

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 1796

HAROLD DOUGLAS COPPEDGE, *et al.*,)
)
 Plaintiffs,)
)
 UNITED STATES OF AMERICA,)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 THE FRANKLIN COUNTY BOARD)
 OF EDUCATION,)
)
 Defendant.)
 _____)

CONSENT ORDER

CONSENT ORDER

This matter is before the Court at the request of plaintiffs Harold Douglas Coppedge, *et al.*, plaintiff-intervenor United States, and defendant Franklin County Board of Education (“the District”).

The District operates under a series of school desegregation orders (including orders issued on August 21, 1967, August 5, 1968, July 28, 1970, May 22, 1978, August 16, 1994, and June 14, 1996). The desegregation orders and applicable federal law require the District to, *inter alia*, eliminate the vestiges of discrimination, to the extent practicable, in its student assignments, faculty and staff hiring and assignments, quality of education, school transportation, extracurricular activities, school construction and facilities, and student transfers. The desegregation orders also require the District to report periodically to the Court, plaintiffs, and

plaintiff-intervenor on several facets of the District's school operations.

On April 12, 2000, the District filed a Motion to Dismiss asking, *inter alia*, the Court to declare that the District has achieved unitary status and dismiss this case and the applicable desegregation orders. Plaintiffs and plaintiff-intervenor opposed the District's motion for unitary status on grounds that the District has not eliminated the vestiges of discrimination in certain areas to the extent practicable.

On June 24, 2002, this Court granted in part, and denied in part, the District's request for a finding of unitary status. The Court held that "the District has achieved unitary status in the following areas: (1) school transportation; (2) extracurricular activities; (3) school construction and facilities; (4) student transfers; and (5) faculty desegregation." June 2002 Order at 2. The Court, however, denied the District's request for unitary status in the areas of student assignments, staff desegregation and quality of education. *See id.* at 2-3. The Court concluded its order by directing the District to develop a proposal to address the three remaining areas of noncompliance, and by establishing a timetable for plaintiffs and plaintiff-intervenor to respond to the District's proposal and for the parties to explore the possibility of developing a proposed consent decree. *See id.* at 3. As directed by the Court, the parties have engaged in good faith negotiations since the June 2002 Order. In an effort to address the Court's concerns regarding student assignments, quality of education and staff desegregation, and eliminate the possibility of protracted and costly litigation, the parties have agreed to the desegregation initiatives detailed below.

It is the determination of this Court that the actions embodied in this Consent Order:

1) comport with the Fourteenth Amendment to the Constitution of the United States of America

and applicable federal law; 2) are reasonable, equitable and appropriate to ensure that the practices and policies of the District comply with applicable federal law and the desegregation orders issued in this case; and 3) will, if properly implemented, further the orderly desegregation of the schools operated by the District.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following plan be entered, announced, and implemented as appropriate steps for attaining compliance with applicable federal law:

I. STUDENT ASSIGNMENTS

The District will take the following steps to ensure that it has eliminated the vestiges of discrimination, to the extent practicable, in student assignments:

A. The District will continue following its majority to minority transfer program, under which any student may “transfer between district schools if . . . : (A) the percentage of students of a given race at the school from which the student desires to transfer is greater than the average district-wide percentage of such students for schools with the same grade structure; (B) the student who wishes to transfer is of that same race; and (C) the percentage of students of that same race at the school to which the student desires to transfer is less than the average district-wide percentage of such students for schools with the same grade structure.” June 1996 Order at 3-4. The District will provide transportation to all students who elect to participate in the majority to minority transfer program and will be transferring between Franklinton Elementary and Youngsville Elementary, or between Louisburg Elementary and Royal Elementary;

B. Immediately after the entry of this Consent Order, the District will begin developing a list of individuals qualified to serve as the District’s consultant who will study and determine, at

a reasonable and affordable cost, what practicable measures the District can take to further desegregation in student assignments to each of the District's schools. In creating its list, the District will consider any recommendations or input from the parties about potential candidates. The District will provide its list of candidates to the parties, and permit the parties to participate in any interviews that the District conducts to review the qualifications of the candidates. The District will interview at least two of the candidates recommended by the other parties;

C. Within 90 days after the entry of this consent order, the District will advise the parties of the name and qualifications of a consultant that the District proposes to hire to study and determine what practicable measures the District can take to further desegregation in student assignments to each of the District's schools. After receiving the name and qualifications of the consultant identified by the District, plaintiffs or plaintiff-intervenor may object to the District's consultant selection within 30 days. If plaintiffs and/or plaintiff-intervenor object to the District's consultant selection, the parties will commence negotiations for a period of 30 days in an effort to reach agreement on the consultant to be selected. If the parties are able to agree on the consultant to be selected, the District will hire the consultant. If the parties are not able to agree on the consultant to be selected, any party may submit the issue to the Court for resolution within 15 days of the end of the negotiation period.

D. The District, after hiring the consultant (see Section I(C), above), will provide the consultant with all appropriate information necessary for the consultant to analyze the District and identify any practicable measures the District can take to further desegregation in student assignments to each of the District's schools. In completing the study, the consultant will consider, *inter alia*, the following issues: existing attendance zone lines and practicable

modifications thereto; other practicable measures for furthering desegregation in student assignments to the District's schools; projected growth in the District; estimated costs of any recommendations, proposals or alternative plans; student transportation costs; existing school facilities; proposed school construction; and student enrollment trends in charter schools, private schools and parochial schools located in the District. The consultant will complete the study, prepare a written report outlining his or her findings, including a description of any practicable measures that the consultant determines the District may take to further desegregation in student assignments to the District's schools, and provide a copy of the report (and any supporting analysis) to all parties within 180 days of the date on which the consultant is hired.

E. Within 60 days of receiving the consultant's report, the District will develop a proposed student assignment plan and provide a copy of that plan to plaintiffs and plaintiff-intervenor. The District will also provide any reports, data, draft plans, or other information related to its proposed student assignment plan. If the District, in its proposed student assignment plan, declines to implement any practicable measure(s) that the consultant's report indicates the District could take to further desegregation in student assignments, the District will provide, along with its proposed student assignment plan, the District's written rationale for not implementing the measure(s).

F. Plaintiffs and plaintiff-intervenor may provide the District with any written responses to the District's proposed student assignment plan within 30 days of receiving the District's plan and supporting documents. After the end of the 30-day response period, the parties will begin a 60-day negotiation period to discuss the District's proposal and attempt to resolve any disagreements. If the parties are able to agree on a new student assignment plan, the District will

submit the plan to the Court for approval, and upon such approval, begin implementing the plan by the 2005-06 school year. If the parties are unable to agree on a new student assignment plan, any party may identify any unresolved issues and, within 15 days after the conclusion of the negotiation period, ask the Court to schedule a hearing to resolve the matter.

II. DESEGREGATION OF STAFF¹

The District will take the following steps to ensure that it has eliminated the vestiges of discrimination relating to its staff to the extent practicable:

A. The District will ensure that, by the 2003-04 school year, the percentages at each school of black certificated and non-certificated staff will be no more than 10% below and no more than 10% above the district-wide averages within each school level (*e.g.*, the staff at each high school in the District will be compared against the combined staff of all high schools in the District). To facilitate meeting this standard, the District may use voluntary or involuntary staff transfers; and

B. The District will continue its efforts to recruit black administrators, counselors, psychologists and media staff. As part of its recruiting efforts, the District will, *inter alia*: contact officials at nearby colleges and universities (including institutions that historically have, and have not, enrolled high numbers of black students) to identify black students who may be interested in applying for employment with the District; contact local professional associations,

¹ For purposes of this decree, the term “staff” includes all certified and non-certified (classified) personnel except for teachers. *See* June 2002 Order at 2 (adopting plaintiff-intervenor’s reasoning that the District has achieved unitary status in faculty desegregation, but not in staff desegregation); Plaintiff-Intervenor’s Response to District’s Motion to Dismiss at 18-21 (in discussing staff desegregation, referencing data about certified staff such as administrators, counselors, and media staff, and data about non-certified staff such as assistant teachers).

organizations and civic groups with high black memberships (*e.g.*, bar associations, teacher associations, and churches) to advertise vacancies; and advertise vacancies in local newspapers that have a substantial number of black subscribers.

C. At the end of each school year, the District will identify any comparable school districts that have developed procedures or practices that have assisted the school in recruiting black administrators, counselors, psychologists and media staff, and will ensure that all personnel involved in recruitment and/or hiring in the District receive information about those practices and procedures.

III. QUALITY OF EDUCATION

The District will take the steps described in this section (Section III) to ensure that it has eliminated the vestiges of discrimination, to the extent practicable, in quality of education. If, however, the District determines that it will not be able to implement one of the measures in this section due to a lack of funding (and despite the District's reasonable efforts to secure such funding), the District will notify the parties and the parties will commence a 60-day period of negotiations to determine if they can agree on an appropriate modification to this decree (*e.g.*, a modification that would permit the District to cease implementing the measure in question, replace the measure with an appropriate alternative, etc.). If the parties are not able to reach an agreement after the negotiations period, any party may, within 15 days after the conclusion of the negotiation period, ask the Court to schedule a hearing to resolve the matter.

A. Academic Achievement

The District will take the following steps to ensure that it develops the academic potential and achievement of students of all races:

1. The District will continue implementing a one-on-one remedial reading program for all elementary school students, and will also provide one-on-one remedial reading assistance to at-risk middle and high school students with personalized education plans that recommend such services;

2. The District will implement a plan in each school for improving the academic achievement of all students, and thereby for reducing the academic achievement gap between white students and black students;

3. The District will monitor academic achievement data once each school year. To carry out its monitoring responsibilities, the District will collect and review data about the academic achievement levels (as indicated by student performance on standardized tests and other assessments) of students of each race in each school. If the District, through its review, identifies data that indicate that black students in specific schools have low academic achievement rates when compared to students of other races, the District will investigate to determine the cause(s) of the low academic achievement rates among black students at each school in question and, if appropriate, take steps to address the cause(s), such as by providing tutoring, remedial instruction, and other supplemental academic services; and

4. At the end of each school year, the District will identify any schools in the district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in raising the academic performance levels of students of all races (and thereby reducing the academic achievement gap between white students and black students), and will ensure that all schools in the District receive information about those practices and procedures.

B. Advanced Course Offerings and Enrollment

The District will take the following steps to ensure that its advanced courses are offered and operated in a fair and nondiscriminatory manner:

1. The District will offer an equitable number of advanced placement, accelerated and honors classes (“advanced courses”) at each high school, and will allow students to enroll in those classes without regard to race or other discriminatory factors;

2. The District will design and implement a plan for recruiting and encouraging black students to register for advanced courses. The District, as part of its plan, will:

a) conduct outreach to the public, and particularly to students and parents, about its advanced course offerings;

b) develop and implement a system, for identifying students who may be able to succeed in advanced courses and for encouraging and preparing those students to register for challenging courses that are consistent with their academic potential;

c) implement initiatives to provide support to students (*e.g.*, through mentoring, counseling on an individual or small-group basis, etc.) who enroll in, or express interest in, advanced courses; and

d) encourage teachers, through training, recognition, evaluation and other initiatives, to identify, recruit and encourage black students to register for advanced courses;

3. The District will monitor student enrollment in advanced courses at the beginning of each semester to ensure that those courses are being offered and operated in a fair and equitable manner. To carry out its monitoring responsibilities, the District will collect and review data from each school about the race and number of students who enroll in and complete

advanced courses. If the District, through its review, identifies data that indicate that low numbers of black students in specific schools (taking into account each school's racial demographics) are enrolling in and/or completing advanced courses, the District will investigate to determine the cause(s) of the low advanced course enrollment and/or completion rate among black students at each school in question and, if appropriate, take steps to address the cause(s), such as by training faculty and staff about identifying and counseling students who may be successful in advanced courses; and

4. At the end of each school year, the District will identify any schools in the district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in encouraging a racially diverse group of students to enroll in and complete advanced courses, and will ensure that all middle and high schools in the District receive information about those practices and procedures.

C. Discipline

The District will take the following steps to ensure that it administers discipline in a fair and nondiscriminatory manner:

1. The District will continue adhering to its uniform code of conduct;
2. The District will operate at least one program that will be available to serve as an alternative for students who are faced with suspension;
3. The District will monitor discipline data each semester during each school year to ensure that discipline is being administered fairly and without regard to race. To carry out its monitoring responsibilities, the District will collect and review data from each school about the race and number of students receiving in-school suspensions, out-of-school suspensions, and

other forms of discipline. If the District, through its review, identifies data that indicate that high numbers of black students in specific schools (taking into account each school's racial demographics) are being disciplined by in-school suspensions, out of school suspensions, or some other form(s) of discipline, the District will investigate to determine the cause(s) of the high discipline rate among black students at each school in question and, if appropriate, take steps to address the cause(s), including, but not limited to, training personnel on administering discipline in a fair and nondiscriminatory manner, reviewing and revising discipline procedures and practices, providing classroom management training, and creating corrective action plans for individual faculty and staff; and

4. At the end of each school year, the District will identify any schools in the district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in administering discipline in a fair and nondiscriminatory manner, and will ensure that all schools in the District receive information about those practices and procedures.

D. Gifted and Talented Program

The District will take the following steps to ensure that it administers its gifted and talented program in a fair and nondiscriminatory manner:

1. The District will follow a gifted and talented program plan that is consistent with any applicable State of North Carolina guidelines, and will ensure that its gifted and talented program plan will include provisions that will call for personnel to consider multiple factors when determining whether a student is eligible for the program;

2. The District will require that all teachers at the elementary and middle school

levels complete, on an annual basis, a training workshop about how to identify students from all student populations who may be able to qualify for the gifted/talented program;

3. The District will encourage teachers, through training, recognition, evaluation and other initiatives, to identify, and refer for assessment, students of all races who may be able to qualify for the gifted/talented program;

4. The District will conduct outreach to minority parents and students at each elementary and middle school about its gifted and talented program, including, but not limited to, outreach that will advise parents and students about the referral, identification and evaluation process for the program, and will provide information about the educational content of the program;

5. The District will monitor data about the gifted and talented program each semester during each school year to ensure that the gifted and talented program is being administered fairly and without regard to race. To carry out its monitoring responsibilities, the District will collect and review data from each school about the race and number of students who are referred for and/or qualify for the gifted and talented program. If the District, through its review, identifies data that indicate that low numbers of black students in specific schools (taking into account each school's racial demographics) are being referred for evaluation and/or are qualifying for the gifted and talented program, the District will investigate to determine the cause(s) of the low referral and/or qualification rates among black students at each school in question and, if appropriate, take steps to address the cause(s), such as providing staff development and ensuring that personnel are following referral and evaluation procedures; and

6. At the end of each school year, the District will identify any schools in the

district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in identifying a racially diverse group of students who are able to qualify for the gifted and talented program, and will ensure that all elementary and middle schools in the District receive information about those practices and procedures.

E. Special Education Program

The District will take the following steps to ensure that it administers its special education program in a fair and nondiscriminatory manner:

1. The District will continue using Student Support Teams in each of its schools to, *inter alia*, assist in educating students by developing strategies to address behavioral, academic, or other barriers that may hinder the student's ability to learn;

2. The District will publicize, to the community at large, information about the special education program, including information about: the procedures that the District follows before referring students to the special education program (*e.g.*, presenting the student's case to the Student Support Team, etc.); the process that the District uses to identify and refer students to the special education program; special education services that may be available to students who qualify for such services; and student and parental rights that relate to the special education program;

3. The District will monitor the special education program each semester during each school year to ensure that the program is being administered fairly and without regard to race. To carry out its monitoring responsibilities, the District will collect and review data from each school about the race and number of students who are referred to the special education program and about race and number of students who are classified as Educable Mentally

Disabled (“EMD”) or as having a Specific Learning Disability (“SLD”). If the District, through its review, identifies data that indicate that high numbers of students of one race in specific schools (taking into account each school’s racial demographics) are being referred to the special education program or are being classified as EMD or SLD, the District will investigate to determine the cause(s) of the high rate of referrals and/or EMD/SLD classifications among students of the race in question and, if appropriate, take steps to address the cause(s), including, but not limited to, ensuring that personnel are following Student Support Team procedures, and providing staff development on identifying, referring and evaluating students for the special education program; and

4. At the end of each school year, the District will identify any schools in the district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in accurately identifying, referring and evaluating students for the special education program, and will ensure that all schools in the District receive information about those practices and procedures.

F. Student Dropouts

The District will take the following steps to address the high numbers of black students who drop out of school before obtaining their high school diploma:

1. The District will implement a dropout prevention plan at each school that will include initiatives for identifying and providing academic and other appropriate assistance to students at risk of not completing their high school education;

2. The District will ensure that, at each middle and high school operated by the District, each student receives guidance, individually or in a small-group setting, from a teacher

or counselor about the student's academic career. The guidance provided should include, but is not limited to, information about high school course options and selection, study skills, and opportunities for academic assistance or enrichment;

3. The District will monitor dropout data each semester. To carry out its monitoring responsibilities, the District will collect and review data about the race and number of students who drop out of each middle and high school. If the District, through its review, identifies data that indicate that high numbers of black students in specific schools (taking into account each school's racial demographics) are dropping out of school, the District will investigate to determine the cause(s) of the high dropout rate among black students at each school in question and, if appropriate, take steps to address the cause(s), such as supplementing the measures outlined in the school's dropout prevention plan; and

4. At the end of each school year, the District will identify any schools in the district, or in other comparable school districts, that have developed procedures or practices that have assisted the school in substantially reducing its dropout rate, and will ensure that all schools in the District that serve similar grade levels receive information about those practices and procedures.

IV. MONITORING AND REPORTING

The District will submit to the Court, and to counsel of record for all parties, annual reports fully detailing its efforts to comply with the provisions of this Order until such time as the District's school system is declared unitary. The District will provide the information requested for the annual reports *in lieu of* filing the reports outlined in the Court's August 21, 1967 and July 28, 1970 Orders. The District will submit the annual reports outlined herein each year by

October 15th, with the first report due October 15, 2003. If any of the information required for the annual report in a particular school year is available in a document that the District already has prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal or state statute or regulation, the District may include the document in its annual report and indicate the section of the annual report to which the document applies. The annual reports will include the following information about the school year preceding each annual report if such data is available and, regardless, will include the most recent data available unless otherwise specified:

- A. The number and percentage of students, by race, enrolled in the District as a whole, and the number and percentage of students, by race and grade, enrolled in each school in the District;
- B. The number, by race and school, of student requests to transfer to other schools within the district (intra-district transfers) under the Majority to Minority transfer program, specifying for each such request, the school to which the student was zoned to attend, the school to which the transfer was sought, and whether the district granted or denied the transfer, and the District's rationale for granting or denying the transfer;
- C. The number, by race and school, of student requests to transfer to other schools within the district (intra-district transfers, *excluding* transfers requested under the Majority to Minority transfer program), specifying for each such request, the school to which the student was zoned to attend, the school to which the transfer was sought, whether the district granted or denied the transfer, and the District's rationale for granting or denying the transfer;

D. The number, by race and school, of student requests to transfer to schools outside of the district (inter-district transfers), specifying for each such request, the school to which the student was zoned to attend, the school district to which the transfer was sought, whether the district granted or denied the transfer, and the District's rationale for granting or denying the transfer;

E. The number and percentage of staff (*e.g.*, principals, assistant principals, guidance counselors, administrative assistants, and other support staff) employed by the District, separately listing certified and non-certified staff, by race, position, school and grade level (if applicable);

F. The certified and non-certified staff of the central office, by position and race;

G. A list of staff positions that the District has filled in the past twelve months by new hires or promotions, providing, for each such position, the school(s) or office(s) where the position is located, and the race of the individual who the district hired for or promoted to the position;

H. A description of the initiatives the District is implementing to recruit and/or retain black personnel, and a description of any practices and procedures that the District has identified and shared with its personnel, as set forth in Section II(C) of this Consent Order;

I. A list, by school, of all advanced courses, providing for each such course the number, by race, of students who enrolled in the course, and the number, by race, of students who completed and passed the course;

J. The number of out of school suspensions, by school and race of student;

K. The number of students, by race, school, and grade, in the district's gifted and talented program;

L. For each school, the number of students, by race, who were referred for assessment for the gifted/talented program, specifying the source and basis of the referral, and specifying, for each source/basis of referral, the number, by race, of students who qualified for the program;

M. The number of students, by race, school, grade, classified as having a specific learning disability (SLD) or as being educable mentally disabled (EMD), and thus placed in the district's special education program;

N. For each school, the number of students, by race, who were referred for assessment for the special education program, and the number, broken down by race and special education classification, of students who qualified for special education services after assessment;

O. The number of student dropouts, by school and race of student;

P. A summary of the results of the District's monitoring of academic achievement, advanced course offerings and enrollment, discipline, the gifted and talented program, the special education program, and student dropouts (as set forth in Sections III(A)(3), B(3), C(3), D(5), E(3) and F(3) of this Consent Order). The District, in its summary, will describe any actions that the District has taken as a result of its monitoring and analysis, and will also explain any instances where the District elected not to take action despite results of its monitoring and analysis indicating a possible area of concern.

Q. A list and description of any practices and procedures that the District has identified

and shared with its schools, as set forth in Sections III(A)(4), B(4), C(4), D(6), E(4) and F(4) of this Consent Order;

R. A description of any steps, not already discussed elsewhere in the annual report, that the district has taken to comply with this Consent Order and other applicable Consent Orders; and

S. Any other information that the district believes would be helpful.

The Superintendent will certify in writing that all of the information contained in each annual report is true and correct to the best of his/her information, knowledge, and belief, and that a copy of the report has been furnished to the Board. This certification will be included with each annual report.

All parties hereto will have the right to seek enforcement of the provisions of this Consent Order. This Court will retain jurisdiction to monitor compliance with the provisions of this and other Orders in this action. All previous Orders entered in this case that are not inconsistent with this Consent Order remain in full force and effect.

SO ORDERED, this _____ day of _____, 2003.

JAMES C. FOX
Senior United States District Judge

The signatures of the parties on this page indicate their consent to the terms of this agreement.

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