THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
Civil Action No. 632

UNITED STATES OF AMERICA, Plaintiff, v. THE BERTIE COUNTY BOARD OF EDUCATION, *et al.* Defendants.	)	UNITED STATES' MOTION FOR FURTHER RELIEF

The United States hereby submits this Motion for Further Relief, and as reasons therefor, states the following:

1. Since 1968, the Bertie County Board of Education ("the District") has operated under a desegregation order. *See United States v. Bertie County Bd. of Educ.*, 293 F. Supp. 1276 (E.D.N.C. 1968).

2. The order required, among other things, that the District file "a plan of school desegregation providing for the complete elimination of the dual school system in Bertie County schools with respect to pupil and faculty assignments, facilities, transportation, and other school activities." *Bertie County*, 293 F. Supp. at 1283.

3. In 1969, this Court approved the District's plan for desegregating its schools. The District's plan created geographic attendance zones for its schools, and stated that teachers would be assigned without regard to race.

4. Two years after this Court approved the District's desegregation plan in 1969, the Supreme Court explained that district courts have broad equitable powers that they may invoke in school desegregation cases to remedy past wrongs. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402

U.S. 1, 15 (1971). In response to the Supreme Court's ruling, the Fourth Circuit remanded several cases to the district court to implement revised desegregation plans conforming with the expanded scope of remedies outlined in *Swann*. *See*, *e.g.*, *Riddick v. School Bd. of the City of Norfolk*, 784 F.2d 521, 524 (4th Cir. 1986) (referring to a case remanded for such a revised desegregation plan); *Medley v. School Bd. of the City of Danville, Va.*, 482 F.2d 1061, 1065 (4th Cir. 1973) (same).

5. Notwithstanding the legal development in *Swann* concerning the scope of remedies available in school desegregation cases, the District continues to operate under its 1969 (pre-*Swann*) desegregation plan and has not desegregated Askewville Elementary to the extent practicable.

6. In the 2000-01 school year, white students comprised 77% (117/151) of the enrollment at Askewville Elementary, but 15% (258/1665) of the student enrollment in the District's K-5 elementary schools as a whole.

7. Upon information and belief, the District has continued to operate Askewville Elementary with an identifiably white student enrollment since this Court's 1968 desegregation order.

8. In the 2000-01 school year, white personnel comprised 91% (10/11) of the faculty and 75% (9/12) of the on-site staff assigned to Askewville Elementary, but 54% (59/110) of the faculty and 26% (25/96) of the on-site staff assigned to the District's K-5 elementary schools as a whole.

9. Upon information and belief, the District has continued to operate Askewville Elementary with an identifiably white faculty and staff since this Court's 1968 desegregation order.

10. For several years, the District has followed an "open door" student transfer policy that permitted student transfers that had the cumulative effect of hindering desegregation. From the 1998-99 to the 2000-01 school year, the District (under the open door policy) permitted a net of 60 white students to transfer to schools outside of the District (62 transferred out of the District; 2 transferred in). In that same time period, the District permitted a net of 13 white students transfer from the majority black

school in their attendance zone to Askewville Elementary, the only majority-white school in the District (6 transferred out of Askewville Elementary; 19 transferred in).

11. Upon information and belief, the District has stopped following its open door policy for student transfers, but currently is denying various transfers that would further desegregation in the District.

12. Upon information and belief, the District has not adhered to an appropriate student transfer policy (*i.e.* a policy consistent with the District's desegregation responsibilities) since this Court's 1968 desegregation order.

13. The District has failed to eliminate the vestiges of discrimination in its schools to the extent practicable, insofar as (among other things) Askewville Elementary continues to have a predominantly white student enrollment, faculty, and staff, and insofar as the District's student transfer policies have hindered desegregation.

14. On January 8, 2001, the United States sent a letter to the District to request documents in connection with the United States' periodic review of the District's compliance with the desegregation order in this case and applicable federal law.

15. The United States' review of the District included visiting the District in May 2001 to tour schools and meet with District officials, communicating with community members, reviewing data and information provided by the District, and reviewing data and information from publicly available reports and databases.

16. In a letter to the District dated June 20, 2001, the United States advised the District of its concerns about, among other things, the District's assignments of students, faculty and staff to Askewville Elementary, and the District's open door policy for student transfers. The United States concerns include the following: (a) Askewville Elementary continues to be racially identifiable as a

school for white students, insofar as the District assigns high numbers of white students, faculty and staff to that school in comparison to the racial composition of the students, faculty and staff at the elementary school level in the District as a whole; and (b) through its open door policy for student transfers, the District has permitted student transfers that hinder desegregation.

17. In July 2001, the United States commenced informal negotiations with the District about what steps the District might take to ensure that (among other issues) its student transfer and student, faculty and staff assignment practices comply with the desegregation order in this case and applicable federal law.

18. In July 2002, the United States and the District concluded negotiations because the parties could not reach an agreement regarding the District's student transfer and student, faculty and staff assignment practices.

19. The District continues to operate Askewville Elementary as a racially identifiable white school with an identifiably white student body, faculty and staff.

20. To the United States' knowledge, the District does not plan to implement any measures to further desegregation in the student, faculty and staff assigned to Askewville Elementary.

21. To the United States' knowledge, the District currently is denying student transfers that would further desegregation, and has not taken adequate steps to develop a policy that will ensure that the District does not consent to transfers that will have the cumulative effect of hindering desegregation.

22. Further desegregation is practicable as to the District's assignments of students, faculty and staff to Askewville Elementary, and as to the District's student transfer policies.

23. Unless this Court grants the United States' request for further relief, the District will continue to operate Askewville Elementary as a racially identifiable white school with an identifiably white student enrollment, faculty and staff, and will not take sufficient steps to ensure that its student

transfers do not hinder desegregation.

WHEREFORE, for the reasons set forth herein and in the accompanying memorandum in support, the United States respectfully requests that this Court grant the United States' Motion for Further Relief, and order the District to: (1) formulate, adopt and implement a plan approved by this Court that promises realistically to work now to eliminate the vestiges of discrimination, to the extent practicable, in student, faculty and staff assignments to Askewville Elementary, and in student transfers; and (2) provide, after this Court approves such a desegregation plan, periodic reports to this Court and to the United States about the District's progress in desegregating its schools to the extent practicable.[1]

Respectfully submitted,

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This the ____ day of _____ 2002.

[1] After the District files its response to the United States' Motion for Further Relief, and the United States files any reply thereto, this Court may wish to convene a status conference to discuss the appropriate way to set this matter for discovery, consideration and resolution.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2002, I served a copy of the following pleadings to counsel of record, by depositing a copy of the same in the U.S. Mail, postage prepaid, at the addresses listed below:

United States' Motion for Further Relief;
Memorandum of Law in Support of United States' Motion for Further Relief.

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