IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
OLD WASHINGTON DIVISION
No. 6:69-CV-702-H

RONDA EVERETT, MELISSA GRIMES, CAROLINE SUTTON, and CHRISTOPHER W. TAYLOR, next friends of minor children attending Pitt County schools, and THE PITT COUNTY COALITION FOR EDUCATING BLACK CHILDREN,	)	
Plaintiffs,	)	**ORDER**
v.	)	
THE PITT COUNTY BOARD OF EDUCATION, public body corporate,	)	
Defendant.	)	

This action originated in two separate suits filed against the Greenville City Board of Education and the Pitt County Board of Education during the 1960s. It is presently before the court on a motion for declaration of unitary status filed by the Pitt County Board of Education and on remand from the Fourth Circuit Court of Appeals for consideration of plaintiffs' motion to enjoin implementation of the School Board's 2011-2012 student assignment plan. Beginning on July 22, 2013, the court held a five-day bench trial in this matter at which the court heard the testimony of sixteen witnesses and admitted 233 exhibits into evidence. Following the trial, each of the parties submitted

written proposed findings of fact and conclusions of law, which the court has carefully considered along with the evidence presented and the arguments of counsel made at the conclusion of the bench trial. For the reasons set forth below, the court grants the School Board's motion for declaration of unitary status and dismisses plaintiffs' motion for injunctive relief.

BACKGROUND

This case arises out of desegregation orders issued by the court in 1970. Teel v. Pitt County Bd. of Educ., No. 6:65-CV-569 (E.D.N.C.), was filed on January 4, 1965, on behalf of black students enrolled in the Pitt County, North Carolina school district. Edwards v. Greenville City Bd. of Educ., No. 6:69-CV-702 (E.D.N.C.), was a separate, but similar action filed on November 12, 1969, on behalf of black students enrolled in the City of Greenville, North Carolina school district. In each case the late Judge John D. Larkins, Jr., determined that the school district was operating racially segregated schools and ordered them desegregated.

Following a number of orders entered with respect to the Pitt County schools, Judge Larkins entered an order in Teel, on August 5, 1968, rejecting the school district's proposed desegregation plan. Judge Larkins mandated specific student assignments beginning with the 1968-69 school year and ordered that the school district "to the extent consistent with the

proper operation of the school system as a whole, . . . locate any new school and substantially expand any existing schools with the objective of eradicating the vestiges of the dual systems and eliminating the effects of segregation." (Jt. Ex. 1 at J5.) Two years later, in August 1970, Judge Larkins ordered the Pitt County schools to construct four new high schools during the 1970-71 academic year and to establish attendance areas that would racially integrate the feeder schools. The 1970 order also required that teachers and school personnel in each of the district's schools be assigned "so that the ratio of black and white teachers in each school will be substantially the percentage of black and white teachers and school personnel in the school system as a whole." (Jt. Ex. 2 at J10.) Following a period of active supervision, Judge Larkins administratively closed Teel in 1972 but retained jurisdiction over the case.

In Edwards, Judge Larkins entered an order on July 7, 1970, rejecting the Greenville City school district's proposed desegregation plan and ordered the Board to submit a plan that would provide for desegregation in the areas of student assignment, faculty assignment, extracurricular activities, and transportation and other programs. (Jt. Ex. 5 at J21.) On July 31, 1970, Judge Larkins approved the Greenville City school district's amended desegregation plan, which provided for

satellite busing to establish a 2 to 1 (white to black) racial ratio in each of the elementary schools and prohibited the discrimination of any student based on race or color. The plan further ordered that faculty and staff be assigned to establish a racial ratio that approximates that of the district as a whole and that there be no racial discrimination "in any service, facility, activity or program" in the Greenville City school district. (Jt. Ex 5 at J21.) As with Teel, a period of supervision followed and, in 1972, Judge Larkins administratively closed Edwards but retained jurisdiction over the Greenville city schools.

In 1986, the North Carolina General Assembly enacted a local act merging the Greenville City schools and the Pitt County schools to form a single school system, which is operated by the current Pitt County Board of Education ("School Board"). See An Act to Merge the Pitt County & Greenville City School Administrative Units, ch. 796, 1986 N.C. Sess. Laws 26-28.

Following the administrative closing of Edwards and Teel, no further action was taken in either of the cases for over thirty-five years until March 2008, when the School Board sought to reopen the cases. Three years prior to filing its motion, the School Board had adopted a new student assignment plan for the 2006-2007 academic year, which resulted in the redistricting or reassignment of over 3,000 elementary students. The 2006-2007

plan was met with great resistance and resulted in the loss of approximately 500 of the 1,005 white students enrolled in elementary schools located within the City of Greenville.[1]

In February 2006, members of the Greenville Parents' Association filed a complaint with the United States Department of Justice's Office for Civil Rights ("OCR"), complaining of the School Board's use of race in the 2006-2007 assignment plan. Following an investigation, representatives from OCR met with the Superintendent of the Pitt County Schools and members of her senior staff, including the School Board's attorney. OCR advised the school district that the race of individual students should not have been used to make student assignments under the 2006-2007 redistricting plan. At that meeting, OCR representatives discussed possible "corrective action," including the adoption of school choice options for children affected by the plan and the "undoing" of the 2006-2007 plan. In the end, the school district and OCR agreed that the School Board would seek clarification of this court's prior desegregation orders and that OCR would hold in abeyance any decision on the complaint filed with that agency. On the advice of and with guidance from OCR, the School Board revised its Attendance Area Policy in September 2007 to reflect that student achievement and socio-economic status, together with ethnic and

[1]Black enrollment at these schools increased approximately 7% during this same time period.

racial subgroups, would be considered by the School Board in the adoption of future student assignment plans.

In March 2008, the School Board filed a motion requesting that this court approve the school district's 2006-2007 student assignment plan as well as its revised Attendance Area Policy. On the school board's motion, this court reopened and consolidated the Teel and Edwards cases. The court allowed members of the Greenville Parents' Association to intervene in the case, and they subsequently moved the court for an order declaring the Pitt County school system unitary.

After court-ordered mediation, the parties reached a settlement, a part of which required the School Board to involve representatives of the parties to this action in School Board meetings concerning student assignment. The parties further agreed that the court should not take up the issue of unitary status at that time, and the court ordered the parties to work together in order to have the Pitt County schools declared unitary. This court approved the parties' settlement as fair and reasonable and found the School Board's adoption of the 2006-2007 student assignment plan and revised policy to have been undertaken in good faith compliance with the 1970 desegregation orders. Prior to the trial in this matter, no court has considered the issue of unitary status with respect to either the Greenville City schools or the Pitt County schools.

In anticipation of the 2011 opening of a new elementary school (Lakeforest) and significant expansion of Eastern Elementary, in November 2010, the School Board adopted a new student assignment plan for the 2011-2012 school year. Plaintiffs filed a motion in this court to enjoin implementation of the 2011-2012 plan on the grounds that it violated the prior desegregation orders and the School Board's continuing duty to desegregate the schools.

Because the 2011-2012 plan had been developed pursuant to the revised Attendance Area Policy, which had been consented to by plaintiffs and was part of the court-approved settlement of the parties' disputes, the court viewed plaintiffs' claim as one for breach of the court-approved settlement and placed the burden upon plaintiffs to show need for the injunctive relief sought, the standard generally applicable to motions for injunctive relief. Concluding that plaintiffs had not met that burden, this court denied plaintiffs' motion to enjoin the School Board from using the 2011-2012 plan.

Plaintiffs appealed, and the Fourth Circuit Court of Appeals vacated this court's order. The Fourth Circuit reasoned that since the 1970 desegregation orders had not yet been lifted, the burden was on the School Board "to prove that the 2011-12 Assignment Plan is consistent with the controlling desegregation orders and fulfills the School Board's affirmative

duty to eliminate the vestiges of discrimination and move toward unitary status." Everett v. Pitt County Bd. of Educ., 678 F.3d 281, 290 (4th Cir. 2012). Finding the existence of "competing factual claims," the Fourth Circuit remanded the case to this court for further development of the record. Id. at 291-92.

Following the Fourth Circuit's remand, the School Board filed a motion for declaration of unitary status. Presently before the court are the School Board's motion for declaration of unitary status and plaintiffs' motion for injunctive relief of the 2011-2012 plan.[2]

COURT'S DISCUSSION

I. Unitary Status Determination

> [D]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. Government action dividing us by race is inherently suspect because such classifications promote notions of racial inferiority and lead to a politics of racial hostility, reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin, and endorse race-based reasoning and the conception of a Nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict.

Parents Involved in Community Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 745-46 (2007) (citations and quotation marks

[2]Plaintiffs-Intervenors (members of the Greenville Parents' Association) had previously filed a motion to declare the school district unitary, but that motion was withdrawn pursuant to the parties' settlement, and Plaintiffs-Intervenors have since dismissed their claims with prejudice.

omitted). Because race-based classifications demean the dignity and worth of individuals by judging them based upon their ancestry instead of their own merits and qualities, such classifications are permissible only where they are narrowly tailored to achieve a compelling government interest, such as remedying the effects of past, intentional discrimination by the state. Freeman v. Pitts, 503 U.S. 467, 489-90 (1992).

Once state-enforced school segregation is found to exist, there arises a presumption that any current racial imbalance is the product of the former de jure discrimination. Id. at 505 (Scalia, J., concurring). However, school desegregation orders, such as the ones involved in this litigation, are not intended to be permanent. "[T]he prospect of indefinite federal supervision of local school districts" cannot be reconciled "with the ultimate purpose of that supervision - to foster the creation of autonomous, racially balanced school systems." Coalition to Save Our Children v. State Bd. of Educ., 90 F.3d 752, 761 (3d Cir. 1996).

> Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination."

Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell, 498 U.S. 237, 248 (1991) (quoting Spangler v. Pasadena City Bd. of Educ., 611

F.2d 1239, 1245 n.5 (9th Cir. 1979) (Kennedy, J., concurring)). Where a school system is found to have engaged in past racial discrimination, the school board has an affirmative duty to take whatever steps are necessary to convert its discriminatory school system to a unitary one. Green v. County Sch. Bd., 391 U.S. 430, 437-38 (1968). "The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about . . . ." Id. at 436. Once a school system has fulfilled its duty, the federal court should withdraw its jurisdiction and restore to the state and local authorities control over the operations of the school system. Dowell, 498 U.S. at 248-49.

Determining whether a school system has established a unitary system is a fact-intensive inquiry, and the burden of proof rests with the party seeking to end court supervision. Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305, 318 (4th Cir. 2001). It is only where the school board has complied in good faith with the desegregation plan and has eliminated the vestiges of past discrimination to the extent practicable that a school system may be declared unitary and federal jurisdiction withdrawn. Id. In evaluating whether the vestiges of discrimination have been eliminated to the extent practicable, a court must examine the following facets of school operations: student assignment, faculty assignment, staff assignment,

facilities and resources, transportation and extra-curricular activities. Green, 391 U.S. at 435. In its discretion, the court may consider other ancillary factors, such as student discipline, teacher quality, and the quality of education.

Where a school system demonstrates that it is unitary with respect to all relevant factors, the court should dissolve the desegregation order and withdraw its supervision. If, however, the court finds a school system is unitary with respect to some factors, but not others, the court may withdraw supervision incrementally with respect to discrete areas. Freeman, 503 U.S. at 491-92.

A. Elimination of Vestiges of Past Discrimination

1. Student Assignment

"Student assignment is perhaps the most critical . . . factor because state-mandated separation of pupils on the basis of race is the essence of the dual system." Belk, 269 F.3d at 319. Schools that are all or predominately one race require close scrutiny, and once de jure segregation is found, there is a presumption that any racial imbalance is the product of past discrimination by the state. "To rebut this presumption, 'a school board must prove that the imbalances are not the result of present or past discrimination on its part.'" Manning v. Sch. Bd. of Hillsborough County, Fla., 244 F.3d 927, 942 (11th Cir. 2001) (quoting Lockett v. Bd. of Educ., 111 F.3d 839, 843

(11th Cir. 1971)). However, "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 24 (1971). "The existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law." Id. at 26.

Moreover, it is only disparities caused by state-mandated action that are of constitutional concern. "Once the original racial imbalance caused by a constitutional violation has been rectified, 'the school district is under no duty to remedy imbalance that is caused by demographic factors.'" Belk, 269 F.3d at 321 (quoting Freeman, 503 U.S. at 494). Disparities in student assignment caused by socio-economic, demographic, or geographic factors are not vestiges of past de jure discrimination and are, therefore, not the concern of the federal courts. Freeman, 503 U.S. at 495 ("Where resegregation is a product not of state action but of private choices, it does not have constitutional implications."); Manning, 244 F.3d at 944 ("Where a defendant school board shows that demographic shifts are a substantial cause of the racial imbalances, the defendant has overcome the presumption of de jure segregation.").

At the outset of its analysis, the court notes that the parties disagree on a number of matters concerning the standards and methodology to be used in determining racial balance. First, Dr. David Armor, defendant's expert on desegregation, utilized a +/-20% deviation for determining whether a particular school is racially balanced or imbalanced, whereas plaintiffs' expert, Dr. Genevieve Siegel-Hawley, testified that she used a +/-15% standard because it has been commonly used in North Carolina and that she has never seen +/-20% used by any court, only +/-5, +/-10 and +/-15. As the First Circuit recognized in Morgan v. McDonough, 689 F.2d 265 (1st Cir. 1982), desegregation cannot be reduced to a matter of ratios or mathematical computations. However, standards of deviation, if applied flexibly, can be useful to supervising courts in measuring a school district's progress toward unitary status. Id. at 274. There is no particular deviation standard that has been generally accepted by the courts. However, a number of courts have used or approved the +/-20% standard utilized by Dr. Armor. See, e.g., Manning, 244 F.3d at 935, *cited with approval in* Belk, 269 F.3d at 319; United States v. Alamance-Burlington Bd. of Educ., 640 F. Supp. 2d 670 (M.D.N.C. 2009); Adams v. Richardson, 356 F. Supp. 92 (D.D.C. 1973); see also Morgan, 689 F.2d 265 (25% deviation standard). The court agrees with Dr. Armor that +/-20% is a reasonable standard and, therefore, uses

that standard to guide the court in determining the school district's progress toward unitary status.

In determining whether a school is racially balanced, the parties also disagree whether a school's racial composition should be compared to the student population of that particular grade level (i.e. elementary, middle or high school level) or to the student population of the district as a whole. Dr. Armor states that "students are not fungible across grade levels, so racial balance should be determined by computing deviations from elementary school, middle school and high school" populations. (Def.'s Ex. 3 at 9.) This court agrees with Dr. Armor that the racial composition of students attending elementary schools within a particular district may be far different from the racial composition of that district's high schools and therefore adopts Dr. Armor's methodology.

Finally, Dr. Siegel-Hawley applied the wrong standard in her analysis, continuously referring to the School Board's burden to remove all vestiges of discrimination "to the extent *possible*" (see, e.g., Trial Tr. at 775, 776), thereby placing a heavier burden on the School Board than the law requires. See Dowell, 498 U.S. at 250 (stating standard as "whether the vestiges of past discrimination [have] been eliminated *to the extent practicable*" (emphasis added)). Due to the number of significant flaws in Dr. Siegel-Hawley's methodology, the court

does not find her analysis helpful to the court's unitary status determination in this case.

There is no dispute in this case that both the Pitt County school system and the Greenville City school system were desegregated for some period of time following implementation of the 1970 desegregation plans approved by this court. In fact, the data shows that the Greenville City schools were almost perfectly balanced for the 1970-1971 school year. In 1972-1973, the first full year for which there is enrollment data following implementation of the desegregation order in Teel, all but two of the county schools were racially balanced. The School Board contends that both of the school systems maintained substantial racial balance among their students for at least fourteen years prior to the merger and that, as to the factor of student assignment, the Board has met its burden of proving that the vestiges of discrimination have been eliminated to the extent practicable.

Plaintiffs, on the other hand, argue that the School Board's evidence fails to establish that either school system was unitary in student assignment prior to their merger in 1986. Plaintiffs assert that any progress made toward racial balancing of the schools following implementation of the desegregation orders was "fleeting" - that it was attributable only to the school boards' initial compliance with court-ordered

desegregation and does not evidence a good faith compliance with the court's orders or a commitment to desegregation of the schools. This court disagrees.

a. Pre-Merger Period

i. Greenville City Schools

Prior to the court's desegregation order in Edwards, the Greenville City school system was highly segregated. In 1968, for example, the Greenville City school system was comprised of ten schools. Two elementary schools, Sadie Saulter and South Greenville, were 100% black, as was C.M. Eppes, a school that served grades 7-12. Four elementary schools, Agnes Fullilove, Elmhurst, Wahl-Coates, and Eastern, were 96-100% white, as were Greenville Junior High and J.H. Rose High School. Third Street Elementary was the only school within the district that was racially balanced at that time.

In 1970, Judge Larkins ordered that the Greenville City school board establish satellite attendance areas for the city's elementary schools to serve grades 1-6 and that the City establish one junior high school and one high school for the attendance of all students in grades 7-12. Because there is no question that the junior high and high school were completely desegregated shortly after the court's order, the court does not address those schools in determining whether the School Board has met its burden of establishing that the Greenville City

schools eliminated the vestiges of past discrimination in the area of student assignment.

For the three years following implementation of the court's desegregation plan, the Greenville City schools were "about as perfect a racial balance" as defendant's expert witness, Dr. Armor has ever seen. (Trial Tr. at 60.) For the 1970-1971 school year, the Greenville City schools enrolled 2,920 elementary students of which 1,809 or 61.9% were white and 1,102 or 37.7% were black. During this same year, the racial composition of the elementary schools was as follows: Sadie Saulter (58.3% white and 41.7% black, a deviation of 4%), South Greenville (62.6% white and 37% black, a deviation of -.7%), Elmhurst (56.4% white and 43.5% black, a deviation of 5.8%) Wahl-Coates (67.9% white and 31.1% black, a deviation of -6.6%) and Third Street (62.7% white and 36.8% black, a deviation of -.9%).[3] This near-perfect racial balance continued for three years, up to and including the 1972-1973 school year. That year, 58% of the elementary students were white and 41.5% were black, with the racial composition of the elementary schools being as follows: Sadie Saulter (53.8% white and 46.2% black, a deviation of 4.7%), South Greenville (59.8% white and 39.1 black, a deviation of -2.4%), Elmhurst (51.2% white and 48.8%

[3]Agnes Fullilove, which had previously served as a predominately white elementary school, was converted into a school for preschool education and special programs in 1970.

black, a deviation of 7.4%), Wahl-Coates (63.2% white and 35.7% black, a deviation of -5.8%), and Third Street (61% white and 38.5% black, a deviation of -3%).

By 1974, the Greenville City school system began to experience changes in its elementary school enrollment. With the addition of mandatory kindergarten classes, the number of elementary students had increased district-wide, but white enrollment was on the decline. Of the 2,829 elementary students enrolled for the 1974-1975 school year, 1,550 or 54.5% of the students were white and 1,265 or 44.7% were black. Sadie Saulter was particularly impacted by the changes. While it had the largest percentage increase in enrollment during this period, its white enrollment dropped significantly, from 227 students or 53.8% in 1972-1973 to 181 students or 35.8% in 1974-1975.[4] By the 1976-1977 school year, white enrollment at Sadie Saulter had declined to 125 students or 25.2% of the school's population, whereas the district-wide elementary enrollment was comprised of 50.2% white and 49% black.

Plaintiffs maintain that the School Board never fulfilled its duty to desegregate Sadie Saulter. Data before the court shows that Sadie Saulter was racially balanced for at least

[4]It may be that some of this impact was caused by a policy allowing kindergarten students to enroll in the schools nearest their homes rather than their satellite zones due to their young age. There is no direct evidence of such a policy before the court; however, Dr. Armor has indicated that was a common practice at the time.

three years following implementation of the plan. Additionally, Sadie Saulter was a point of focus, if not the impetus, for a number of the School Board's redistricting or rebalancing efforts. Racial imbalance was a topic of frequent discussion at Board meetings and workshops even after implementation of the court's desegregation plan. The Greenville City school board considered various approaches to racial balancing, including clustering or pairing schools. (See, e.g., March 5, 1979 Gville Bd. Mins., Def.'s Ex. 79; Dec. 17, 1979 Gville Bd. Mins., Def.'s Ex. 84; Jan. 7, 1980 Gville Bd. Mins., Def.'s Ex. 85; see generally Def.'s Exs. 72-90.)

Prior to the 1978-1979 school year, the Greenville City school board modified its satellite zones in order to rebalance the elementary schools. With the percentage of black elementary students in the district having grown to 51.3% in 1978-1979, the racial composition of the elementary schools, including Sadie Saulter, ranged from 48.2% black to 59% black, a deviation of -3.1% to 7.7%.

In 1980, the school district adopted yet another desegregation plan, this time pairing elementary schools in order to maintain racial balance. Under this plan, four schools (Eastern, Elmhurst, Sadie Saulter and Third Street) became K-3 schools while South Greenville and Wahl-Coates were designated for grades 4-6. Following the adoption of this plan, the

Greenville City schools experienced a large loss of white elementary students. Approximately 350 or 28% of the white elementary school students withdrew from the school system, causing the Greenville City elementary schools to become majority black, with 62.5% of the student enrollment being black.

The trends and patterns evident from this data establish that the Greenville City school board fully implemented its court-ordered desegregation plan for student assignment. Additionally, the various measures taken by the school district in the more than ten years following its implementation of the plan evidence the school district's good faith commitment to the continued desegregation of its schools. Based on this evidence, the court finds that the Greenville City schools were unitary in the area of student assignment prior to the school system's merger with the Pitt County schools.

ii. Pitt County Schools

Judge Larkins entered the first order desegregating the Pitt County schools in 1968. At that time, a large number of the schools were racially identifiable and six schools, South Ayden High School (grades 1-12), G.R. Whitfield (grades 2-12), W.H. Robinson (grades 2-12), North Fountain Elementary (grades 1-6), H.B. Sugg (grades K-12) and Bethel Union (grades 2-12) were all black. Only six of the twenty-three schools were

within the +/-20% deviation standard. In 1970, Judge Larkins approved the Pitt County school district's desegregation plan, which called for the construction of four new high schools to be dispersed throughout the county. North Pitt High School was sited for the northern portion of the county and scheduled to open for the 1970-1971 school year. The remaining schools were scheduled for completion prior to the 1971-1972 school year and were to be located in the southeastern (D.H. Conley High School), western (Farmville Central High School) and southwestern (Ayden-Grifton High School) regions of the county. Judge Larkins approved attendance areas, including feeder schools, for each of these new schools and ordered that the attendance area for each school be desegregated. For the North Pitt attendance area, for example, Judge Larkins ordered the clustering or pairing of the following schools: Belvoir Primary (grades 1-3) Belvoir Grammar (grades 4-8), Bethel Primary (grades 1-4), Bethel Grammar (grades 5-8), Stokes Primary (grades 1-5), Stokes Grammar (grades 6-8), Pactolus Elementary (grades 1-5), and North Pitt High School (grades 9-12).

Data from 1972, the first year after the four schools were completed, shows that the Ayden-Grifton, Farmville, and D.H. Conley attendance areas or clusters were racially balanced

following implementation of the plan.[5] The Ayden-Grifton attendance area was almost perfectly balanced, with black enrollment in each of the Ayden-Grifton schools ranging from 36% to 47% black, with the total black enrollment being 43% for that attendance area. Likewise, the Farmville Central attendance area shows a high degree of integration for that year, with black enrollment at each of the five schools ranging from 58% to 63% when the percentage of black students in that attendance area was 60%. Schools in the D.H. Conley attendance area were also racially balanced as defined by the +/-20% deviation, with the percentage of black students ranging from 39% to 62% in an attendance area where the overall black enrollment was 53%. Only two of the twenty-two schools in the Pitt County school district were not racially balanced. These two schools (Pactolus and Stokes) both served geographically remote areas of the county and were only marginally imbalanced, with deviations of -21% and 22%. From 1974 to 1984, all but one of the schools within the Pitt County school district were racially balanced when compared to student enrollment for that school's cluster or region. The exception is Pactolus Elementary, with a deviation rate of -26% in 1974, -21% in 1976, -23% in 1978 and -22% in

[5]Because Judge Larkins ordered the Pitt County schools to be desegregated according to their respective attendance areas, the racial balance of these schools is determined according to the percentage of black students within the respective attendance area and not the percentage of black students in the district as a whole.

1980. However, in 1982, Pactolus became racially balanced and remained balanced at least through 1984.

As with the Greenville City schools, student enrollment data shows that the Pitt County schools successfully implemented their court-ordered desegregation plans and had eliminated all racially imbalanced schools prior to the 1986 merger.

b. Post-Merger Period

Following the merger of the Pitt County schools and Greenville City schools, the School Board made the decision to continue the racial balancing practices of the prior school districts. In 1997, a policy was adopted to annually review racial balance within the schools in order to comply with "federal regulations and/or legal requirements." (Mar. 9, 1987 Sch. Bd. Mins., Df.'s Ex. 15, at 22.) Although the School Board was under no obligation to maintain a particular racial balance at its schools, the School Board adopted a racial balance guideline or target of 70/30. Given a racial composition of approximately 50% black and 50% white at the time, this target generally equates to a +/-20% deviation standard.

In the years following the merger, Pitt County has experienced a number of demographic changes, including population growth, population shifts and the loss of a large percentage of students following redistricting. During the first ten years after the merger, both black and white student

enrollment grew appreciably with little growth in other minority groups. So Pitt County was still approximately 50% black and 50% white during the mid-1990s. Over the next ten years, however, black enrollment continued to grow, but white enrollment leveled off, then began to decline. By 2005-2006 Pitt County was 52% black, 41% white and 7% other minority (mostly Hispanic). During these first twenty years after the merger, the vast majority of the schools were racially balanced for most of the years they were open. The exceptions have been Chicod Elementary and Sadie Saulter Elementary.

In the 1987-1988 school year, Sadie Saulter was 68% black, a deviation of 17% from the county-wide elementary student composition, which was 51% black. That same year, the School Board implemented a comprehensive plan to improve racial balance in the central area elementary schools and to relieve overcrowding in elementary schools located in the Winterville area (southwestern Pitt County), which had been caused by population growth. The plan included opening a new school (Wintergreen) and closing Third Street in 1990. The School Board designed satellite zones to send black students from central city neighborhoods to majority white schools in the county (W.H. Robinson, A.G. Cox and Wintergreen) and suburban white students to central city schools (Sadie Saulter and South Greenville). As a result of this plan, Sadie Saulter became 55%

black in 1988-1989, a deviation of just +7% black. In 1992, Sadie Saulter became majority white for the first time, with a 45% black population and deviation of -3%. Sadie Saulter remained close to 50% black and 50% white for several years, but due to demographic changes became 96% black by the 2004-2005 school year.

In an attempt to improve the racial balance of the central area elementary schools, the School Board implemented a satellite plan in 2005 that impacted more than 3,000 elementary students. The plan did have a short-term positive impact on Sadie Saulter. However, the unanticipated negative consequences far outweighed the plan's achievements. The school system lost a large number of students, predominantly white, to private schools, homeschools and other public schools in the district. In addition, because Sadie Saulter was in School Improvement under the No Child Left Behind Program, the School Board had to offer parents the option to transfer out of Sadie Saulter in the years following the redistricting.

Aside from Sadie Saulter, the only other school that experienced significant imbalance in the two decades after the merger was Chicod. Chicod is a K-8 school that serves a large, mostly rural area of approximately eighty square miles. Unlike other rural regions of Pitt County, the area around Chicod has never had a large black community within its boundaries.

Following implementation of the court's 1970 desegregation order, Chicod had significant black enrollment of 38%, and it remained fairly well balanced until the 1986 merger. However, two years after the merger, Wintergreen opened to relieve overcrowding at W.H. Robinson and A.G. Cox and to offer more opportunities for the desegregation of students in the former Greenville city schools. Due to its distance from Greenville and the central area schools, opportunities to improve the racial balance at Chicod have been limited.

Population growth in Pitt County has resulted in the opening of eight new schools since the 1986 merger. Only three were not racially balanced upon opening: Wintergreen, Hope Middle and Lakeforest. Wintergreen became racially balanced within three years and has been racially balanced for over twenty years now. Hope Middle, which serves an area in the southeastern part of the county that has experienced significant white growth, opened in 2006 with 29% black, compared to a middle school composition of 52% black, which made it imbalanced at 23%. It has remained at or around that level since it opened. Lakeforest opened in the fall of 2011 at 80% black, the only school to have opened with significant racial imbalance since the merger. However, the evidence shows that the cause of imbalance at Lakeforest is not a desire to return to a dual, segregated school system, but is rather reflective of a number

of other factors. Dr. Beverly Reep Emory, the former Superintendent of the Pitt County schools, testified that based upon OCR's advice regarding the inadvisability of using individual students' race as a factor in student assignment, the School Board decided to change its diversity policy by broadening the factors considered and eliminating the use of racial composition percentages.

It was in 2009 that the School Board's long-range facility plan identified the need for a new elementary school (Lakeforest) to alleviate overcrowding at Eastern, Falkland and Ridgewood elementary schools. Utilizing demographic information and growth projections, the Operations Research and Education Laboratory at North Carolina State University ("OREd") conducted a statistical analysis to assist the School Board in identifying the optimal location based on school capacities and the location of students. The site ultimately chosen for Lakeforest was within one and one-half miles of OREd's recommendation and was selected by the School Board based on the availability of suitable land.

Once site configuration had been decided upon, the School Board began developing a student assignment plan to populate Lakeforest. Prior to the construction of Lakeforest, the most recent opening had been Ridgewood Elementary, which was located nearby and opened racially balanced. In the Ridgewood

reassignment plan, the School Board had used socio-economic status, as measured by student eligibility for free or reduced lunch, together with proximity in developing a student attendance area. However, in 2009, the United States Department of Agriculture issued guidance directing school districts to cease using free or reduced lunch data without the individual parents' permission. As a result, the School Board abandoned its use of this factor and instead chose to rely on reading achievement scores (the lowest performance area) as a student diversity factor.

The impact area for the 2011-2012 assignment plan was a result of the identification of schools that could be impacted by the opening of Lakeforest and by the expansion of Eastern,[6] as well as the need to better utilize capacity at the existing middle school facilities. The School Board retained OREd to assist it in developing a student assignment plan. At the School Board's request, OREd produced two alternative plans, one based solely on proximity and one based on reading proficiency. The first was a pure proximity plan that proposed assigning students to the closest school based on where they lived. The second plan blended proximity and reading proficiency scores, with the goal being to balance the reading proficiency scores of the impacted schools.

[6]In 2011, major renovations were completed at Eastern, expanding its capacity from 418 to 742 students.

Maps illustrating the proficiency and proximity plans were presented to the School Board at a retreat, which was also attended by members of the Greenville Parents' Association and representative of the plaintiffs in this action. Information was presented at that meeting about the projected proficiency rates and projected racial composition of the schools under each plan. Under the proficiency plan (ES4 and MS3), the proficiency index was projected to range from a low of 56% to a high of 69% at the impacted elementary schools. Black student enrollment was projected to range from between 37% at Wintergreen to 66% at Lakeforest. Under the proximity plan (ES2 and MS2), the proficiency index was projected to range from a low of 35% to a high of 79% at the impacted elementary schools. Black student enrollment was projected to range from between 26% at Wintergreen to 97% black at South Greenville. In August 2010, OREd presented another alternative, a "middle ground" (ES5) to the elementary school map. Under ES5, the proficiency index was projected to range from a low of 47% to a high of 77%, and student enrollment was projected to range from 28% black at Wintergreen to 81% black at South Greenville.

Each of the plans/maps produced by OREd were pure mathematical computations created without any consideration having been given to their impact upon individuals. They had not been adjusted for practical considerations through a

"humanization" process. From these maps and information, Superintendent Emory and her staff then made some adjustments by moving segments to keep neighborhoods together, improve racial diversity, limit the number of satellite zones and comply with the School Board's stated goals. Based on the school district's experience with the 2006-2007 assignment plan and community input, the School Board attempted to limit the use of satellite zones. Dr. Emory explained, however, that satellite zones were added in certain circumstances in order to promote stability because the students were already attending that school.

Dr. Emory recommended to the School Board a modified version of the ES5 elementary school plan (ES5A1), which the Board adopted. Recognizing that the plan posed diversity and proficiency challenges for some of the schools, Dr. Emory included in her recommendation plans for additional educational resources to support these schools. Although Lakeforest opened as a racially identifiable black school under the plan adopted by the School Board, the plan also called for Sadie Saulter to be repurposed as a pre-kindergarten and special needs facility, thus eliminating the recurrent problems associated with rebalancing Sadie Saulter, which at the time was again over 90% black.

Based on the evidence presented, the court finds that the School Board has fulfilled its duty to eliminate the vestiges of

past discrimination in the area of student assignment prior to the merger and that any racial imbalance that currently exists within the schools is the result of demographic changes and not the product of discrimination by the School Board or the State. The School Board has, therefore, met its burden to show it meets the requirements for unitary status in the area of student assignment.

2. Faculty and Staff Assignment

The School Board has also met its burden of establishing that it is unitary with respect to the areas of faculty and staff assignments. In each of the cases before this court, Judge Larkins ordered that faculty and staff be assigned to establish a racial ratio that approximates that of the district as a whole. At trial, the School Board presented evidence establishing that the percentage of black teachers employed in Pitt County schools during 2011-2012 was 14.9%, whereas the percentage of black teachers employed throughout the State of North Carolina during 2011-2012 was 13.5%. This evidence demonstrates that the School Board is recruiting and retaining a racially representative teaching force when compared with the statewide composition of teachers.

The evidence presented further establishes that of the 36 schools operated by the School Board in the past eight years, 31 (or 85%) maintained racially balanced faculty during the period

of time they were operational or showed a deviation of slightly more or less than 10%. Falkland, G.R. Whitfield and H.B. Sugg were slightly out of balance for one or two years during this time period, and with the exception of Farmville High, all were balanced as of the 2011-2012 school year.

Dr. Delilah Jackson, the Assistant Superintendent of Human Resources testified that the Pitt County schools have adopted a number of initiatives to recruit minority applicants. Prior to the discontinuance of funding, the school district participated in Project Teach, a state program aimed at recruiting minorities to become teachers. The district participates in job fairs and recruitment fairs and sends principals and assistant principals to various colleges throughout the state, including historically black colleges and universities, in an effort to recruit minorities. The school district advertises in The Teacher of Color and The EEO Journal, both of which are publications specifically geared toward minorities.

In 2010, the school district started a leadership academy called the "Tier Program" in which assistant principals are provided professional development and trained to prepare them to become principals. The program involves a three "tier" progression aimed at improving the leadership skills of all assistant principals. New assistant principals start at Tier 3. As they progress and successfully complete an assessment,

administrators in the program are elevated to Tier 2, at which they receive a higher level of professional development. In Tier 1, an administrator is groomed for principalship and awaits an assignment that is a "good fit." While the program is not aimed specifically at recruiting or promoting minorities, seven of the ten Tier 1 administrators in 2012-2013 program were black, and five of those seven were named as principals for the 2013-2014 school year.

With regard to faculty/staff imbalance at Lakeforest, Dr. Jackson explained that the school district faced a number of challenges in assigning faculty upon the opening of Lakeforest. The biggest was ensuring that teachers displaced from the closing of Sadie Saulter (one of the larger elementary schools in the district) or the reduction of student enrollment in other schools had positions within the district. The school district also sought to match teachers with the grade levels previously taught so that teachers were not assigned to teach vastly different grade levels and to balance the assignment of new and experienced teachers to ensure that a school would not be staffed entirely with either new or experienced teachers. Finally, the administration also sought to accommodate personal requests by teachers who, for example, did not drive and would find it a hardship to be transferred to a school that was not nearby.

Finally, race and gender are factors considered by the district when filling vacancies in school leadership positions. Especially in larger schools where there are multiple assistant principals, the school district strives to have racially diverse teams of principals and assistant principals that reflect the student body so that students have positive role models and feel more comfortable approaching administration.

As shown by the evidence of the school district's programs, policies and practices, the School Board has eliminated racial discrimination in the hiring and assignment of faculty and staff. The court, therefore, finds that the Pitt County schools are unitary as to this factor.

3. Facilities and Resources

Plaintiffs concede there are no vestiges of discrimination with regard to the School Board's maintenance and provision of adequate school facilities. The School Board utilizes a race-neutral, long-range planning process to evaluate the condition of facilities and to prioritize and allocate resources for renovation and new construction based on the overall needs of the system. Although school facilities across the county vary according to their age and capacity, there is no evidence of a correlation between race and the condition of the facilities.

Over the last two decades, the total school-age population in Pitt County has increased 62%, necessitating the construction

of a number of new schools and the expansion of existing schools. The School Board has shown substantial compliance with this court's prior orders as they relate to the siting of schools, an issue plaintiffs do not concede. The evidence before the court is that new school sites are selected based on capacity and utilization of existing facilities and projections of growth in student enrollment, as well as the availability of suitable land. There are a number of constraints that must be considered in selecting a site, including zoning, existing infrastructure, soil condition and size of the property.

Since 1990, the School Board has utilized the services of OREd to assist it with school siting decisions. OREd's purpose is to identify an optimal school location based on school capacities, the location of students and projected population growth. The School Board does not consider race in selecting a particular site for a school. Once a site is chosen based on the need for additional capacity, the School Board does, however, consider such factors as race, socio-economic status, and student achievement in drawing the attendance area for the school.

Census data for Pitt County reveals that census tracts 6 and 13 experienced the greatest total growth of school-age population during the period of 2000-2010. Together, these census tracts grew by 1,608 black and 614 white school-age

children. Based on the significant population growth in these tracts, which are located in the southern portion of the county, the School Board was compelled to construct new schools in this area. Thus, Pitt County's three newest elementary schools (Creekside, Ridgewood, and Lakeforest) are all located in census tracts 6 and 13.

The evidence before the court establishes that the School Board's siting decisions have been motivated by the need to accommodate overcrowding at other schools caused by significant demographic changes in the county. There being no evidence of discrimination by the School Board, the court finds that the school district is unitary in the area of facilities and resources.

4. Transportation

The School Board provides bus transportation for all eligible students, regardless of their race. Students qualify for transportation based on the distance of their residence to their assigned school. Although the School Board is not required to provide transportation for students living within one and one-half miles of their assigned school, see N.C. Gen. Stat. § 115C-242(4), the school system regularly provides transportation to students living within this radius due to safety concerns.

The school district transports approximately 12,500 students (53% of the district-wide enrollment) each day. Bus routes are designed to promote safety and efficiency, and the average bus route consists of approximately eighteen to twenty-two stops. Bus routes are established to "[p]rovide the least amount of ride time for students, with no more than 90 minutes for any student for each trip and no more than 60 minutes desired." (Def.'s Ex. 32.)

Presently, the average bus ride is about forty-five minutes. From 2009 to 2012, both the average and median travel time for black students was less than the average travel time for white students. In 2009, the average travel time for white students was 49.2 minutes each way, and in 2012 it was 45.6 minutes each way. Black students spent an average of 41 minutes on the bus each way in 2009 and 38.5 minutes each way in 2012. The average travel time for Hispanics and students of other race and ethnicity is between those of the average white and average black travel times.

The evidence presented establishes that the School Board has complied with this court's prior orders concerning transportation and that there is no racial discrimination in the provision of transportation services to students.

5. Extracurricular Activities

There are no racial restrictions on a student's eligibility or ability to participate in sports or extracurricular activities in the Pitt County schools. Information about sports and extra-curricular activities is communicated to students and parents in a variety of ways, including morning announcements to the student body, school websites, email, posters throughout the school and through a telephone notification system. Club meetings are scheduled during the day so that all students are given the opportunity to participate. In addition, transportation home is available for after-school activities.

Finally, students are not prevented from participating in sports or other activities because of financial barriers. Students unable to pay applicable fees or who cannot afford equipment, shoes, or similar items receive assistance and sponsorships from the school or individual faculty members.

The court finds that the school district is unitary with respect to extracurricular activities.

6. Discipline

Plaintiffs urge the court to consider a disparity in student discipline as an ancillary factor under Green. See Belk, 269 F.3d at 319 ("In its discretion, a court conducting a unitary status hearing may consider other relevant factors not mentioned in Green."). For two reasons, the court does not find

discipline to be an appropriate factor for consideration in this case. First, Judge Larkins made no finding that either the Greenville City schools or the Pitt County schools had been administering disciplinary measures in a racially discriminatory manner. Additionally, no competent evidence has been presented to support such a finding. At most, the evidence shows that the rate of suspension for black students is higher than the rate for white students both statewide and in Pitt County. The anecdotal (and hearsay) testimony presented by plaintiffs to suggest that black students are more harshly punished than white students for dress code violations simply does not rise to the level of proof needed to justify consideration of discipline as an ancillary factor in the court's unitary status determination.

B. Good faith compliance

A school board is entitled to release from court supervision only where it has shown good faith compliance and a commitment to the eradication of state-imposed discrimination. Dowell, 498 U.S. at 637-38. As the Supreme Court explained in Freeman:

> [A] school district [must] show its good-faith commitment to the entirety of a desegregation plan so that parents, students, and the public have assurance against further injuries or stigma . . . . [T]he good-faith compliance of the district with the court order over a reasonable period of time is a factor to be considered in deciding whether or not jurisdiction [can] be relinquished. . . . A history of good-faith compliance is evidence that any current racial imbalance is not the product of a new de jure

> violation, and enables the district court to accept the school board's representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future.

Freeman, 503 U.S. at 498 (citations omitted).

The court finds that the School Board has met its burden of proving good faith. The evidence in this case shows that the School Board (and its predecessor school boards) fully implemented this court's desegregation orders within a short period of time. In the forty years since, the school boards have sought to comply with those orders notwithstanding significant demographic changes in the City of Greenville and Pitt County. The fact that the School Board originally opposed a motion for declaration status filed in this action and did not seek a unitary status determination until after this court's 2009 order, only underscores the School Board's commitment to this court's prior orders and to the continued integration of its schools.

II. 2011-2012 Student Assignment Plan

In light of the court's finding that the School Board is unitary in all respects and should be released from the court's prior desegregation orders, the court finds that plaintiffs' request for injunctive relief as to the School Board's 2011-2012 Student Assignment Plan is moot. Even assuming, arguendo, that the School Board is unable to meet its burden of proof as to the 2011-2012 plan, an order enjoining the continued implementation

of this plan would be pointless since the school district has been declared unitary and no longer has an affirmative duty to ensure that its policies move the district toward unitary status. See Freeman, 503 U.S. at 489 ("A remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation."); Milliken v. Bradley, 433 U.S. 267, 282 (1977) "[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation.").

CONCLUSION

As Chief Justice Roberts recently stated, times have changed since the 1960s. See Shelby County v. Holder, 133 S. Ct. 2612, 2625-26 (2013) (noting that "our Nation has made great strides" in ensuring the civil rights of minorities). Our society no longer tolerates separate lunch counters, drinking fountains, schools and buses for individuals based on the color of their skin, their race, or their ethnicity. Minorities are not only entitled to vote, they "hold office at unprecedented levels." Id. (quoting Northwest Austin Munic. Util. Dist. No. 1 v. Holder, 557 U.S. 193, 202 (2009)). Nevertheless, some individual prejudices still exist and, history tells us, always will. However, it is not the function of this or any other court to assume the role of supervising our schools due to the

prejudices of a few. The School Board has proven that the vestiges of state-mandated discrimination practiced over forty years ago have been eliminated to the extent practicable and that the School Board, as well as its predecessor boards, has complied in good faith with this court's desegregation orders and possesses a good faith commitment to the eradication of de jure discrimination in its schools.

For these reasons, the court hereby GRANTS the School Board's Motion for Declaration of Unitary Status [DE #106], DISMISSES as moot plaintiffs' motion for injunctive relief [DE #80] and hereby DISMISSES this case. The court finds plaintiffs' request for attorneys' fees and costs is not justified and therefore denies the same. The clerk is directed to close this case.

This 25th day of September 2013.

MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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