

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 78-22-Civ-Oc-20

MARION COUNTY SCHOOL DISTRICT,
et al.,

Defendants.

2004 MODIFIED DECREE

I. BACKGROUND

The United States filed suit against the School District in 1978, pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq., the implementing regulations of the U.S. Department of Education (then, Health, Education & Welfare), 45 C.F.R. parts 80 and 81; the Fourteenth Amendment of the United States Constitution; and Defendants' contractual assurances in consideration of receipt of federal financial assistance.

By Order of December 22, 1983, this Court approved a Stipulated Agreement of the parties which implemented a plan for the further desegregation of the School District, and required the District to file semi-annual Hinds reports to the court on various aspects of its desegregation compliance.

The 1983 Agreement required the School District, by the beginning of the 1985-86 school

year, to convert de jure black Madison Street Primary and Howard Upper Elementary Schools (both with almost 100% black student enrollments) into magnet or special purpose facilities, and to open at least one K-5 magnet facility with an enrollment of 500, closely reflective of the district-wide student enrollment. The School District elected to open one K-5 magnet school at Madison Street Elementary, and to convert Howard Upper Elementary into a community and school district resource center. The approximately 350 black elementary students residing in the former Madison-Howard attendance area were reassigned among five predominantly white schools: Oakcrest, Wyomina Park, Ward-Highlands, South Ocala, and Eighth Street.

In 1985, before the new magnet and special purpose facilities were fully operational, the School District reported its intention to undertake extensive new elementary school construction throughout the School District. The United States raised concerns about the potential impact of the School District's construction plans on district-wide elementary desegregation in light of Pitts v. Freeman, 755 F.2d 1423 (11th Cir. 1985), and the inequity of achieving the desegregation-related 500 student magnet enrollment at Madison Street by use of numerous relocatable classrooms, while simultaneously undertaking new permanent construction to relieve elementary overcrowding elsewhere in the District. The United States urged the School District to consider reprioritizing its proposed new elementary construction to more equitably fulfill the School District's obligations under the 1983 Order, either by construction of a permanent addition to the Madison Street magnet school, or by use of another facility as a magnet school.

The School District moved relocatable classrooms to Madison Street to achieve the required 500 student enrollment. During the 1980's, the School District initiated an extensive new school construction program, funded largely by over \$67 million in local bonds, which resulted in construction of ten (10) new elementary schools, two new middle schools, a new high school, and additions/renovations to several schools.

In the early 1990's, the School District constructed a new College Park Elementary and a new Reddick-Collier Elementary for students in grades K - 5, and initiated plans to convert historically

black Dr. N. H. Jones to a K - 5 magnet school, without the knowledge of the United States or the Court's approval. This action modified the voluntary desegregation agreement entered into with H.E.W. that had paired historically black Dr. N. H. Jones with historically white College Park, and historically black Collier with historically white Reddick.

By Order of November 16, 1993, as amended December 2, 1993, this Court directed the parties to determine whether this case should remain open and, if so, what further court supervision was required. Following entry of this Order, the United States undertook a thorough investigation to determine whether the School District had fully complied with the prior orders of the Court and applicable federal law and should be declared unitary.

In its March 4, 1994 Response to this Court's prior orders, the United States concluded, on the basis of its investigation, that continued judicial supervision was appropriate and identified several areas affecting school operation, consistent with Green v. County School Board of New Kent County, 391 U.S. 430, 435 (1968), in which the School District had not fully complied with its continuing desegregation obligations: (1) student assignment (including transfers); (2) faculty/staff hiring and assignment; (3) construction and location of new schools; (4) maintenance and improvements to existing schools with large minority enrollments; and (5) distribution of educational programs.

Without conceding liability, in its February 28, 1994 Response to the Court's Order, the School District agreed not to pursue dismissal at that time, and to attempt to resolve the desegregation concerns of the United States with the assistance of Dr. William M. Gordon, a desegregation expert retained for this purpose by the United States.

Beginning in March 1994, with the cooperation of the School District, Plaintiff's desegregation expert, Dr. Gordon, made several on-site visits to the School District, examined school facilities, met with school officials, parents, and interested citizens, and gathered and analyzed extensive desegregation data.

A status conference was held on July 26, 1994, at which this Court requested the parties'

proposed timetable for resolution of these issues. On August 18, 1994, the parties submitted a Joint Response setting forth an agreed timetable for development of specific remedial proposals and exchange of relevant data, which was approved by the Court's August 19, 1994 Order, as amended November 8, 1994.

Per the parties' August 1994 Joint Response, after evaluating all of the relevant data, Dr. Gordon prepared and submitted to the School District two detailed desegregation reports. The expert's reports contain analyses of the relevant data, detailed remedial recommendations, and suggested policy changes. (Copies of Dr. Gordon's September and November 1994 desegregation reports were filed as Attachments A and B, respectively, to the Response of the United States to Marion County School District's November 30, 1994 Interim Report, filed on December 17, 1994.)

The September 1994 Desegregation Report concluded that the School District's policies and practices, particularly with respect to student assignment and maintenance and construction of school facilities, negatively impacted desegregation. Therefore, the report contains numerous remedial recommendations including several student assignment options and identification of necessary renovation and new construction. A later Consent Agreement reflects the School District's ultimate adoption of many of Dr. Gordon's recommendations in these areas.

The November 1994 Desegregation Report on Employment found that there has been a decrease in minority School District employees in nearly every job category since the 1960's, and that the percentage of minority classroom teachers decreased from 33.6% of the teaching force in 1967-68, to 14.3% in 1993-94, in contrast to "the dramatic increase in both the number and percentage of white classroom teachers" over the same fifteen year period. The report further concluded that the School District's hiring and assignment practices have had a negative desegregative impact on employment. To remedy this, the November 1994 Desegregation Report included specific suggestions for employee recruitment, hiring, and assignment. The School District adopted many of Dr. Gordon's employment recommendations.

Pursuant to this Court's December 20, 1994 Order, the School District was directed to file

a Memorandum detailing steps taken, or planned, to implement the recommendations of the desegregation expert, as set forth in his September and November 1994 Desegregation Reports. The School District filed its Memorandum In Response To Recommendations of Plaintiff's Expert on February 21, 1995. The United States submitted its Response thereto on March 29, 1995.

By Order of March 29, 1995, this Court set this case for trial during the term commencing November 6, 1995, and directed the parties to file a pretrial stipulation and engage in settlement negotiations by September 22, 1995.

Thereafter, the United States undertook formal discovery while the parties continued to attempt to resolve the outstanding issues herein without litigation. In September 1995, the parties reached an amicable settlement which they believed would result in the School District's fulfillment of its continuing desegregation obligations and the ultimate resolution of this case. That agreement was adopted as a Decree (the 1995 Decree) of this Court.

This Court conducted a hearing during the week of July 12, 2004 on opposing motions filed by the Parties. Plaintiff had filed a Motion to Enforce the 1995 Consent Agreement (Doc. No. 129, filed January 23, 2004); Defendant had filed a Motion for Determination of Unitary Status (Doc. No. 133, filed February 13, 2004), which was orally withdrawn during the hearing. As a result of the stipulation of the Parties at that hearing, the 1995 Consent Agreement is modified by the Court as follows to insure that the School District will eventually operate as promptly as possible a Unitary School System that provides the best educational opportunity for the students of Marion County as possible.

II. DEFINITIONS

The parties have agreed that, as used herein, the terms identified below shall be understood to mean as follows:

1. "**Minority**" refers to non-white persons, including black, Hispanic, Asian, Native American, and any other non-white racial classification recognized by the Census Bureau of the United States. Where appropriate, students or staff are referred to herein by their particular racial classification, rather

than as "minority."

2. "Negative effect on desegregation" refers to actions or inactions which result in a deviation from the district-wide racial composition of students, or from the district-wide racial composition of administrators, faculty, and/or staff in excess of the tolerances agreed upon by the parties, consistent with Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1970), cert. denied, 396 U.S. 1032 (1970), and its progeny.

III. STUDENT ASSIGNMENT

A. Out-of-Area Transfers:

1. The School Board shall immediately reinstate Policy JC: "Student Assignment," as modified and set forth herein.

2. Policy JC shall apply regardless of the authority under which any other policies to the contrary have been or shall be issued. The other policies shall be null and void.

3. The School Board will not modify Policy JC without the express approval of the Court.

4. Policy JC shall take precedence and supercede any other policy because of the constitutional basis upon which it is established, and any transfer that may be authorized by the "No Child Left Behind Act" may only be granted if it would have no adverse impact on the desegregative efforts contained herein. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); Green v. County School Board of New Kent County, 391 U.S. 430(1968); Brown v. Board of Education, 347 U.S. 483 (1954).

5. The School District shall implement the modified "Student Assignment" Policy JC as follows:

a. The School District shall eliminate all out-of-area reassignments based on:

- (1) "hardship" (including "working mom")
- (2) "sibling reassignment"
- (3) "extracurricular activity"

- (4) 5th grade/8th grade "senior privilege"
- b. The School District shall revise the "majority-to minority" transfer policy, so that it is the same standardized policy for all schools within the County, and shall:
- (1) publish the revised "majority-to-minority" policy in the local newspaper of general circulation in Marion County twice each school year
 - (2) mail a copy of the revised "majority-to-minority" policy to the parent(s) or guardian(s) of all school children in the School District immediately after the entry of this Decree and once during each school year hereafter.
 - (3) annually publish a standard uniform version of the "majority-to-minority" policy and the definition of a "majority-to-minority transfer" in the parent and student handbooks for every school and in other information brochures, and specifically advise all new students of the policy
 - (4) eliminate any restriction on the date by which applications for such transfers may be filed
 - (5) provide transportation and publicize its availability
 - (6) clarify the School District's obligation to offer a reasonably comparable alternative reassignment if transfer to the school to which the "majority-to-minority" was sought cannot be granted (due to severe overcrowding, making space unavailable)
 - (7) clarify application of the policy to include minority students (as defined herein), other than black students, at a school where the total enrollment of minority students constitutes the majority
 - (8) clarify the School District's obligation to ensure that any out-of-area transfer request which also qualifies as a "majority-to-minority" request shall be treated as such, regardless of whether the out-of-area transfer for which the student applied would be granted or denied on the basis for which the transfer was

sought

- c. The School District shall clarify and limit "program of study" transfers to:
 - (1) secondary schools
 - (2) a transfer that does not negatively effect desegregation at the sending or receiving school
 - (3) a requested program that cannot reasonably be made available at the school to which the student is assigned by the use of interactive video, shared instructional personnel, or other means, or by permitting the student's attendance for only the necessary portion of the day at the school offering the desired program
- d. The School District shall clarify and limit "professional courtesy" transfers to:
 - (1) only full-time employees of the School District (no non-School District personnel)
 - (2) only students in grades Pre-K through 5
 - (3) transfers having no negative effect on desegregation at the sending or receiving school
 - (4) limit transfer to employee's place of employment or, in the case of non-school based employees, limit to the nearest elementary school site to employee's place of employment
- e. Other than transfers based upon "majority-to-minority," "program of study" and "professional courtesy" transfer policies, as clarified herein, the only other out-of-area transfers permitted shall be for:
 - (1) parents building or buying a home in a new area
 - (2) change of school due to family moving
 - (3) 12th grade "senior privilege"
 - (4) special needs of the physically or developmentally impaired
 - (5) medical necessity

(6) administrative necessity, which is defined as "needed in very rare and exceptional circumstances involving the health, safety, well-being, or discipline of a student"

(7) enrollment at the Madison Street, Dr. N. H. Jones, or Howard Middle magnet schools, as well as the EMIT Program at Forest High School, the IB Program at Vanguard High School, and the MCCA [Marion County's Center for Arts] at Westport High School.

and

(8) transfers permitted under the No Child Left Behind Act, as restricted by III. A. 4. herein.

which shall be under School District policies narrowly and clearly defined to permit objective implementation by District Office personnel.

f. Transfers sought under Subparts e.(1), (2), and (3) shall require verification by sworn affidavit from the parent/guardian and such additional documentation of proof of residency as the School District may require. Transfers sought under Subpart e.(5) shall require such proof as the School District may require, including verification by written statement from the treating physician as to the nature of the medical problem and why reassignment is warranted thereby. Transfers under Subpart e.(6) shall require the School District to provide a written explanation of why reassignment as an administrative necessity is warranted.

g. For the 2004-2005 school year by October 1, and annually thereafter by no later than August 1st, the School District shall submit to the United States photocopies of all out-of-area transfer applications approved for the upcoming school year with documentation attached, along with a computer generated list, specifically identifying all student transfers by transfer basis, race, sending and receiving school, and those transfers who were renewed for the upcoming year based upon Paragraph A. 5. b., c., d., and e. and

- certifying that a review of the basis for the original transfer and of the renewal demonstrate no circumstance (including any misrepresentation in the original application) that would disqualify the applicant from renewal under Paragraph A. 5.
- h. The School District shall clarify that an out-of-area transfer is limited to the school for which such transfer was originally sought and does not continue with a student who moves on to the next school level (i.e., middle school, high school), but the student is not precluded from submitting a new transfer request.
 - i. Every out-of-area transfer shall be reviewed by a second, designated District official before implementation of the final grant or denial thereof. The School District shall immediately notify the United States and the Court who the designated District official is and also make the same notification upon a change in that designated official. That reviewing official shall personally sign each transfer application.
 - j. If the basis for the requested transfer remains in effect under the School District's revised student assignment policies (Policy JC), the student shall reapply each year for such transfer by no later than July 1st, with the exception of applicants for "Majority-to-Minority" transfers, who may apply at any time.
 - k. Request for out-of-area transfer on the basis of "professional courtesy," "program of study," and 12th grade "senior privilege" must be filed in the period of time between April 1 and July 1 of the year preceding the school year in which such transfer is to be effective. A student not enrolled in the School District during the year preceding the year in which the transfer is to be effective must file application at the time the student initially enrolls in the public school in his/her assigned attendance area.
 - l. Using the School District's designated out-of-area transfer application, all required information, including the race of the transfer applicant, the reason for which the out-of-area transfer is requested, and the specific basis upon which the transfer is granted or denied, is to be fully detailed in the designated space on the out-of-area transfer

application. The District official's analysis of the racial impact that transferring that student would have on the sending and receiving school shall also be included. Incomplete out-of-area transfer applications shall not be accepted, nor shall a transfer be implemented if the basis for the grant or denial of such transfer is not clearly stated in the space designated in plain language without the use of codes.

- m. In addition, prior to notifying applicants that out-of-area transfers other than "majority-to-minority" have been granted, the District shall make a determination of the cumulative desegregative effect of all annual transfers on each sending and receiving school. See Elston v. Talladega County Board of Education, 997 F.2d 1394, 1418 (11th Cir. 1999), citing United States v. Lowndes County Board of Education, 878 F.2d 1301, 1305 (11th Cir. 1989). If the cumulative effect of all approved out-of-area transfers would increase the racial identifiability of the sending and/or receiving school, so that the school's enrollment would deviate from the district-wide student racial enrollment by +/- 10%, transfers that increase the racial identifiability of a particular school or program shall be denied.
- n. The School District shall retain the original out-of-area transfer applications, approved and disapproved, that are processed for the term of this Decree.

B. "Attendance Islands":

1. The parties shall reexamine the Madison-Howard "attendance islands" (established as part of the implementation of the desegregation-related Madison Street magnet school) by which minority students residing in the former Madison-Howard attendance area were reassigned to five schools -- Eighth Street, Wyomina, Ward-Highlands, Oakcrest, and South Ocala. As part of their reexamination, the parties shall determine whether the number of schools to which these minority students are currently assigned and the related transportation burden on these minority students may be reduced.

2. By no later than November 30, 2004, the School District agrees to submit to the United States

and the Court its preliminary reassignment proposal to reduce the number of schools to which students residing in the former Madison-Howard attendance zone are assigned.

3. By no later than January 30, 2005, the United States shall respond to the School District and to the Court regarding the School District's preliminary reassignment proposal.

C. "Enclave Area":

1. The implementation of the math/science/technology magnet school for grades K - 5 at Dr. N. H. Jones Elementary resulted in discontinuation of the pairing of College Park (K - 2) and Dr. N. H. Jones (3-5), and the related reconfiguration of College Park Elementary as a regular K - 5 school. All students (grades K - 5) residing in the "Enclave" and "Triangle" areas of the former College Park/Dr. N. H. Jones attendance area (shown in ATTACHMENT A to the 1995 Consent Agreement) now are included in the Saddlewood and College Park attendance area. The area of the former College Park/Dr. N. H. Jones attendance zone immediately surrounding Dr. N. H. Jones school and identified by the School District as the "Walk-In Area" (also shown in ATTACHMENT A to the 1995 Consent Agreement) now comprises the walk-in portion of the attendance area for the Dr. N. H. Jones magnet school.

2. The parties recognize that the increased enrollment at College Park Elementary and at Saddlewood Elementary and the continued disproportionate racial composition at College Park and the disproportionate racial composition at Saddlewood Elementary may necessitate the reassignment of students residing in the "Enclave Area" to Eighth Street Elementary School, which has a contiguous attendance area and is closer to the "Enclave Area" than College Park. The parties, however, have agreed to defer a permanent change in the Eighth Street attendance area until completion of the evaluation of the "attendance islands" required pursuant to Section III. B., above, to permit consideration of the impact on Eighth Street of changes in attendance areas resulting from that analysis.

3. For the 2005-2006 school year, the School District agrees to advise the parents/guardians of children residing in the "Enclave Area" of their right to have their kindergarten students residing in the

"Enclave Area" reassigned to Eighth Street Elementary. with transportation provided regardless of distance because of the intervening highway and railroad.

4. In addition, older siblings of students reassigned to Eighth Street who are assigned to College Park and/or Saddlewood, or who are enrolled in the Dr. N. H. Jones magnet school, will be allowed to transfer to Eighth Street with their siblings, and the availability of this sibling transfer option for students residing in the "Enclave Area" shall be publicized.

5. Students in the "Enclave Area" shall continue to have second priority for minority enrollment at the Dr. N. H. Jones magnet school, and do not waive that admissions priority by virtue of their reassignment to Eighth Street.

6. Based upon the results of the parties' evaluation of the "attendance islands" (see Section III., B., above) and the impact of reassignments in connection therewith, beginning in 2005-2006, students in grades 1, 2, 3, 4, and 5 residing in the "Enclave Area" either shall be reassigned to Eighth Street, or be permitted to choose such reassignment, by the annual phasing in of students in each grade upward from grade 1, until all students in grades K - 5 who reside in the "Enclave Area" have been reassigned to Eighth Street Elementary.

7. In conjunction with its agreed analysis of the desegregative effect of continued out-of-area transfers, particularly "professional courtesy" transfers, the School District agrees specifically to evaluate Eighth Street's enrollment, to determine whether "professional courtesy" and other out-of-area transfers to that school should be discontinued.

D. Inter-District Transfers:

1. In conjunction with revision of "Student Assignment" Policy JC, the School District shall continue to monitor inter-district student transfers into and out of the School District to determine whether such transfers have a negative desegregative effect on either the sending or receiving school.

2. The School District's analysis, including identification of all such inter-district transfers by race, grade, and sending and receiving school (and school district) will be included in the semi-annual

reports to the court.

E. Magnet Schools and Magnet Programs:

1. The School District agrees to consider implementation of additional magnet school(s) and/or magnet program(s), in the future, at school(s) where the racial composition of student enrollment at a school deviates significantly from the district-wide racial composition of students.

2. The School District shall advise the Court and the United States of any such magnet school or program proposal(s) sufficiently in advance of the proposed implementation to allow the United States to evaluate the desegregative effect thereof and report to the Court thereon.

3. No magnet school(s) or magnet program(s) may be added, discontinued, or modified without the express approval of the Court.

IV. MADISON STREET MAGNET SCHOOL

1. To make admissions policies for the Madison Street magnet school more consistent with admissions policies at Dr. N. H. Jones magnet school, the School District has agreed that minority students residing within the former Madison-Howard attendance area have first minority enrollment priority, and that minority students enrolled in schools with minority enrollments above the district-wide average have the next minority enrollment priority.

2. To enable more students residing in the former Madison-Howard attendance area to attend school closer to their homes, the School District further agrees that the percentage of minority students enrolled at Madison Street shall be 35%. Minority students at those schools shall be notified of this policy prior to the application date for the next school year.

3. Consistent with the school building program undertaken in the School District since the Madison Street magnet school was established under the 1983 Stipulated Agreement and the capital improvements undertaken at the Dr. N. H. Jones magnet school, the School District constructed a new magnet school facility in 2000, on a portion of the Madison Street Site to house the required total

magnet school enrollment of at least 500 students in permanent facilities. The School district renovated and remodeled the original Madison Street School facility for use as District offices.

4. For the 2003-2004 school year, the Madison Street magnet school had an enrollment of at least 484, and a waiting list for enrollment at each grade level, indicating the popularity of this magnet school and the need for the School District to consider enlarging the facility to accommodate an increase enrollment, or establishing a new, separate elementary magnet school.

5. Therefore, in conjunction with the evaluation of the "attendance islands" by which former Madison-Howard area students are currently assigned to five schools, as required by III, B. *supra*, should the School District determine that enrollment at the Madison Street magnet school should be increased above 500 students, a determination of the manner in which the increased enrollment shall be accommodated, including the possible use of the old Madison Street School facility, or its demolition and construction of an appropriate addition to the new magnet school facility, shall be included in the School District's November 30, 2004 "Attendance Island" report to the United States.

V. DR. N. H. JONES MAGNET SCHOOL

1. Recognizing that historically black Dr. N. H. Jones elementary school (grades 3 - 5) remained racially identifiably black and that paired College Park Elementary School (grades K - 2) had become a majority black school, the School District established a math/science/technology magnet school for students in grades K - 5 at Dr. N. H. Jones, and reconfigured College Park as a regular elementary school serving grades K - 5, effective for the 1995-96 school year.

2. Minority students residing in the part of the former Dr. N. H. Jones/College Park attendance area now defined by the School District as the "Walk-In Area" (shown in ATTACHMENT A to the 1995 Consent Agreement) shall have first minority enrollment priority at the Dr. N. H. Jones magnet school, followed by those students residing in the defined "Enclave" and "Triangle" areas (shown in ATTACHMENT A to the 1995 Consent Agreement). Minority students in schools with minority enrollment above the district-wide average shall have the next minority enrollment priority.

3. The Dr. N. H. Jones Elementary School, remodeled and fully equipped as a math/science/technology magnet, shall seek to achieve an enrollment of 700 students with a 65% white and 35% minority racial composition.

4. In order to provide an academic continuum for the math/science/technology magnet program offered at Dr. N. H. Jones elementary, the School District shall incorporate a comparable math/science/technology magnet component into the curriculum of the Howard Middle School, which shall be available to all students residing in the Howard Middle School attendance area who choose to participate and who are academically qualified and to students currently enrolled in the Dr. N. H. Jones magnet school who wish to and who are academically qualified to continue that program at the middle school level, beginning in the 2005-2006 school year.

VI. NEW SCHOOL CONSTRUCTION

1. The School District shall take into consideration the desegregative effect of any new school construction, and to the extent practicable, to locate new schools and assign students thereto in a manner that will not negatively effect desegregation in the School District.

2. The School District shall provide the United States with the same information it intends to provide to the School Board, regarding all proposed new school construction, including: the proposed site, the date of proposed construction, the date of proposed occupancy, the contiguous school attendance zones to be affected by location of the new school, the proposed new attendance boundaries (by legal description and zone line map showing boundary changes), the effect on the racial composition of each affected school (by number and racial percentage of students), and the projected racial composition of the new school (by number and racial percentage of students), in sufficient time, i.e., no less than thirty days, prior to presentation of the proposed new school construction to the School Board to permit the United States to evaluate and comment on the desegregative effect thereof.

3. Beginning with any new school proposed to be sited and constructed after Elementary School "T," there shall be no new school construction, including site selection, without the express approval

of the Court.

VII. STAFF ASSIGNMENT AND RECRUITMENT

The School District has not fulfilled its Singleton, supra. obligations with respect to administrator, faculty, and staff employment practices, and shall remedy its past non-compliance, including the use of involuntary transfers, notwithstanding any collective bargaining agreement to the contrary.

1. Racial identifiability in staffing is understood to mean that: (1) the racial composition of administrators, faculty, and/or staff at a school more closely reflects the racial make-up of the particular school's student enrollment rather than the district-wide racial composition of the administrators, faculty, or staff, and/or (2) the composition of administrators, faculty, and/or staff at a school, or in the central administration, deviates from the district-wide racial composition of administrators, faculty, or staff by more than the tolerances agreed upon by the parties. See Singleton, supra., Lowndes Co., supra.; Lee v. Lee Co. Bd. of Ed., 639 F.2d 1243, 1261 (5th Cir. 1981).

2. Building principals, other building level administrators, and District Central Office personnel who are involved in the hiring and assignment process shall be specifically advised every six months, commencing October 1, 2004, of the School District's continuing obligations under Singleton and of the Court's Decree with respect to staff employment, and shall be provided a copy of this Decree.

3. The School District shall make good faith efforts to achieve a 25% district-wide minority faculty, which reflects the proportion of eligible minorities in the labor market within the area identified for minority recruitment, with a deviation of $\pm 5\%$ at the elementary level and $\pm 10\%$ at the secondary level. Nothing in this Decree shall require the School District to sacrifice valid job-related selection criteria in order to achieve this goal. The School District shall not be held in violation of this Decree for failure to attain this goal if it can demonstrate under applicable federal standards, that despite good faith efforts, which could include involuntary reassignments, the District was unable to do so.

4. The School District shall employ a full-time recruiter with responsibility for recruitment of

minority personnel and whose position shall be devoted 100% to the recruitment-related responsibilities and shall not include additional unrelated job requirements.

5. The School District shall allocate in future annual budgets sufficient funds for the salary of a full-time recruiter, and any necessary supporting staff, but in no event less than one additional support position, so that the recruiter can successfully carry out the School District's personnel recruitment responsibilities for an annual job fair and for recruitment trips that shall specifically include visits to historically black and predominantly minority colleges and universities with schools of education from among those identified in ATTACHMENT D to the November 1994 Desegregation Report on Employment prepared by Dr. William Gordon. The states where the School District shall target minority recruitment shall include, but not be limited to: Florida, Georgia, South Carolina, Alabama, Mississippi, and Louisiana.

6. The District's Recruiter and those administrators who are members of the recruitment teams (identified by the Director of Personnel or the Recruiter from among School District staff to make recruitment trips) shall have the authority to immediately extend tentative District contracts to outstanding candidates for employment who are interviewed on recruitment trips, subject to the completion of the new hires' academic program, their receiving the necessary academic degree, and being fully credentialed for the position sought. The District shall provide notice to all such new hires that they are employed by the School District, and not assigned to a particular school, until further notice by the District's Personnel Office. No new hires shall be assigned to a particular school until the Singleton impact of all personnel assignments has been determined and approved by the District's Personnel Office following the procedures set forth in VII. 9, infra.

7. The School District and its employees shall use their good names in an effort to assist new hires from out of the Marion County area to become a vital, integrated part of the community. They shall, through a personal effort and by establishing new programs, such as setting up a "buddy" system, urge other governmental, civic, religious, business, and charitable organizations to extend a hearty welcome and transition assistance to those employees new to the area. This will assist the full time

recruiter in efforts to bring the best quality teachers to Marion County and strive towards achieving a Unitary School System and bringing an end to this long arduous litigation.

8. All building level principals and any other School District personnel who interview applicants for certified and non-certified staff positions or who are designated as members of staff recruitment teams, shall have formal training (in-service) in proper interview/recruitment techniques and shall be required to use standardized interview questions appropriate to the applicant's type and level of position (i.e., elementary teacher, high school teacher, guidance counselor, etc.), so that regardless of who conducts the interview, the identical information is gathered from all applicants. All interview forms shall be pre-approved by the Director of Personnel.

9. The School District shall revise its policies governing hiring, assignment, and transfer of teachers, teacher-aides, and other staff who work directly with children at a school, and shall implement such revised policies, so that:

- a. A determination shall be made in February of each year as to the number and specific title of all positions at each school anticipated to be vacant for the following year, the number of personnel expected to return, and the number and specific title of each position anticipated to be filled by new or reassigned personnel.
- b. The District Personnel Office shall then notify each building principal of that determination, by number and specific title of each open position, separately identifying the number and percentage of classroom teachers, other certified staff, and non-certified staff, and of the requirements for compliance with the School District's continuing Singleton obligations. If voluntary transfer is not achieved during the period prescribed in subparagraph c. below, in any instance where a school has not achieved Singleton compliance, and the number of vacancies to be filled will not permit compliance to be achieved, such notification must include use of involuntary transfer of personnel (who shall be identified in such notice), notwithstanding any collective bargaining agreements to the contrary.

- c. A list of vacant positions for the following year (which shall include positions anticipated as subject to involuntary transfer under subparagraph b., above) shall be distributed to current employees (including individuals holding District contracts for the following year as referred to in Paragraph 6.. above) and a period shall be specified for application for inter-school transfer requests. Notwithstanding any collective bargaining agreement to the contrary, because of the passage of almost twenty-five years since the institution of the lawsuit, and the fact that the School District has still not obtained Unitary Status, any proposed inter-school transfer must be approved by the District Personnel Office.
- d. At the close of the inter-school transfer application period, the District Personnel Office shall provide each building principal with a list of all transfer applicants, who by reason of certification and Singleton considerations, could be considered for the vacant position(s) at that school.
- e. Concurrently, each applicant shall be provided a list of the schools to which the applicant's name was provided under subparagraph d., above. including information necessary to permit the applicant to contact the principal.
- f. Following such interviews of transfer applicants as a principal considers appropriate, each principal shall notify the District Personnel Office of those individuals the principal recommends for transfer to his/her school. Upon approval by the District Personnel Office, if such transfer does not violate the Singleton Obligations, a transfer assignment will then be made, which may be personally extended by the principal on behalf of the School District.
- g. In making the determination as to whether offers of employment with the School District recommended by a principal shall be made (including at which school employment will be offered when more than one principal recommends an applicant), the impact thereof upon the School District's compliance with its Singleton obligations

shall be determined. No offer of employment inconsistent with that obligation shall be made absent (i) the principal's detailed written explanation on the so-called "Singleton Obligation" form of the specific effort made to find an applicant whose employment would be consistent with such obligation, including the name and race of every person who applied for the position and the reason why each person not recommended for hire was deemed unacceptable, and the circumstances deemed sufficient to permit the recommended offer notwithstanding its impact on Singleton compliance; and (ii) the District Personnel Office's approval of the explanation as sufficient. Copies of each such "Singleton Obligation" form with the requisite documentation shall be maintained among the School District's personnel files during the term of this Modified Decree.

- h. All contracts of employment and school assignments shall be recommended to the Superintendent and approved by the School Board.

10. The School District will revise its policies governing hiring, assignment, transfer and promotion of school-based and District level administrators to insure compliance with its Singleton desegregation obligations, and shall:

- a. establish and widely and regularly publicize among the School District's certified personnel an Administrative Leadership Academy that shall operate regularly to provide specific training and resources to encourage certified non-administrative personnel to obtain the necessary certification to be administrators;
- b. advertise every administrative opening for a period of at least ten days;
- c. review the certification level of existing District non-administrative personnel, particularly minority certified personnel, to determine whether there are District personnel who already possess the requisite administrative certification to be considered for open administrative positions; contact such personnel; and encourage them to apply within the advertised period;
- d. consider all applications received, from within and from outside of the District, before

making any lateral administrative transfer or otherwise filling any administrative vacancy;

- e. utilize an interview committee of no less than three administrators, including at least one minority administrator, who shall use standardized interview questions appropriate to the type and level of each administrative vacancy (i.e., Central Office position, elementary or secondary principal, elementary or secondary assistant principal, etc.) and standardized rating forms that shall be pre-approved by the Director of Personnel; and
- f. maintain copies of all interview questions and rating forms in the District's Personnel Office during the term of this Modified Decree.

VIII. REPORTING PROVISIONS

The School District shall continue to file semi-annual reports to the Court on those areas of school district operation as set forth herein:

1. The School District shall hereafter file semi-annual reports to the Court on October 1st and March 1st of each school year, with copies to be served on the United States, providing the following information:

- a. the total number and percentage of students enrolled in the School District, by race
- b. the total number and percentage of students enrolled in each school in the School District by race
- c. the number and percentage of students enrolled at each school in the School District, by race and by grade
- d. the total number and percentage of full-time teachers in the School District, by race
- e. the total number and percentage of full-time teachers at each school in the School District, by race, grade, and position
- f. the total number and percentage of new full-time teachers hired in the School District, by race, position, grade level, and school of assignment

- g. the total number and percentage of part-time teachers in the School District, by race
- h. the number and percentage of part-time teachers at each school in the School District, by race and position
- i. the total number and percentage of administrators in the School District, by race
- j. the number and percentage of administrators, at each school and in the District's central administration, by race, by position, and by place of assignment
- k. the total number and percentage of new administrators in the School District, by race, position, grade level, and school or other place of assignment, and whether each administrator was (1) hired from outside the district; or (2) transferred from within the district, or promoted from within and, if so, the position to which each such administrator was previously assigned within the District
- l. the total number and percentage of non-certified personnel in the School District
- m. the number and percentage of non-certified personnel at each school and in the District Office, by race, by position, and by place of assignment
- n. the total number of requests for majority-to-minority student transfers in the School District, by race, sending and receiving school, and whether approved or disapproved
- o. the total number of out-of-area (intra-district) student transfers granted by race, reason, sending school, and receiving school (utilizing the table format agreed upon by the parties)
- p. the total number of out-of-area (intra-district) student transfers denied by race, reason, sending school, and receiving school (utilizing the table format agreed upon by the parties)
- q. the total number of inter-district student transfers into and out of the School District, by race, grade, sending school (and school district as applicable), and receiving school (and school district as applicable)
- r. an update on the results of the School District's minority staff recruitment efforts since the last report (to be provided in a format agreed upon by the parties, including new

- hires, by race, position, and place of assignment)
- s. what specific in-service training has been provided, to date, to members of the recruitment teams, and to building level personnel, particularly principals and any other School District personnel who interview job applicants
 - t. any proposed new school construction, including the specific information described in Part V, supra
 - u. any proposed change in the utilization of the Howard Community Center.

IX. JURISDICTION

1. The Court shall retain jurisdiction for purposes of monitoring and enforcing compliance with the terms of this Modified Decree.

2. Within forty-five (45) days of the School District's filing of each report to the Court as required herein, unless otherwise specified, the United States shall notify the School District and the Court if Plaintiff believes that this Modified Decree is being violated and specifically state how.

3. Upon the submission of the annual reports for any school year, the School District may file a motion for dismissal of this case provided that the School District has fully and in good faith implemented the terms of this Modified Decree. The United States shall file any objection or objections that it may have regarding the District's motion within sixty days from the filing by the School District. The Court thereafter shall schedule any appropriate proceedings, make appropriate findings, and render appropriate orders with respect to the School District's motion for dismissal of the case in accordance with applicable law.

DONE AND ENTERED at Jacksonville, Florida, this 31st day of August, 2004.


HARVEY E. SCHLESINGER
United States District Judge

Copies to:

Salliann S. M. Dougherty, Esq.
John P. McKeever, Esq.