the 75 seats at Pioneer over the next three years and its enrollment rises to 600 students, its racial composition would be 32% black, 63% white, and 5% other. In addition, the sending schools of Washington, Mack Benn, and/or Elephant's Fork should experience some desegregative benefit from the transfers as well.

In May 2014, the Board publicized the M-to-M program through the District's website and the local education television station, sent letters home to parents and guardians of eligible

students, and conducted two information sessions. The Board received 38 applications from Washington students who sought to transfer to Pioneer and 3 applications from Pioneer students who sought to transfer to Washington. As of September 2, 30 of the Washington students have enrolled at Pioneer and 2 Pioneer students have enrolled at Washington. The M-to-M students at Pioneer should increase the percentage of Pioneer's black enrollment from 22% to 25% black in the first year of the phase-in plan.

III. Reporting Requirements

By no later than October 30 of each year, the Board shall provide to the United States and file with the Court the following information with respect to the new student assignment plan:

1. The total number and percentage of students, by race/ethnicity and grade level, assigned to each school operated by the Board.
2. The total number of students who applied to participate in the voluntary M-to-M transfer program; each student's race/ethnicity, grade, sending school (school the student is zoned to attend), and receiving school (school to which transfer is sought); and whether the Board granted or denied the transfer, the reason the Board granted or denied the transfer, and whether the student accepted the transfer and enrolled.
3. The enrollment status of students who enrolled in the M-to-M program in prior years, including the student's race/ethnicity, grade, sending school (school the student is zoned to attend), and receiving school (school to which transfer was initially sought); whether the student is still enrolled in the M-to-M program; and if the student is no longer enrolled in the M-to-M transfer program, the reason that the student is no longer enrolled.
4. The bus routes for the students participating in the M-to-M transfer program, including their length in miles and their duration.

5. The total number of students who made requests for transfers to Pioneer (excluding M-to-M transfers), and for each request, please indicate: the student's grade level, race and ethnicity, sending school, and receiving school; the reason for the transfer request; whether the Board granted or denied the transfer; and the reason for this decision.

IV. Conclusion

All prior orders that do no conflict with this Consent Order remain in full force and effect.

IT IS SO ORDERED, this 18th day of December 2014.

_____/s/
Henry Coke Morgan, Jr.
Senior United States District Judge
UNITED STATES DISTRICT JUDGE
HCM

Respectfully submitted for Court approval:

MOLLY J. MORAN
Acting Assistant Attorney General

By: *Andrea E. Hamilton*
Anurima Bhargava, Section Chief
Emily H. McCarthy, Deputy Chief
Andrea E. Hamilton, Trial Attorney,
NC State Bar # 42878
Attorneys for United States of America
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
Patrick Henry Building, Suite 4300
950 Pennsylvania Ave., NW
Washington, DC 20530
phone: (202) 307-6887
fax: (202) 514-8337
andrea.hamilton@usdoj.gov

DANA J. BOENTE
United States Attorney

By: Susan L. Watt

Susan L. Watt, Va. State Bar # 17733
Supervisory Assistant U.S. Attorney
Attorney for United States of America
United States Attorney's Office
101 W. Main Street, Suite 8000
Norfolk, VA 23510
phone: (757) 441-6331
fax: (757) 441-6689
susan.watt@usdoj.gov

Wendell M. Waller

Wendell M. Waller, Va. State Bar # 23681
Attorney for the School Board and Superintendent
Office of the School Board Attorney
100 North Main Street
P.O. Box 1549
Suffolk, VA 23439-1549
Phone: (757) 925-6752
Fax: (757) 925-6751
wendellwaller@spsk12.net