

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

HAROLD DOUGLAS COPPEDGE, et al.,)

Plaintiffs)

UNITED STATES OF AMERICA,)

Plaintiff-Intervenor)

C.A. No.1796

V.)

THE FRANKLIN COUNTY BOARD OF)
EDUCATION, et al.)

Defendants)

**UNITED STATES' RESPONSE TO THE FRANKLIN
COUNTY BOARD OF EDUCATION'S MOTION TO DISMISS**

On April 13, 2000, the Franklin County Board of Education (hereafter Board) filed a Motion To Dismiss requesting the Court to declare that it "has become a unitary system of free public schools". The Board operates pursuant to a July 28, 1970 Order which has been amended several times. In its motion, the Board states that it has filed annual reports detailing the racial statistics reflecting student and faculty at schools operated by the district, that it has received no complaints concerning its compliance and that it has complied in good faith with the terms and conditions of the Court Order. The issue presented to the Court concerns whether the Board has fully complied with its desegregation orders, has eliminated to the extent practicable all remaining vestiges of the formerly de jure system of public education, and therefore should be

declared unitary. On January 11, 2000, the Court held a status conference to determine the necessity of continued supervision of the case. At that time the Court ordered the Board to file a motion to be declared unitary. Thereafter, the United States initiated informal discovery (1) seeking information not previously provided in compliance with the operative orders in this case; (2) contacting the U.S. Department of Education, Office for Civil Rights, to determine whether there were citizen complaints on file with the agency; and (3) contacting persons active in the community, including officials of the local NAACP, to ascertain their views concerning the district's operations.

Accordingly, the United States sets forth below (1) our view of the legal standards for determining whether a school district has achieved unitary status; (2) a discussion of the data we have reviewed; and (3) a proposed schedule for resolving the outstanding issues.

I. PROCEDURAL HISTORY

Prior to the passage of the Civil Rights Act of 1964, students in the Franklin County School District and the Franklin City School District attended racially segregated schools. Thereafter, the district operated pursuant to a desegregation plan approved by the Department of Health, Education and Welfare. On August 5, 1968, an Order was entered which established six unitary attendance zones, each based on the attendance areas serving the predominantly white high schools: Louisburg High, Bunn High, Youngsville High, Edward Best High, and Epsom High. On July 28, 1970, an order was entered which provided for further desegregation, including faculty and staff desegregation, majority to minority student transfers, construction and site selection, student classroom assignment, and transportation. On August 5, 1970, an Amended Desegregation Plan was entered which mirrored the desegregation plan outlined in the

July 28, 1970 Order.

On July 1, 1994, the Franklin County School District was merged with the Franklinton City School Administration Unit. The consolidated plan merged the two schools (one K-6 and one K-12) operated by the Franklin County School Administration Unit with eight schools (two K-5, one K-6, two K-8, one 6-8 and two 9-12) operated by Franklin County School District. On August 15, 1994, the court entered an Order approving the merger. At the time of the merger, there were four predominantly white schools and six predominantly minority schools.¹

On June 14, 1996, a consent order was entered to provide a plan for the merged school systems. Specifically, the new remedial plan required additional desegregation which included a revised student assignment plan, non-discriminatory staff assignments, new school construction, and notification and publication of the majority to minority transfer policy.

II. STANDARD OF REVIEW

The Supreme Court in *Freeman v. Pitts*, 503 U.S. 467 (1992) and *Board of Oklahoma City v. Dowell*, 498 U.S. 237, 249-50 (1991) established a standard of review for examining whether a formerly dual school system is unitary. First, school districts that unlawfully segregated their schools in the past have an affirmative, constitutional duty to remedy that segregation and its effects by taking all “steps necessary to eliminate the vestiges of the unconstitutional de jure system.” *Freeman*, 503 U.S. at 485. Second, when determining whether remnants of a dual system have been eradicated, the court must examine every facet of

¹Bunn Elementary, Edward Best Elementary, Youngsville Elementary and Bunn High were the predominantly white schools with minority percentages ranging from 21% to 31% black. Franklinton Elementary, Laurel Mills Elementary, Louisburg Elementary, Terrell Lane Middle, Louisburg High and Franklinton High were the predominantly minority schools with enrollments ranging from 55% to 67% black.

the school district's operations, including student assignment, faculty and staff, transportation, extracurricular activities, and facilities. *Green v. County School Board of New Kent County*, 391 U.S. 430, 435 (1968). Finally, the Supreme Court has recognized in addition to the *Green* factors that the additional factor of quality of education should be considered 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. In order to determine if school districts have achieved "unitary status", the Supreme Court has mandated a complete review, setting forth criteria that the district court should utilize to determine whether the school district has manifested a good faith commitment to maintaining a non-discriminatory school environment: (1) Defendants must show that they have complied in good faith with existing court orders; (2) Defendants must show that they have eliminated the vestiges of lawful segregation to the greatest extent practicable; and (3) Defendants must show that they will not re-segregate in the future. See *Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Pitts*, 503 U.S. at 491-92, 498; *Dowell*, 498 U.S. at 248-50.

Implicit in the inquiry of "whether the Board has complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable," is that the orders and court-approved plans be implemented fully and effectively, see *Swann v. Charlotte Mecklenberg Board of Education*, 402 U.S. 1, 25, reh'g denied, 403 U.S. 912 (1971). However, mere implementation of the court-ordered desegregation plan is not enough; the remedies must eliminate the vestiges of segregation to the extent practicable. *Dowell*, 498 U.S. at 250. The Supreme Court has placed on the defendants the burden of proving compliance with specific desegregation decrees and

demonstrating that all effects of state-imposed segregation have been remedied. The school district bears the burden of showing that any current imbalance is not traceable, in a proximate way, to the prior violation. *Freeman*, 503 U.S. at 494. Once there has been a finding that a defendant established an unlawful dual school system in the past, there is a presumption that current disparities are the result of the defendant's unconstitutional conduct. *Jenkins v. Missouri*, 122 F.3d 588, 593 (8th Cir. 1997)(citing *Freeman*, 503 U.S. at 494; *Dayton Bd. Education v. Brinkman*, 443 U.S. 562 (1979) (Dayton II). Courts, in analyzing school desegregation cases, have consistently placed the burden of proof on the defendants. *Reed v. Rhodes*, 179 F.3d 453, 481(6th Cir. 1999); *Lockett v. Board of Edu. of Muscogee County Sch. Dist.*, 92 F.3d 1092, 1098(11th Cir. 1996), *reh'g granted and aff'd*, 111 F.3d 839(1997), *Tasby v. Wright*, 713 F.2d 90,94 (5th Cir. 1983). The measure of a school district's attempts to eliminate the vestiges of past discrimination is their effectiveness, not their purpose. *Dayton II*, 443 U.S. at 538. This Court has the continuing authority and responsibility to order further relief to ensure that the ultimate goal of school desegregation—elimination of all vestiges of discrimination to the extent practicable is achieved. This authority is consistent with providing for the orderly transition to a unitary system, which can be released from judicial supervision. When a desegregation decree fails to fully eliminate the effects of past discrimination, courts have the power and duty to adjust remedies to ensure that injuries are properly addressed and that the constitutional principles underlying the court order are enforced fairly and with precision.

III. AREAS OF COMPLIANCE

The Franklin County School Board must demonstrate good faith compliance with the court order over a reasonable period of time, that is, the school board must demonstrate its good

faith commitment to accomplishing both the mandates of the decree and the ultimate purpose of the decree. Otherwise, there is little guarantee that the school board will not revert to their old segregative ways after they have succeeded in convincing a court that unitary status has been achieved. As discussed below, based on the information and data provided by the district, the United States does not object to a declaration that the district has achieved unitary status in the areas of school transportation, extracurricular activities, school construction and facilities, student transfers, student assignment, and faculty desegregation. Our determination is based upon informal discovery conducted by us and a review of the annual reports submitted by the school district.

Transportation

The district provides transportation to the majority of its students attending schools within the district. Based on the information and data provided by the district, the transportation system appears to be desegregated and all students regardless of race or national origin are served by the same buses.

Extracurricular Activities

The district offers numerous extracurricular activities to its students. Based on the information provided by the district, all extracurricular activities appear to be voluntary and all students appear to be given an opportunity to participate in sports, student government, extracurricular and co-curricular activities. According to data provided by the district concerning student involvement in extra-curricular activities, black students appear to be represented in all extracurricular activities except golf.

School Construction & Facilities

The district appears to operate its facilities in a non-discriminatory manner. The district has renovated and constructed schools to accommodate population growth. Since 1992 three middle schools have been constructed and one elementary opened in fall 2000. All construction in the district has been undertaken after the objective of desegregation was considered, and has been done in a manner that will prevent the recurrence of the dual school structure that was once in place in Franklin County.

Student Transfers

The 1970 and 1996 orders provide for majority to minority student transfers, inter-district transfers, and intra-district transfers. The district appears to have approved majority to minority, inter-district, and intra-district transfers on a non-discriminatory basis. Throughout the years, the district has used transfers, majority to minority, inter-district, and intra-district transfers to facilitate desegregation. During the years, the majority of the intra-district transfers approved were for hardship and children of school employees.

	M to M		Inter-District		Intra-District	
	W	B	W	B	W	B
1994-95			54	1	10	4
1995-96	19	4	58	29		
1997-1999	102	119	89	7	180	84

Student Assignment

The earliest reporting data available was 1989. At that time there were 4,689 students attending Franklin County schools, 2,037(43%) black and 2,652(57%) white. By September 2000, the total enrollment was 7,698 students, 3519(46%) black and 4,179 (54%) white. The Franklin County School District currently operates twelve schools, six K-5 schools, three 6-8

middle schools, and three 9-12 high schools. Students are assigned to schools located within the attendance wherein they reside. All attendance zone changes have been approved by the United States.

1. 1996 Consent Decree

On June 14, 1996, a consent order was entered which included, inter alia, a remedial plan for the merged school district. The 1996 consent decree required the district to develop a revised student assignment plan to accommodate two new middle schools for the Bunn and Franklinton feeder systems and to further desegregation to the extent practicable. Specifically, the decree states that “the revised student assignment plan associated with the opening of the middle school shall seek to desegregate all schools, including elementary schools, to the extent practicable. The plan shall ensure that the two new middle schools open with a student population that is +/- 15% of the overall student population, by race, for middle schools, and that the elementary schools shall be desegregated to the extent practicable.” Consent Order at 3. The Order further required that “for 1996-97 school year, defendant shall operate the same schools, and the percentage minority enrollment shall be substantially similar to that for the 1995-96 school year.” *Id.* at 2. The minority student enrollment at the district’s schools for 1995-96, 1996-97, and 2000 school year was as follows:

	1995-96	1996-97	2000
Bunn Elementary	31%	33%	38%
Laurel Mills	63%	61%	56%
Louisburg Elem.	59%	60%	69%
Edward Best Elem.	39%	36%	38%
Youngsville Elem.	19.8%	21%	28%
Franklinton Elem.	65%	65%	64%
Elementary Totals	44.2%	44.1%	47%

Terrell Lane Middle	55%	55%	59%
Bunn Middle	DID NOT	EXIST	38%
Cedar Creek Middle	DID NOT	EXIST	42%
Middle Totals			45%
Bunn High	30%	32%	34%
Louisburg High	56%	52%	55%
Franklinton High	50%	48%	45%
High School Total	46%	44%	45%

Elementary Schools

In reviewing the enrollment data for the 1995-96 school year, Youngsville Elementary was 19.8% black, Franklinton Elementary 65% black, Laurel Mills Elementary 63% black, and Louisburg Elementary 59% black. For the 1995-96 school year, at the elementary level, the district-wide ratio was 44.2% black and 56% white. Consequently, four (80%) of the district's five elementary schools were racially identifiable: Youngsville Elementary, Franklinton Elementary, Laurel Mills Elementary and Louisburg Elementary. Youngsville Elementary was the only racially identifiable white school in the district. For 1996-98, the enrollments for these racially identifiable elementary schools remained substantially the same as the 1995-96 enrollment.

Beginning academic year 2000, the black percentage for the six elementary schools range from 28% to 69% with Youngsville Elementary School having the lowest (28%) assignment of black students and Louisburg Elementary School having the highest (69%) assignment. The overall student population, by race, for each elementary school to be in compliance with the +/- 15% standard should range between 32% to 62% black. Presently three schools, Franklinton, Louisburg, and Youngsville elementary schools have failed to meet the targeted goal.

Franklinton Elementary was 65% black in 1995 and has decreased only one percentage point within a five year period. Although Youngsville Elementary's black enrollment is 28%, Youngsville remains 4% below the +/-15% overall student population by race for elementary schools. Louisburg Elementary black enrollment has consistently increased over the last five years, going from 59.2% in 1995-96 to 69% for the current school year, thus reflecting an increase of 9.8% in the black student enrollment. Louisburg Elementary has become even more racially identifiable over the five year period and is the only school where officials have failed to achieve any measurable desegregative success over the last five years.

Middle Schools

As stated above, the 1996 Order required that the two new middle schools open with a student population +/-15 of the overall student population, by race, for middle schools. The two new schools Bunn Middle School and Cedar Creek Middle School opened 1998-99 school year. For the 1998-99 school year, the district enrolled 1,789 middle school students, 821 (46%) black and 968(54%) white. Bunn Middle School opened with an enrollment of 638 students of which 227 (36%) were black and 411 (64%) were white. Cedar Creek Middle School opened with an enrollment of 593 students of which 259(44%) were black and 334 (56%) were white. The +/-15% guideline of overall enrollment, by race, for middle schools for this year was 21% to 51% black. Consistent with the provisions of the Order both schools opened with an enrollment that was within a +/-15% guideline.

	1999			2000		
	W	B	T	W	B	T
Bunn Middle	471(61%)	297(39%)	768	450(62%)	278(38%)	728
Cedar Crk.	377(57%)	266(41%)	643	366(58%)	261(42%)	627

Terrell Ln.	221(41%)	325(39%)	546	219 (41%)	318(59%)	537
Districtwide	1069(55%)	888(45%)	1957	1035(55%)	857(45%)	1892

For years 1999 and 2000, the black enrollment at the three middle schools, Bunn, Cedar Creek and Terrell Lane ranged from 38% to 59%, with Bunn Middle School having the lowest (38%) assignment of black students for both years and Terrell Lane Middle School having the highest (59%) assignment of black students for both years. The +/-15% guideline for enrollment for the middle schools for this period range was 30% to 60% black; each school met the targeted goal each year.

High School

During 1995-96, 2,037 students were enrolled in the district’s three high schools, 935 (45.9%) black and 1,102 (54.1%) white. The black student enrollment for the three schools ranged from 30% to 56% black with Bunn High having the lowest black student enrollment (30%) and Louisburg High the highest black student enrollment (56%).

	1996-97	1997-98	1998-99	1999	2000
Bunn HS.	32%	34%	66%	34%	34%
Franklinton HS.	48%	47%	51%	49%	45%
Louisburg HS.	52%	50%	50%	52%	55%

Each year since 1996-2000, the black enrollment at the three high schools ranged from 32% to 52% black in 1996 to 34% -55% black in 2000. Each year Bunn High has had the lowest and Louisburg High the highest black student enrollment. Each year from 1996-97 to 2000 the +/-15 guideline of overall enrollment , by race, for high school should range within 29% to 59% black. Each high school met the +/-15 targeted goal.

Based on the data provided, only a few of the elementary schools are slightly above the +/- 15% standard; the middle and high schools are within the standard. Although several of the

schools have missed the targeted goals by several percentage points, based on our review of the data and on the information we have gathered to date, we have concluded that the district has complied in good faith with its student assignment objectives and has eliminated vestiges to the extent practicable in this area.

Faculty

The 1970 Amended Desegregation Plan required the district to assign faculty and staff to schools so that the ratio of black and white faculty approximated the same ratio throughout the system. The 1996 Consent Order provides that the percentages at each school of black certificated and non-certificated personnel shall be no more than 10% below and no more than 10% above the district-wide averages within each school level.

During 1989, the district employed 300 faculty, 223(74%) white and 77(26%) black. By 2000, the district’s faculty had increased to 575, 463(80%) white and 120(20.8%) black. The percentage of non-white faculty at each of the schools for years 1995-96 -2000 is set out below.

District’s Black Faculty

Schools	1995-96	1996-97	1997-98	1998-99	1999-00	2000
Bunn	15.1%	14.0%	12.9%	13.6%	13.2%	15%
Ed. Best	17.0%	17.3%	16.7%	12.1%	22.6%	17%
Franklinton	21.3%	17.0%	16.3%	22.2%	18.6%	8%
Laurel Mills	22.6%	21.2%	22.6%	25.0%	28.2%	31%
Louisburg	27.3%	28.3%	28.9%	21.7%	22.0%	20%
Youngsville	17.1%	28.6%	17.0%	17.1%	19.0%	13.0%
Elem. Total	21.0%	19.8%	18.3%	21.3%	23.1%	17.0%
Bunn Middle	DID	NOT	EXIST	25.0%	26.7%	15%
Cedar Creek	DID	NOT	EXIST	26.3%	20.5%	19%
Terrell Lane	30.6%	27.5%	23.8%	27.5%	45.0%	48%
Middle Total				26.3%	30.7%	25%

Bunn HS	14.1%	17.4%	15.6%	14.0%	15.7%	14.0%
Franklinton HS	33.3%	27.9%	23.9%	29.3%	25.6%	24.0%
Louisburg HS	24.0%	29.6%	18.0%	13.3%	14.3%	13.0%
High Sch. Tot.	25.6%	24.7%	19.8%	18.9%	18.5%	17.0%

At the elementary level, a review of the data for 1997-2000 year indicates that the district-wide assignment of black faculty for five of the six elementary schools ranged from 13% - 28% in 1997 to 8% - 31% in 2000. Therefore, the +/- 10% guideline requires that at the elementary level, black faculty at each school should approximate the following percentage for the respective year: 1997-98 the range should be 8.3%-28.3% black; for year 1998-99 the range should be 8.4% - 28.4% black; for year 1999-00 the range should be 9.8%-29.8% black; and for year 2000 the range should be 7%-27% black. During 1997-98, Louisburg Elementary did not meet the targeted range, and Laurel Mills did not meet the acceptable range during 2000.

At the middle school level, the district employed during 1998-99, 122 faculty, 90 (73%) white and 32 (26.2%) black; during 1999-00 the district employed 129 faculty, 90 (69.7%) white and 39 (30%) black; and during 2000, the district employed 157 faculty, 118(75%) white and 39(24.8%) black. Therefore, the district-wide +/-10% average for faculty assignment at the middle school level for 1999 should range from 16.2%-36.2% black; for 1999-00 the range should be 20%-49% black; and for year 2000 the range should be 14.8%-34.8% black. Consequently, Terrell Lane Middle school failed to meet the targeted goal for years 1999-00 and 2000. Terrell Lane Middle school is more than 10% above the district-wide percentage for faculty assignment at middle schools.

At the high school level, during 1997-98, the district employed 162 faculty, 130 (80%) white and 32 (19.7%)black; during 1998-99 and 1999-00, each year the district employed 136

faculty, 111(81.6%) white and 25(18.3%) black; and during 2000, the district employed 150 faculty,124 (83%) white and 26(17%) black. Therefore, the district-wide +/-10% average for faculty assignment at the high school level for 1997-98 should range from 9.8%-29.8% black; for 1998-99 and 1999-00, each year the range should be 8.4%-28.4% black; and for year 2000 the range should be 7% -27% black. During 1998-99 Franklinton High School failed to meet the target goal.

Although several of the schools have missed the targeted goals by several percentage points, based on our review of the data and on the information we have gathered to date, we have concluded that the district has complied in good faith with its faculty assignment objectives and has eliminated vestiges to the extent practicable in this area.

IV. AREAS OF POSSIBLE NON-COMPLIANCE

A. Quality of Education

1. Gifted and Talented

The academically gifted and talented program is administered in the district's elementary and middle schools. The district has maintained, district-wide, a 46% black student enrollment since 1998-99. During 1998-99 the district enrolled 5,702 elementary and middle school students of which 2,671 (46.8%) was black; during 1999, 5,686 elementary and middle school students were enrolled of which 2, 683 (47%) were black; and by 2000, the number of elementary and middle school students had increased to 5,748 of which 2,660(46.2%) were black. During the three year period black elementary and middle student enrollment in the gifted and talented program ranged from 7% to 17.5% .

Elementary & Middle School Enrollment In Gifted & Talent Program

	Elementary			Middle		
Year	W	B	Total	W	B	Total
1998-99	91(93%)	7(7%)	98	142(90%)	15(9%)	157
1999	236(83%)	39(14%)	284	151 (90%)	14(8%)	167
2000	232(82%)	51(17.5%)	283	157(88%)	18(10%)	175

1998-99 Gifted & Talent Program Enrollment By School

School	W	B	Total
Bunn Elementary	22 (96%)	1(4%)	23
Laurel Mills	5 (83%)	1(17%)	6
Louisburg Elem.	14 (100%)		14
Edward Best Elem.	19 (100%)		19
Youngsville Elem.	24 (92%)	2(8%)	26
Franklinton Elem.	7 (70%)	3(30%)	10
Elementary Totals	91 (93%)	7(7%)	98
Bunn Middle	43(90%)	5(10%)	48
Terrell Lane Middle	47(89%)	6(11%)	53
Cedar Creek Middle	52(93%)	4(7%)	56
Middle Totals	142(90%)	15(9%)	157

The data show that black students are not represented in gifted and talented programs in proportion to the district-wide student population, and individual school enrollments.

2. Advanced Placement

The district's advanced placement program is operated at the high school level for grades 9-12. Each year since 1997 the black student population in the advanced placement program has ranged from 22(16%) in 1997 to 24(14%) in 2000. The total high school enrollment, district-wide, for 1997-98 was 2,109 students, 1,182(56%) white and 927(44%) black; for 1999 the enrollment was 1,939 students, 865(45%) black and 1,074(55%) white and year 2000, the high school enrollment district-wide is 1,950, 859(44%) black and 1,091 (56%) white. At the high

school level, only 2.8% of the black students are represented in the advanced placement classes. Consequently, black students are not represented in the advanced placement programs in proportion to the larger district-wide student population.

High School Enrollment In Advanced Placement

Year	White	Black	Total
1997-98	113(84%)	22(16%)	135
1999	123(83%)	25(17%)	149
2000	143(86%)	24(14%)	167

3. Special Education

The United States has reviewed data concerning the placement of exceptional children. The two categories which have caused greatest concern are Educable Mentally Disabled (EM) and Learning Disabled (LD). For years 1997-2000, each year there has been a higher proportion of black students identified as EM as compared with the number of white students identified as EM. A reverse pattern is seen with regard to LD identification; a higher proportion of white students are identified as LD as compared with black students.

Yr.	Educable Mentally Disabled		Learning Disabled	
	White	Black	White	Black
1997-98	45 (22%)	156 (78%)	158 (51%)	150 (49%)
1998-99	52 (21%)	200 (79%)	209 (56%)	162 (44%)
1999-00	37 (24%)	115 (76%)	192 (57%)	144 (43%)

As demonstrated above, for years 1997-2000, 46% of the district’s students are black; however, approximately 78% of the students enrolled in EM classes are black. Minority students are more likely to be disproportionately placed in special education programs.

The data show that the school district enrolls a disproportionately low black enrollment in

the gifted and talented and advancement programs, and a disproportionately high black enrollment in special education programs. In *Vaughns v. Board of Educ. Of Prince George's County*, 758 F.2d 983 (4th Cir. 1985), the court held that it was the school board's burden to overcome that present racial disparities involving the special education and gifted and talented programs are casually related to the prior unconstitutional segregation.

Because the County's school system had not attained unitary status, it is settled law that the plaintiff's were entitled to a presumption that current placement disparities were causally related to prior segregation and that the burden of proving otherwise rested on the defendants.

Id. at 991.

4. Discipline/Suspension

There appears to be a disparity in the suspension rates for students attending the district's schools. There was no uniform standard used to report discipline/suspension data; therefore, the chart below represents only schools for which data could be analyzed.

In School Suspensions

School	1997-98		1999-2000	
	W	B	W	B
Terrell Ln.			42(26%)	122(74%)
Louis HS	26(22%)	94 (78%)	175(37%)	297(63%)
Bunn HS	193(61%)	122(38%)		
Franklin HS			128(37%)	214(63%)

Out Of School Suspensions

School	1997-98		1999-2000	
	W	B	W	B
Terrell Ln.			32(25%)	95(75%)
Louis HS	23(28%)	60 (72%)	64(30%)	151(70%)
Bunn HS	36(57%)	27(43%)		
Franklin HS			67(23%)	224(77%)

Based on the chart, the data indicate that black students receive a higher proportion of

in/out school suspensions that white students.

B. Desegregation of Staff

The 1996 Consent Order provides that the percentages at each school of black certificated and non-certificated personnel shall be no more than 10% below and no more than 10% above the district-wide averages within each school level.

1. Certified Staff

During 1997-98, the district employed 470 certified staff, 82 (17%) black and 397 (83%) white. The following year the total certified staff increased to 493 of which 93 (19%) were black and 400(81%) were white. However, by the year 2000 the total number of certified staff diminished to 448, 85(19%) black and 363 (81%) white.

a. Administrators

Of the 42 central office administration and staff employees in the school district, 11(26%) are black and 31 (73%) are white. Of the twenty-four administrators assigned to schools, 17(71%) are white and 7(29%) are black. Twelve are assigned to elementary schools, 10(83%) white and 2 (17%) black; 6 are assigned to middle schools, 4(67%) white and 2(33%) black; and 6 are assigned to high schools, 5(83%) white and 1 (17%) black. At the central office level, there are 18 administrators, of which 12(66%) are white and 6(33%) are black.

Each year since 1997, the district has employed 10-12 principals and 11-12 assistant principals. The number of black principals has increased from 1 (8.3%) in 1997 to 4 (33%) in 2000. The number of assistant black principals increased from 3(25%) in 1997 to 5(42%) in 1998; currently there are 3 (25%) black assistant principals and 4(33%) black principals.

The district has assigned black principals to schools with large black student enrollments

and white principals to schools with large white student enrollments. Four black principals are assigned to schools that have the largest black enrollments: Laurel Mills Elementary, Louisburg Elementary, Terrell Lane Middle and Bunn Middle, the predominantly minority schools prior to and subsequent to the 1996 Consent Decree. In *Freeman*, the Supreme Court affirmed the district court's finding that a school district "was not in compliance with respect to faculty assignment" where "black principals and administrators were overrepresented in schools with high percentages of black students and underrepresented in schools with low percentages of black students." *Freeman*, 503 U.S. at 482.

b. Counselors/ Media Staff

Each year since 1997, the district has employed between 11-15 counselors, and 9-12 media staff. However, at no time has the district employed more than 2 black counselors or 2 black media staff. The black counselors are primarily assigned to schools with larger black enrollments, Louisburg High (1997-98) and Terrell Lane (1999-00). A similar pattern is seen concerning the district's employment of media staff.

Year	White	Black	Total
1997-98	8(88%)	1(11%)	9
1998-99	10(83%)	2(17%)	13
1999-00	8(80%)	2(20%)	10

2. Non-Certified Staff

The decree requires that "by 1997-98 school year, the percentages at each school of black certificated and non-certificated personnel shall be no more than 10% below and no more than 10% above the district-wide averages within each school level". During 1997-98 the district employed 325 non-certified staff, 140 (43%) black and 185(57%) white. By 2000 the number had decreased to 244 with 119 (49%) black and 125(51%) white. With regard to the assignment of

teacher assistants, the district has assigned black assistant teachers to schools that have larger black student enrollments.

Assistant Teacher Assignments

Schools	1997-98			1999-00		
	W	B	T	W	B	T
Bunn	23(68%)	11(32%)	34	18(64%)	10(36%)	28
Ed. Best	19(76%)	6(24%)	25	7(70%)	3(30%)	10
Franklinton	7(35%)	13(65%)	20	6(35%)	11(65%)	17
Laurel Mills	9 (60%)	6(40%)	15	4(57%)	3(43%)	7
Louisburg	13(45%)	16(55%)	29	9(43%)	12(57%)	21
Youngsville	25(81%)	6(19%)	31	12(60%)	8(40%)	20
Elem. Total	96(62%)	58(38%)	154	56(54%)	47(46%)	103
Bunn Middle	DID	NOT	EXIST	1(50%)	1(50%)	2
Cedar Creek	DID	NOT	EXIST	1(50%)	1(50%)	2
Terrell Lane	3(25%)	9(75%)	12	1(20%)	4(80%)	5
Middle Total			12	3(33%)	6(67%)	9
Bunn HS		6 (100%)		2(100%)		2
Franklinton HS		14(100%)		1(100%)		1
Louisburg HS		3(100%)		1(33%)	2 (67%)	3
High Sch. Tot.		23		4(67%)	2(33%)	6

For the 1997-98 school year the district-wide average for black teacher assistants at the elementary level was 38% . Therefore, the acceptable +/- 10% range for teacher assistants at the elementary level was 28%-48% black. Four of the district’s six elementary schools failed to meet the targeted goals: Youngsville, Edward Best, Louisburg, and Franklinton. For the 2000 school year, the district-wide average for black teacher assistants was 46% and the acceptable +/- range is 36%-56% black. For this period three elementary schools, Edward Best, Franklinton, and Louisburg failed to meet the goal.

At the middle school level, for 2000, the district-wide average is 67% black, and the acceptable +/- 10 range is 57%-77% black. At the high school level, the district-wide average is

33% black and the range is 23%-43% black. None of the middle schools and high schools teacher assistant assignments comply with the standard. As stated in *Singleton v. Jackson Municipal Separate School Dist.*, 419 F.2d 1211 (5th Cir. 1970), cert. denied, 396 U.S. 1032 (1970), “Principals, teachers, teacher-aides and other staff who work directly with children at a school must be so assigned that in no case will racial composition of a staff indicate that a school is intended for Negro students or white students”. *Id.* at 1218. Likewise staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin. *Id.* The Franklin County school district has failed in this aspect of its staff assignments.

V. PROPOSED SCHEDULE

The United States is mindful of this Court’s desire to set in motion the final adjudicating process to a declaration that the system is unitary in all respects. Therefore, we propose a schedule for the parties to negotiate a Consent Decree, to be submitted to the court for review and approval, which would commit the Franklin County Board of Education to take certain actions to address the concerns set forth herein, and to submit annual reports concerning the areas that the district has not achieved unitary status. We suggest the following schedule:

(1) The Franklin County Board of Education shall have forty-five(45) days to develop proposals to address the concerns raised by the United States.

(2) The plaintiff parties shall have forty-five(45) days thereafter to respond to the school board’s remedial proposals.

(3) The parties shall have thirty days from that date to negotiate and attempt to resolve

outstanding issues.

(4) After the parties have an opportunity to engage in good faith discussions, they will apprise the Court of their progress and either submit to the Court (1) a proposed consent order or (2) a statement of unresolved issues and a request for a hearing.

Respectfully Submitted,

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