**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

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| ROBERT L ADAMS ET AL., | § | |
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| Plaintiffs, | § | CIVIL ACTION NO. 6:04-CV-00291-RWS |
| | § | |
| v. | § | |
| | § | |
| CHARLES F MATTHEWS, SUPERINTENDENT OF LONGVIEW ISD ET AL., | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court is the parties' Joint Motion for Declaratory Judgment of Unitary Status as to Longview Independent School District ("LISD" or "District"). Docket No. 89. For the reasons below, the motion is **GRANTED**, LISD is **DECLARED UNITARY** and the case is **DISMISSED**.

**BACKGROUND**

On January 20, 1970, this Court entered an order requiring LISD to implement a Desegregation Plan.[1] The Desegregation Plan required, among other things, LISD to create attendance zones and transport students from one attendance zone to another in order to further the desegregation of its schools. *See* Consent Order, Docket No. 42 at 1–2. Since that time, LISD has made significant changes to its student assignment policies and practices to eliminate the vestiges

[1] This case was previously docketed under 6:62-cv-3095 but was given a new case number in 2004. Judge Joseph Sheehy was first assigned the case in 1962. The case was reassigned to Judge Joseph Fisher following Judge Sheehy's death in 1967. Judge Fisher oversaw the case until it was closed in 1978. When the case was reopened in 2004, it was given a new case number (6:04-cv-291) and assigned to Judge Leonard Davis. Finally, it was transferred to the undersigned in October 2016.

of discrimination and foster racial desegregation throughout its schools. *See* Docket No. 89 at 3–5 (describing some of the changes made since 1970).

In more recent years, the Court has dealt extensively with this case since the parties filed a Joint Motion to Amend the Desegregation Order in June 2004. Docket No. 1. The Court held a hearing with the parties to review the joint motion in July 2004. Docket No. 3. After issuing an Order granting the Joint Motion (Docket No. 4), the Court held another status conference in June 2005. Docket No. 10. The Court continued these annual status conferences, holding them in July 2006 (Docket No. 13), July 2007 (Docket No. 14) and July 2008 (Docket No. 17). The parties then submitted a Joint Motion to Approve Consent Judgment in August 2008 (Docket No. 19), and the Court promptly approved it (Consent Order, Docket No. 20) after holding another status conference (Docket No. 22). LISD then filed status reports in October 2008 (Docket No. 25) and February 2009 (Docket No. 29), and the Court held another conference in June 2009. Docket No. 30. The parties filed a joint status report in February 2010 (Docket No. 32), followed by another status conference with the Court (Docket No. 33). The Court again held status conferences in July 2010 (Docket No. 37), January 2011 (Docket No. 41), December 2011 (Docket No. 46), July 2012 (Docket No. 50), January 2013 (Docket No. 52), and June 2013 (Docket No. 59), and LISD filed more periodic status reports (Docket Nos. 36, 40, 43–45, 51, 58, 69).

Then, in February 2014, the Court entered an Agreed Order for Declaration of Partial Unitary Status and Partial Dismissal, finding LISD unitary with respect to the following factors: facilities and resource allocation; transportation; extracurricular activities; and staff assignments. *See* Agreed Order, Docket No. 71 at 1–2. Later that year, following another status conference (Docket No. 82), the Court entered a Final Consent Decree setting forth LISD's remaining

obligations with respect to student assignments and faculty assignments and imposed specific reporting and staff training requirements to ensure compliance. *See* Docket No. 81.

In May 2017, the Court granted LISD's request to modify the Final Consent Decree, allowing LISD to seek a federal Magnet Schools Assistance Program grant to expand its magnet programs. *See* Docket No. 87. LISD sought expanded magnet and other specialized education offerings, in part, to foster further racial diversity. Specifically, the Court allowed LISD to create two new Montessori charter schools; establish science, technology, engineering, arts, and math (STEAM) programs at Ned E. Williams Elementary, Bramlette Elementary and Judson Middle School; and expand the International Baccalaureate programs at Forest Park Middle School and Longview High School. *Id*. at 1–2. All other provisions of the Final Consent Decree remained in full effect. *Id*. at 2.

According to the terms of the Final Consent Decree, LISD's obligations expired on December 22, 2017 and the United States "shall not oppose LISD's motion for a declaration of full unitary status provided that there are no outstanding disputes pending before the Court concerning compliance with this Final Consent Decree." Docket No. 81 at 5. The Joint Motion for Declaration of Unitary Status was filed on January 31, 2018. Docket No. 89. No one has filed objections to the Joint Motion. Specifically as to the United States, the parties state: "Because there are no disputes pending between the United States and the District, the United States does not oppose this motion." Docket No. 89 at 2–3.

The Court has jurisdiction to consider the Joint Motion. *Green v. County Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 439 (1968) (. . . "whatever plan is adopted [in achieving desegregation] will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed." (citations omitted)).

## LEGAL STANDARD

The United States District Court for the Western District of Louisiana recently articulated a succinct statement of the standard of review in desegregation cases:

> When first presented with a school desegregation case, a district court is charged with determining whether or not a school board has maintained or facilitated a dual school system in violation of the Equal Protection Clause of the United States Constitution. U.S. Const., Amend. XIV. If the district court finds such a violation, then under *Brown v. Bd. of Educ. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), and *Brown v. Bd. of Educ.*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), the dual system must be dismantled, and the school board must "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green*, 391 U.S. at 437–38.
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> Neither a school board's nor a district court's duty ends with the initial desegregation order. Rather, there is a "continuing duty [for school officials] to eliminate the system-wide effects of earlier discrimination and to create a unitary school system untainted by the past." *Ross v. Houston Indep. Sch. Dist.*, 699 F.2d 218, 225 (5th Cir. 1983) (citing *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971)). Likewise, the district court "retain[s] jurisdiction until it is clear that state-imposed segregation has been completely removed." *Id.* (citing *Green*, 391 U.S. at 439; *Raney v. Bd. of Educ.*, 391 U.S. 443, 449, 88 S. Ct. 1697, 20 L. Ed. 2d 727 (1968)).
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> The goal of the district court is to return "schools to the control of local authorities at the earliest practicable date." *Freeman v. Pitts*, 503 U.S. 467, 490, 112 S. Ct. 1430, 118 L. Ed. 2d 108 (1992). In discharging this duty, the district court considers the Supreme Court's "*Green* factors": (1) faculty and staff assignments; (2) transportation; (3) extra-curricular activities; (4) facilities; and (5) student assignments. *Green*, 391 U.S. at 435; *see also Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 250, 111 S. Ct. 630, 112 L. Ed. 2d 715 (1991).
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> "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." *Dowell*, 498 at 249–50; *Freeman*, 503 U.S. at 491; *Green*, 391 U.S. at 439; *Ross*, 699 F.2d at 225. To meet its obligation, "[f]or at least three years, the school board must report to the district court." *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." *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400, 1401 (5th Cir.1971). The Court may declare a subject unitary if it determines that the school board has not engaged in any continued racial discrimination and has acted in good faith to maintain its non-discriminatory practices. *See Freeman*,

> 503 U.S. at 490–91; *see also Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1314 (5th Cir.1991) (We use the term "unitary" to refer to a school district that "has done all that it could to remedy the [prior] segregation caused by official action.").

*United States v. Franklin Parish Sch. Bd.*, 2013 WL 4017093, at *4-5 (W.D. La. Aug. 6, 2013).

**ANALYSIS**

This Joint Motion represents the parties' substantial efforts together, not only over the years this matter has been pending, but in reviewing the pertinent evidence and statistics. The fact that it is the parties' joint position that unitary status is warranted in LISD's case carries weight. *See Jones v. Caddo Parish*, 704 F.2d 206, 221 (5th Cir. 1983) ("[S]chool desegregation is one of the areas in which voluntary resolution is preferable to full litigation because the spirit of cooperation inherent in good faith settlement is essential to the true long-range success of any desegregation remedy.") (quoting *Armstrong v. Board of School Directors*, 616 F.2d 305, 318 (7th Cir. 1980)) (internal quotations omitted). The United States, by the Department of Justice, intervened as a Plaintiff in this matter, and there is a presumption that the government properly represents its citizens. *Graham v. Evangeline Parish Sch. Bd.*, 223 F.R.D. 407, 435 (W.D. La. 2004) ("There is a presumption that government institutions represent the interests of the public at large, particularly where the United States is plaintiff in a school desegregation case.") (citation omitted). LISD has tracked and reported its compliance for many years and has provided the evidence upon which the Court bases its determination. *See e.g.*, Docket Nos. 51, 83, 84, 88 (annual status reports of LISD, including enrollment numbers of students by race/ethnicity for each school).

To obtain a declaration of unitary status, the District must show that it has: (1) fully and satisfactorily complied with the court's desegregation orders for a reasonable period of time; (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 to those provisions

of the law and the Constitution that were the predicate for judicial intervention in the first instance. *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 298 (5th Cir. 2008). In assessing whether a school district is unitary, the Court must examine "every facet of school operations" to determine whether the District "has done all that it could to remedy the segregation caused by official action." *Board of Educ. v. Dowell*, 498 U.S. 237, 250 (1991) (quoting *Green v. County Sch. Bd.*, 391 U.S. 430, 435 (1968)). *See Anderson*, 517 F.3d at 298.

The Court will review the *Green* factors to determine whether LISD should be declared fully unitary. *See e.g.*, *USA v. Tyler Independent School District*, C.A. No. 6:70-cv-5176-MHS, Docket No. 69 at 5–13 (analyzing each of the five *Green* factors before declaring Tyler Independent School District fully unitary). The *Green* factors are: (1) faculty and staff assignments; (2) transportation; (3) extra-curricular activities; (4) facilities; and (5) student assignments. *Green*, 391 U.S. at 435. In this case, however, in early 2014, the Court declared LISD fully unitary as to transportation, extracurricular activities, facilities, and staff assignments. *See* Docket No. 71 at 1–2. Therefore, only factor five (student assignments) and part of factor one (faculty assignments) remain.

In late 2014, the parties indicated that they disagreed over the remaining two *Green* factors, stating in a joint filing that "[t]he parties disagree over whether LISD had eliminated the vestiges of past discrimination to the extent practicable with respect to student and faculty assignments." Docket No. 80 at 2. However, recognizing that "voluntary resolution is preferable to full litigation" in the area of school desegregation, the parties created a joint plan to solve these disputes, which is known as the "Final Consent Decree." Docket No. 80 at 3. Under that agreement, if LISD performed its obligations for three years, the government would not oppose a motion for declaration of full unitary status. *Id*. LISD then cooperated in accordance with that plan in the

last three years, including providing annual status reports. *See* Docket Nos. 83, 84, 88. As a result, the parties filed their joint motion to declare LISD fully unitary. Docket No. 89. Thus, it is now ripe for the Court to review the two remaining *Green* factors.

**A. Student Assignments**

One *Green* factor involves student assignments. *Green*, 391 U.S. at 435. In the Court's Final Consent Decree, there were a list of obligations LISD had to adhere to for three years in order to be able to file its motion for full unitary status. Docket No. 81 at 1–6. They include: detailed requirements about how students should be admitted to Hudson PEP Elementary School; rules about intra-district student transfers; guidelines for enrollment in gifted-and-talented courses; and instructions on proper training of LISD's teachers on these issues. *Id*. at 1–5.

In their Joint Motion, the parties agree that LISD has complied with all of the requirements set forth in the Final Consent Decree:

- "To further student desegregation, the District has implemented open enrollment policies that encourage majority-to-minority transfers, a robust gifted and talented program, and specialized programs within the District, such as the International Baccalaureate Program, Early Graduation High School, and the new East Texas Prep Montessori Academy. These programs not only promote intra-district transfers, but also help attract a diverse population of students who seek inter-district transfers." Docket No. 89 at 4.
- Additionally, last year LISD "devised a robust magnet and charter campus expansion plan to encourage student transfers into those programs, fostering greater desegregation. This plan received a United States Department of Education Magnet Schools Assistance Program grant of fifteen million dollars awarded over the course of five years." *Id*. at 4–5.

- Lastly, LISD followed through on its promise to train its teachers on LISD's transfer policies, gifted and talented admissions requirements, student discipline policies, and admissions requirements to the Hudson Planned Enrichment Program: "Uniform instruction across campuses has been achieved through video training modules that are administered to all faculty on a yearly basis. The videos, which were supported and approved by the United States, are posted online on the District's website in order to be accessible by both faculty and community members." *Id*. at 5.

The statistical evidence submitted in LISD's annual report also supports LISD's case for full unitary status. In its enrollment report submitted in October 2017, LISD submitted that out of a total of 8,677 students, 38 percent were Black, 33.16 percent were Hispanic, 25.71 percent were White, and 2.94 percent identified as "Other." Docket No. 88-1 at 4. In general, the individual schools themselves are in line with this balance. For example, in LISD's 2017 annual report for each school, Longview High School reported 35.75 percent of its students were Hispanic, 38.76 percent were Black and 22.71 percent were White. Docket No. 88-1 at 2. Although some individual schools reflect either a higher or lower percentage of student enrollment by race, no one particular school's variance is significant or material when viewing the LISD enrollment statistics as a whole.

In that light, the Court notes that attaining desegregation does not require perfection in either absolute numbers of students enrolled by race in the various schools or in the statistics used to describe them. As the *Franklin Parish School Board* Court observed,

> The law does not require that all schools in a district be racially balanced as a prerequisite to a unitary status finding. *See Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 298 (5th Cir. 2008). As the Fifth Circuit has explained,
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> > [t]he constitution does not require school districts to achieve maximum desegregation; that the plan does not result in the most

> desegregation possible does not mean that the plan is flawed constitutionally. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. The school board's constitutional duty is to cure the continuing effects of the dual system, not to achieve an ideal racial balance.
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> *Monteilh v. St. Landry Parish Sch. Bd.*, 848 F.2d 625, 632 (5th Cir. 1988) (internal quotations and citations omitted). The Court need not employ "'awkward,' 'inconvenient,' or 'even bizarre' measures . . . to achieve racially balanced school assignments 'in the late phases of carrying out a decree, when the imbalance is attributable neither to the prior *de jure* system nor to a later violation by the school district but rather to independent demographic forces.'" *Hull v. Quitman Cnty. Bd. Of Educ.*, 1 F.3d 1450, 1454 (5th Cir.1993) (quoting *Freeman*, 503 U.S. at 493). A school board's affirmative duty does not compel it to adopt the most desegregative student assignment alternative available, but to act in good faith within the practical limitations. *Swann*, 402 U.S. at 18 (citation omitted).

*Franklin Parish Sch. Bd.*, 2013 WL 4017093, at *9. Here, the enrollment statistics reveal that LISD has achieved the desegregation goal for student assignments in its schools at all levels. Further, having reviewed the statistical compilations from the last several years of LISD's Compliance Reports, the Court finds that LISD has maintained this student assignment status and operated as a unitary system during that period. *Lemon*, 444 F.2d at 1401.

In addition, the parties state in their Joint Motion that,

> Based on a review of the District's policies and practices, and the impact of those policies and practices on the desegregation of LISD's schools, the parties agree and stipulate that no vestiges of the former *de jure* dual school system remain in LISD. It appears that the District has complied with its desegregation obligations for a reasonable period of time and is able to demonstrate a good faith commitment to the whole of the Court's orders and to those provisions of the law and the Constitution, which were the predicate for judicial intervention in the first place. Accordingly, the parties agree that LISD should be granted a declaration of full unitary status and that the above-captioned case should be dismissed.

Joint Motion, Docket No. 89 at 5–6. This joint representation by Plaintiff-Intervenor United States and Defendant LISD, made as a voluntary resolution of this issue, is preferable to continued litigation due to its spirit of cooperation and long-term, good faith commitment. *Jones v. Caddo*

*Parish*, 704 F.2d at 221. Because it includes the Plaintiff-Intervenor United States, it carries a presumption that the interests of the citizenry are represented. *Graham*, 223 F.R.D. at 435.

Accordingly, the Court declares LISD unitary in the area of student assignments.

**B. Faculty Assignments**

Another *Green* factor involves faculty and staff assignments. *Green*, 391 U.S. at 435. As the Court has already declared LISD unitary as to staff assignments (Docket No. 71), the remaining issue related to this factor is faculty assignments. In the Final Consent Decree, there were only two regulations set forth for LISD to abide by as to faculty assignments. Specifically, in its annual reports for 2015, 2016, and 2017, LISD was required to: 1) "record the total number and percentage of teachers and administrators, by race/ethnicity and position, assigned to each school operated by the District, specifically indicating all full-time teachers, part-time teachers, principals, and assistant principals, and other certified personnel" and 2) "record the number of new teachers and administrators who were hired during the preceding year, by race/ethnicity, position, and school." Final Consent Decree, Docket No. 81 at 5.

Here, there is no dispute that LISD has complied with the Final Consent Decree as to faculty assignments. In each annual status report, LISD submitted the required information to the Court. *See* Docket Nos. 83 (2015 Report), 84 (2016 Report), and 88 (2017 Report). In addition, the statistical evidence offered supports LISD's ultimate desegregation achievements in the area of faculty assignments. For example, according to the 2017 annual report, out of 42 total teachers at Bramlette, 19 were Black, 6 were Hispanic, and 15 were White. Docket No. 88-5 at 2. At ET Montessori, out of 47 teachers, 17 were Black, 13 were Hispanic, and 16 were White. Similar to student assignments, while some individual schools had a higher or lower faculty percentage by

race, the Court cannot identify any practice of segregated assignment of faculty in the District, nor is there any suggestion by the Plaintiff-Intervenor United States that such a practice exists.

Having reviewed the annual reports, the Court finds that LISD has complied with the effort to desegregate in the area of faculty assignments. As in the area of student assignments, such a joint and voluntary resolution by the parties is preferable to continued litigation due to its spirit of cooperation and long-term, good faith commitment. *Jones v. Caddo Parish*, 704 F.2d at 221. Because it includes the Plaintiff-Intervenor United States, it again carries a presumption that the interests of the citizenry are represented. *Graham*, 223 F.R.D. at 435.

Accordingly, the Court declares LISD unitary in the area of faculty assignments.

**CONCLUSION**

The Court's findings herein, including the concurring stipulations by the Plaintiff-Intervenor United States, demonstrate LISD's good faith compliance with the obligation to eliminate the vestiges of discrimination within the school system.

For these reasons, the parties' Joint Motion for Declaration of Unitary Status (Docket No. 89) is **GRANTED**. The Longview Independent School District is **DECLARED UNITARY** in all areas. This case is **DISMISSED**.

**It is SO ORDERED.**

**SIGNED this 15th day of June, 2018.**

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE