

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, )  
) )  
v. )  
) )  
JUVENILE FEMALE 1 and THE GREENVILLE )  
PARENTS ASSOCIATION, )  
) )  
Plaintiffs-Intervenors, )  
) )  
v. )  
) )  
THE PITT COUNTY BOARD OF EDUCATION, )  
public body corporate, )  
) )  
Defendant. )

**DEFENDANT’S REPLY  
TO PLAINTIFFS’ RESPONSE  
TO MOTION FOR  
DECLARATION OF  
UNITARY STATUS**

Defendant P itt C ounty B oard of E ducation, ( “Board”), b y and t hrough c ounsel a nd  
pursuant to Local Rules 7.1(e) and 7.2, h ereby submits its Reply to Plaintiffs’ Response to the  
Defendant’s Motion for Declaration of Unitary Status.

**ARGUMENT**

**I. The Fourth Circuit Court of Appeals’ remand to this Court does not preclude a consideration of unitary status in the area of student assignment.**

Nothing i n the decision of t he Fourth C ircuit C ourt of A ppeals p reempts t his C ourt’s  
authority and duty to consider whether the Pitt County Board of Education should be declared  
unitary. *Everett et al. v. Pitt County Bd. of Educ.*, 678 F.3d 281 (4th Cir. 2012). It is entirely

appropriate for the Court to take up the issue of unitary status now and, especially, to consider whether the school system has attained unitary status with respect to student assignment. Consideration of the Board's 2011 reassignment plan cannot take place in a vacuum. Without an assessment of whether or how close the Pitt County Schools has come to achieving unitary status in student assignment, the Court cannot undertake a meaningful review of the issues remanded by the Fourth Circuit. This is a determination the Court must make notwithstanding the Board's motion for a declaration of unitary status.

In *Bradley v. Baliles*, the United States District Court for the Eastern District of Virginia was asked to determine whether the State should be required to provide additional funding to the Richmond Public Schools (RPS) for compensatory and remedial programs necessary to eliminate vestiges of prior discrimination. 639 F. Supp. 680 (E.D. Va. 1986), *aff'd* 829 F.2d 1308 (4th Cir. 1987). The question of unitary status was not directly before the court and, at the time of hearing, no court had ruled that RPS had attained unitary status. *School Bd. of Richmond v. Baliles*, 829 F.2d 1308, 1311 (4th Cir. 1987). Nevertheless, the district court examined the *Green* factors and found that "RPS has now achieved such status." *Bradley*, 639 F. Supp. at 687. The district court's decision finding that the school district had achieved a unitary system was affirmed by the Fourth Circuit, even though the case was before the district court on a different question at the time of the unitary status ruling. *Baliles*, 829 F.2d at 1311.

Both the student assignment component of a unitary status determination and the issues raised in Plaintiffs' motion for injunctive relief share essential questions of fact. This Court may consider both matters in a consolidated hearing without violating any directive of the Fourth Circuit.

**II. The Board is entitled to an opportunity to demonstrate that the Pitt County Schools has achieved unitary status in the area of student assignment as part of meeting its burden to defend the 2011 reassignment plan.**

Despite Plaintiffs' suggestions to the contrary, this Court has never ruled directly on the question of whether unitary status has been attained as to one or more of the *Green* factors. By entering the 2009 settlement agreement, the parties removed the question of unitary status from the Court's immediate consideration. (D.E.69-2, pp. 9 -13; D.E.73, p. 6) Indeed, the 2009 settlement agreement was intended to avoid the protracted and resource-draining litigation that would necessarily accompany a unitary status determination. However, the 2009 settlement agreement clearly has not put an end to the litigation. Therefore, the Board is prepared to show the Court that it has complied with the desegregation orders, has eliminated the vestiges of discrimination to the extent practicable, and is entitled to a declaration of unitary status.

While the Board has certainly acknowledged, as indeed it must, that no *declaration* of unitary status has been made, it is simply incorrect to assert that the Board has conceded that the Pitt County Schools is not operating as a unitary system. In fact, in its response to Plaintiffs' April 2011 motion for injunctive relief, the Board expressly requested that the Court "enter a scheduling order that would permit sufficient time to enable the Board to present evidence of all relevant factors for a unitary status inquiry." (D.E.84, p. 17 (emphasis added)) The Board has taken a consistent position that the validity of the 2011 student reassignment plan should not be viewed in isolation.

**III. The Board's Motion for Declaration of Unitary Status is sufficient to request an evidentiary hearing at which it will bear the burden of proof to demonstrate that the Pitt County Schools has achieved unitary status on one or more of the *Green* factors.**

Plaintiffs assert that the Board's motion for unitary status should be "summarily denied." (D.E. 110, p. 11) This statement has no support in law or fact. While the Board will clearly bear

the burden of proof in an evidentiary hearing on the question of unitary status, there is no basis to contend that the Board's motion or supporting memorandum must contain all of the evidence necessary to carry this burden. Yet that is exactly what Plaintiffs appear to contend.

A determination on unitary status is a "fact-intensive inquiry." *See, e.g., United States v. Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d 670, 676 (M.D.N.C. 2009); *see also Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 312 (4th Cir. 2001) (noting that the district court's decision on unitary status "was not reached in haste; it was the result of a two-month hearing and an examination of extensive testimony and evidence relating to every aspect of CMS's educational system."). As the Board bears the ultimate burden of proof on the question of unitary status, it is entitled to a hearing at which it can present evidence on all relevant factors.

#### **IV. A Special Master is not needed at this point in the litigation.**

Plaintiffs' Response appears to suggest that the Court has been unable or unwilling to provide sufficient judicial guidance, evaluation and oversight. (D.E.110, p. 14) The Board disagrees. The Court has ordered the parties "to submit, on or before December 31, 2012, a report detailing the School Board's efforts and progress in achieving unitary status and eliminating the vestiges of past discrimination to the extent possible." (D.E.73, p. 6) The Board has been diligently working toward submitting its report and sees no need to turn this task over to a Special Master. Moreover, the Board has asked this Court to affirmatively take up consideration of whether the Pitt County Schools has attained unitary status. Plaintiffs' desire for greater intervention and for delegation of responsibility to a Special Master at this point is without basis, other than Plaintiffs' unfounded belief that the Board has not fulfilled or is not fulfilling its obligations.

## CONCLUSION

For the reasons stated herein and in the Memorandum in Support of Defendant's Motion for Declaration of Unitary Status, the Board respectfully requests that the Court hear Plaintiffs' Motion for Injunctive and Other Appropriate Relief, Attorney Fees and Costs in conjunction with the student assignment component of the Board's Motion for Declaration of Unitary Status.

Respectfully submitted this the 13<sup>th</sup> day of August 2012.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DEFENDANT'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR DECLARATION OF UNITARY STATUS** was served upon Plaintiffs via electronic mail, addressed to:

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This the 13<sup>th</sup> day of August 2012.

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