

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 3:70-cv-04706-WHB-LRA
v.)	
)	WAYNE COUNTY SCHOOL DISTRICT
STATE OF MISSISSIPPI, <i>et al.</i> ,)	
)	
Defendants.)	
)	

CONSENT ORDER

This Consent Order arises out of the good faith efforts of Plaintiff United States of America (the “United States”) and Defendant Wayne County School District (the “District”) (collectively, the “Parties”) to address and resolve the District’s ongoing obligations in this school desegregation case with respect to student assignment of children who reside in the Waynesboro attendance zone. This Consent Order supplements and extends all provisions of the May 16, 2006 Consent Order (the “2006 Order”) and August 8, 2008 Consent Order (the “2008 Order”), which addressed the District’s impermissible consideration of race in classroom assignments at Waynesboro Elementary School and prohibited the District from taking any actions that reverse its progress in desegregating the school system, as well as the operative student assignment and reporting provisions of the original desegregation order entered on August 11, 1970 (the “1970 Order”).¹ The United States has reviewed the District’s compliance with the operative orders and has determined that the District has failed to satisfy its student

¹ As the 2006 Order declared the District partially unitary in the areas of faculty assignment, staff assignment, transportation, extracurricular activities, and facilities, 2006 Order at 4, those areas are no longer at issue in this case and the portions of the 1970 Order that apply to those areas have been dismissed. The other relevant procedural history recited in the 2006 Order and 2008 Order will not be repeated here.

assignment obligations with respect to classroom assignment at Waynesboro Elementary School and the school assignment of students who reside in the Waynesboro attendance zone. The parties have negotiated further remedial measures, set forth herein, intended to bring the District into compliance with its student assignment obligations.

This Consent Order is jointly entered into by the Parties. The District agrees to comply with the terms of this Consent Order and the other operative orders in this case. As indicated by the signatures of counsel below, the United States and the District respectfully request that the Court approve this Consent Order. The Court, having reviewed the terms of this Order, finds that it is consistent with the objectives of the Fourteenth Amendment to the United States Constitution and will facilitate the orderly desegregation of the District. Thus, the Court **ORDERS, ADJUDGES, AND DECREES** the following:

I. STIPULATED FACTS

The Wayne County School District has seven schools currently serving 3,669 students. Oct. 5, 2011 Court Report at 1-2. District-wide, the student population is currently 55.5 percent black, 43.6 percent white, and 1.0 percent other. *Id.* Pursuant to the 1970 Order, as modified by subsequent orders, the District is divided into four attendance zones: Beat Four, Buckatunna, Clara, and Waynesboro. The Beat Four, Buckatunna, and Clara zones each have a school serving grades K-8. The Waynesboro zone has an elementary school serving grades K-4 and a middle school serving grades 5-8. The District has one high school and one alternative school.

The student demographics of the District's schools are set forth in Table 1 below. Waynesboro Elementary School and Waynesboro Middle School are racially identifiably black schools, with black student populations 20.2 and 24.1 percentage points above the District-wide average, respectively. The student population at Waynesboro Elementary is currently 75.7

percent black, 22.1 percent white, and 2.2 percent other. Beat Four School and Clara School are racially identifiably white schools, with black student populations 21.8 and 44.1 points below the District-wide average, respectively. Only Buckatunna School, Wayne County High School, and Community Service Center have black student populations within 20 percentage points of the District-wide averages.

Table 1: District Enrollment (2011-2012 School Year)					
<i>Zone</i>	<i>School</i>	<i>Black</i>	<i>White</i>	<i>Other</i>	<i>Total</i>
Beat Four	Beat Four School (K-8)	150 (33.7%)	290 (65.2%)	5 (1.1%)	445
Buckatunna	Buckatunna School (K-8)	265 (59.6%)	180 (40.4%)	0 (0.0%)	445
Clara	Clara School (K-8)	54 (11.4%)	416 (88.1%)	2 (0.4%)	472
Waynesboro	Waynesboro Elementary (K-4)	539 (75.7%)	157 (22.1%)	16 (2.2%)	712
	Waynesboro Middle (5-8)	430 (79.6%)	105 (19.4%)	5 (0.9%)	540
All Zones	Wayne County High (9-12)	586 (56.6%)	442 (42.7%)	8 (0.8%)	1036
	Community Service Center	11 (57.9%)	8 (42.1%)	0 (0.0%)	19
<i>District-wide</i>		2035 (55.5%)	1598 (43.6%)	36 (1.0%)	3669

In the 2005-2006 school year, the United States determined that school officials at Waynesboro Elementary School were explicitly considering race as a factor in classroom assignment decisions, which “resulted in a disproportionate number of all-black or virtually all-black classes at the school.” 2006 Order at 2. That year, as many as twelve of the school’s 38 regular education classes were racially isolated, with zero or one white students enrolled. 2008 Order at 2. The 2006 Order directed the District to “cease using race as a factor in assigning students to classes by the start of the 2006-07 school year.” 2006 Order at 3. According to the District’s semiannual court reports, the number of racially isolated classes decreased to three of 38 classes in the 2006-2007 school year, but increased again to eight of 38 classes in the 2007-2008 school year. To address this ongoing noncompliance, the parties agreed to enter into the 2008 Order, which required the District to report additional information, including the class rosters at Waynesboro Elementary School, two times per semester, in addition to its semiannual court reports. 2008 Order at 3.

The District's various reports submitted to the Court and the United States since 2008 show that the existence of racially isolated classes at Waynesboro Elementary persisted every school year through the 2010-2011 school year. In 2008-2009, five of 38 classes had zero or one white students, and in 2009-2010, eight of 36 classes had zero or one white students. Although no classes had one or fewer white students in the 2010-2011 school year, five classes had only two white students at grade levels in which other teachers had as many as 11 white students. Moreover, the data provided by the District indicated that, year-to-year, several of the same teachers were being assigned above-average or below-average numbers of white students in their classrooms. In some instances, the race of the teacher appeared to correspond to the percentage of white students in the teacher's class. Each year, white students who enrolled after the start of the school year were assigned to teachers with the highest number of white students in their classrooms, exacerbating the racial identifiability of certain classrooms.

Based on the foregoing, the United States concluded that the former Supervisory Principal at Waynesboro Elementary School, who bore primary responsibility for classroom assignment decisions at Waynesboro Elementary School from before entry of the 2006 Order through the 2010-2011 school year, continued to use race as a factor in classroom assignment decisions in contravention of the 2006 and 2008 orders. In April 2011, the United States notified the District, through its counsel and Superintendent, that the District was violating the 2006 Order and 2008 Order. The District agreed to adopt immediate voluntary measures to address the issues outlined above. The District, in consultation with the Southeastern Equity Center, developed a random assignment system for Waynesboro Elementary, which it used to make classroom assignments for the 2011-2012 school year. At the United States' request, the classroom assignment process was undertaken by District-level employees rather than at the

school level. The District included written confirmation that it followed these procedures with its 2011-2012 compliance reports.

A separate student assignment issue came to the United States' attention during the course of its review of the District's compliance with the 2006 Order and 2008 Order. In August 2011, the United States received a written complaint alleging that the District had a practice of permitting white students who resided in the majority-black Waynesboro attendance zone to attend school at the majority-white Clara School, allegedly furthering the racial identifiability of the schools in both the Waynesboro and Clara attendance zones. In communications with the United States, the District acknowledged that such intra-district transfers had previously occurred, but provided information showing that the practice was stopped for the 2011-2012 school year and that the District's schools were required to adopt stricter address verification procedures than had previously been in place. The District agreed to adopt additional measures to ensure that all students in the District attend school in the attendance zone in which they actually reside.

This Consent Order memorializes the parties' negotiated resolution of both the ongoing classroom assignment issues at Waynesboro Elementary School and the intra-district transfers of white students from the Waynesboro zone to the Clara zone.

II. LEGAL STANDARDS

A school system that was previously segregated by law and has not yet achieved unitary status has the affirmative duty to eliminate all vestiges of past discrimination to the extent practicable. *See Freeman v. Pitts*, 503 U.S. 467, 485 (1992); *Board of Educ. of Oklahoma City Pub. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 249-50 (1991); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 458-59 (1979); *Green v. County Sch. Bd. of New Kent County, Va.*, 391 U.S. 430,

437-38 (1968)). The affirmative duty to desegregate is a continuing responsibility, and “[p]art of the affirmative duty . . . is the obligation not to take any action that would impede the progress of disestablishing the dual system and its effects.” *Dayton Bd. of Education v. Brinkman*, 443 U.S. 526, 537-38 (1979). “Each instance of a failure or refusal to fulfill this duty continues the violation of the Fourteenth Amendment.” *Columbus Bd. of Educ.*, 443 U.S. at 458-59. Violation of a court’s desegregation orders, further acts of discrimination, or other actions that impede desegregation or demonstrate a lack of good faith warrant continued enforcement of those orders by the Court. *Freeman*, 503 U.S. at 490, 499.

III. STIPULATED REMEDIAL MEASURES

To ensure that the District satisfies its desegregation obligations in the area of student assignment, the District will undertake the following actions, in addition to those set forth in the 2006 Order and 2008 Order.

A. Classroom Assignment at Waynesboro Elementary School

1. Beginning in the 2011-2012 school year, the District will adopt a random assignment procedure for all classroom assignments at Waynesboro Elementary School. All classroom assignments will be conducted at the District’s central office under the supervision of a District-level administrator. The random assignment system will meet the following conditions:

(a) Prior to initiating the classroom assignment process for each school year, the District will establish a targeted enrollment goal for each class at Waynesboro Elementary School. At each grade level, each class will have the same targeted enrollment figure unless physical classroom capacity or other extenuating circumstances warrant a deviation. In its first classroom roster report submitted prior to each school year, the District will list the targeted enrollment goal for each classroom and explain the basis for any deviations.

(b) No later than thirty (30) days before the first day of the school year, all new and returning students, except as specified below, will be randomly assigned to classrooms. The District may utilize a random assignment system in a manner that ensures a balance of male and female students in each classroom. Students with disabilities and English Language Learner students (ELLs) are exempt from the random assignment system and may be assigned to classrooms and teachers based on their individual needs.

(c) All students who transfer into Waynesboro Elementary School after the initial classroom rosters are created will be randomly assigned to a classroom in which seats are available, as determined by the targeted enrollment goals established pursuant to ¶ III.A.1(a) above.

2. Under no circumstances will requests by a student's parent/guardian for particular teachers or classrooms at Waynesboro Elementary School be considered or honored.

3. No later than ninety (90) days prior to the beginning of the 2012-2013, 2013-2014, or 2014-2015 school years, the District may propose an alternative, race-neutral system for classroom assignment for the United States' review and approval. The United States will consent or object to any such proposal within thirty (30) days. If the United States consents to a proposed alternative system, the parties will jointly petition the Court for appropriate modification of this Consent Order. If the United States rejects any such proposals, the District will continue to use the random assignment system used in the 2011-2012 school year.

4. In the event the former District employee, who held the title of Supervisory Principal at Waynesboro Elementary School at the time the 2006 Order and 2008 Order were entered, becomes reemployed by the District in any capacity, she will not be involved in any way in

classroom assignment processes or decisions for students at Waynesboro Elementary School or any school in the District.

B. Intra-District Transfers

1. The District will not permit any student in grades K-8 to attend or transfer to a school outside of the attendance zone in which the Student actually resides, unless the requested transfer would satisfy the requirements of the majority-to-minority transfer provision contained in ¶ III.B.4. below or the District determines that an exceptional hardship (*e.g.*, health of the student, safety of the student, natural disaster, family emergencies) warrants placement at a school outside of a student's attendance zone of residence. All transfer requests must be made in writing by a student's parent/guardian. The District may only grant an exceptional hardship transfer if the parent/guardian requesting the transfer provides sufficient documentation to the District describing the hardship, explaining why the student's assigned school does not sufficiently accommodate the hardship, and justifying the need for the student's placement at the requested school.

2. The District will maintain all documentation related to transfer requests and keep a record of all transfer requests, which will include, for each transfer request, the following information: (a) the requesting student's name, physical address, attendance zone of residence, grade, and race, (b) whether the request was granted or denied, and (c) the basis for the District's decision to grant or deny the request (specifying the basis for any exceptional hardship transfers). These records and underlying documentation will be produced or made available for inspection by the United States upon request.

3. The District will verify the residency of all students in grades K-8 in the District using a residency verification form approved by the United States. The form and an explanatory notice

approved by the United States must be provided to the parent/guardian of all new students at the time of registration and to the parents/guardians of all returning students on or before the first day of the school year. The form must be completed and returned within ten (10) days of the student's initial enrollment in the District and annually thereafter within ten (10) days of the start of each school year. The District will maintain copies of all signed residency verification forms for the United States' review and inspection upon request.

4. Pursuant to the majority-to-minority ("M-to-M") student transfer provisions of the 1970 Order, the District will encourage and permit any student attending a school in the District in which the student's race is in the majority to attend another school in the District in which the student's race is in the minority. The District will provide transportation to all students who have been granted M-to-M transfers who desire transportation. Once granted, M-to-M transfers will be renewed automatically each year the student is eligible to attend the receiving school, unless the student's parent/guardian requests assignment to the school in the attendance zone in which the student actually resides. The District will provide written notice to all parents of its M-to-M transfer policy, including how to apply for M-to-M transfers, in each student and parent handbook issued by the District. Additionally, no later than thirty (30) days prior to the end of each school year, the District shall send a notice to all parents and guardians of its M-to-M policy and the process for seeking a M-to-M transfer.

C. Monitoring and Reporting

The District will continue to file compliance reports pursuant to the requirements of the 2006 and 2008 orders, as clarified, modified, and supplemented below.

1. The District will continue to produce compliance reports to the United States as required by Section II of the 2008 Order two times per semester, with the following supplemental information:

(a) The first compliance report, to be produced fourteen (14) days prior to the first day of the school year, will: (i) list and explain the targeted enrollment goals for each classroom as required by ¶ III.A.1(a) above; (ii) provide a detailed narrative written description of the procedures used to make classroom assignments, including the names and positions of the District employees involved in the classroom assignment process, the location at which the random assignment procedure was conducted, the date(s) on which classroom assignments were made; and (iii) list all students, by grade level and race, who were exempt from the random assignment process, indicating whether the student has a disability or is an English Language Learner;

(b) The second, third, and fourth compliance reports will include: (i) a list of all students, by grade level and race, who transferred out of the school, enrolled in the school since the previous report, or were assigned to a different class since the previous set of rosters was produced; and (ii) a detailed narrative written description of the procedures used to assign newly-enrolled students to classrooms (including the names and positions of the District employees involved in the decision) and the basis for making classroom assignment changes for any other students; and

(c) Each compliance report will include a CD/DVD containing a Microsoft Excel spreadsheet in native format (PDF files will not be permitted) listing all students currently enrolled in grades K-8 in the District, with each student's name, grade, race, physical home address, attendance zone of residence, and assigned school.

2. The biannual court reports filed annually on October 5 and March 5 will contain information on majority-to-minority transfers as required by the 1970 Order, Attachment B, ¶ III.² This information should include, but is not limited to: (a) a copy of all information on M-to-M transfers provided to students and their parents/guardians, (b) a list of all students, by receiving school and race, of all students who were granted a M-to-M transfer (new or renewal) that school year, indicating the attendance zone in which each student resides, and (c) a list of all students who applied for but were denied a M-to-M transfer, indicating each such student's race, assigned school, requested school, and the basis for the denial.

3. The reporting provision contained in the 1970 Order, Attachment B, ¶ IV, will be supplemented to add the following sentence: "Additionally, state the number of intra-district transfers granted since the previous court report (excluding the majority-to-minority transfers reported in response to ¶ III), including, for each transfer, the student's name, physical address, grade level, race, and attendance zone of residence; the school and attendance zone to which the transfer was made; the basis of the transfer (specifying the basis of any exceptional hardship transfers); and a description of the supporting documentation provided by the student's parent/guardian in support of the requested transfer."

4. The District will also certify in each biannual report that the District has verified the address of each student in grades K-8 pursuant to the requirements of ¶ III.B.2. of this Consent Order.

IV. 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

² That provision requires the District to "[d]escribe the requests and the results which have accrued, by race, under the majority to the minority transfer provision."

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. The District may move for a declaration of complete unitary status no sooner than forty-five (45) days after the United States receives the District's October 5, 2014 compliance report. The applicable provisions of the Federal Rules of Civil Procedure and the local rules of this Court will apply to any such motion.

V. EFFECT OF PRIOR ORDERS

All Orders not inconsistent herewith remain in full force and effect.

SO ORDERED, this 3rd day of January 2012.

[Signature of Judge William H. Barbour, Jr.]
The Honorable William H. Barbour, Jr.
United States District Judge

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

For Plaintiff United States of America:

For Defendant Wayne County School District:

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Dated: 12/16/2011

Dated: 12/15/11