THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 14428
	)	Judge James
WEST CARROLL PARISH SCHOOL BOARD, *et al.*	)	
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION FOR SUMMARY JUDGMENT

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I. Introduction

Plaintiff the United States submits this memorandum in support of its motion for summary judgment against Defendant the West Carroll Parish School District ("District"). The undisputed facts establish that the District has not eliminated the vestiges of its former dual system to the extent practicable. The District's 1969 student assignment plan, which predates Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), failed to desegregate five of the District's eight schools. Feasible ways of desegregating them exist, as evidenced by the numerous plans proposed by the United States. The United States urges this Court to order the District to implement one of the plans proposed by the United States or to develop and implement a comparable plan. If the District decides to develop its own plan, the United States respectfully requests an opportunity to evaluate the plan. If the United States objects to the plan, the Court should require the District to show why its plan satisfies its duty to eradicate vestiges to the extent practicable, and this showing could be made at the hearing on February 26, 2007.

II. Statement of the Facts

In accordance with Local Rule 56.1, the United States has submitted a separate statement of material facts to which the United States contends there is no dispute. See Statement of Facts (hereinafter "Facts"). Each statement of material fact is supported by citations to the record.

III. Procedural History

This case began on February 10, 1969, when the United States sued the District for operating an unconstitutional dual school system. Fact 1. The July 31, 1969 Order in this case approved the student assignment plan proposed by the District ("the 1969 Plan"). Id. This Plan did not desegregate five of the District's eight schools. Facts 6-13. The United States offered plans to desegregate them, but the District rejected these offers. Facts 15-16. On November 29, 2005, the United States moved for further relief that would require the District to implement one of the United States' proposed plans or to develop and implement an equally effective alternative. Fact 17. The District opposed the motion, and discovery ensued. The Court scheduled a hearing on the United States' motion for further relief on February 26, 2007.

IV. Legal Standards for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A "material" fact is one that might affect the outcome of the suit under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In order for a dispute to be "genuine," the evidence before the Court must be "such that a reasonable jury could return a verdict for the nonmoving party." Id.; see also Judwin Props., Inc.

v. United States Fire Ins. Co., 973 F.2d 432, 435 (5th Cir. 1992).

Once the moving party properly supports its summary judgment motion, the burden shifts to the nonmoving party to come forward with specific facts demonstrating a genuine issue of material fact for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must view the evidence introduced and all factual inferences from the evidence in the light most favorable to the party opposing summary judgment. Id. at 587-88; Lincoln General Ins. Co. v. Aisha's Learning Ctr., 468 F.3d 857, 858 (5th Cir. 2006). The Court must enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

V. Argument

This Court should enter summary judgment against the District because the undisputed facts show that the District cannot meet its burden of showing that it has eliminated the vestiges of its former dual system to the extent practicable. It is undeniable that the District's 1969 pre-Swann Plan has left five of the District's eight schools racially identifiable. Three of the District's former de jure "white" schools have remained virtually all white since 1969: Fiske Union Elementary ("Fiske"), Goodwill Elementary ("Goodwill"), and Forest High School ("Forest"). Two other schools remain racially identifiable because they deviate from the district-wide white percentage by 31 and 29 percentage points respectively: Pioneer Elementary School ("PES") and Epps High School ("EHS").

In its opposition to the United States' motion for further relief, the District argued that its implementation of the 1969 Plan absolves it from any duty to desegregate its schools. Case law,

however, requires a school district to go beyond an ineffective pre-Swann plan that leaves schools that could feasibly be desegregated. The undisputed facts show that the District has failed to satisfy Swann's directive to "make every effort to achieve the greatest possible degree of actual desegregation" because such efforts "necessarily [are] concerned with the elimination of one-race schools," 402 U.S. at 26, and otherwise racially identifiable schools that are "traceable, in a proximate way, to the prior violation." Freeman v. Pitts, 503 U.S. 467, 494 (1992).

The United States has offered the District seventeen desegregation plans that either eliminate or reduce the number of one-race and otherwise racially identifiable schools. The sheer number of plans shows that desegregation is plainly practicable. Nevertheless, the District has refused to implement all of these plans without adequate justification. The District rejected the five plans in the United States' first expert report on capacity and transportation grounds. Since that time, the United States has offered twelve plans that use the District's revised capacity figures. These twelve plans also involve less travel than the five plans in the expert's first report, and none of the United States' plans involves impracticable bus travel times. In short, the undisputed facts show that the District cannot meet its burden of showing that all seventeen plans are impracticable and that no feasible alternative exists.

The District's pending motion for unitary status provides no bar to the entry of summary judgment. The District cannot show full and good faith compliance with its orders, nor can it show that it has taken all practicable steps to eliminate the vestiges of its de jure system when three of its former "white" schools remain virtually all white. Accordingly, this Court should enter summary judgment against the District and deny its motion for unitary status. Because it is clear that further desegregation is practicable, this Court should order the District to implement

one of the United States' plans or an equally effective plan in time for the 2007-08 school year.

A. The 1969 Plan Failed to Eliminate the Vestiges of the Prior Dual System

As a school district that has yet to achieve unitary status, the District remains under a legal obligation to "to take all steps necessary to eliminate the vestiges of [its] unconstitutional de jure system." Freeman, 503 U.S. at 485. To determine whether the District has met this obligation, "a critical beginning point is the degree of racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole." Id. at 474. This is because "[o]ne . . . vestige, indeed the hallmark of a dual system, is schools that are markedly identifiable in terms of race." United States v. State of Ga., Meriwether County, 171 F.3d 1333, 1338 (11th Cir. 1999).

The undisputed facts establish that the District's 1969 Plan failed to eliminate the vestiges of the prior system. Facts 6-13. This pre-Swann Plan established seven attendance zones to be phased in by the 1970-71 school year. Fact 2. These seven zones are still used today except that 9-12 students in Zone 7 attend EHS instead of Pioneer High School, which has been closed. Fact 3. The current plan is as follows: (1) Zone 1's PreK-12 students attend EHS; (2) Zone 2's PreK-8 students attend Goodwill and its 9-12 students attend Forest; (3) Zone 3's PreK-6 students attend OGES and its 7-12 students attend OGHS; (4) Zone 4's PreK-8 students attend Fiske and its 9-12 students attend OGHS; (5) Zone 5's PreK-12 students attend KHS; (6) Zone 6's PreK-12 students attend Forest; and (7) Zone 7's PreK-8 students attend PES and its 9-12 students attend EHS. Fact 4-5; Ex. 57 (Tab 4).

As the undisputed facts show, the seven-zone plan left three former all white schools

virtually all white, and five of the District's eight schools racially identifiable. Facts 6-13. In the 1970-71 school year, the District's enrollment was 27% black, Fiske and Goodwill remained all white schools, only 13% of the students at Forest were black, and EHS and Pioneer High were 42% black (15 percentage points higher than the district-wide percentage). Fact 6; see Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 319 (4th Cir. 2001) (en banc) (endorsing the district court's use of a plus/minus 15% variance from the district-wide ratio to determine whether a school is racially imbalanced).[1] Within three years of implementing the 1969 plan, only four of the nine schools were within 15 percentage points of the district-wide percentage of black students (26%). Fact 8. Even though the District's demographics have barely changed since 1969, Fact 14, the percentages of black students rose at PES and EHS over time, while the percentage at Forest declined until it reached 1.5% this school year with only 7 black students. Facts 7-9, 11-13. Fiske and Goodwill have remained white schools since 1969, and neither enrolls a single black student this school year. Facts 10-12. Not surprisingly, the community perceives Fiske, Goodwill, and Forest as "white" schools. Fact 12.

B. The Pre-Swann Plan Does Not Satisfy the District's Duty to Desegregate Because Single Race and Otherwise Racially Identifiable Schools Persist

The District has mistakenly argued that its five racially identifiable schools should be excused because it has implemented the 1969 Plan. Dist. Opp'n to U.S. Mot. for Further Relief at 6-7. The 1969 Plan came two years before the Supreme Court decided Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). In Swann, the Supreme Court held that

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[1] See also David J. Armor, Forced Justice: School Desegregation and the Law 160 (1995) (observing that a variance of ± 15% or greater is used in over 70% of the school districts with desegregation plans in which racial balance is measured by numerical standards).

when a school district fails to meet its affirmative duty "to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch[,]" "judicial authority may be invoked" and "the scope of a district court's equitable powers to remedy past wrongs is broad." Id. at 15. In response to this holding, the Fifth Circuit ordered several school districts to develop and implement revised desegregation plans that would conform to the expanded remedies called for by Swann. See, e.g., Gaines v. Dougherty County Bd. of Educ., 465 F.2d 363, 364 (5th Cir. 1972) (remanding case to district court to develop such a revised desegregation plan); Stout v. Jefferson County Bd. of Educ., 448 F.2d 403, 404 (5th Cir. 1971) (same).

The Fifth Circuit has rejected the argument that compliance with a pre-Swann plan satisfies the duty to desegregate when racially identifiable schools persist, as they do here. See, e.g., Ross v. Houston Indep. Sch. Dist., 699 F.2d 218, 225 (5th Cir. 1983) ("A school system is not, of course, automatically desegregated when a constitutionally acceptable plan is adopted and implemented, for the remnants of discrimination are not readily eradicated."); Lee v. Tuscaloosa City Sch. Sys., 576 F.2d 39, 40-41 (5th Cir. 1978) (requiring a new plan to address racially identifiable schools despite compliance with 1970 order); United States v. Bd. of Educ. of Valdosta, 576 F.2d 37, 38-39 (5th Cir. 1978) (requiring a new plan to address virtually one race schools even though district complied with 1971 order); Gaines, 465 F.2d at 364 (remanding with instructions to replace pre-Swann plan despite district's compliance with plan due to one-race or predominantly one-race schools).[2]

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[2] The Fourth Circuit also has interpreted Swann and the duty to eliminate vestiges to the extent practicable as "meaning . . . that in some desegregation cases simple compliance with the court's orders is not enough for meaningful desegregation to take place." Belk, 269 F.3d at 334.

This Court has never considered the District's 1969 Plan under Swann's standards. To determine if the District's pre-Swann Plan fulfills its desegregation obligations, this Court must review the Plan under the standards set forth in Swann and its progeny. Tuscaloosa, 576 F.2d at 40 ("The adequacy of the 1970 order must be evaluated in light of the current understanding in this Circuit of school desegregation law."); Tasby v. Estes, 572 F.2d 1010, 1014 (5th Cir. 1978) ("We cannot properly review any student assignment plan that leaves many schools in a system one race without specific findings by the district court as to the feasibility of [using the] techniques [outlined in Swann]."); Ellis v. Bd. of Pub. Instruction of Orange County, Fla., 465 F.2d 878, 880 (5th Cir. 1972) ("formerly segregated school districts must comply with [Swann] as a supervening decision of the Supreme Court"); Stout, 448 F.2d at 404 (remanding with instructions to replace pre-Swann plan with a new plan that complies with Swann and other intervening cases).

Swann establishes a "general presumption against the maintenance of a system with substantially one-race schools" and "places the burden squarely on the Board to demonstrate that the remaining one-race schools are not vestiges of past segregation." Davis v. East Baton Rouge Parish Sch. Bd., 721 F.2d 1425, 1434 (5th Cir. 1983) (citing Swann, 402 U.S. at 26). Swann's discussion of the presumption sets forth this Court's obligation when ruling on this motion.

> The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools. No per se rule can adequately

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In 2003, a district court in the Fourth Circuit ordered a school district to replace its pre-Swann plan with a new plan because the 1969 plan had not eliminated a racially identifiable white elementary school. See Order in United States v. Bertie County Bd. of Educ., No. 67-CV-632-BO(3), (E.D. N.C. Apr. 22, 2003) (Tab 39).

> embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory . . . .

402 U.S. at 26.

This Court must apply Swann's presumption against one-race schools because three of the District's eight schools are virtually all white. Fact 12; see Harrington v. Colquitt County Bd. of Educ., 460 F.2d 193, 195 (5th Cir. 1972) (schools that "are predominately of one race (white) . . . come under the Supreme Court's proscription in Swann"). The District cannot meet its burden of proving that Fiske, Goodwill, and Forest are not vestiges because these schools were "white" under the dual system and have never been desegregated. Facts 6-12; see Ellis, 465 F.2d at 880 (affirming order granting further relief to desegregate three virtually one race schools that "have never been desegregated and were a part of the dual school system"); cf. N.A.A.C.P., Jacksonville Branch v. Duval County Sch., 273 F.3d 960, 969 (11th Cir. 2001) (racially identifiable schools were not vestiges in part because "[t]he Board had broken the pattern of [one race] enrollment at the schools it formerly operated" as one-race schools).

Swann's presumption is not limited to one race schools. "[O]nce a plaintiff shows de jure segregation . . . , a presumption arises that all racial imbalances in a school district are the result of the de jure segregation[,]" and "[t]o rebut this presumption, 'a school board must prove that the imbalances are not the result of present or past discrimination on its part.'" Manning v. Sch. Bd. of Hillsborough County, Fla., 244 F.3d 927, 942 (11th Cir. 2001) (citation omitted).

Therefore, the presumption also applies to the racially imbalanced schools of EHS and PES.

Until a school district achieves unitary status, it has the burden of establishing that any current racial disparities in its operations "[are] not traceable, in a proximate way, to the prior violation." Freeman, 503 U.S. at 494. To satisfy this burden, a school district often must show more than mere compliance with its original desegregation plan or the court's orders, because "in some desegregation cases simple compliance with the court's orders is not enough for meaningful desegregation to take place." Belk, 269 F.3d at 334 (explaining that a desegregation order or plan "entered in the 1960s or 1970s could have underestimated the extent of the remedy required, or changes in the school district could have rendered the decree obsolete"); see also Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 459-60 (1979) (noting that the district in Swann implemented a court-approved desegregation plan in 1965, but was required to develop a more effective plan in 1969).

The District cannot satisfy its burden because its implementation of the 1969 Plan has not *effectively* eliminated the vestiges of its dual system to the extent practicable. See Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50 (1991) (a district must not only comply with its orders but must also take all practicable steps to eliminate vestiges); Davis v. Bd. of Sch. Comm'rs of Mobile County, 402 U.S. 33, 37 (1971) ("The measure of any desegregation plan is its effectiveness."); Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430, 439 (1968) (a district court should assess a desegregation plan by examining the effectiveness of the plan in achieving desegregation). While "[c]onstructing a unitary school system does not require a racial balance in all of the schools," "[w]hat is required is that every reasonable effort be made to eradicate segregation and its insidious residue." Ross, 699 F.2d at 227-28. The

undisputed facts show that the District has not made every reasonable effort to eradicate its racially identifiable schools because it has rejected seventeen practicable desegregation plans that would eliminate or reduce the number of such schools. Fact 18 (five plans in expert's first report); Fact 23 (nine plans in expert's second report); and Fact 24 (three plans from the United States).

C. The Plans Proposed by the United States Show that Desegregation Is Practicable

The United States has offered the District numerous plans that establish the feasibility of desegregating all or most of its racially identifiable schools. Facts 15-16, 18, 23, 24. The United States had no obligation to offer such plans because the burden is on the District to show that further desegregation is infeasible. See Dowell, 498 U.S. at 249-50; Swann, 402 U.S. at 26 (requiring "every effort to achieve the greatest possible degree of actual desegregation"); Davis, 721 F.2d at 1434. The District's rejection of *seventeen* plans and refusal to offer any plan of its own expose its unwillingness to fulfill its ongoing duty to eliminate the vestiges of its former dual system and demonstrate why summary judgment is appropriate.

The plans proposed by the United States merely require taking reasonable steps to reduce the number of students in single race and otherwise racially identifiable schools. These steps include redrawing zone lines, reconfiguring schools, or closing one or two schools – all steps that have been sanctioned by many courts. See, e.g., Swann, 402 U.S. at 27-29 (discussing remedial altering of attendance zones); United States v. Desoto Parish Sch. Bd., 574 F.2d 804, 818 (5th Cir. 1978) ("The zones should be redesigned to discharge this affirmative duty."); United States v. Hinds County Sch. Bd., 560 F.2d 1188, 1191 (5th Cir. 1977) ("The process of desegregation . . . is often one of trial and error; if one set of zones proves ineffective, then another must be drawn

and, if necessary, another, or some yet different approach be tried."). The District's superintendent has admitted that "Justice has offered every plan [that] would aid [the District in desegregating its schools]," Dosher Dep. at 95:23-96:15 (Tab 5), and has "never doubted that there are ways that [the District] can decrease [its] all white schools or majority black schools." Id. at 91:12-14; Facts 28, 31; see also Fact 32. For example, he believes that "[w]hen zone lines are changed, the schools can be further desegregated," Dosher Dep. at 88:11-12 (Tab 5), because the black students can be distributed better across schools. Facts 25-26; see also Fact 27.

1. The Five Plans in Dr. Gordon's First Expert Report

Dr. Gordon's first expert report provides five plans that would desegregate all students in grades 6-12 or 7-12 and reduce the number of racially identifiable elementary schools. Ex. 9 (Tab 23). These five plans involve: (1) closing Fiske and creating five PreK-6 schools, one of which would remain racially identifiable (Goodwill), and two 7-12 schools at OGHS and Forest, id. at 6-8; (2) closing Fiske and creating one high school at OGHS, one junior high at Forest, and four elementary schools, one of which would remain racially identifiable (Goodwill), id. at 8-10; (3) closing Goodwill and creating one high school at OGHS, two middle schools at KHS and EHS, and four elementary schools, two of which would remain racially identifiable (Forest and PES), id. at 11-14; (4) closing Goodwill and creating one high school at OGHS, two junior high schools at KHS and EHS, and four elementary schools, two of which would remain racially identifiable (Forest and PES), id. at 14-15; and (5) keeping all schools open and creating one high school at OGHS, one junior high school at Forest, and six elementary schools, two of which would remain racially identifiable (Fiske and Goodwill), id. at 16-18.

The District rejected the capacity figures in these five plans, Fact 19, even though the

District had provided these figures to the United States in 2002, Fact 18, and the Superintendent admitted that "[t]he five different plans presented by the Justice Department are possible to implement." Dosher Rep. at 3 (Ex. 39) (Tab 29); Fact 29. The District asserts that the figures are no longer accurate because they are from 1970. Fact 19. The United States believes the schools can accommodate the enrollments projected in the first five plans, but agreed to extend discovery to calculate capacity based on current class usage. Fact 20. The District's revised figures underestimate capacity because they assume only 20 students in a class for grades PreK-12, Facts 21-22, Ex. 56 (Tab 25), even though many classes have 25 or more students this school year. Ex. 60 (e.g., Sanderson's 6th ELA and 6th Science at Fiske have 28 students, Morris's 7th and 5th Social Studies at Forest have 31 and 33 students respectively) (Tab 26). These figures also do not count special education rooms, Title I rooms, science labs, computer labs, or workrooms, except for a few that the District agreed to include after the United States challenged the District's original figures. Facts 21-22; Ex. 56 (Tab 25).

2. The Nine Plans in Dr. Gordon's Second Expert Report

The second report of the United States' expert, Dr. Gordon, uses the District's revised capacity figures even though the United States maintains that the figures underestimate capacity. Fact 22. To minimize travel times, the second report divides the District into a Northern Portion and a Southern Portion, and ensures that all school assignments are within a given portion. Fact 23. The second report offers three assignment plans for the Northern Portion and three plans for the Southern Portion. Id. Because any plan for the Northern Portion can be combined with any plan for the Souther Portion, the second report offers a total of nine district-wide plans. Id.

Given the undisputed facts in this case, the District cannot meet its burden of proving that

none of these plans is practicable and that no feasible alternative exists. Facts 29-32, 34-35. The Superintendent has admitted that he is "capable of doing all [of] these plans." Dosher Dep. at 57:17-18 (Tab 5); Fact 30. Although the burden is not on the United States, as long as the undisputed facts show that *one* of its plans can practicably reduce the number of racially identifiable schools, this Court should enter summary judgment against the District and order it to implement that plan or a comparable alternative. See Davis, 721 F.2d at 1434 ("If further desegregation is 'reasonable, feasible, and workable,' then it must be undertaken, for the continued existence of one-race schools is constitutionally unacceptable when reasonable alternatives exist.") (quoting Swann, 402 U.S. at 31).

The undisputed facts show that Plan 1 for the Northern Portion and Plan 1 for the Southern Portion offer a feasible district-wide plan that would reduce the number of racially identifiable schools from five to one. Facts 33-45. The Superintendent has conceded the feasibility of each aspect of Plan 1 for the Northern Portion. Facts 34-37. The only concern that the Superintendent raised about Plan 1 is that the PreK-8 students in Zone 4 (Fiske) may try to attend school in Morehouse Parish if they are assigned to KHS. Fact 38. Concerns about white flight do not establish impracticability or justify delaying desegregation. See, e.g., 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); Desoto, 574 F.2d at 816. In addition, Morehouse Parish is subject to a desegregation order prohibiting segregative transfers. Fact 38.

The undisputed facts further show that Plan 1 for the Southern Portion can feasibly desegregate all of the Southern schools except for Goodwill. Ex. 59 at 9 (Tab 9); Fact 33. The projected enrollments stay within the District's capacity figures, Ex. 59 at 9 (Tab 9), and the

Superintendent conceded this point. Fact 39. In addition, the transportation required by Plan 1 for the Southern Portion is reasonable. The travel times for PreK-8 students in Zones 1, 2, and 6 remain the same because these students already attend EHS, GES, and Forest respectively. Facts 4, 44. While the travel time for some PreK-8 students in Zone 7 would increase, the increase would not be unreasonable because PES is only 6.5 miles away from Forest. Fact 45.

The travel time for high school students in Zones 1 and 7 would not increase because these students already travel to EHS. Facts 4, 40. Although the travel distance for high school students in Zone 6 (Forest) would increase if they were assigned to EHS, the distance is reasonable. Fact 41. The "most miles" a student would have to travel is only 1.5 miles longer than the "most miles" (38 miles) that high school students from Zone 7 (PES) already travel to EHS. Fact 41. The time needed for high school students in Zone 2 to travel to EHS would be comparable to the time that many high schools students currently spend on several buses that travel from Zone 4 (Fiske) to OGHS, from Zone 2 (Goodwill) to Forest, and from Zone 7 (Pioneer) to EHS. Fact 43. The District could minimize the time by creating bus routes that transport 9-12 students in Zone 2 directly to EHS, Fact 42; however, even if the routes required these students to travel to Goodwill before proceeding to EHS, their travel time should not exceed the 75-minute commute that 9-12 students in Zone 7 made last school year. Fact 43.

Because the undisputed facts show that the first two plans for the Northern and Southern Portions are practicable and would leave only one racially identifiable school, this Court should enter summary judgment against the District and order it to implement one of the United States'

plans or a comparable alternative.[3] See Davis, 721 F.2d at 1434; cf. United States v. Lawrence County Sch. Dist., 799 F.2d 1031, 1044-55 (5th Cir. 1986) ("a federal court's power to remedy segregation is not exhausted by its issuance of a decree that promises to, but does not, work").

D. The District's Motion for Unitary Status Is No Bar to Summary Judgment

The legal standards for achievement of unitary status are well-established by the Supreme Court. The first inquiry raised by a unitary status motion is: "whether the Board has complied in good faith with the desegregation decree since it was entered." Freeman, 503 U.S. at 492 (quoting Dowell, 498 U.S. at 249-50). The second inquiry 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). The third and last inquiry is "whether the school district has demonstrated . . . 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." Missouri v. Jenkins, 515 U.S. 70, 89 (1995) (quoting Freeman, 503 U.S. at 491). Because the District cannot satisfy this three-prong rest, this Court should deny the District's motion for unitary status and enter summary judgment against the District.[4]

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[3] The District has speculated that the test scores of its students may fall if its school assignments are changed. See Dist. Opp'n to U.S. Mot. for Further Relief at 28. This unsupported speculation does not show impracticability. Moreover, the consolidation plans proposed by the United States would enable the District to increase course offerings and extracurricular activities while simultaneously reducing the number of non-highly qualified teachers in the District and the number of subjects that teachers need to prepare each day. Facts 46-47 (17 teachers are not highly qualified, and some teachers have to prepare five to six different subjects a day).

[4] On January 26, 2006, the Court issued a minute entry stating that the District's opposition to the United States' motion for further relief would be treated as a motion for a declaration of unitary status in the one area of student assignment to schools. If this Court grants the United States' motion for summary judgment, the Court should simultaneously deny the

The undisputed facts set forth above show that the District has not eliminated the vestiges of its dual system to the extent practicable. The undisputed facts also establish that the District has not complied fully and in good faith with its orders. Fact 48-50. The District's history of segregative transfers gave rise to two consent orders, one in 1991 and another in 2003. Fact 48; see, e.g., Valley v. Rapides Parish Sch. Bd., 646 F.2d 925 (5th Cir. 1981) (segregative transfers violate desegregation orders and should be enjoined).[5] The District also added eight portables to Forest and Fiske, Fact 49, thereby maintaining, if not increasing, the number of students in virtually one-race schools in violation of its desegregation duties. See Swann, 402 U.S. at 21 ("future school construction. . . [may] not serve to perpetuate or re-establish the dual system"); see also Anderson v. Canton Mun. Separate Sch. Dist., 232 F.3d 450, 453 (5th Cir. 2000) (same). The most egregious violations were the contracts required by EHS's principal, in which members of the homecoming court promised not to bring escorts of a different race, and the District's holding of race-based homecoming elections in the 2003-04 school year *after* telling the United States that this practice had ended. Fact 50; see Swann, 402 U.S. at 18 ("the first remedial responsibility of school authorities is to eliminate invidious racial distinctions").

VI. Conclusion

For all of the above reasons, the United States respectfully moves this Court to enter judgment as a matter of law against the District and to order the District to implement one of the

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District's unitary status motion because the undisputed facts supporting our summary judgment motion demonstrate that the District cannot meet the three-prong test for a declaration of unitary status in this area.

[5] These transfers, which permitted students to attend schools outside of their attendance zones, establish that the District has not complied fully with the 1969 Plan since its initial implementation.

plans proposed by the United States or an effective alternative plan by the start of the 2007-08 school year. If the District chooses to devise a plan of its own, the United States respectfully requests an opportunity to respond to the plan. If the United States has objections to the plan, the Court should require the District to demonstrate why its plan satisfies its obligation to eradicate vestiges to the extent practicable at the hearing scheduled for February 26, 2007.

Respectfully submitted,

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This the 21st day of December 2006.