IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 70-15632
	)	
v.	)	
	)	JUDGE ROBERT G. JAMES
FRANKLIN PARISH SCHOOL BOARD,	)	
ET AL.,	)	MAG. JUDGE KAREN L. HAYES
	)	
Defendants.	)	

UNITED STATES' BRIEF CONTAINING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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UNITED STATES' BRIEF CONTAINING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 13 and 14, 2013, the Court held an evidentiary hearing (the "Hearing") regarding the Franklin Parish School District's (the "District") Motion for Declaration of Unitary Status, which was filed on March 1, 2013. Doc. 62. At the conclusion of the Hearing, the Court ordered the parties to submit proposed findings of fact and conclusions of law,[1] and in accordance with the Court's order, the United States submits the following:

PROCEDURAL HISTORY

The history of this case is set forth in the "Procedural History" section of the United States' Opposition to Defendant's Motion for Unitary Status, filed on March 22, 2013. Doc. 59. In addition, the United States notes that, since the original determination by this Court that the

[1] The transcript of the hearing is in two volumes, but the pages are numbered consecutively between the volumes, so this brief will cite to the transcript as "Trans. at [page number]." The brief will cite to the ten exhibits admitted in to evidence at the hearing as "Ex. D - [exhibit number] at [page number]."

District operated a *de jure* segregated school system, *see* August 20, 1970 order, the District has not moved for unitary status in any of the areas identified in *Green v. New Kent County School Board*, 391 U.S. 430 (1967) (the *Green* factors), until, on March 1, 2013, the District filed its Motion for Declaration of Unitary Status and to Dismiss and Memorandum in Support seeking a declaration of full unitary status and dismissal of the case. *See* Doc. No. 57. Nor has the Court determined that the District is unitary in any aspect of its operations.

PROPOSED FINDINGS OF FACTS

At a minimum, there are six areas of operations the District must demonstrate are free from discrimination before the District can achieve unitary status: (1) student assignment; (2) physical facilities; (3) transportation; (4) extracurricular activities; (5) teacher assignment; and (6) staff assignment. *Green*, 391 U.S. at 435. The United States has not stipulated to the unitary status of any of these factors, but in this brief the United States is only contesting unitary status with respect to student assignment, transportation, teacher assignment, and one other factor[2] that should preclude a finding of full unitary status.

Student Assignment

The District operates six schools including a high school (Franklin Parish High School); four (4) preK-8 schools; viz., Baskin School, Crowville School, Gilbert Junior High School, and Fort Necessity School; one preK-5 school, Winnsboro Elementary School; and an alternative

[2] As discussed more fully below, the court's original order of August 20, 1970, in addition to ordering the dismantling of the dual system in all aspects as decreed by the *Green* opinion, also ordered the creation of a committee of community members. *See* August 20, 1970 Order at 8-9.

school that serves students throughout the District, the H.G. White Learning Center. *See generally* Ex. D-7.

Each school is located on a separate campus and serves a specific attendance zone (except for the alternative school which serves students from any of the attendance zones). *Id.* at 30-33.

The most recent change approved by the Court modified the boundary lines that separated the Fort Necessity, Crowville, and Baskin Schools' zones. August 30, 2005 Order at 1.

The District now is served by schools in each quadrant: Baskin School serving the northwest, Crowville School serving the northeast, Gilbert School serving the southeast, and Fort Necessity serving the southwest. Trans. at 169. In addition, students in grades K-5 residing within the town of Winnsboro continue to attend Winnsboro Elementary School. *Id.*

During the 2012-13 school year, the District-wide student enrollment was 3,212 students, with the student racial composition approximately 53 percent black and 46 percent white. Ex. D-7 at a. The Superintendent could not recall, during his time as the superintendent, any affirmative or proactive measure taken by the District in connection with its desegregation obligations. Trans. at 192. The Superintendent's testimony was that no systematic plan for desegregation is necessary because "some of the [*Green*] factors take care of themselves." Trans. at 191.

Winnsboro is a racially identifiable black school and Crowville and Fort Necessity are racially identifiable white schools. Ex. D-7 a-b. According to the Superintendent, no efforts are underway to make Winnsboro more racially diverse, and he has not taken any corrective action in response to the data presented in the annual reports that show the percentage of black students at

Winnsboro Elementary School has continued to increase. Trans. at 186. The Superintendent testified that he is not really concerned about that percentage. *See* Trans. at 166-67 (Q. . . . "Do you have a concern as a superintendent with the fact that Winnsboro Elementary School this year had a black population of 91.3 percent? A. The answer to that would be no and yes probably; but, no, it seemed that it's worked out well with what we're doing. If I can elaborate just a little, that school was in unacceptable status in the State of Louisiana. I had to go before the state superintendent and all the assistant superintendents twice in which they were telling me that they were going to take over the school, that they would get a private operator to take it over. And I, luckily, persuaded them to let us keep trying a couple of more years. After three principals and the changing of – to the third principal, we finally have brought that school out of unacceptable status; and, in fact, it's – it's really ahead of two other schools in the – in the parish. So we're very – we feel very good about the fact that we brought it out of the unacceptable status.")

In the past, the Superintendent has had discussions with District officials about decreasing the percentage of black students at the Winnsboro Elementary School and taking affirmative steps to eliminate the racial identifiability at Winnsboro, but these discussions were subordinated to other concerns. *See* Trans. at 189-90.

At the hearing, the Superintendent testified that the Court-approved the 2005 Plan reduced Winnsboro to a preK-5 grade structure and sent students in grades 6-8 to majority white schools: Fort Necessity, Crowville, and Baskin. Trans. at 188. The Superintendent testified that he is aware of the burden imposed upon black students resulting from this zone change as these students travel significantly further to reach the schools. Trans. at 189.

Inaction has also persisted with respect to the disproportional percentage of black students referred to and attending the alternative school, Trans. at 193. The Superintendent is aware that the students referred to and attending the alternative school are disproportionately black students, but he did not suggest that any steps could or would be taken to address the concern; he instead testified "it's not much I can say about that really." *Id.*

Currently, about 60 students participate in the majority-to-minority transfer option; these are mostly students from the predominately black Winnsboro Elementary School who transferred to majority white schools. Trans. at 83, 170.

The Superintendent admitted that the notice regarding the majority-to-minority (m-to-m) transfer option was disseminated for the first time in 2012, at the request of the Department of Justice. *See* Trans. at 180-81.

Faculty

The District employed 213 teachers in the 2012-2013 school year, and the racial composition of the faculty was approximately 18 percent black and 80 percent white districtwide. Ex. D-8 at C.

During the 2012-13 school year, three schools (Winnsboro, Crowville, and the H.G. White alternative school) did not comply with the Court order of July 22, 1998 because the percentage of teachers are not within the required 10 percent range of the parish-wide averages of black teachers. *Id.*

The Personnel Supervisor is only generally aware that the school system is required to adhere to the July 22, 1998 Order which requires the active recruitment of black personnel and that

the District must establish and maintain percentages of black administrative and certificated personnel within 10 percentage points of the District overall averages at all of the schools. Trans. at 18.

The District's Personnel Supervisor testified that the recruitment of teachers to achieve the required diversity among the schools is impractical because of the possibility of losing the teachers to higher paying school districts. Trans. at 13.

The Superintendent can assign new teachers to any school within the parish and teacher applicants are informed that there is no guarantee that they can/will teach at particular schools. Trans. at 20.

The Superintendent possesses a significant amount of control over teacher assignment. *See* Trans. at 195-96.

The Superintendent confirmed that, in a given school year, it is possible that all new hires of one race could go to one school, while all of the hires of another race go to another school. Trans. at 197-98. The Personnel Supervisor testified that the District does not track the placement of newly hired teachers in an effort to comply with the court's orders. Trans. at 29.

The Superintendent has noticed that certain schools are not in compliance with the court orders regarding teacher assignment. Trans. at 194.

In 13 years, the reassignment of teachers (other than those requesting transfers) has only occurred once, and that was in connection with a reduction of force caused by a budget problem. Trans. at 20-21.

The Personnel Supervisor's testimony was that the District tries to accommodate applicants by allowing them to teach at the schools they want to teach. Trans. at 33.

Transportation

The District utilizes a district-wide plan that provides students with transportation to and from the District's schools, and the bus routes were developed based on attendance zones, geographics, and the costs associated with operating the buses. Trans. at 51-52. The Superintendent acknowledged that school districts commonly create planning documents that implement significant school operations. Trans. at 190. The Superintendent admitted that, to his knowledge, no such planning document was ever contemplated or created by the District in connection with its desegregation obligations. Trans. at 191

The Transportation Supervisor estimated that perhaps 10 of the 58 bus routes may contain students predominantly or solely of one race. Trans. at 61.

The Transportation Supervisor admitted that he has not completely read the court orders in connection with providing transportation. *See* Trans. at 58-59.

The Transportation Supervisor testified that he did not know if any of the bus routes created by the District were of a single race until the unitary status hearing was scheduled. Trans. at 60-61.

The Transportation Supervisor conceded that he has not studied the possibility of reducing the number of single-race bus routes. Trans. at 62.

Other

The Superintendent testified that it was his belief that the Court's order mandating the dismantling of the dual school system did not require that the District use a bi-racial advisory committee. Trans. at 183. The original order dismantling the dual system contained an express provision that the District establish a bi-racial advisory committee. *See* August 20, 1970 Order at 8-9.

PROPOSED CONCLUSIONS OF LAW

To prevail on its Motion for Unitary Status, the District must prove that the continued racial segregation of its schools is not traceable to its *de jure* actions. *See Freeman v. Pitts*, 503 U.S. 467, 494 (1992). Specifically, the District must show that it: (1) fully and satisfactorily complied with the court's desegregation orders since they were entered; (2) eliminated the vestiges of its past *de jure* discrimination to the extent practicable; and (3) demonstrated a good faith commitment to the whole of the court's order and the underlying principles of equal protection. *See Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Freeman*, 503 U. S. at 491-92, 498; *Bd. of Educ. v. Dowell*, 498 U.S. 237, 248-50 (1991).

In addition, the District must "demonstrate[ ] to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance." *Freeman*, 503 U.S. at 491); *see also Dowell*, 498 U.S. at 247 (The court must inquire into whether it is "unlikely that the school board [will] return to its former ways."). The Court must not only examine the District's past conduct, but also evaluate "specific policies, decisions, and

courses of action that extend into the future." *Brown v. Bd. of Educ.*, 978 F.2d 585, 592 (10th Cir. 1992), *cert. denied sub nom., Shawnee County, Kan. v. Smith by Smith*, 509 U.S. 903 (1993).

The District's compliance with the previous orders is the test of its commitment, and the "court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future." *Dowell,* 498 U.S. at 249.

Prong One

The first prong of this analysis requires the District to show compliance with the desegregation decree for a reasonable period of time. *Dowell*, 498 U.S. at 249-50 ("The District Court should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable"); *see also Jenkins*, 515 U.S. at 89. The testimony adduced at the hearing in this case shows that the District has not sufficiently complied with the relevant court orders and has not fulfilled its desegregation obligations. For example, the Superintendent admitted that the notice regarding the majority-to-minority (m-to-m) transfer options was first disseminated during the 2012-2013 school year, at the United States' request, despite the fact that the Court ordered the "aggressive" promotion of the m-to-m transfer option many years ago. *See* December 8, 1995 Order at 6. The Superintendent also testified that he believed that the Court's order mandating the dismantling of the dual school system did not require that the District create a bi-racial advisory committee. However, the Court did mandate that the District "establish[] a bi-racial committee composed of an equal number of black and white persons." August 20, 1970, Order at 8. In addition, the Court decreed that the percentage of black teachers at the schools must not deviate by

more 10 percent from the parish-wide average for black teachers, s*ee* April 13, 1999 Order at 7, but three schools are not in compliance with this mandate.

The community cannot have any assurance that the District will comply with the court orders governing desegregation of the schools when the Superintendent fails to discuss those orders with students and families. *See Freeman*, 503 U.S. at 491 (A school district must "demonstrate[ ] to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.").

The Superintendent admitted that no corrective action has been taken to modify the percentage of black students assigned to the Winnsboro Elementary School to eliminate its racial identifiability. While the District is aware of the need to address the ongoing segregation of students at the Winnsboro Elementary School, it has failed to take the necessary action to eliminate the problem. *See Swann v. Charlotte-Mecklenburg Bd. of Educ*, 402 U.S. 1, 26 (1971) ("The burden falls on the school district to correct past discriminatory practices.").

The testimony of the Superintendent shows that the District has not complied with the court orders since they were entered as the Superintendent believes that some of the *Green* factors "take care of themselves," but courts have specifically rejected this passive approach to achieving unitary status. *See, e.g., Swann* , 402 U.S. at 15 (School authorities are "'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.") (quoting *Green*, 391 U.S. at 437-38); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 538 (1979) (A school district that operated a *de jure* system is under a "continuing duty to eradicate the effects of that system");

Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 459 (1979) ("Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment.").

The Superintendent confirmed the District's has failed to make affirmative effort to desegregate when he admitted that, in his nine years as superintendent, he could not recall taking any corrective action to eliminate the vestiges of the former dual system. Such inaction cannot comply with the edict of *Swann* that school district take the affirmative steps necessary to dismantle the dual system. *See* 402 U.S. at 15.

Prong Two

In connection with the second prong of the unitary status test, the standard is that "[t]he measure of any desegregation plan is its effectiveness." *Davis v. Bd. of Sch. Comm'rs of Mobile Cnty*., 402 U.S. 33, 37 (1971); *Brinkman*, 443 U.S. at 537-38 (1979) ("[T]he measure of the post-*Brown I* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system."); *Swann*, 402 U.S. at 25 ("[A]district court's remedial decree is to be judged by its effectiveness."); *Green*, 391 U.S. at 438 (holding that a desegregation plan is unacceptable if it fails "to provide meaningful assurance of prompt and effective disestablishment of a dual system"), and a school district "ha[s] to do more than abandon its prior discriminatory purpose." *Brinkman*, 443 U.S. at 538 (citing *Keyes v. School Dist. No. 1*, 413 U.S. 189, 200-01 n. 11 (1973); *Swann*, 402 U.S. at 28).

Moreover, it is important to note that the Court must presume that any current racial disparities in its operations are the result of the District's prior unlawful conduct, unless the

District proves that the imbalances are not traceable in a proximate way to its former *de jure* system. *See Freeman*, 503 U.S. at 494; *see also Manning v. Hillsborough Cnty Sch. Bd.*, 244 F.3d 927, 942 (11th Cir. 2001) (Until a district is declared unitary there is "a presumption [] that all racial imbalances in a school district are the result of the *de jure* segregation."). Moreover, while the goal of any desegregation case is to "eradicate segregation and its insidious residue," *Anderson v. School Board of Madison County*, 517 F.3d 292, 298 (5th Cir. 2008) (quoting *Ross v. Houston Independent School District*, 699 F.2d 218, 228 (5th Cir. 1983)), and return the District to the control of local authorities, s*ee Freeman*, 503 U.S. at 489, the Court should not release the District from judicial oversight until it proves that it "has done all that it could to remedy the segregation caused by official action," *Anderson*, 517 F.3d at 298 (quoting *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1314 (5th Cir. 1991)), and the passage of time, alone, does not satisfy this standard. *See Dowell v. Bd. of Educ.*, 8 F.3d 1501, 1516 (10th Cir. 1993); *see also Brown*, 978 F.2d at 590.

The vestiges of discrimination remain as is evident by the student assignment at Winnsboro Elementary School where over 90 percent of the students are black.[3] Hence, the school continues to be racially identifiable with a student population that is about 91 percent black; the percentage of black students has increased for the last three school years, as it was 88.9 percent black in 2010. *See* Trans. at 185. The Superintendent is aware that the school is racially

[3] It is stressed that, while racial disparities in enrollment between schools are not *per se* prohibited, the District must prove it made "every effort to achieve the greatest possible degree of actual desegregation." *See Swann*, 402 U.S. at 26. Indeed, "[t]he [Supreme] Court's cases make clear that there is a presumption in a former *de jure* segregated school district that the board's actions caused the racially identifiable schools, and it is the school board's obligation to rebut that presumption." *Freeman*, 503 U.S. at 512 n. 1. Although the presumption is applied to all identified disparities, it is particularly strong when a district operates one-race or substantially one-race schools. *See Swann*, 402 U.S. at 26; *Davis v. East Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1434 (5th Cir. 1983); *Lemon v. Bossier Parish Sch. Bd.*, 566 F.2d 985, 987 (5th Cir. 1978).

identifiable, but no efforts have been or are underway to eliminate the vestige of segregation. The Superintendent is not concerned about the racial identifiability of the school. Indeed, the Superintendent is satisfied that, if the school passes the bare minimum of requirements as set by the state, the process has worked out well, which contravenes the mandate to take affirmative efforts to remove the vestiges of the dual system. *See Swann*, 402 U.S. at 15; *Green,* 391 U.S. at 437; *Pitts,* 503 U.S. at 495.

There was no showing that further integration of the schools is impracticable. *See United States v. DeSoto Parish Sch. Bd*., 574 F.2d 804, 815 (5th Cir.), *cert. denied*, 439 U.S. 982 (1978) (A number of factors are assessed when a court determines whether a particular remedial option is practicable, including the location of the schools, the geography of the district, physical barriers, demographic obstacles, and insuperable distances between schools.).

The District has the burden to show that it is impracticable to redraw its attendance zones; consolidate facilities or locate and construct new schools; pair or cluster schools; adopt controlled choice or lottery programs; develop theme schools or centers of interests; site specialized or focused academic programs; or some combination of these options. In fact, according to the Superintendent, the District has not created a plan to achieve unitary status; consequently, the Court has no guidelines with which to gauge the District's systematic efforts to achieve unitary status, so the Court should presume that the District can take remedial measures to reduce the racial identity of the Winnsboro Elementary School. *Swann,* 402 U.S. at 27-28.

During the spring semester of 2012, the student population at the H. G. Alternative School was about 95 percent black. As in the case of the racially identifiable Winnsboro Elementary School, the Superintendent is aware of this situation, but has failed to take remedial actions to

address the disproportionate referral and attendance of black students to the alternative school. Given these recent statistics, the District cannot demonstrate that it has eliminated schools that are racially identifiable for a reasonable period of time. *See Flax v. Potts,* 915 F.2d 155, 158 (5th Cir. 1990); *Monteilh v. St. Landry Pub. Sch. Bd*., 848 F.2d 625, 629 (5th Cir. 1988); *Singleton v. Jackson Mun. Sep. Sch. Dist.,* 541 F. Supp. 904, 906-907 (S.D. Miss. 1981) (operating in a unitary fashion for a reasonable period of time without situations detrimental to desegregation, is adequate to demonstrate the establishment of unitary status).

The Crowville, Winnsboro, and H.G. White schools are not within the required 10 percent range of the parish-wide averages for black teachers, and therefore, they do not comply with the Court order. *See* April 13, 1999 Order at 7. The predominantly white Crowville School, whose black student population is lower than the District's overall black student population, has only 3 percent black teachers, while the District's overall black teacher percentage is close to 20 percent. Conversely, the racially identifiable black Winnsboro Elementary School's percentage of black teachers is more than double the District's overall black teacher percentage, and the H. G. White Learning Center's black teacher percentage exceeds ***three*** times the District's overall black teacher percentage. Hence, vestiges of the dual system remain. *See* Court's Order of August 20, 1970 at 3 (requiring the District to assign faculty, staff, and administrators so that "in no case will the racial composition of a staff indicate that a school is intended for black students or white students" and "so that the ratio of black to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teacher and other staff, respectively, in the entire school system."); Court's April 13, 1999 Order at 7; *Singleton v. Jackson Mun. Separate Sch. Dist*., 419 F.2d 1211, 1217-18 (5th Cir. 1969) (The District has an affirmative duty to ensure that its "the principals,

teachers, teacher aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students."), *rev'd on other grounds sub nom.*, *Carter v. West Feliciana Parish School District*, 396 U.S. 290 (1970).

The District has failed to take the necessary efforts to assign faculty in compliance with the Court's orders. The District places applicants at the school at which they desire to teach, and the District does not track the placement of newly hired teachers in an effort to comply with the Court orders. Acceding to the preferences of the teachers in the context of achieving desegregation is not permissible where it impedes the desegregation process. The District must undertake the necessary, affirmative, steps such as employee reassignment to aid in the desegregation process. *See Singleton*, 419 F.2d at 1217-18; *Pitts*, 503 U.S. at 492. *See also United States v. Bd. of Educ. of City of Bessemer*, 396 F.2d 44, 50 (5th Cir. 1968) ("The School Boards do not meet their duty by soliciting volunteers [when integrating faculty]."); *United States v. Greenwood Mun. Separate Sch. Dist.*, 406 F.2d 1086, 1093 (5th Cir. 1969) ("The school board must put its shoulder to the wheel and assume the burden of integrating the faculty and staff of each school…"); *Hall v. St. Helena Parish Sch. Bd.*, 417 F.2d 801, 807 (5th Cir. 1969) ("There can be no doubt of the duty of school boards to act affirmatively to abolish all vestiges of state-imposed segregation of the races in the public schools.").

In sum, less than affirmative efforts are not legally sufficient for the District to prove compliance with the Court's orders on this very important aspect of its operations. *See, e.g., Swann*, 402 U.S. at 18 (A school district's policies and practices concerning the recruitment and assignment of its faculty and staff are "among the most important indicia of a segregated system.")

(citing *Green*, 391 U.S. at 435). The District has not eliminated the vestiges of the dual system in connection with the assignment of teachers. *See generally Singleton,* 419 F.2d at 1217-18. The same is true with respect to the transportation of students. The District still has a significant number of bus routes that carry students disproportionally of one race or the other. The District could examine the alteration of routes to lessen this, but it has not done so.

Prong Three

In connection with the District's need to show good faith commitment to equal protection, it is important to note that black students have shouldered a disproportionate burden of the District's past desegregation efforts. The largely black student population living in Winnsboro must attend grades 6 through 8 in more distant white schools in order to desegregate those schools, while white students who live in other parts of the parish are not required to travel to the Winnsboro Elementary School. Thus, black students that would be assigned to Winnsboro are the only students required to travel, which is not permitted. *See, e.g., Arvizu v. Waco Independent School District,* 495 F.2d 499, 504 (5th Cir.) ("[I]t is incumbent upon the district courts to insure that the burdens of desegregation are distributed equitably.") (citations omitted), *reh'g. denied,* 496 F.2d 1309 (5th Cir. 1974); *Davis v. East Baton Rouge Parish School Board,* 514 F. Supp. 869, 883 (M.D. LA 1981).

CONCLUSION

The District bears the burden of proof on each element of the unitary status test; the District has the affirmative duty to take "all steps necessary to eliminate the vestiges of the un-

constitutional *de jure* system." *Freeman*, 503 U.S. at 485, 494; *see also United States v. Fordice*, 505 U.S. 717, 739 (1992) ("*Brown* and its progeny . . . established that the burden of proof falls on the [district] . . . to establish it has dismantled its prior *de jure* segregated system."). The testimony and evidence presented at the hearing shows that the District has failed in its responsibilities to eliminate the vestiges of the former dual system and therefore, has yet to achieve unitary status.

The mere profession by the District that it will comply with the Court's orders is not sufficient. *See, e.g., Dowell,* 498 U.S. at 249 (The "court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future."). The testimony and evidence shows that the District has failed to carry its burden of proof that the District has achieved unitary status and in is compliance with the three prongs listed above.

As described in detail above, the testimony at the hearing by the District's administrators shows that the District has not: (1) fully and satisfactorily complied with the court's desegregation orders since they were entered; (2) eliminated the vestiges of its past *de jure* discrimination to the extent practicable; and (3) demonstrated a good faith commitment to the whole of the court's order and the underlying principles of equal protection.

The Winnsboro Elementary School continues to have a black student population of over 91 percent, and the H. G. White Alternative School's black population in one recent school semester was over 90 percent. These schools' black student populations are substantially above the District's overall black student population of about 53 percent and therefore, constitute racially identifiable schools.

Importantly, the Superintendent's testimony reveals that the District is aware that segregation in student assignment and faculty assignment persists, at a level inconsistent with applicable case law and the orders of this Court, but the District has failed to take any action to eliminate the vestiges of the former dual school system. In addition, the assignment of teachers at three of the schools does not comply with the Court order and case law. Finally, the District has not taken any affirmative efforts to eliminate one-race bus routes in connection with the transportation of students.

In sum, based upon the evidence, it is respectfully urged that the Court deny the motion for unitary status.

Respectfully submitted,

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July 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the _12_ day of _July_, 2013, a true and correct copy of the foregoing Brief Containing Proposed Findings of Fact and Conclusions of Law was served on all counsel of record in the above-captioned matter by electronic means through the Court's ECF system and by depositing a copy of the same in the U.S. Mail, postage prepaid, at the following address:

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