IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 3:70-cv-4101-O**
THE TEXAS EDUCATION AGENCY, et al.,	§	
Defendants.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Currently before the Court is Richardson Independent School District's ("RISD") Motion for Declaration of Unitary Status (ECF No. 18).[1] The Court conducted an evidentiary hearing on this matter beginning June 11, 2012. The Court sets out its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). The following findings of fact and conclusions of law are based upon the pleadings, testimony, evidence, and exhibits admitted at the hearing. The Court has reviewed the record in its entirety, and had the opportunity to observe the witnesses presented at the hearing to assess their credibility and weigh their testimony. The Court provides a clear understanding of the bases of its decision in accordance with the level of detail required in this Circuit. *See Century Marine Inc. v. United States*, 153 F.3d 225, 231 (5th Cir. 1998). Any finding of fact that should be construed as a conclusion of law is hereby adopted as such. Any conclusion of law that should be construed as a finding of fact is hereby adopted as such. For the reasons explained below, the Court finds that RISD's Motion for Declaration of Unitary Status (ECF

[1] RISD's Motion for Partial Summary Judgment (ECF No. 41) is hereby **DENIED as moot.**

No. 18) should be and is hereby **GRANTED in part** and **DENIED in part.**

I. PROCEDURAL & FACTUAL BACKGROUND

A. The 1970 Complaint

On August 7, 1970, Plaintiff the United States of America ("Plaintiff") filed a complaint against RISD, among other Texas school districts, arising out of the districts' operation of dual school systems based on race. *See generally* Compl., *United States v. The Tex. Educ. Agency*, No. CA-3-4076-A (N.D. Tex. Aug. 7, 1970). The complaint sought an injunction prohibiting the defendant districts from discriminating against African-American students on the basis of race, and an order requiring the districts to adopt and implement a desegregation plan prior to the beginning of the 1970-71 school year. *See id.* at 6; *see generally* Appl. Order, *Tex. Educ. Agency*, No. CA-3-4076-A (N.D. Tex. Aug. 7, 1970). The presiding judge, then-Chief Judge Joe Ewing Estes, set the matter for a preliminary pretrial conference after the scheduled start of the 1970-71 school year. *See* Order Prelim. Pretrial Conference at 1, *Tex. Educ. Agency*, No. CA-3-4076-A (N.D. Tex. Aug. 10, 1970). Plaintiff appealed this schedule to the Fifth Circuit. *See* Notice Appeal at 1, *Tex. Educ. Agency*, No. 3-4076-A (Aug. 12, 1970). The Fifth Circuit reversed the pretrial scheduling order, holding that the case against RISD and the remaining districts should be given top priority, and stating that it would be appropriate for the Chief Judge to sever the suits against the individual school districts and, if necessary, to order a delay in the opening of schools for the 1970-71 school year. *See United States v. Tex. Educ. Agency*, 431 F.2d 1313, 1316 (5th Cir. 1970) (per curiam). Thereafter, the case against RISD was severed from the main action and assigned to Judge William M. Taylor, Jr. *See* Order at 3, *Tex. Educ. Agency*, No. 3-4076-A (N.D. Tex. Aug. 19, 1970); Docket Designations Severed Actions at 1, *Tex. Educ. Agency*, No. 3-4076-A (N.D. Tex. Aug. 19, 1970)

(assigning CA-3-4101-C as new docket number).

On August 20, 1970, Judge Taylor ordered that the opening of RISD would not be delayed and directed Plaintiff and RISD to submit by August 24, 1970 an agreed plan, or competing proposed plans, for the desegregation of RISD. *See* Tr. Proceedings at 20:12-21:12, *United States v. Richardson Indep. Sch. Dist. (RISD)*, No. CA-3-4101-C (N.D. Tex. Aug. 20, 1970). Unable to reach agreement, the parties submitted their competing plans for Judge Taylor's consideration on August 24, 1970. *See* Tr. Proceedings at 22:19-22, *RISD*, No. CA-3-4101-C (N.D. Tex. Aug. 24, 1970).

B. The 1970 Desegregation Order

On September 10, 1970, Judge Taylor entered the desegregation order (the "Desegregation Order") in this case. *See generally RISD*, No. CA-3-4101-C (N.D. Tex. Sept. 10, 1970); *see also* Def.'s Ex. 1. The Desegregation Order addresses a number of areas still at issue between the parties, including student assignment, faculty and staff matters, the implementation of a majority to minority transfer policy, school construction and site selection, intradistrict and interdistrict tranfsers, use of a bi-racial advisory committee ("BRAC")[2], and RISD's reporting requirements.

C. The 1997 Plan

On April 14, 1997, RISD filed a motion for approval of a proposed student assignment plan (the "1997 Plan"). *See generally* RISD's Mot. Approve Proposed Student Assignment Plan, *United States v. RISD*, No. CA-3-4101-R (N.D. Tex. Apr. 14, 1997). Judge Jerry Buchmeyer, then presiding, entered an order on June 10, 1997 approving the 1997 Plan and stating that students in RISD shall be assigned to attendance zones as set forth in the 1997 Plan. *RISD*, No. CA-3-4101-R

[2] Under the Desegregation Order, the BRAC is charged with advising RISD on ways and means for achieving racial balance, periodically reviewing RISD's policies to ensure their effectiveness in creating a unitary system, and objecting to RISD's policies that undermine the Desegregation Order.

(N.D. Tex. June 10, 1997) (order approving student assignment plan). The 1997 Plan states that its objective is to address, through long-range planning, a number of issues in RISD, including: "overcrowding, building underutilization, imbalance in special needs services, and program delivery, and the promotion of diversity in student enrollment." *See generally* Pl.'s Ex. 16 (1997 Proposed Student Assignment Plan). In furtherance of these goals, the 1997 Plan provides for, among other things: maintaining the neighborhood school system at the elementary school level; using a flexible secondary feeder system that includes the reassignment of several feeder schools, choice and managed choice of junior high attendance in particular areas, and the use of centers of interest at junior highs which serve as feeders to under-diversified high schools; the opening of a freshman campus; and the redrawing of attendance zones. *See id.*

II. ANALYSIS

"The ultimate inquiry in determining whether a school district is unitary is whether (1) the school district has complied in good faith with desegregation orders for a reasonable amount of time, and (2) the school district has eliminated the vestiges of prior de jure segregation to the extent practicable." *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 297 (5th Cir. 2008) (citing *Freeman v. Pitts*, 503 U.S. 467, 492, 498 (1992); *Hull v. Quitman Cnty. Bd. of Educ.*, 1 F.3d 1450, 1454 (5th Cir.1993)).

A. Good Faith Compliance with the District Court's Orders

"A school district seeking the termination of federal court supervision must first show that it has 'consistently complied with a court decree in good faith.'" *Anderson*, 517 F.3d at 297 (quoting *Hull*, 1 F.3d at 1454); *see also Freeman*, 503 U.S. at 498 ("A history of good-faith compliance is evidence that any current racial imbalance is not the product of a new de jure violation . . . ."). "To

meet this obligation, '[f]or at least three years, the school board must report to the district court.'" *Anderson*, 517 F.3d at 297 (quoting *Monteilh v. St. Landry Parish Sch. Bd.*, 848 F.2d 625, 629 (5th Cir. 1988)). "Further, 'the district in question must have for several years operated as a unitary system.'" *Id.* (quoting *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400, 1401 (5th Cir. 1971)).

Here, RISD has complied with its reporting requirements from 1971 to 2012, and the Court finds that the district has complied in good faith with each of the requirements of the Desegregation Order and the 1997 Plan. Plaintiff objects that RISD has opened some schools and redrawn some attendance lines without Court approval, which is required under the Desegregation Order. However, the Court notes that RISD has presented evidence that such actions were presented for community approval, were approved by the BRAC, and were disclosed to the Court in its annual reports, without objection by Plaintiff. Plaintiff also argues that RISD has authorized numerous transfers that were not authorized by the Court and had a segregative effect. Based on the testimony and evidence in this case, the Court agrees with RISD's expert that the *cumulative* effect of such transfers was not segregative, and was therefore in compliance with the Court's orders. Based on the totality of the circumstances, the Court finds that RISD's efforts were in good faith compliance with the Court's desegregation orders in this case.

B. Elimination of the Vestiges of Prior De Jure Segregation to the Extent Practicable

"Regarding the requirement that a school district eliminate the vestiges of prior de jure segregation to the extent practicable, 'every reasonable effort [must] be made to eradicate segregation and its insidious residue,' although complete racial balance is not required." *Anderson*, 517 F.3d at 298 (quoting *Ross v. Hous. Indep. Sch. Dist.*, 699 F.2d 218, 227-28 (5th Cir. 1983)).

"Rather, the emphasis is on whether 'the school district has done all that it could to remedy the segregation caused by official action.'" *Id.* (quoting *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1037, 1314 (5th Cir. 1991)); *see also United States v. Fordice*, 505 U.S. 717, 728 (1992) ("[W]e have consistently asked whether existing racial identifiability is attributable to the State . . . ."). "To guide courts in determining whether the vestiges of de jure segregation have been eliminated as far as practicable, the Supreme Court has identified several aspects of school operations that must be considered, commonly referred to as the *Green* factors: student assignment, faculty, staff, transportation, extracurricular activities, and facilities." *Anderson*, 517 F.3d at 298 (citing *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 250 (1991); *see also Green v. Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430, 435 (1968)). Here, the parties have previously conceded that RISD is unitary in the areas of transportation, extracurricular activities, and facilities. *See generally* Order Partial Unitary Status, Aug. 17, 2011, ECF No. 30.

1. Student Assignment

"Student assignment within a school district is relevant to determining whether a school district has remedied, to the extent possible, the vestiges of prior de jure segregation." *Anderson v.* 517 F.3d at 298-99 (citing *Dowell*, 498 U.S. at 250). "While racial imbalance in a particular school is relevant [to this analysis], racial imbalance, without more, does not violate the Constitution." *Id.* (citing *Cavalier ex rel. Cavalier v. Caddo Parish Sch. Bd.*, 403 F.3d 246, 260 (5th Cir. 2005)). "Once the racial imbalance [in student assignment] due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors." *Id.* (quoting *Freeman*, 503 U.S. at 494). Accordingly, "immutable geographic factors and post-desegregation demographic changes that prevent the homogenation of all student bodies do not

bar judicial recognition that the school system is unitary." *Price*, 945 F.2d at 1314 (quoting *Ross*, 699 F.2d at 225).

To determine whether RISD has achieved unitary status in the area of student assignment, the Court begins by examining the "racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole." *Freeman*, 503 U.S. at 474. "A central purpose of desegregation decrees was to prevent, to the extent practicable and not attributable to demographic changes, the continued existence of one-race schools." *United States v. Texas*, 457 F.3d 472, 480 (5th Cir. 2006). "The term 'one-race schools' generally refers to schools with a student body of at least 90% [one race]." *United States v. Bolivar Cnty. Bd. of Educ.*, No. 2:65-CV-00031-GHD, 2012 WL 1066349, at *12 (N.D. Miss. Mar. 28, 2012) (citing *Flax v. Potts*, 915 F.2d 155, 161 n.8 (5th Cir. 1990)).

With these principles in mind, the Court will examine the racial percentages of each school within RISD as of March 22, 2012. *See id.*; *see also* Def.'s Ex. 46, Attachment A (2012 Annual Report); Pl.'s Ex. 31 (Student Assignment to Schools by Race). The Court begins by noting that, in 2012, the student population of RISD was 37,021 students, including 50.8% (8,595) black students, 28.5% (10,564) white students, 38.4% (14,202) Hispanic students, and 9.9% (3,660) students designated as other.[3] By contrast, RISD enrolled 30,060 students as of November 1, 1970, including 3.3% black students (1,001), 95.6% (28,757) white students, and 0.6% (185) Hispanic students. Although RISD has increased its enrollment by only 6,961 students during the desegregation process, the district has undergone a significant demographic shift. Accordingly, from

[3] The racial composition of the student bodies at the high school, junior high, and elementary levels vary only slightly from these district wide figures.

1970 to 2012, the percentage of black students in RISD has increased by 19.9%, white students have decreased by 67.1%, and Hispanic students have increased by 37.4%. *See* Def.'s Ex. 4, Attachment A (1970 Annual Report).

a. High Schools

RISD currently operates four high schools, all of which operated as one-race white schools in 1970. In addition, RISD now operates a freshman-only campus. As of 2012, none of these schools had a one-race student population. By contrast, L.V. Berkner, Lake Highlands, Richardson High Schools, and the Lake Highlands Freshman Center, had achieved commendable racial balance by 2012. So, for instance, the 2012 student population of L.V. Berkner included 28.5% black students, 25.9% white students, 26.3% Hispanic students, and 19.3% students designated as other. Likewise, Richardson High School had a student enrollment that was 19.9% black, 30.5% white, 38.3% Hispanic, and 11.2% other. The student populations at Lake Highlands High school and the Lake Highlands Freshman Center demonstrate similar racial balance. At each of these schools, the student population is divided relatively evenly between black students, white students, and Hispanic students. In addition, the percentage of students within each race at each of these schools falls within 20% of the district wide percentages. The racial composition of each of these schools has been relatively stable for the past three years. Furthermore, RISD has undertaken significant efforts to achieve the current racial composition of these schools, including the district's use of choice and managed choice in the assignment of middle school students to high schools; the development of centers of interest at middle schools that serve as feeders to Richardson and J.J. Pearce High Schools; and the reworking of school attendance boundaries and feeder zones. *See, e.g.*, Pl.'s Ex. 16 (1997 Proposed Student Assignment Plan). Based on the foregoing, the Court finds without

reservation that RISD has achieved unitary status as to student assignment at the aforementioned campuses.

In its hearing exhibits, Plaintiff has identified J.J. Pearce as a problematic high school in the area of student assignments. The 2012 makeup of J.J. Pearce included 6.4% black students, 54.6% white students, 32.7% Hispanic students, and 6.3% students designated as other. The racial composition of J.J. Pearce has been relatively stable for the last three years. Plaintiff is correct in noting that J.J. Pearce is currently majority white, and that it deviates from the district wide percentage of white students by more than 20%. In deciding whether a school district has obtained unitary status as to student assignments, district courts have often considered whether one-race schools persist in the district, as well as whether the student population of a given race in any particular school departs from the district wide average by more or less than 20%. *See, e.g.*, *Freeman*, 503 U.S. at 476-77. Importantly, however, RISD is not required–by the caselaw or by the Desegregation Order that governs this case–to achieve a specific racial balance of plus or minus 20% to obtain unitary status. Here, the Desegregation Order did not impose a specific racial quota on RISD, and the Court finds it inappropriate to do so. Under the circumstances of this case, including the racial balance achieved at the remaining high schools in the district, and RISD's significant efforts to obtain balance in J.J. Pearce High School–which, in 1970, was 99.5% white, and was 84.3% white as late as 1996–the Court finds that the presence of a single predominantly white high school in RISD does not prevent a finding that the district has achieved unitary status as to student assignments within high schools.

Based on foregoing the Court finds that RISD has achieved unitary status in the area of student assignment to high schools.

b. Junior High Schools

At the junior high level, the Court also finds that RISD has achieved unitary status in the area of student assignment. In 1970, RISD operated six junior high schools, with each school being at least 79% white and three schools having a 99% white student population. In 2012, RISD operated eight junior high schools. Of these schools, only Parkhill was majority white, with a white student population of 50.6%. No junior high school in the district is currently a one-race school. Furthermore, with the exception of the white student population at Parkhill, the student population of each race within each junior high in RISD falls within 20% of the district wide average. The racial composition of each of these schools has been relatively stable for the past three years. Like RISD's high schools, the junior high schools in RISD have generally achieved racial balance. Yet again, RISD has undertaken significant efforts to achieve these results, including school closings, the redrawing of attendance lines, the use of choice and managed choice systems for student assignment, implementing a flexible secondary feeder system, and the use of centers of interest at the junior high level. *See, e.g.*, Def.'s Ex. 1 (1970 Desegregation Order); Pl.'s Ex. 16 (1997 Proposed Student Assignment Plan). The Court finds that the presence of a single majority white junior high school within RISD does not preclude a finding that the district has achieved unitary status.

Based on the foregoing, the Court finds that RISD has achieved unitary status in the area of student assignment to junior high schools.

c. Elementary Schools

As of 2012, RISD operated forty-one elementary schools. None of these schools operated as a one-race white or black school, and none enrolled more than 80% black or white students.

However, two of RISD's elementary schools (C.G. Bukhair and Dover) enrolled in excess of 90% Hispanic students–qualifying them as one-race Hispanic schools–while another campus (Dobie PCCD) enrolled 89.5% Hispanic students. Using a plus or minus 20% deviation from the district wide average of black, white, or Hispanic students as a guideline for identifying racial imbalance, a total of twenty-six (63%) of RISD's elementary schools were racially imbalanced in 2012. For example, nine elementary schools exceeded the district wide average of white students by at least 20%, including four schools (Bowie, Mohawk, Prairie Creek, and White Rock) that both operated as one-race white schools in 1970 and continued to enroll at least 70% white students in 2012. The presence of these persistently white elementary schools, which date back to the beginning of the desegregation process, are of particular concern to the Court. Although the racial composition within each elementary school in the district has fluctuated more in the previous three years than in RISD's junior or high schools, these trends have generally been present in RISD for the past three years.

Because of the history of de jure segregation in this case, there is a presumption that the current racial imbalance in the assignment of students to RISD's elementary schools is the result of de jure segregation, and RISD bears the burden of demonstrating that such imbalance in not proximately traceable to its prior violation. *See Freeman*, 503 U.S. at 494. RISD argues that any current racial imbalance in the district is the result of demographic changes that have occurred during the desegregation process and have resulted in a less integrated school district. RISD states that the sheer numbers indicate that shifts in the RISD student population are not the vestige of a prior de jure system or of any new de jure violation by the school district.

A school district may use demographic evidence to rebut the presumption that current racial imbalances are the result of de jure segregation in two ways. *See, e.g.*, *NAACP Jacksonville Branch*

v. Duval Cnty. Sch., 273 F.3d 960, 988-89 (11th Cir. 2001) (Barkett, J, dissenting in part). First, if a district can demonstrate that it temporarily achieved maximum practicable desegregation, but subsequent demographic changes intervened and resulted in reintegration, the school district has demonstrated that current racial imbalances are the result of demographic factors beyond the district's control. *See Freeman*, 503 U.S. at 493-95. Second, the district may establish that further desegregation of the district is impracticable as a result of drastic changes in the district's demographics. *See Duval*, 273 F.3d at 988-89 (citing *Dowell*, 498 U.S. at 634); *see also Flax v. Potts*, 725 F. Supp. 322, 324 (N.D. Tex. 1989).

Here, the Court after extensive review can identify no period in the desegregation process at which RISD achieved racial balance in its elementary schools which was subsequently undermined by demographic changes. As previously explained, certain attendance patterns in RISD's elementary schools have been persistent throughout the desegregation process, such as the presence of four persistently white elementary schools. In fact, it appears to the Court that the demographic changes experienced in the district–including a drastic reduction in the percentage of white students in RISD, and a corresponding increase in the percentage of black and Hispanic students–have resulted in increased integration at some schools at the elementary level.[4] Accordingly, unless RISD can direct the Court to a period in the desegregation process when it achieved relative racial balance, the Court cannot find that demographics alone have intervened to

[4] The Court also notes that the racial composition of RISD's schools have fluctuated from year to year due to demographic changes. Accordingly, Plaintiff's expert conceded at the evidentiary hearing that, when testing whether schools in the district were disproportionately one race–which, using the expert's definition, is more than 50% one race or another–numerous schools within RISD that were disproportionately one race in a particular year did not meet this definition in the following year. *See* Hr'g Tr. vol. 3-B, June 13, 2012, 12:19-13:11, ECF No. 122.

cause the current racial imbalances in RISD's elementary schools.

Next, the Court alternatively considers whether the presumptive link between the prior de jure segregation in RISD and any current racial imbalance has been rebutted by evidence that demographic changes in RISD have made further desegregation impracticable. As noted previously, RISD has simply asserted that the demographic numbers in this case establish that racial imbalance in the district is the result of population change, not any prior or current de jure segregation. It may be that the current demographics in RISD, along with other factors, have rendered further desegregation impracticable. The Court notes that the presumptive link between RISD's prior violation and the current imbalance in its elementary school populations has become more tenuous with the passage of time and with RISD's good faith compliance with the Desegregation Order. *See Freeman*, 503 U.S. at 496. Furthermore, Dr. Rossell–a desegregation scholar who appeared as an expert for RISD–testified that using the indices of dissimilarity and interracial exposure, two common tools in desegregation cases, RISD has achieved more racial balance than many other districts that have already been declared unitary. *See Cowan*, 2012 WL 1066349, at *19 (relying in part on Dr. Rossell's testimony to same effect in unitary status case). However, without evidence or argument demonstrating that further desegregation efforts would not be practicable in RISD's elementary schools in light of its current demographics or other factors, the Court that cannot comfortably find on the instant record that RISD has satisfied its burden.

Based on the foregoing, the Court directs RISD to submit evidence and arguments establishing that the current demographics or other factors in RISD make further desegregation impracticable, if the district believes this to be the case. The Court directs particular attention to *Swann* and its progeny. *See generally Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1

(1971). In the Fifth Circuit, a determination that further desegregation is not practicable to eliminate current racial imbalance in a school district must be supported by specific findings, including whether further or modified use of the *Swann* desegregation tools would be effective or feasible. *See Davis v. E. Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1439 (5th Cir. 1983); *see also Ross*, 699 F.2d at 224. The *Swann* methods include tools such as: an optional majority-to-minority transfer program, "ethnic balancing, altering of attendance zones, elimination of one-race schools, pairing, and busing." *See Ross*, 599 F.2d at 224. With regard to busing, the transportation of elementary aged students may be impracticable if the "time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process." *Swann*, 402 U.S. at 30-31. The Supreme Court has emphasized that the proper time limit in this context depends on many factors, the most important of which is the age of the children involved. *Id.* Here, "adequate time-and-distance studies are desirable, if not indispensable." *Ross*, 699 F.2d at 226.

As a starting point for the analysis under *Swann*, the Court notes that RISD is large school district both in terms of numbers and geographic area, spanning parts of Richardson, Dallas, and Garland. The schools currently at issue are RISD's elementary schools, which enroll thousands of the youngest students in RISD. These schools have operated on a neighborhood school concept–where children generally attend schools near their homes–since the beginning of the desegregation process, without any objection by Plaintiff. In an effort to desegregate its elementary schools, RISD has implemented magnet programs, redrawn attendance zones, and has a majority-to-minority transfer program. Furthermore, the 1997 Plan–which was approved by the Court, unopposed by Plaintiff, supported by the community after extensive studies, and ratified by the BRAC–is apparently premised on an understanding that, at the elementary level, continued

adherence to the aforementioned desegregation methods and the neighborhood school concept are in the best interests of the children and the quality of education in RISD, and that further desegregation efforts are impracticable. However, RISD did not assert at the evidentiary hearing that the 1997 Plan represented the collective view that further desegregation efforts are impracticable at the elementary school level. At this juncture, RISD must explicitly address whether the aforementioned factors, and any other relevant circumstances, make further desegregation of its elementary schools impracticable.

2. Faculty and Staff

"Faculty and staff issues are also relevant under *Green*." *Anderson*, 517 F.3d at 303 (citing *Dowell*, 498 U.S. at 250). "In *Singleton v. Jackson Municipal Separate School District*, [the Fifth Circuit] announced several requirements for hiring and assigning faculty and staff in schools under desegregation orders." *Id.* (citing *Singleton*, 419 F.2d 1211, 1217-18 (5th Cir.1969) (en banc), *rev'd in part sub. nom.*, *Carter v. West Feliciana Parish Sch. Bd.*, 396 U.S. 290 (1970)). "Only two of the *Singleton* requirements are relevant here." *Id.* "First, a school must show that faculty and staff who work directly with children are assigned in such a manner that the racial composition of the faculty and staff would not indicate that the school is intended for either African-American or white students." *Id.* "Second, 'discrimination on the basis of race, color or national origin in the hiring, assignment, promotion, pay, demotion or dismissal of faculty members and administrative staff' is prohibited." *Id.* (quoting *Fort Bend Indep. Sch. Dist. v. Stafford*, 651 F.2d 1133, 1138 (5th Cir.1981)). "We have made clear that these requirements do not establish an arbitrary racial quota." *Id.* (citing *Stafford*, 651 F.2d at 1139).

Here, Plaintiff argues that RISD has failed to achieve unitary status in the areas of faculty and

staff recruiting and assignment. *See* Pl.'s Resp. Opp'n Def.'s Mot. Partial Summ. J. 14, 25, ECF No. 45.[5]

a. Hiring and Recruiting

Under the Desegregation Order, staff who work directly with children and professional staff who work on the administrative level must be hired without regard to race, color, or national origin. *See id.* During the evidentiary hearing, the Court heard evidence of non-discriminatory and equal opportunity hiring practices of the district, as well as the extensive minority recruiting efforts employed by RISD to attract quality candidates. The Court also heard testimony that these efforts have been successful, in that RISD has been able to increase the number of black and Hispanic faculty and staff within the district. So, for example, the percentage of black and Hispanic teachers employed by the district between 1996 and 2012 has increased or held steady ever school year, with the exception of a small decrease in the percentage of black teachers by 0.6% in 2007 and by 0.4% in 2010. Based on the totality of the evidence, the Court finds that RISD has achieved unitary status with regard to the hiring and recruitment of faculty and staff, as mandated by *Singleton* and the Desegregation Order in this case.

[5] In a post-hearing notice filed with the Court, RISD indicated that it would rely on its summary judgment briefing to support its request for declaration of unitary status in the areas of faculty and staff hiring, recruiting, and assignment. *See generally* Notice, ECF No. 125. The Court has carefully reviewed RISD's summary judgment briefing for argument in support of a finding that RISD has achieved unitary status in these areas. RISD has dedicated much of its briefing to demonstrating its achievements in the areas of faculty and staff recruiting and hiring, both of which are commendable. However, other than asserting that "teachers and staff are distributed across all of the District's schools," RISD has not addressed whether its *assignment* of faculty and staff within particular schools in the district substantially corresponds to the racial distribution of faculty and staff in the district as a whole. *See* Mot. Partial Summ. J. 24, ECF No. 41. Because *Singleton* and the terms of the Desegregation Order separately require RISD to achieve unitary status as to faculty and staff recruiting and hiring at the district wide level on the one hand, and with respect to faculty and staff *assignment* within particular schools on the other, the Court will address these areas separately.

b. Assignment

Here, the Desegregation Order incorporated the *Singleton* requirements as to faculty and staff assignment by providing that principals, teachers, teacher-aides, and other staff who work directly with students at a school must be assigned in a non-discriminatory manner and "shall be assigned so that in no case will the racial composition of a staff indicate that a school is intended for black students or white students." Def.'s Ex. 1, at 3. The Desegregation Order requires, where necessary to carry out this plan, the reassignment of faculty and staff as a condition of future employment *See id.* While incorporating *Singleton*, the Desegregation Order did not establish a specific guideline for RISD to meet in order to satisfy its *Singleton* obligations, as by requiring that the ratio of white or black teachers in any particular school be within a 15% range of the district wide ratio. *See, e.g.*, *Anderson*, 517 F.3d at 304. At a minimum, however, *Singleton* requires that the racial composition of faculty and staff within the district's individual schools be substantially the same as the racial composition of faculty and staff throughout the district. *See Singleton*, 419 F.2d at 1218.

With regard to non-faculty staff members who work directly with children in RISD, the Court heard evidence of the diverse racial composition of the district's central administrative staff, including assistant superintendents and various executive directors. RISD also presented evidence of the racial composition of staff members who were newly hired, promoted, or separated from RISD in particular years. However, RISD did not submit evidence of the racial composition of all staff members who work directly with children, either at the district wide level or within each school in the district. Without such evidence, the Court cannot determine whether RISD has achieved unitary status with regard to assignment of such staff members. Accordingly, RISD is directed to submit additional evidence on the racial composition of staff who work directly with children.

Turning to the assignment of faculty, RISD has submitted as part of its annual reports a yearly breakdown of the racial composition of the district's faculty by school. In 2012, RISD reported a total of 2,520 teachers, including: 232 (9.2%) black teachers; 1,942 (77.1%) white teachers; 249 (9.9%) Hispanic teachers; and 97 (3.8%) teachers designated as other. Plaintiff argues that RISD has failed to obtain unitary status in the area of faculty assignment because its teacher assignments reinforce the racial identifiability of schools that are majority white or majority black. For example, Thurgood Marshall Elementary, which enrolled 60.7% black students in 2012, employed 25.6% more black teachers than the district wide average. Likewise, of the twelve majority white schools in the district in 2012, five schools employed more than 90% white teachers, and an additional six schools had white faculties in excess of 80%. Given the racial composition of RISD's faculty, which–despite the commendable recruiting efforts of the district–includes 77.1% white teachers, the Court finds that the mere presence of schools in RISD with predominantly white faculties does not indicate that those schools are intended for white students. However, after reviewing the evidence in this case, the Court agrees that some imbalance currently exists in the area of faculty assignment. Using plus or minus 15% as a starting guideline, the Court notes that eighteen of the fifty-five campuses operated by RISD in 2012 had faculties with racial imbalance. As to those campuses with black or Hispanic faculty percentages 15% higher than the district wide average, the Court finds that this racial imbalance does not make the schools racially identifiable and is not a result of prior de jure segregation. Of greater concern to the Court are the disproportionately white faculties in RISD. As of 2012, RISD operated seven elementary schools with at least 90% white teachers. These campuses include three elementary schools (Bowie, Mohawk, and Prairie Creek) which were one-race white schools in 1970 and continue to enroll in excess of 70% white students. The Court finds

no indication that, as of 2012, RISD intentionally assigned white faculty to predominantly white campuses. However, RISD has nowhere explained the continued racial imbalance in its elementary school faculties, particularly at those campuses with persistently white student enrollment. RISD has also failed to address whether tools like mandatory re-assignment of faculty–which the Desegregation Order provides should be used where necessary to meet the district's *Singleton* requirements–have been used or would be practicable to achieve a more diverse faculty within such schools. Without evidence or argument to this effect, the Court cannot find that RISD has achieved unitary status in the area of faculty assignment. Accordingly, RISD is ordered to produce additional evidence as to whether it has taken all action practicable to eliminate the vestiges of desegregation in its faculty assignments, if it believes such to be true.

3. Quality of Education and Discipline

Discipline and quality of education are not among the *Green* factors which must be considered by a court in deciding whether a school district has achieved unitary status, though such factors may be considered by a court in its discretion, depending on the circumstances of the case. *See Green*, 391 U.S. at 435; *see also Freeman*, 503 U.S. at 492 (discussing quality of education where parties agreed that consideration of this factor was proper in the particular case). In the instant case, the Court's Desegregation Order is silent on the issues of quality of education and discipline, and there has never been a finding that RISD was a constitutional violator in these areas. *See generally* Def.'s Ex. 1. School districts like RISD are "entitled to a rather precise statement of [their] obligations under a desegregation decree." *Missouri v. Jenkins*, 515 U.S. 70, 101 (1995) (citing *Dowell*, 498 U.S. at 246). Accordingly, where non-*Green* factors like quality of education or discipline–sometimes referred to as ancillary factors–are not expressly addressed by a desegregation

order, the burden of proof does not lie initially with the school district. *See Coalition to Save Our Children v. State Bd. of Educ. of State of Del.*, 90 F.3d 752, 778 (3d Cir. 1996) (citing *Jenkins*, 515 U.S. at 101-02); *see also Keyes v. Cong. of Hispanic Educators*, 902 F. Supp. 1274, 1282 (D. Colo. 1995). Rather, the burden is properly placed on the plaintiff to demonstrate that present racial imbalances with regard to ancillary factors are causally related to–or the vestiges of–prior de jure segregation, or new constitutional violations. *See Coalition*, 90 F.3d 752; *Keyes*, 902 F. Supp. at 1281. If the plaintiff fails to establish this causal link, racial imbalance as to an ancillary factor will not preclude a finding of unitary status. *See Coalition*, 90 F.3d 752; *Keyes*, 902 F.Supp. at 1281.

Here, Plaintiff has argued and presented evidence of racial disparities in RISD with regard to quality of education–specifically, standardized test scores and school ratings–and the imposition of discipline. Even assuming that such racial disparities currently exist in RISD, Plaintiff has not demonstrated that these disparities are attributable to prior de jure segregation or to a new constitutional violation. Without such evidence, Plaintiff has failed to carry its burden in these areas. So, for example, in a case relied upon by Plaintiff, the Fifth Circuit emphasized that with regard to student discipline, mere "statistical proof that black students are disciplined more frequently and more severely than white and Mexican-American students has limited probative value," particularly in light of the "many legitimate, non-racial factors" involved in discipline decisions made by individual faculty members with respect to individual students. *Tasby v. Estes*, 643 F.2d 1103, 1108 (5th Cir. 1981). The Court held that "no inference of discriminatory intent is warranted" even where racial imbalances exist in student discipline, and even where such imbalance "occurs in the context of on-going desegregation efforts." *Id.* Having carefully reviewed the record in this case, the Court finds no evidence that the alleged racial disparities in RISD with regard to discipline and quality of

education are the result of discriminatory practices. Without such proof, the Court declines to impose additional affirmative obligations on RISD in the areas of quality of education and discipline.

IV. CONCLUSION

Based on the foregoing, the Court finds at this time that RISD has complied with the Court's desegregation orders in good faith and has achieved unitary status in the following areas: student assignment to its high schools and junior high schools, and faculty and staff hiring and recruiting. Accordingly, it is **ORDERED** that RISD's Motion for Declaration of Unitary Status (ECF No. 18) is **GRANTED in part** as to the areas of student assignment to high schools and junior high schools, and faculty and staff hiring and recruiting. It is further **ORDERED** that the Desegregation Order is dismissed as to these areas, and that RISD is hereby released from further Court supervision as to these areas.

Next, the Court finds that Plaintiff has not satisfied its burden to show a violation in the areas of quality of education or discipline. Accordingly, the Court declines to impose additional affirmative obligations on RISD in the areas of quality of education and discipline.

Finally, the Court finds that additional argument and evidence are needed to determine whether RISD has achieved unitary status in the areas of: student assignment to RISD's elementary schools, and assignment of faculty and staff. Accordingly, the Court **DEFERS** ruling on RISD's Motion for Declaration of Unitary Status (ECF No. 18) in these areas. RISD is **ORDERED** to submit a notice to the Court within **thirty days** of this order setting forth: (1) whether RISD plans to offer the additional evidence and arguments requested in this order and, if so, a proposed timeline for briefing and, if necessary, a further evidentiary hearing; and (2) if RISD feels that it cannot submit further arguments or evidence as to one or more of the areas requested, a proposed timeline

for development and submission of a plan to achieve further desegregation in such areas.

SO ORDERED on this **27th day** of **July, 2012.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE