

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 4706

**STATE OF MISSISSIPPI, *et al.*
(WAYNE COUNTY SCH. DIST.),**

Defendants.

CONSENT ORDER

This is a desegregation case in which the United States filed a complaint on July 9, 1970, seeking to enjoin the Wayne County School District (“District”) from operating a dual school system based on race. On August 11, 1970, this Court permanently enjoined the operation of a dual system of schools within the District, adopted a comprehensive desegregation plan, and directed the District to submit bi-annual reports. Subsequent orders were entered in the case to further the desegregation of the District.

The United States has reviewed the District’s compliance with its desegregation orders and applicable federal law. In the course of that review, the United States made information requests, conducted a site visit of all District schools on February 27-28, 2006, and deposed the principal of Waynesboro Elementary School. The United States also held negotiations with the District to resolve concerns about the publication of the District’s transfer policy, its former race-based selection process for extracurricular activities, and the matters addressed in this order.

As indicated by the signatures of counsel below, the United States and the District respectfully request that the Court approve this Consent Order, which requires that the District cease consideration of race in class assignment, declares that the District has achieved partial unitary status, and establishes a timeline for the dismissal of the case. The Court has reviewed the terms of this Order and finds that it is consistent with the objectives of the Fourteenth Amendment of the United States Constitution and will facilitate the orderly desegregation of the Wayne County School District. Thus, the Court **ORDERS, ADJUDGES AND DECREES** the following:

I. STIPULATED FACTS

The District currently operates four elementary schools (Beat Four Elementary School, Buckatunna Elementary School, Clara Elementary School, and Waynesboro Elementary School), a middle school (Waynesboro Middle School), and a consolidated high school (Waynesboro High School). The total student population is 3,905 students, of whom 2,135 (54.7%) are black. Among all schools, there is no evidence that vestiges of racial discrimination remain in faculty assignment, staff assignment, extracurricular activities, facilities, or transportation. Nonetheless, the United States contends that one discrete vestige of discrimination remains in the District with respect to student assignment. Specifically, the United States asserts that the District improperly considers race in classroom assignment at Waynesboro Elementary School. Although school officials at Waynesboro Elementary use a variety of other factors for classroom assignment (*e.g.*, learning style, reading level, test scores), the explicit consideration of race has resulted in a disproportionate number of all-black classes at the school.

II. LEGAL STANDARDS

The ultimate resolution of a desegregation case depends on whether a school district has achieved “unitary status,” *i.e.*, full compliance with the mandates of the Constitution and existing court orders. Bd. of Educ. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237, 246 (1991). A finding of unitary status requires a district court to determine: (1) whether the school district has shown that it has eliminated all vestiges of past discrimination to the extent practicable, and (2) whether the district has fully complied with, and demonstrated a good-faith commitment to, the desegregation plan and its other obligations under the law. Missouri v. Jenkins, 515 U.S. 70, 89 (1995); Freeman v. Pitts, 503 U.S. 467, 491 (1992); Holton v. City of Thomasville Sch. Dist., 425 F.3d 1325, 1339-40 (11th Cir. 2005).

The Supreme Court has identified six areas, commonly known as the “Green factors,” which must be evaluated to determine whether a school district has eliminated vestiges of *de jure* segregation to the extent practicable: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. Green v. County Sch. Bd. of New Kent County, 391 U.S. 430, 435 (1968); Dowell, 498 U.S. at 250. The Green factors, however, are not intended to be a “rigid framework.” Freeman, 503 U.S. at 493. The Supreme Court has also approved consideration of other indicia, such as “quality of education,” in determining whether a school district has fulfilled its desegregation obligations. Id. at 492.

III. STIPULATED REMEDIAL MEASURES

To remedy the prevalence of racially isolated classrooms at Waynesboro Elementary School, the District shall cease using race as a factor in assigning students to classes by the start of the 2006-07 school year. The District may continue to use all other factors presently used to

assign students. If, however, the District chooses to use any new criteria to assign students to classrooms at any school, it shall notify the United States of the proposed criteria by June 1, 2006.

IV. DECLARATION OF PARTIAL UNITARY STATUS

This Court is satisfied that the Wayne County School District has taken all reasonable steps to remove the vestiges of discrimination in the areas of faculty assignment, staff assignment, transportation, extra-curricular activities, and facilities. Accordingly, the Court **DECLARES** that the Wayne County District schools have achieved **UNITARY STATUS** in the five distinct categories of faculty assignment, staff assignment, transportation, extra-curricular activities, and facilities.

V. FINAL TERMINATION

Continued judicial supervision of this case will be limited to ensuring that the District (1) takes all actions identified in this Consent Order, and (2) refrains from taking any actions that reverse its progress in desegregating the school system. The parties commit to negotiate in good faith any disputes that may arise, but the United States shall have the right to seek judicial resolution of any noncompliance.

In the absence of a pending motion by the United States for further relief, or a ruling by this Court as to the District's non-compliance with this Consent Order or federal law, the District shall achieve full unitary status on July 15, 2009. On this date, but not before, this Consent Order shall terminate, and the Court shall dismiss this case with prejudice.

Until dismissal of this case, the District shall continue to submit bi-annual reports as directed in the August 10, 1970 Order. However, in light of the Court's declaration of partial

unitary status, the District need only report data pertaining to student assignment within the District and school classrooms.

VI. EFFECT OF PRIOR ORDERS

All requirements of prior orders in this case which are not specifically and explicitly modified by this Order shall remain in full effect.

SO ORDERED, this 16th day of May, 2006.

[Signature of Judge Tom S. Lee]

United States District Judge

The following signatures of the counsel to the parties indicate the parties consent to the form and content of this Order.

UNITED STATES OF AMERICA

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