

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

JOHN McFERREN, JR., et al.)	
)	
And)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiffs,)	
)	CIVIL ACTION No. 2:65-cv-00136-STA
v.)	
)	
COUNTY BOARD OF EDUCATION OF)	
FAYETTE COUNTY, et al.,)	
)	
Defendants.)	
_____)	

CONSENT ORDER

Having reviewed the terms of this Consent Order and having found that its entry is consistent with the objectives of the Fourteenth Amendment of the United States Constitution and will further the desegregation of the Fayette County School District to the extent practicable, the Court approves this Consent Order, which shall serve to supersede, modify, and otherwise replace the Court’s prior Order of August 21, 2012, and directs the County Board of Education of Fayette County (“District”) to implement the following Desegregation Plan.

INTRODUCTION

On August 21, 2012, this Court approved a Consent Order in this case and directed the District to implement the desegregation plan contained therein. That desegregation plan was the culmination of more than two years of negotiations between the parties and was designed to remedy persistent racial disparities in the District’s elementary schools. According to the District’s 2012 Annual Report, student enrollment at the schools during the 2012-13 school year was as follows, with the red cells indicating schools that fell outside +/-15 percentage points of

the district-wide elementary enrollment percentages by race:

<i>Fayette County -- Student Assignment 2012-2013 (Annual Report)</i>									
	Grade	Black	%	White	%	Other	%	Total	Cap.
Fayette-Ware	9-12	628	69.8%	245	27.2%	27	3.0%	900	1,300
HS Total		628	69.8%	245	27.2%	27	3.0%	900	1,300
East	6-8	290	70.2%	100	24.2%	23	5.6%	413	600
West	6-8	189	45.2%	208	49.8%	21	5.0%	418	500
MS Total	6-8	479	57.6%	308	37.1%	44	5.3%	831	1,100
Oakland	PK-3	207	32.2%	373	58.0%	63	9.8%	643	700
Southwest	4-5	94	37.3%	141	56.0%	17	6.7%	252	400
Northwest	PK-5	96	72.7%	22	16.7%	14	10.6%	132	300
Central	PK-5	185	60.1%	106	34.4%	17	5.5%	308	400
Jefferson	PK-5	118	79.2%	20	13.4%	11	7.4%	149	300
Somerville	PK-5	110	39.4%	159	57.0%	10	3.6%	279	350
LaG./Moscow	PK-5	241	77.2%	54	17.3%	17	5.4%	312	500
ES Total		1051	50.7%	875	42.2%	149	7.2%	2075	2,950
TOTAL		2158	56.7%	1428	37.5%	220	5.8%	3806	

Pursuant to the 2012 Consent Order, the District was required, *inter alia*, to close Jefferson Elementary School and Somerville Elementary School, which is located 3.5 miles from Jefferson and was first ordered to be closed in 1975. The District also was required to construct a new elementary school with capacity for 600 students; adopt new residential attendance zones; implement a controlled choice program; and create a magnet program at Northwest Elementary School.

Due to changed circumstances in the District and to ensure greater certainty in desegregating its elementary school enrollments, the District began developing an alternative student assignment plan in the fall of 2012 as a replacement for the 2012 student assignment plan. On April 30, 2013, the District presented its draft plan to the other parties, who conducted independent examinations of the underlying student locator data and projected student

enrollments at the various schools, as well as burden analyses to assess the impact of the plan on the students with respect to transportation and relocation. The private Plaintiffs and the United States also evaluated alternative plans, and through negotiations the parties were able to agree on the following desegregation plan.

DESEGREGATION PLAN

Consistent with its desegregation obligations, the District shall comply with the terms of this Consent Order and, unless otherwise stated below, the District shall ensure that all of the changes to its student assignment policies and practices required by this Consent Order shall take effect at the beginning of the 2014-15 school year.

A. **School Construction and Consolidation:** Pursuant to the August 21, 2012 Consent Order and consistent with the funding authorization of the Fayette County Commission, attached as Exhibit 1, the District shall construct a new elementary school (“New School”) in Somerville at a site known as “the North Campus.” The New School shall have sufficient capacity to enroll up to 900 students. The District also will cease using the Central, Jefferson, Northwest, and Somerville facilities as elementary schools.

B. **New Attendance Zones:** The District shall operate four elementary schools – the New School, LaGrange-Moscow, Oakland, and Southwest – and shall modify its residential attendance zone boundaries for these schools in accordance with the lines depicted in the maps attached as Exhibits 2 and 3. The District shall assign all students to attend the school located within their residential attendance zone (“zoned school”) with certain exceptions delineated below. Consistent with the October 4, 2010 Order, the District also shall implement the address verification provisions of District Policy 6.205, which is attached as Exhibit 4, and any modifications to Policy 6.205 must receive Court approval before they are implemented.

Using student data from the 2012-13 school year, the projected enrollments at the District's elementary schools after they are consolidated and the new attendance zones are adopted are as follows:

<i>Fayette County – Elementary Assignment Projection Based on 2013 Data</i>									
	Grade	Black	%	White	%	Other	%	Total	Cap.
Oakland	PK-5	221	36.0%	326	53.1%	67	10.9%	614	700
Southwest	PK-5	142	46.7%	149	49.0%	13	4.3%	304	400
New School	PK-5	326	57.8%	210	37.2%	28	5.0%	564	900
LaG./Moscow	PK-5	200	63.1%	97	30.6%	20	6.3%	317	500
TOTAL		889	49.4%	782	43.5%	128	7.1%	1799	

C. **School Pairings**: The District shall reconfigure the Oakland and Southwest elementary schools, which are currently paired, to become stand-alone pre-kindergarten through fifth-grade (PK-5) schools.

D. **Controlled Choice**: The District shall establish and operate a controlled choice program to include the modified school zones of Oakland and the New School as depicted in Exhibits 2 and 3. The District shall operate the controlled choice program pursuant to paragraphs 1 through 9 below.

1. The District shall assign all grade K-5 students who reside within this controlled region area using a random computerized program, which shall be designed and implemented by a third-party consultant retained by the District with the advance input and approval of the Private Plaintiffs and the United States, which shall not be unreasonably withheld.

2. The District's controlled choice system shall assign students to Oakland and the New School based on their ranked preferences between the two schools provided that student racial diversity is achieved each school year and the capacity limitations of

the schools are not exceeded. As used herein, the phrase “student racial diversity” is +/- 15 percentage points of the district-wide proportion of the African-American and White elementary students based on the District’s enrollment as reported to the Court October 15 of the preceding school year.

3. In addition to students’ ranked school choices, the District may design its computerized controlled choice program to consider other weighted factors in the assignment decision, including, but not limited to, sibling preference, school proximity, socioeconomic status, and students’ individualized education plans, provided those factors have no segregating effect detrimental to the achievement of student racial diversity and do not have the effect of disproportionately burdening African-American students.

4. Once students are assigned according to the controlled choice system, they may remain in the assigned school unless or until they choose to reapply in the controlled choice process.

5. Students enrolled in pre-kindergarten are exempt from the District’s school assignment policy, and the District may consider non-discriminatory factors, such as class size and parental schedules, in assigning pre-kindergarten students to schools, although it is anticipated that pre-kindergarten students will be assigned to their zoned schools.

6. During the 2014-15 school year, students in grades four (4) and five (5) may be exempt from the controlled choice program and remain in their zoned schools at the option of the District, provided the District uniformly grants all such requests.

7. Students who (a) move into the controlled choice region after the start of

each school year or (b) who reside in the controlled choice region and either register for the first time in or otherwise return to the District shall be assigned pursuant to the controlled choice process.

8. The assignment of students pursuant to the controlled choice system shall occur annually by April 30, following any magnet school assignments and all initial intra-district transfer decisions, including majority-to-minority (“M-to-M”) transfers.

9. The District shall provide free transportation to all students who reside in the controlled choice region and are not assigned to their zoned school.

E. **Magnet School**: If the District elects to operate an elementary magnet school, the parties have agreed that it shall do so at LaGrange-Moscow, and it shall do so pursuant to paragraphs 1 through 6 below.

1. The District shall allow all students residing in the LaGrange-Moscow attendance zone to enroll in the magnet school and shall allocate all remaining capacity at the school to students applying to the magnet school from outside of the LaGrange-Moscow zone.

2. If the number of applicants for the magnet school together with the expected number of zoned students exceeds the capacity of LaGrange-Moscow, the District shall use a random lottery selection process to select applicants and achieve student racial diversity at LaGrange-Moscow. The District shall ensure that the process is conducted with fairness and integrity.

3. The District’s random lottery selection process shall provide preference for students who would otherwise qualify as M-to-M transfers and for other preferences desired by the District (*e.g.*, sibling preferences) provided those preferences help achieve

student racial diversity at LaGrange-Moscow and have no segregating effect.

4. The District will implement a systematic and intensive publicity and recruitment plan to enhance the racial diversity of student applications to the magnet school, including targeted advertisements in local media.

5. The magnet school curriculum will be fully integrated into the school so that all students, zoned or magnet, will have the opportunity to participate in the magnet.

6. The District will provide free transportation to non-zoned students from designated pick-up points that are not burdensome on such students and do not negatively affect their willingness to apply to the magnet school.

F. **School Transitions:** Prior to the start of the 2014-15 school year, the District shall host two transition programs at LaGrange-Moscow, the New School, Oakland, and Southwest for all elementary students who will be attending a new school because of the changes to student assignments required by paragraphs A through E above, although the District may use an alternative location for the New School transition programs if construction of the facility is still under way. If construction delays or prevents the orientation programs from occurring at the New School prior to the start of the 2014-15 school year, the District shall host an open house at the facility within one week of its opening for classes. The first program shall consist of a half-day welcoming class to allow the students to tour the school and meet the faculty and staff who will be working with them. The second program shall consist of a half-day orientation for both students and their parents. The District shall provide free transportation to these transition events for both students and parents. The District also shall provide written notices to all parents informing them about these events at least thirty (30) before they take place.

G. **After-School Support Programs:** The District shall initiate and operate a pilot

after-school support program at Oakland and the New School designed to provide additional academic support to students who previously attended Central, Jefferson, and Northwest and were reassigned to their new schools. To assist these students with their school transition, the after-school program will include educational tutoring as well as other supportive instruction, such as conflict resolution and character education. This program will be administered through Fayette Literacy, a local non-profit, supervised by a campus liaison and staffed by volunteer tutors from the community and secondary schools. The program will be held three days a week, on Monday, Tuesday and Thursday, for one hour composed of two 30-minute sessions. Tutoring will be provided for grades 1 through 5 and engagement activities will be available for PreK and kindergarten students. The District shall provide snacks and free transportation to students who participate in the program.

H. **Junior High Schools:** The District shall continue to operate two junior high schools (“JHS”) – East and West – and shall modify its residential attendance zone boundaries and feeder patterns for these schools in accordance with the lines depicted in the maps attached as Exhibit 5, so that Oakland and Southwest feed into West JHS and the New School and LaGrange-Moscow feed into East JHS.

Using student locator and enrollment data from the 2012-13 school year, the projected enrollments at the junior high schools in the 2015-16 school year, when the current fifth-grade students matriculate to the eighth grade, are as follows:

<i>Fayette County – Junior High Assignment Projection for 2015-16 Based on 2013 Data</i>									
	Grade	Black	%	White	%	Other	%	Total	Cap.
East	6-8	267	62.2%	145	33.8%	17	4.0%	429	600
West	6-8	166	39.3%	222	52.6%	34	8.1%	422	500
TOTAL		433	50.9%	367	43.1%	51	6.0%	851	

I. **M-to-M Transfers:**

Pursuant to the February 5, 2009 Consent Order, the District shall broadly disseminate information about the availability of M-to-M transfers and encourage and permit such transfers so that any student attending a school in which his/her race is in the majority may choose to attend another school in the District where his/her race is in the minority. Annually, by no later than February 21, the District shall mail a letter and an accompanying transfer request form to the parents or guardians of all grade K-7 students who are in the majority race at their school based on school enrollment data for January 15 of the same year. This letter shall inform the parents that they are eligible for M-to-M transfers the next school year and that the District provides free transportation for M-to-M transfers. The letter also shall inform parents that M-to-M transfer requests for the next school year must be received by the District's office no later than March 15 to be considered, and the District shall notify parents whether their transfer requests were granted by no later April 15. The District shall evaluate and grant when appropriate any M-to-M transfer request submitted by any current student who changes his/her residence or any new student who moves into the District after March 15, provided that the student submits the transfer request no later than ten (10) business days before the start of the next school year.

Once granted, M-to-M transfers shall be renewed automatically each year until the students matriculate to the next school level (*e.g.*, junior high or high school) or voluntarily return to their zoned schools. The District shall grant new M-to-M transfers prior to the assignment of students through the controlled choice program. Students who transfer from a school outside the controlled choice area to a school within the controlled choice area through an M-to-M transfer may not subsequently seek a reassignment under the controlled choice program.

J. **Intra-District Transfers:**

The District shall not permit any intra-district transfers except those authorized by the District's revised Policy 6.206 Transfers Within the System, attached as Exhibit 6, and no transfers shall have a cumulative negative impact on the desegregation of the sending or receiving schools so as to cause the sending or receiving schools to fall outside +/-15 percentage points of the district-wide elementary enrollment percentages by race. Any modifications to Policy 6.206 must receive Court approval before they are implemented.

K. **Transportation:** The District shall revise transportation routes in a non-discriminatory manner to reflect the modified attendance zones with a commitment to limit travel time for students as is reasonably practicable. As noted above, the District shall provide free transportation to all students who reside in the controlled choice region and are not assigned to their zoned school, as well as to all students who received M-to-M transfers and/or who participate in the pilot after-school program. The District shall ensure that parents are notified that transportation is available under the M-to-M transfer and controlled choice programs.

L. **School Construction and Renovations:** Before the District constructs any schools not identified in this Consent Order or renovates any school in a manner that alters the facility's capacity or otherwise impacts student assignments, the District shall first notify the other parties to this case in writing. The notice to the parties shall include, where relevant: the proposed location of the new school; a description of the proposed construction/renovation; a summary of how the proposal will impact student assignments to the schools; the projected method of assigning students, including tentative zone lines, if any; and the projected impact on the racial compositions of the schools. The District also shall file a motion for and obtain Court

approval for the proposed construction of any new school or renovations to an existing school that alters the facility's capacity or otherwise impacts student assignments, although such motions shall not be filed until private Plaintiffs and the United States have had sixty (60) days to review the above-referenced notice or consent to an earlier filing in writing. This Order shall not prohibit the District from conducting regular school maintenance or restoring without Court approval facilities that might be damaged or destroyed by a casualty or event such as fire or weather so long as the maintenance or restoration does not alter the facility's capacity or otherwise impact student assignments.

The District must provide private Plaintiffs and the United States with written notice of intent to purchase any land not adjacent to current school property and allow them a reasonable opportunity to object. The notice shall identify the property to be acquired, the property's anticipated purpose, and its probable impact, if any, on student assignments to schools. The notice also shall identify any issues that may require expedited closure on the property.

M. **Faculty and Staff Assignments:** The District shall assign teachers, administrators, professional support staff, and teacher assistants so that those assignments to each school reflect employee racial diversity. As used herein, the phrase "employee racial diversity" is +/-20 percentage points of the district-wide racial proportion of African-American and White staff for each class of employees at the relevant school levels (*e.g.*, elementary, junior high, and high school).

When there is a reduction in the number of principals, teachers, or other certified staff employed by the District that results in a dismissal or demotion of any such staff members, including any reductions in force attributable to the elementary school consolidation described above, the District must first adopt policies to ensure that the employees to be dismissed or

demoted are selected on the basis of objective and reasonable non-discriminatory criteria. Consistent with § 49-5-511 and § 49-2-301 of the Tennessee Code, any teacher or staff member who is terminated or demoted due to a reduction of force shall be considered for reemployment for any vacancy the District advertises or fills within two years of the individual's termination, so long as the individual is qualified for the vacancy based on his/her training and experience. The District shall fill any such vacancies based on non-discriminatory factors.

N. **Cultural Competency Professional Development:** Prior to the 2014-15 school year, the District shall require the teachers and staff who work closely with students at Oakland and the New School to take cultural sensitivity and competency training as part of their professional development. This training shall teach employees how to work effectively with students and parents from diverse racial, cultural, and socioeconomic backgrounds. This training shall be taught by the administrator of the after-school support programs and a staff member from each of the two schools after they have attended the "Mentoring for Equity" course offered at the University of Memphis, or, if the aforementioned course is no longer available, a comparable course. The curriculum for the training and all related materials developed within the District to facilitate the training contemplated in this Consent Order shall be provided to the private Plaintiffs and the United States at least thirty (30) days before the training of the employees. Prior to the 2015-16 school year, the District also shall require the teachers and staff who work closely with students at the remaining schools to take the cultural sensitivity and competency training as part of their professional development.

The District also shall require teachers and staff to attend a seminar on "Poverty and Education," and receive training on the District's Positive Behavior Intervention Strategies program. The District also shall confer with the Director of the Southeastern Equity Assistance

Center (“SEAC”) and request information about possible technical assistance that the SEAC can provide the District.

O. **Advanced Placement & Gifted Classes:** The District will continue Advanced Placement English and History and will implement advanced biology at Fayette-Ware High School. The District will implement advanced math at Fayette-Ware High School for the 2013-14 school year. The District will also provide identical gifted services (High Achievers Program, or HAP) at every elementary school.

IMPLEMENTATION AND MONITORING

The District shall implement all components of the Desegregation Plan by no later than the beginning of the 2014-15 school year. The District may file a motion for a declaration of unitary status and dismissal of this case no earlier than the end of the 2016-17 school year, and the District must demonstrate it has eliminated the vestiges of segregation to the extent practicable through substantial good faith compliance with all components of this Consent Order and all other extant orders.

The District shall retain all documents used to prepare the reports described below, and private Plaintiffs and the United States shall have the right to inspect all records related to the District’s efforts to comply with this Consent Order and the parties will cooperate to exchange such information. The District also will file with the Court and provide to Plaintiff parties annual reports no later than October 15 of each school year until the Court enters an Order granting full unitary status to the District. Such reports will contain:

1. The total number and percentage of students, by race/ethnicity and grade level, assigned to each school operated by the District.
2. For each classroom in each school, the total enrollment in the class,

by race/ethnicity; grade served; and the subject or program of the class, specifically indicating any groupings or assignments by ability, achievement, or other basis such as advanced placement or honors classes, programs for students with intellectual or specific learning disabilities, gifted and talented programs, or limited English proficient classes.

3. The total number of students who have requested intra-district transfers, indicating for each such request the student's race/ethnicity, grade, zoned school, receiving school, reason for transfer request, and the reason for granting or denying the transfer. The District will provide the same information for inter-district transfers.

4. The total number and percentage of teachers and administrators, by race/ethnicity and position, assigned to each school operated by the District, specifically indicating all full-time teachers, part-time teachers, principals and assistant principals, and other certified personnel such as guidance counselors and librarians.

5. The total number and percentage of non-certified staff, by race/ethnicity and position, assigned to each school operated by the District.

6. If a magnet program is planned for at LaGrange-Moscow, updated information concerning decisions made and actions taken to implement the magnet program.

7. If magnet program becomes operational at LaGrange-Moscow, a report indicating the total number and percentage of students who applied for admission to the magnet program, by race/ethnicity, grade level, zoned school, and whether the students were granted or denied admission to the magnet program.

8. In addition to its annual October 15 report, the District shall provide private Plaintiffs and the United States within thirty (30) days of any reduction in force caused by the school consolidation as defined in this Consent Order, a list of employees by name, race, and

position who are terminated or demoted due to the reduction in force. The District shall include in its annual October 15 report a list of all vacancies filled with terminated or demoted employees from the reduction in force list.

CONCLUSION

This Consent Order shall serve to supersede, modify, and otherwise replace the Court's prior Order of August 21, 2012. All other prior orders that do not conflict with this Consent Order remain in full force and effect.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: July 12, 2013

WE SO CONSENT:

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