

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

DIAN HUDSON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
&	)	
	)	
UNITED STATES OF AMERICA,	)	Civil Action No. 3:63-CV-3382-DPJ-FKB
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
LEAKE COUNTY SCHOOL BOARD, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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**SECOND JOINT MOTION TO MODIFY THE DESEGREGATION ORDER**

Plaintiff-Intervenor United States and Defendant Leake County School Board (“LCSB”) jointly and respectfully move this Court for an Order modifying the plan for desegregating the Leake County School System established by the November 7, 1969 Order and modified by the January 27, 1971, October 23, 1986, and May 13, 2010 Orders (collectively “desegregation order”). In support of this Second Joint Motion to Modify the Desegregation Order, the Parties state as follows:

**BACKGROUND**

1. Fifteen years after Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483 (1954), the LCSB operated eight schools with the following student enrollment and faculty assignment:

<b>Leake County School System, 1968-69 School Year</b>				
	<b>Students</b>		<b>Teachers</b>	
	<b>White</b>	<b>Black</b>	<b>White</b>	<b>Black</b>
<b>Leake County</b>	2088 (48.4%)	2224 (51.6%)	102 (51%)	98 (49%)
<b>Carthage (1-12)</b>	1074 (94.4%)	64 (5.6%)	48 (100%)	0 (0%)
<b>Edinburg (1-12)</b>	419 (100%)	0 (0%)	18 (100%)	0 (0%)
<b>Lena (1-12)</b>	208 (100%)	0 (0%)	12 (100%)	0 (0%)
<b>Madden (1-12)</b>	192 (100%)	0 (0%)	12 (100%)	0 (0%)
<b>Walnut Grove (1-12)</b>	195 (100%)	0 (0%)	11 (100%)	0 (0%)
<b>Grier (1-12)</b>	0 (0%)	576 (100%)	1 (3.2%)	30 (96.8%)
<b>Jordan (1-12)</b>	0 (0%)	865 (100%)	0 (0%)	37 (100%)
<b>Murphy (1-12)</b>	0 (0%)	719 (100%)	0 (0%)	31 (100%)

2. On November 7, 1969, the United States Court of Appeals for the Fifth Circuit ordered the LCSB to dismantle its dual school system pursuant to a plan prepared by the U.S. Office of Education, Department of Health, Education and Welfare (“HEW”). U.S. v. Hinds Co.

Sch. Bd., 423 F.2d 1264, 1267 (5th Cir. 1969). The HEW plan created six attendance zones: Thomastown, Carthage, Edinburg, South Leake, Murphy, and Lena.

3. On January 27, 1971, the Fifth Circuit issued an Order modifying the original attendance zones to further the goals of desegregation. The 1971 Order redrew the attendance zone boundaries; created an elementary, junior high school, and senior high school in the Carthage zone; and merged the Murphy Zone with the South Leake Zone. The 1971 Order also reconfigured the southeast corner of the South Leake Zone as a separate attendance zone and assigned the students in that zone to neighboring Scott County (hereinafter “the Scott County Zone”). The net effect was six attendance zones: Thomastown, Carthage, Edinburg, Lena, South Leake, and Scott County.

4. On October 23, 1986, the Court issued an Order closing the Lena School and restructuring grades in the Carthage Zone. The 1986 Order also merged the Lena Zone with the South Leake Zone, leaving only five attendance zones: Thomastown, Carthage, Edinburg, South Leake, and Scott County.

5. On May 7, 2010, the United States and LCSB filed a Joint Motion to Modify the Desegregation Order seeking to merge the Scott County Zone with the South Leake Zone to further desegregation. This Court signed an Order granting the proposed modification on May 13, 2010. The net effect of the 2010 Order was four attendance zones: Thomastown, Carthage, Edinburg, and South Leake.

### **DISCUSSION**

6. In 2007, the United States initiated a review of the LCSB’s compliance with the desegregation order. During the 2007-08 school year, the LCSB enrolled over 3,200 students and employed over 200 teachers in seven schools:

	Students			Faculty	
	White	Black	Asian/ Hispanic/ Multiracial/ Native Am.	White	Black
<b>Leake County</b>	36.7% (1,212/3,298)	58.1% (1,915/3,298)	5.2% (171/3,298)	66.4% (158/238)	33.6% (80/238)
<b>Carthage Elementary School (KG-5)</b>	36% (323/898)	54.1% (486/898)	9.9% (89/898)	76.9% (40/52)	23.1% (12/52)
<b>Carthage Junior High School (6-8)</b>	37% (145/392)	58.9% (231/392)	4.1% (16/392)	66.7% (18/27)	33.3% (9/27)
<b>Carthage High School (9-12)</b>	39.9% (170/426)	54.2% (231/426)	5.9% (25/426)	92.9% (26/28)	7.1% (2/28)
<b>Edinburg Attendance Center (KG-12)</b>	88.8% (500/563)	9.6% (54/563)	1.6% (9/563)	94.4% (34/36)	5.6% (2/36)
<b>South Leake Elementary School (KG-6)</b>	12.5% (46/368)	82.9% (305/368)	4.6% (17/368)	66.7% (18/27)	33.3% (9/27)
<b>South Leake High School (7-12)</b>	8.1% (23/283)	87.6% (248/283)	4.2% (12/283)	37% (10/27)	63% (17/27)
<b>Thomastown Attendance Center (KG-12)</b>	1.4% (5/368)	97.8% (360/368)	0.8% (3/368)	15.6% (5/32)	84.4% (27/32)

7. As part of its review, the United States requested information from the LCSB and visited each school in the district during a May 2008 site visit. The United States also solicited input from parents and concerned citizens by hosting community meetings during the May 2008 site visit. Following the May 2008 site visit, the United States requested additional information

from the LCSB and conducted a second site visit in August 2009. During the August 2009 site visit, the United States again visited each school in the district and met with administrators. The United States drove throughout Leake County to assess transportation routes.

8. Following its comprehensive review, the United States concluded that the LCSB had not achieved unitary status and continued to operate schools that could be identified as belonging to one race, both in terms of student assignments, Freeman v. Pitts, 503 U.S. 467, 474 (1992) (a critical measure of the success of desegregation efforts “is the degree of racial imbalance in the school district,” for student assignment represents what used to be the crux of the dual system), and other factors as well, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 18 (1971) (even if, independent of student assignment, “it is possible to identify a ‘white school’ or a ‘[black] school’ simply by reference to the racial composition of teachers . . . , [or] the quality of school buildings and equipment . . . , a prima facie case of violation of substantive constitutional rights . . . is shown”).

9. For example, the United States concluded that the Thomastown Attendance Center (“Thomastown”) is racially identifiable as a black school. The LCSB’s overall student body is approximately 57% black, yet Thomastown’s student body is currently over 98% black. In the *de jure* system, the school, then known as Grier, was designated for black students. The desegregation order was based upon HEW’s projection that approximately 600 students would enroll at Grier (later renamed “Thomastown”), of whom 400 would be black (66.6%) and 200 white (33.4%). The projection proved inaccurate.

In 1970, one year after the desegregation order, Thomastown enrolled 764 students in grades K-12, of whom 670 were black (over 87%) and 94 white (less than 13%). By 1972, three years after the desegregation order, little had changed. Thomastown enrolled 637 students in

grades K-12, of whom 552 were black (over 86%) and 85 white (less than 14%). During the 2007-08 school year, over forty years after the initial desegregation order, Thomastown enrolled approximately 368 students in grades K-12, of whom less than 2% are white.

The racial composition of Thomastown's faculty reinforces its status as a black school. While the District-wide faculty is roughly 33% black and 66% white, Thomastown's faculty is approximately 84% black and 16% white. Moreover, the physical condition of Thomastown's facilities stand in contrast to the condition of other LCSB schools, further contributing to its image as a black school. Thus, Thomastown has made little, if any, progress in transitioning from its status in the *de jure* system as a black school to just a school.

10. The United States also concluded that South Leake Elementary and South Leake High are racially identifiable as black schools. During the 2007-08 school year, South Leake Elementary enrolled approximately 368 students in grades K-6, of whom 305 were black (approximately 82.9%). South Leake High enrolled approximately 283 students in grades 7-12, of whom approximately 248 were black (approximately 87.6%).

11. The United States further concluded that the Edinburg Attendance Center ("Edinburg") is racially identifiable as a white school. The LCSB's overall student body is approximately 39% white, yet Edinburg's student body is currently over 88% white. In the *de jure* system, the school was designated for white students. The desegregation order was based on HEW's projection that approximately 400 students would attend Edinburg, of whom 250 would be white (63%) and 150 black (37%). As with Thomastown, the projections fell short of reality.

In 1970, one year after the desegregation order, Edinburg enrolled 521 students in grades K-12, of whom only 56 were black (less than 11%). By the 2007-08 school year, over forty

years later, Edinburg enrolled approximately 563 students in grades K-12, of whom over 88% were white. The racial composition of Edinburg's faculty reinforces its status as a white school. Edinburg's faculty is approximately 95% white, well above the District-wide average of approximately 66%. Moreover, while Edinburg and Thomastown were built within a year of each other, Edinburg's facilities are better maintained.

12. The United States informed the LCSB that it has a continuing duty to take affirmative steps to eliminate the vestiges of the *de jure* system. Swann, 402 U.S. at 6; Bd. of Educ. of Okla. City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50 (1991). Moreover, the "measure of any desegregation plan is its effectiveness." Davis v. Bd. of Sch. Com'rs of Mobile County, 402 U.S. 33, 37 (1971). The Supreme Court has long recognized that "whatever [desegregation] plan is adopted will require evaluation in practice," Green v. County Sch. Bd. of New Kent County, 391 U.S. 439 (1968), and that the plan must be modified as necessary to eliminate discrimination "root and branch." Id. at 438. Moreover, mere compliance with an existing desegregation order does not fulfill a school district's obligation to desegregate its schools. Belk v. Charlotte-Mecklenberg Bd. of Educ., 269 F.3d 305, 334 (4th Cir. 2001) ("[I]n some desegregation cases simple compliance with the court's orders is not enough for meaningful desegregation to take place." (citing Swann, 402 U.S. at 25)).

13. The LCSB advised the United States that it disagrees with the conclusions outlined above. However, in lieu of protracted litigation, the parties have negotiated in good faith to resolve their differences. On May 7, 2010, the United States and LCSB filed a Joint Motion to Modify the Desegregation Order requiring the LCSB to enforce the current attendance zone lines by verifying residency; cease inter-district transfers from Neshoba County to the Edinburg Attendance Center; and merge the former Scott County Zone back into the South

Leake Zone. This Court signed an Order granting the proposed modifications on May 13, 2010. The net effect of the May 13 Order was four attendance zones: Thomastown, Carthage, Edinburg, and South Leake.

14. Following the May 13 Order, the United States and LCSB continued their negotiations on how to address the United States' conclusion that the LCSB operates four racially identifiable schools: Thomastown Attendance Center, Edinburg Attendance Center, South Leake Elementary School, and South Leake High School. The parties explored the feasibility of a plan that would close the Thomastown Attendance Center and send those students to schools in the Carthage Zone, and close the Edinburg Attendance Center and send those students to schools in the Carthage and South Leake Zones. The United States projected that the plan would leave five schools whose student enrollment approximated the district-wide student enrollment:

(chart on next page)



	<b><u>Student Enrollment Projections</u></b>		
	<b>White</b>	<b>Black</b>	<b>Asian/ Hispanic/ Multiracial/ Native Am.</b>
<b>Leake County</b>	36.1% (1,166/3,233)	58.4% (1,889/3,233)	5.5% (178/3,233)
<b>Carthage Elementary School (KG-5)</b>	36.8% (373/1,014)	54.5% (553/1,104)	8.7% (88/1,104)
<b>Carthage Junior High School (6-8)</b>	36.4% (246/675)	59% (398/675)	4.6% (31/675)
<b>Carthage High School (9-12)</b>	36.7% (206/561)	59.2% (332/561)	4.1% (23/561)
<b>South Leake Elementary School (KG-6)</b>	36.1% (176/487)	61% (297/487)	2.9% (14/487)
<b>South Leake High School (7-12)</b>	31.3% (118/377)	63.1% (238/377)	5.6% (21/377)

15. The LCSB studied capacity at its existing facilities, renovations/additions to existing facilities, possible transportation routes, and faculty assignments. The United States and LCSB solicited community input on the plan at a December 7, 2010, open meeting of the LCSB. The LCSB invited all students, parents, and concerned citizens to the December 7 community meeting. Over 800 people were in attendance and all attendees who signed up to comment on the plan were allowed to speak. All interested persons were also given eight days following the

December 7 meeting to submit written comments on the proposed plan to the LCSB's Superintendent. The United States and LCSB fully considered all written submissions.

16. After considering all comments, the United States and LCSB respectfully move the Court to modify the desegregation order as follows:

**I. Student Assignment**

17. The LCSB will implement the following student assignment modifications by the start of the 2011-12 school year:

- a. All students in grades 9-12 in the Thomastown Zone will be reassigned to schools in the Carthage Zone;
- b. All students in grades 7-8 in the Thomastown Zone will have the option of attending schools in the Carthage Zone with transportation provided by the LCSB;
- c. All students in grades 9-12 who reside in the portion of the Edinburg Zone that will be merged into the Carthage Zone (see Exhibit A) will be reassigned to schools in the Carthage Zone;
- d. All students in grades 7-8 who reside in the portion of the Edinburg Zone that will be merged into the Carthage Zone (see Exhibit A) will have the option of attending schools in the Carthage Zone with transportation provided by the LCSB;
- e. All students in grades K-12 who reside in the portion of the Edinburg Zone that will be merged into the South Leake Zone (see Exhibit A) will be reassigned to schools in the South Leake Zone;

- f. All students in grades K-12 who reside in the portion of the South Leake Zone that will be merged into the Carthage Zone (see Exhibit A) will be reassigned to schools in the Carthage Zone;
- g. The grade configurations in the Carthage Zone and South Leake Zone will be modified by the LCSB as needed based on enrollment patterns.

18. The LCSB will implement the following student assignment modifications by the start of the 2012-13 school year:

- a. All students in grades K-8 in the Thomastown Zone will be reassigned to schools in the Carthage Zone;
- b. The Thomastown Attendance Center will be closed and the Thomastown Zone will be fully merged into the Carthage Zone (see Exhibit A);
- c. All students in grades K-8 who reside in the portion of the Edinburg Zone that will be merged into the Carthage Zone (see Exhibit A) will be reassigned to schools in the Carthage Zone;
- d. The Edinburg Attendance Center will be closed and a portion of the Edinburg Zone will be merged into the Carthage Zone (see Exhibit A) and the remainder of the Edinburg Zone will be merged into the South Leake Zone (see Exhibit A);

## **II. Faculty & Staff Assignment**

19. The LCSB will ensure that administrators (central office and school level), faculty, and staff “will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.” Singleton v. Jackson Municipal Separate Sch. Dist., 419 F.2d 1211, 1217-18 (5th Cir. 1969).

20. The LCSB shall provide the United States notice by electronic mail and facsimile 7 business days prior to finalizing any plan to reassign faculty, staff, and administrators from the Thomastown Attendance Center and Edinburg Attendance Center to schools in the Carthage Zone and South Leake Zone.

21. For the remainder of the 2010-11 school year and through the end of the 2012-13 school year, the LCSB will provide the United States notice by electronic mail and facsimile 7 business days prior to finalizing any decision related to the renewal, reassignment, dismissal and/or reduction-in-force of any administrator (central office and school level), faculty, or staff, including, but not limited to, administrators, faculty, and staff currently employed at Thomastown Attendance Center and Edinburg Attendance Center.

### **III. Quality of Education**

22. The LCSB will:

- a. Offer substantially similar courses in the Carthage Zone and South Leake Zone, including, but not limited to, Advanced Placement, Honors, and Distance Learning courses, depending on student interest and schedules. Prior to finalizing the course offerings for the 2011-12, 2012-13, and 2013-14 school years, the LCSB will provide the United States 7 business days to review the master schedule listing all courses that will be offered at each school in the district and the teacher assigned to teach each course.
- b. Sponsor and/or provide faculty/staff training and development prior to the start of each school year to ensure the consistency of the curriculum and courses in the Carthage Zone and South Leake Zone.

- c. Require faculty/staff teaching similar courses in the Carthage Zone and South Leake Zone to meet at least 3 times each school year to ensure consistency in the curriculum and courses.

23. The LCSB will provide appropriate remedial courses to students reassigned to the Carthage Zone and South Leake Zone that are below grade level.

#### **IV. Extracurricular Activities**

24. The LCSB will form a committee comprised of black and white LCSB administrators, LCSB faculty/staff, parents, and students to study options for school names and colors in the consolidated Carthage Zone and South Leake Zone.

25. The LCSB will offer substantially similar extracurricular activities in the Carthage Zone and the South Leake Zone.

26. The LCSB will maintain the existing extracurricular facilities (including stadiums, tracks, athletic fields, gyms, locker rooms, uniforms) in the Carthage Zone and South Leake Zone in a substantially similar manner.

27. The LCSB will provide the United States notice by electronic mail or facsimile 30 days prior to finalizing any plan that requires constructing new extracurricular facilities (including stadiums, tracks, athletic fields, gyms, locker rooms) or constructing additions to existing extracurricular facilities (including stadiums, tracks, athletic fields, gyms, locker rooms).

28. Prior to the 2011-12, 2012-13, and 2013-14 school years, the LCSB will provide the United States a list of all extracurricular activities that will be offered in the Carthage Zone and the South Leake Zone 21 days before the start of the school year.

**V. Reporting Requirements**

29. By July 1 of each year, beginning with July 1, 2011, the LCSB shall serve counsel for the United States with and maintain a copy in the Superintendent's office of a report that provides the following information:

- a. The total number of students, by race and grade level, enrolled at each school operated by the LCSB.
- b. The total number of administrators (central office and school level), faculty, and staff, by race and position, assigned to each school operated by the LCSB. The report should indicate the certification held by administrators (central office and school level) and faculty and whether each employee is full-time or part-time.
- c. The list of all faculty/staff training and development conducted prior to the start of each school year that is designed to ensure the consistency of the curriculum and courses in the Carthage Zone and South Leake Zone. The report should include sign-in sheets for each such training.
- d. A list of the meetings, by subject area, between faculty/staff teaching similar courses in the Carthage Zone and South Leake Zone that occurred over the previous school year, including sign-in sheets of faculty/staff present at the meetings.
- e. The total number of administrators (central office and school level), faculty, and staff, by race, position, and school, hired during the preceding year.
- f. The total number of students, by race, in each class/course at each school operated by the LCSB.

- g. A copy of all yearbooks published by each school operated by the LCSB over the preceding year.

WHEREFORE, the United States and the LCSB request that the Court enter an Order modifying the desegregation order as set forth herein.

DON BURKHALTER  
United States Attorney

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General

Dated: February 23, 2011

/s/ Krishna K. Juvvadi

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Dated: February 23, 2011

/s/ Dexter C. Nettles, Jr.

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**Exhibit A**



