IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA, Plaintiff, and CHARLES RIDLEY, et al., Plaintiff-Intervenor, v. STATE OF GEORGIA *et al.,* (DUBLIN CITY SCHOOL DISTRICT) Defendants.	)	Civil Action No. 3009

UNITED STATES' OPPOSITION TO MOTION FOR DECLARATION OF UNITARY STATUS AND TO DISMISS DEFENDANT DUBLIN CITY SCHOOL DISTRICT

SUMMARY

The United States submits this legal memorandum as its initial response in opposition to the Motion for Declaration of Unitary Status and to Dismiss Defendant Dublin City School District ("Motion to Dismiss"), which was filed on June 9, 2004. This memorandum sets forth the legal standards for the achievement of unitary status and dismissal in a school desegregation case and demonstrates why Dublin cannot meet them at this time. As explained below, Dublin's Motion to Dismiss should be denied because Dublin has violated the 1971 and 1978 Orders and should show cause why it should not be held in contempt. Dublin is attempting to avoid the show cause hearing by filing its Motion to Dismiss, but its Motion is entirely premature. If the United States prevails at the show cause hearing, Dublin's violations and lack of good faith

would preclude the relief Dublin seeks, dismissal of this case. Resolving the class assignment violations, which the United States has been trying to resolve for a long period of time, and the inter-district transfer violations, which are exacerbating Dublin's segregative class assignment practices, should not be held up by unitary status proceedings regarding all of the other areas of Dublin's operations. The Court's attention should be directed toward these violations so that they may be addressed now.

For these reasons, Dublin's Motion to Dismiss should be denied, or at least held in abeyance until the United States' Motion to Enforce is resolved. If the Court, however, allows the Motion to Dismiss to go forward, the United States opposes in the areas of class assignments and transfers and will need discovery in the other areas to determine whether it will oppose in those areas as well. At the close of that period of discovery, the United States would file a supplemental response to the Motion to Dismiss identifying the areas in which the United States opposes unitary status. Even if the Motion to Dismiss proceeds at this time, the show cause hearing should be held prior to the unitary status hearing because the former may obviate the need for the latter.

DISCUSSION

I. The Legal Standards for a Declaration of Unitary Status

The legal standards for achievement of unitary status are well-established by the Supreme Court and Eleventh Circuit case law. The first inquiry raised by a unitary status motion is equivalent to the one raised by the United States' Motion to Enforce: "whether the Board has complied in good faith with the desegregation decree since it was entered . . . ." Freeman v. Pitts, 503 U.S. 467, 492 (quoting Bd. of Educ. v. Dowell 498 U.S. 237, 249-50 (1991)) (emphasis

added); see also Missouri v. Jenkins, 515 U.S. 70, 89 (1995); N.A.A.C.P., Jacksonville Branch v. Duval County Sch. 273 F.3d 960, 966 (11th Cir. 2001) (citing Jenkins, 515 U.S. at 88). Moreover, the Supreme Court has made clear that to obtain even partial unitary status,[1] "full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn" is required. Freeman, 503 U.S. at 491 (emphasis added). When assessing compliance with consent orders, the courts are to interpret the terms of the orders under principles of contract law. Duval, 273 F.3d at 966 (citation omitted).

The second inquiry raised by a unitary status motion is "whether the vestiges of past discrimination had been eliminated to the extent practicable." Freeman, 503 U.S. at 492 (quoting Dowell 498 U.S. at 249-50); Jenkins, 515 U.S. at 89 (same); Duval, 273 F.3d at 966 (same). To answer this inquiry, "the district court must examine six areas: (1) student assignments; (2) facilities; (3) faculty; (4) staff; (5) transportation; and (6) extracurricular activities." Duval, 273 F.3d at 966 (citing Green v. County Sch. Bd., 391 U.S. 430, 435 (1968)). In addition to the Green factors, federal courts may examine other factors, such as quality of education, to "determine whether minority students [are] being disadvantaged in ways that require[] the formulation of new and further remedies to ensure full compliance with the court's decree." Freeman, 503 U.S. at 492. Until unitary status is attained, "a presumption arises that all racial imbalances in [the] school district are the result of the *de jure* segregation," and the district bears the burden of "prov[ing] that the imbalances are not the result of present or past discrimination on its part." Manning ex rel. Manning v. Sch. Bd. of Hillsborough County, Fla., 244 F.3d 927,

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[1] Dublin has not moved for partial unitary status, but even if it had, it could not obtain it. While a federal court may dismiss an area where full good faith compliance has been achieved and the vestiges have been eliminated "before full compliance has been achieved in every area of school operations," it may not dismiss any part of the case if there is a lack of a good-faith commitment "to a course of action that gives full respect to the equal protection guarantees of the Constitution." Freeman, 503 U.S. at 490. See infra discussion of good-faith commitment at 4-5.

942 (11th Cir. 2001). To overcome this presumption, the district must prove that "external forces, such as demographic shifts, which are not the result of segregation and are beyond the board's control" have caused the racial disparities. Id. at 941. The failure or refusal of a district to fulfill its "affirmative duty" to eradicate the vestiges of its prior dual school system continues the constitutional violation. Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 459 (1979); United States v. Lawrence County Sch. Dist., 799 F.2d 1031, 1044 (5th Cir. 1986).

The third and last inquiry is "whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance." Jenkins, 515 U.S. at 89 (quoting Freeman, 503 at 491); Lockett v. Bd. of Educ. (Lockett II), 111 F.3d 839, 843 (11th Cir. 1997). The good faith component has two parts; a school district must show not only past good faith compliance, but also a good faith commitment to the future operation of the school system. See Dowell, 498 U.S. at 247 (the court must inquire into whether it is "unlikely that the school board [will] return to its former ways"); Brown v. Bd. of Educ., 978 F.2d 585, 592 (10th Cir. 1992) ("specific policies, decisions, and courses of action that extend into the future must be examined to assess the school system's good faith."). As the Supreme Court explained, "a history of good-faith compliance is evidence that any current racial imbalance is not the product of a new *de jure* violation, and enables the district court to accept the school board's representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future." Freeman, 503 U.S. at 498; Lockett II, 111 F.3d at 843. Dublin bears the burden of establishing affirmative responses to all three inquiries regarding its compliance, vestiges, and good faith.

When a district cannot satisfy the good faith inquiry due to violations of its orders, enforcement of the orders and/or further relief by the Court is entirely warranted. See Freeman, 503 U.S. at 499 ("When a school district has not demonstrated good faith under a comprehensive plan to remedy ongoing violations, we have without hesitation approved comprehensive and continued district court supervision.") (citing cases). Additionally, if a district's future plans do not demonstrate a good faith commitment to maintain an environment free of discrimination, retained court supervision is appropriate. See, e.g., Dowell v. Bd. of Educ., 8 F.3d 1501, 1513 (10th Cir. 1993) (examining "future-oriented board policies" to determine if they "manifest[] a continued commitment to desegregation"); Brown, 978 F.2d at 592. The district must demonstrate its "affirmative commitment to comply in good faith with the entirety of a desegregation plan," and not just that it "had [not] acted in bad faith or engaged in further acts of discrimination since the desegregation plan went into effect." Freeman, 503 U.S. at 499. Violations of a court's orders, further acts of discrimination, or other actions that demonstrate a lack of good faith preclude dismissal of a desegregation case and any area therein. See id. at 490 ("[O]ne of the prerequisites to relinquishment of control *in whole or in part* is that a school district has demonstrated its commitment to a course of action that gives full respect to the equal protection guarantees of the Constitution.") (emphasis added).[2]

[2] In Freeman, the lower court found the district had fully complied in all areas except the assignment of minority teachers and administrators and quality of education. 503 U.S. at 481-83. The lower court found that "there was no intentional violation" with respect to quality of education, id. at 483-84, and "did not find that [the district] had acted in bad faith or engaged in further acts of discrimination since the desegregation plan went into effect." Id. at 499. The Supreme Court, however, made clear that this was not enough to satisfy the good faith inquiry needed for dismissal of any area and remanded for further proceedings regarding this inquiry. Id.

II. Dublin's Motion to Dismiss Should Be Denied or At Least Held In Abeyance Until the United States' Motion to Enforce and Show Cause Hearing Are Resolved

Dublin has moved to dismiss this case but has provided no factual support for its motion. Dublin merely asserts that it "will show that (1) it complied in good faith [sic] the desegregation decree entered in this action for a reasonable period of time, and (2) the vestiges of prior *de jure* segregation have been eliminated to the extent practicable in every facet of school operations in the School District." Br. in Supp. of Mot. to Dismiss at 4. Dublin, however, bears the burden of making these two showings as well as a showing of a past good faith commitment to the whole of the decree and a good faith commitment to operating the district in a non-discriminatory manner in the future. See Jenkins, 515 U.S. at 89 (quoting Freeman, 503 at 491); Brown, 978 F.2d at 592. Dublin has presented no evidence suggesting that it could meet its burden, and the evidence in support of the United States' Motion to Enforce already shows (and additional evidence that would be presented at a show cause hearing would further show)[3] that Dublin cannot satisfy its burden. Therefore, the Court should deny Dublin's Motion to Dismiss, or at least hold it in abeyance until a show cause hearing regarding the transfer and assignment violations has been held.

[3] The United States submitted many documents demonstrating Dublin's noncompliance with the 1971 and 1978 Orders to support its Motion to Enforce. The United States chose documents from recent years that provide examples of Dublin's noncompliance in the area of class assignments, see Mot. to Enforce, Tabs 10, 20-21, 23-25, and samples of communications between Dublin and the Department of Education's Office for Civil Rights ("OCR") showing Dublin's repeated failures to fulfill its promises to comply with the 1978 Order. See id. Tab 19. The United States has many other documents that Dublin has provided demonstrating noncompliance in recent years and during the 1990s, but not all of the documents were submitted because they are quite voluminous and many contain "personally identifiable information." Family Educational and Privacy Rights Act, 20 U.S.C. § 1232g. If a show cause hearing is held, the United States likely will seek to introduce these documents and others obtained in discovery.

A. Dublin Must But Cannot Demonstrate Full Compliance with Its Orders

The evidence presently before the Court establishes that Dublin has violated its 1971 and 1978 Orders for at least the last several years and that at no time during this period of knowing noncompliance did Dublin seek to have its Orders modified or dismissed. See Mot. to Enforce & Mem. in Supp. Instead of disputing this evidence, Dublin first argued that it should not have to comply with its Orders because of the passage of time. See Initial Response at 4, 6. Perhaps recognizing the futility of that argument,[4] Dublin now argues that it should not have to comply with its Orders because it is already unitary. See Mot. to Dismiss at 4. Yet this presumptuous argument puts the cart before the horse because the first showing required for a declaration of unitary status is full and satisfactory compliance with the orders since they were entered. See Freeman, 503 U.S. at 491, 492, 498; Dowell 498 U.S. at 249-50. Unable to meet this first showing, Dublin focuses on the second vestiges showing and argues that it should not have to obey its Orders because racial imbalances in its classes are not vestiges. Dublin cannot skip over the first showing, however, because the Orders were designed to eliminate the dual system and its vestiges, and full compliance with the Orders is needed to establish the good faith commitment that courts require before relinquishing supervision in any area. See Freeman, 503

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[4] See Pasadena, 427 U.S. at 439-40 ("those who are subject to the commands of an injunctive order must obey those commands, notwithstanding eminently reasonable and proper objections to the order, until it is modified or reversed"); Freeman, 503 U.S. at 518 (Blackmun, J., concurring) ("[A]n integrated school system is no less desirable because it is difficult to achieve, and it is no less a constitutional imperative because that imperative has gone unmet for 38 years."); Dowell, 8 F.3d at 1516 ("The passage of time alone does not erase racial imbalance as a vestige of prior *de jure* discrimination."); Brown, 978 F.2d at 590 (The "lingering effects" of segregation do not "magically dissolve" without affirmative efforts by the school district, and the Constitution "does not permit the courts to ignore today's reality because it is temporally distant from the initial finding that the school system was operated in violation of the constitutional rights of its students.").

U.S. at 490, 498-99; Lockett II, 111 F.3d at 843.

B. Dublin Cannot Show that It has Eliminated the Vestiges of the Dual System

While focusing on the vestiges inquiry, Dublin ignores its burden of demonstrating that any current racial imbalances "are not the result of present or past discrimination on its part," Manning, 244 F.3d at 942, through evidence of "external factors" that caused those imbalances. Id. at 941. For example, Dublin fails to identify any external cause for its single race and otherwise racially imbalanced classes or any factual support for its contention that such imbalances are not vestiges other than Dr. Connell's self-serving statements, which are refuted by the evidence. See Reply Tabs 26-31; Mot. to Enforce Tabs 10, 20-21, 23-25. Because the single race and otherwise racially imbalanced classes result directly from Dublin's segregative assignment practices and its failure to stop white students from transferring to Laurens, all in violation of the 1971 and 1978 Orders, Dublin cannot satisfy its burdens, even with respect to the most central "Green" factor, student assignment.

Dublin relies on several cases that addressed whether racial imbalances across schools were vestiges of the dual system, but these cases do not support Dublin's contention that its segregated classes are not vestiges of the dual system. See Br. in Supp. of Mot. to Dismiss at 4-5 (citing Freeman, 503 U.S. at 494; Pasadena, 427 U.S. at 434-47; Swann, 402 U.S. at 23-24; Duval, 273 F.3d at 966-67; Manning, 244 F.3d at 941). These cases focused on whether racially identifiable schools that deviated by a certain margin from the district-wide racial composition were caused by the district's actions (e.g., its opening and closing of schools, its drawing of zone lines, or its transfer policies) or independent factors beyond the district's control such as private residential choices and demographic changes. If independent factors caused the schools to

become racially identifiable after the district had implemented a desegregation school assignment plan successfully and in good faith for a reasonable period of time, the courts held that the district had no further desegregation obligation with respect to assignment to schools.[5] But if the district's conduct caused the imbalance, "that condition must be remedied." Freeman, 503 U.S. at 494.

While in these cases the courts found that the racially identifiable schools in the district resulted from factors beyond the district's control, here the single race and otherwise racially identifiable classes in Dublin are entirely within Dublin's control. If anything, these cases reinforce the United States' argument that dismissal is inappropriate and that a show cause hearing is needed because Dublin's single race and otherwise racially identifiable classes result from Dublin's own policies regarding class assignments and transfers, rather than external factors.[6] In addition, the courts in these cases were willing to relinquish control over the

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[5] See Swann, 402 U.S. at 32; Pasadena, 427 U.S. at 435 (lower court exceeded its authority by requiring "annual readjustment of attendance zones" where district had "established a racially neutral system of student assignment" and there was "no showing" that district's actions caused racial changes); Freeman, 503 U.S. at 494-96 (lower court's finding that demographic changes were caused by independent factors, not district's policies, supported conclusion that district had no duty to achieve system-wide racial balance in schools); Duval, 273 F.3d at 969-74 (affirming finding that identifiably black schools were caused by demographic and non-discriminatory factors); Manning, 244 F.3d at 941 (holding that racially identifiable schools were caused by demographic changes).

[6] In this respect, Dublin's situation resembles that of the Lawrence County district where the lower court found that the post-1969 changes in the racial mix of some of the Lawrence County schools were caused by the district's continued toleration of zone jumping, in defiance of the original decree and the later 1984 order. See Lawrence, 799 F.2d at 1043. The Fifth Circuit found that "[t]he post-1969 segregative actions by the Board indeed did not violate only the court's order; they also violated the fourteenth amendment," id. at 1044, and held that relief beyond enforcing the order was justified. Id. at 1046. Dublin's situation differs noticeably from that of the Crenshaw County district, which took numerous steps to remedy its past transfer violations by halting transfer of white students out of a particular school zone. Harris v.

districts' school assignments because the racial imbalances arose after a period of full compliance with their decrees, whereas here the racial imbalances in Dublin's classes are contemporaneous with its ongoing violations of its Orders. Thus, Dublin cannot show that it has eliminated the vestiges of its dual system due to its repeated and current violations and its inability to produce evidence that external factors have caused segregation in its classes when these classes are fully within its control.

C. Dublin Cannot Demonstrate the Requisite Good Faith Commitment

As explained above, full or partial dismissal of a desegregation case requires the district to prove "its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance." Jenkins, 515 U.S. at 89 (quoting Freeman, 503 at 491); see also Freeman, 503 U.S. at 490. To make this showing, the district must show past good faith with its decrees and a good faith commitment to operate the school system in a non-discriminatory manner in the future. See Dowell, 498 U.S. at 247; Dowell, 8 F.3d at 1513; Brown, 978 F.2d at 592. Usually the "passage of time enables the District Court to observe the good faith of the school board in complying with the decree." Dowell 498 U.S. at 249. In this case, however, the passage of time has been marked by Dublin's repeated and substantial violations of the 1971 and 1978 Orders. See Mot. to Enforce Tabs 5-7, 9-10, 19-21, 23-25. In this respect, Dublin stands in stark contrast to the districts in Lockett II, Manning, and Duval, where the Eleventh Circuit held that the districts

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Crenshaw County Bd. of Educ., 968 F.2d 1090 (11th Cir. 1992). Crenshaw asked the neighboring counties to cease accepting students; it revised its intra-district transfer policies; its sent individual letters to the parents of each child suspected of attending school outside of his or her zone of residence; it tried to locate and verify the residence of every child in the district; and it tried to rectify all situations in which families were trying to circumvent the district's transfer policies. Id. at 1093-94. Dublin has not taken any of these steps to remedy its violations.

demonstrated a good faith commitment at least in part because they had never violated a court order.[7] As if this were not enough to preclude a good faith finding, Dublin's plan for the future is to continue those violations. Because "[m]ere protestations of an intention to comply with the Constitution in the future will not suffice," and "specific policies, decisions, and courses of action that extend into the future must be examined to assess the school system's good faith," Brown, 978 F.2d at 592, court review of Dublin's November 24, 2003 letter is appropriate for it shows that Dublin intends to continue violating the 1971 and 1978 Orders. See Mot. to Enforce, Tab 10.

D. Dublin's Argument That the Orders Are Unenforceable Should Be Rejected

Dublin challenges enforcement of the 1971 Order by mistakenly characterizing the Order as requiring "racial balancing" of student transfers. The 5% limit of the 1971 Order does not require "racial balancing" of student transfers, but rather constitutes a means of limiting white flight and otherwise segregative inter-district transfers to further the goals of desegregation in Georgia. Dublin's failure to take steps to limit segregative transfers to Laurens justifies enforcing the 1971 Order and the relief sought against Laurens for its interference with the Order.[8] Even absent the 1971 Order, Dublin's conduct violates well-established desegregation

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[7] In Lockett II, the court "found that the school board never failed to comply with a court order" and "took actions to further desegregation which went above and beyond what the 1971 order as amended required." 111 F.3d at 843-44. In Manning, the district "never violated a court order, never were sanctioned, and consulted extensively with the African-American community . . . prior to implementing new student assignments . . . ." 244 F.3d at 945-46. In Duval, the Eleventh Circuit held that the district had demonstrated its good faith in part because it "ha[d] never been found to be in violation of any provision of [its consent decree.]" 273 F.3d at 974. See, also, Spangler v. Pasadena City Bd. of Educ., 611 F.2d 1239, 1243 (9th Cir. 1979) (Kennedy, J. concurring) ("The Board was in substantial compliance with the plan for the period 1970-1974. It was in total compliance during the period 1974-1976 . . . and there has been no showing of noncompliance in any degree since that date.").

[8] If this Court deemed the 1971 Order to require racial balancing, enforcement would still be proper given the transfer violations. See Freeman, 503 U.S. at 494 ("[racial balance] is to be pursued when racial imbalance has been caused by a constitutional violation").

law because districts under order to desegregate must monitor inter-district transfers and bar those that would negatively impact desegregation in either the sending or receiving school or reinforce the dual system. See Singleton v. Jackson Mun. Separate Sch. Dist., 419 F.2d 1211 (5th Cir. 1969). Like the 5% limit in the 1971 Order, "The *Singleton* transfer provision was designed to prevent white students from fleeing predominantly black, often urban schools to majority white public schools in neighboring counties [because] [t]his pattern of 'white flight' often results in de facto resegregation." United States v. Lowndes County Bd. of Education, 878 F.2d 1301, 1305 (11th Cir. 1989) (citation omitted). A Singleton transfer clause "obligates the school district to monitor the effect of [inter-district] transfers, both on its own desegregation efforts and on the desegregation process of the school district from which it receives, or to which it sends, its students" and to forbid those transfers that would negatively impact desegregation. Lowndes, 878 F.2d at 1304. This Dublin has not done.

With respect to the 1978 Order, Dublin consented to this court-approved Order and repeatedly promised OCR that it would comply with the 1978 Order in order to obtain Title VI funding. Mot. to Enforce, Tab 19. Dublin's repeated refusals to comply in the absence of any effort to modify or dismiss the Order demonstrates its lack of good faith thereby precluding dismissal of any area of its case and provides a basis for not only civil, but also criminal contempt. See Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424, 439-40 (1976). Yet even in the absence of the 1978 Order, Dublin's segregated classes in the 2003-04 school year and its intent to continue its segregative assignment practices would preclude dismissal. See Johnson v. Jackson Parish Sch. Bd., 423 F.2d 1055, 1056 (5th Cir. 1970) (a district must eliminate "not only segregated schools, but also segregated classes within the schools"); Adams v. Rankin County Bd. of Educ., 485 F.2d 324, 327 (5th Cir. 1973) ("a school board may not direct or permit the segregation of students within the classrooms"); Christian v. Bd. of Educ., 440 F.2d 608, 611 (8th Cir. 1971) (all black classes caused by clustering white students violate the Constitution). Dublin is also barred from using ability grouping because it is based on the present effects of not

only past, but recent segregation. See McNeal, 508 F.2d at 1020; Montgomery v. Starkville Mun. Separate Sch. Dist. 854 F.2d 127, 130 (5th Cir. 1988); United States v. Gadsen County Sch. Dist., 572 F.2d 1049 (5th Cir. 1978); Moses v. Washington Parish Sch. Bd., 456 F.2d 1285 (5th Cir. 1972); Simmons v. Hooks, 843 F. Supp. 1296, 1302 (E.D. Ark. 1994).

To accommodate white students, Dublin is creating disproportionately white classes and is relegating black students to single race classes. See Mot. to Enforce Tabs 10, 20-21, 23-25; Reply Tabs 26-32. The harm to the black students assigned to these single race classes is equivalent to the very harm that Brown sought to address. "To separate [black students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Brown I, 347 U.S. at 494. As Brown explained, "'[a] sense of inferiority affects the motivation of a child to learn,'" and "'[s]egregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'" Id. How are black families in Dublin to have any assurance against further injury or stigma when Dublin continues to segregate black students to accommodate white students and their families? That these practices are designed to limit white flight to Laurens County and private schools in no way excuses them.[9] See Mot. to Enforce Tabs 23, 25; Reply Tab 26.

For all of these reasons, Dublin's Motion to Dismiss should be denied and a show cause hearing regarding Dublin's repeated violations should be held. At a minimum, the show cause hearing should be held before any unitary status proceedings commence because that hearing is likely to preclude dismissal of this case or any area therein. For this reason, proceeding with the

[9] See United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484, 491 (1972); Stell v. Savannah-Chatham County Bd. of Educ., 888 F.2d 82, 85 (11th Cir. 1989); United States v. Desoto Parish Sch. Bd. 574 F.2d 804, 816 (5th Cir. 1978); Christian v. Bd. of Educ., 440 F.2d 608 (8th Cir. 1971).

Motion to Dismiss risks wasting substantial time and resources. To promote judicial economy, the Court should at least hold the Motion to Dismiss in abeyance until the Motion to Enforce is resolved. If Dublin prevails at the show cause hearing, then the parties could proceed with discovery regarding the other areas and a unitary status hearing on those areas could be addressed at that time with current data. In the alternative, the United States could continue its review of the other areas in this case and seek to resolve any outstanding issues.

II. If the Court Allows the Motion to Dismiss to Go Forward, the United States Opposes in the Areas of Class Assignments and Transfers and Will Need a Reasonable Period of Discovery Regarding the Other Areas

If the Court permits the Motion to Dismiss to proceed, the United States opposes in the area of class assignments and interdistrict transfers for the reasons given in its Motion to Enforce and herein. While Dublin implemented a consolidated grade structure this school year, the United States notes that this plan has been in effect only one year and that Dublin's repeated violations of the 1971 and 1978 Orders would bar dismissal of any area for the reasons given above. The United States also has concerns about other areas of Dublin's operations such as special education and gifted programs, and would require a reasonable period of discovery to determine whether it will formally oppose in these areas and others. At the close of discovery regarding these areas, the United States would file its supplemental response to this initial response, and the Court could then schedule a unitary status hearing.

CONCLUSION

Because Dublin cannot show that it has complied with its 1971 and 1978 Orders in good faith and because its intended assignment and transfer practices for the 2004-05 school year fail to establish a good faith commitment to a non-discriminatory district in the future, Dublin's Motion to Dismiss should be denied and the United States' Motion to Enforce should be granted. Alternatively the Court should hold the Motion to Dismiss in Abeyance until the Motion to Enforce is resolved.

Respectfully submitted,

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DATED: June ___, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing United States' Opposition to Motion for Declaration of Unitary Status and to Dismiss Defendant Dublin City School District was served on this ____ day of June, 2004, via first-class mail, postage prepaid, upon the following attorneys of record:

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