

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

ROBERT L. ADAMS, JR., et al.,	§	
§		
Plaintiff,	§	
§		
UNITED STATES OF AMERICA,	§	
§		
Plaintiff-Intervenor,	§	CIVIL ACTION No. 6:04-cv-291-LED
	§	
v.	§	
	§	
CHARLES F. MATHEWS, Superintendent	§	
of the LONGVIEW INDEPENDENT	§	
SCHOOL DISTRICT, LONGVIEW	§	
INDEPENDENT SCHOOL DISTRICT, et al.,	§	
	§	
Defendants.	§	

JOINT MOTION FOR DECLARATION OF PARTIAL UNITARY STATUS

TO THE HONORABLE LEONARD DAVIS:

Pursuant to the November 22, 2013 Court's Scheduling Order (ECF Doc. 68), Plaintiff-Intervenor United States of America ("United States") and Defendant Longview Independent School District ("District" or "LISD") respectfully file this Joint Motion for Declaration of Partial Unitary Status and Dismissal of Certain Desegregation Issues, and in support of this Joint Motion state as follows:

I. INTRODUCTION

On January 20, 1970, this Court entered an order requiring LISD to implement the Desegregation Plan submitted by the District on January 6, 1970. *See* Consent Order, ECF 42 (01/24/11). The Plan required LISD to create attendance zones and transport students from one attendance zone to another in order to further the desegregation of its schools. *See id.* On July

15, 2004, the Court modified the 1970 Order to allow the District to implement a magnet school program. *See id.* On January 24, 2011, the Court entered a Consent Order approving the District's current student assignment and attendance zone plan. *See id.* The Court's 2004 and 2011 orders addressed the issue of student assignment between schools, but did not address other facets of school operations, such as the District's policies and practices that relate to the *Green* factors, which include student assignment within schools, faculty assignment, staff assignment, facilities, transportation, or extracurricular activities, or other factors, such as the District's special identification and/or gifted and talented programming and student discipline.¹

Pursuant to the Court's Scheduling Order, the United States initiated a comprehensive review of the District's current policies and practices and conducted a site visit to LISD between January 6 and 10, 2014. *See* Scheduling Order, ECF 68 (11/22/13). Following its site visit, on February 11, 2014, the parties participated in a meet and confer conference and identified several of the above-referenced *Green* factors they agree are no longer at issue in this case. The United States also expressed an interest in engaging in further settlement discussions to address and resolve all of the remaining issues and the parties discussed many of the observations they shared regarding the information uncovered during the United States' site visit. The District is currently examining its data to verify some of the analyses the United States shared with it during the meet and confer conference.

¹ *See Green v. County Sch. Bd.*, 391 U.S. 430, 435 (1968); *Tasby v. Woolery*, 869 F.Supp. 454, 459 (N.D.Tex. 1994) (courts must look "to all facets of school operations, with the *Green* factors as a guide"); *see also Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18 (1971) ("existing policy and practice with regard to faculty, staff, transportation, extra-curricular activities, and facilities" are "among the most important indicia of a segregated system"); *Johnson v. Jackson Parish Sch. Bd.*, 423 F.2d 1055, 1056 (5th Cir. 1970) ("We think that it was manifestly clear that the decisions of the Supreme Court and this Court required the elimination of not only segregated schools, but also segregated classes within the schools.").

II. UNITARY STATUS

To obtain a declaration of partial or full unitary status, the District must show that their schools have: (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 which were the predicate for judicial intervention in the first instance.²

In assessing whether a school district is unitary, the Court must examine "every facet of school operations."³ The ultimate goal of the Court's analysis is to determine whether the District "has done all that it could to remedy the segregation caused by official action."⁴ Any current racial disparities in a former *de jure* school system are presumed to be the result of the District's prior unlawful conduct unless the District can demonstrate that the imbalances are not traceable in a proximate way to its former *de jure* system.⁵ Nevertheless, the Court may allow partial or incremental dismissal of the desegregation case before full compliance has been achieved in every area of school operations, thereby retaining jurisdiction over those areas not yet in full compliance and terminating jurisdiction over those areas in which compliance was found.⁶

² See *Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); see also *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 297 (5th Cir. 2008).

³ *Board of Educ. v. Dowell*, 498 U.S. 237, 250 (1991) (quoting *Green*, 391 U.S. at 435).

⁴ See *Anderson* 517 F.3d at 298.

⁵ See *Freeman*, 503 U.S. at 494; see also *United States v. Fordice*, 505 U.S. 717, 739 (1992).

⁶ See *Freeman*, 503 U.S. at 490-91.

III. STIPULATION FOR PARTIAL UNITARY STATUS:

Based on their 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 remains in the LISD in the areas of:

1. Facilities and resource allocation;
2. Transportation;
3. Extracurricular Activities; and
4. Staff Assignment.

With respect to each of these areas of its operations, 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 partial unitary status with respect to these four areas of its operations.

IV. CONCLUSION:

Based on the stipulations set forth above, the parties respectfully move for declaration of partial unitary status for LISD on the following issues: facilities and resource allocation, transportation, extracurricular activities, and staff assignment. A proposed Order is being filed with this Motion.

Respectfully Submitted,

UNITED STATES OF AMERICA

LONGVIEW INDEPENDENT SCHOOL DISTRICT

JOCELY SAMEULS

Acting Assistant Attorney General

ANURIMA BHARGAVA, Chief

KATHLEEN S. DEVINE, Special Legal Counsel

/s/ Mark A. Dann

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CERTIFICATE OF SERVICE

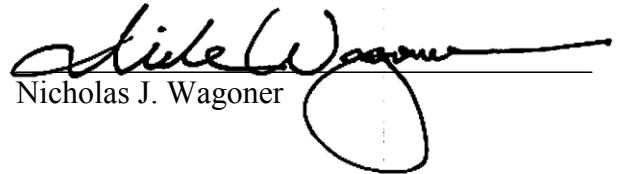
I hereby certify that on 27th day of February , 2014, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and notice was electronically provided to the following CM/ECF system participants:

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/s/ Richard A. Morris
Attorney for Defendant

CERTIFICATE OF CONFERENCE

I hereby certify that on February 27, 2014, I conferred with Plaintiff's counsel regarding the filing of this motion and the relief requested therein. Plaintiff's counsel stated that his client is not opposed to this motion.


Nicholas J. Wagoner