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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

SONNIE WELLINGTON HEREFORD, IV, et al.,	}	
Plaintiffs,	}	
v.	}	**Case No.: 5:63-cv-00109-MHH**
UNITED STATES,	}	
Intervenor Plaintiff,	}	
v.	}	
HUNTSVILLE BOARD OF EDUCATION, et al.,	}	
Defendants.	}	

MEMORANDUM OPINION

The United States of America and the Huntsville Board of Education have asked the Court to approve and enter a consent order in this 52-year-old school desegregation case. The 89-page proposed order maps a path toward a declaration of unitary status – the legal finish line for federal court oversight of the City of Huntsville public school system.

The proposed consent order represents thoughtful analysis and necessary compromise. The order is not perfect, but it is a perfect place to start the hard work of righting a constitutional wrong. In this opinion, the Court explains its

reasons for approving the proposed order and addresses the students whose lives will be impacted as the Board works to implement the consent order.

Factual Background

Context is extremely important in a case like this. The path forward cannot be charted without an appreciation of the more than 50 years that preceded the parties' proposed consent decree. In the memorandum opinion that it issued on June 30, 2014, the Court traced the procedural history of this case. (Doc. 364, pp. 4-23). The Court will not repeat that discussion here. Rather, for purposes of this opinion, the Court turns its attention to the historical backdrop for the consent order – the personal stories that the Court is able to glean from the record and from other reliable sources.

Fifty-two years ago, Huntsville's public schools were racially segregated by law. "Negro children [were] sent to Negro schools only and [those] schools [were] staffed solely by Negro personnel. Conversely, white children [were] sent only to schools containing white children" and those schools were "staffed solely by white personnel." (March 11, 1963, Affidavit in Support of Motion for Preliminary Injunction, at ¶ 5). The schools had been segregated "[i]n every year since at least 1955." (*Id.*).[1] On March 11, 1963, five of the city's black public school students,

[1] The pleadings in this matter became automated in 1998. Many of the court records that precede 1998 do not have docket numbers. The Court refers to those records by the dates on the manual docket sheets. The manual docket sheets appear in the electronic record as Doc. 1.

including Sonnie Wellington Hereford, IV and John Anthony Brewton, asked this Court to tell the Board that it could no longer require segregation of students by race in the public schools under the Board's supervision.

A few months later, on August 13, 1963, the Court entered an order that prohibited the Board from discriminating against the plaintiffs "because of their race or color in seeking assignment, transfer or admission to the public schools of the City of Huntsville, Alabama, or subjecting them to criteria, requirements, and prerequisites not required of white children seeking assignment transfer, or admission to said schools." (August 13, 1963 docket order). The Court gave the Board until January 1, 1964 to submit a plan for "an immediate start in the desegregation of schools of the City of Huntsville." (*Id.*).

Huntsville's public schools were scheduled to open on September 3, 1963, less than one month after the Court issued its order mandating desegregation. (September 3, 1963 Affidavit in Support of Motion for Show Cause Order, at ¶ 4). In light of the Court's desegregation order, the district moved the first day of school to September 6, 1963. When Mr. Brewton arrived with his son at East Clinton Street School on September 6, 1963, he found that "state troopers [had] blocked all entrances." Mr. Brewton "was told the school was closed by request from Gov. Wallace." Dr. Hereford faced a similar reception when he brought his son to Fifth Avenue School. "A Sgt. of the Highway Patrol met [him] and said

'school is closed by Governor Wallace's orders. You can't go in.'" (September 6, 1963, Western Union Telegrams attached as exhibits to September 6, 1963 Affidavit in Support of Motion for Show Cause Order).

The details of the next steps toward integration of Huntsville's public schools do not appear in the record, but this much is certain: Sonnie Hereford, IV, John Anthony Brewton, James Bearden, Jr., Veronica Terrell Pearson, and David C. Piggie left their friends and the familiarity of their neighborhood schools and did, indeed, "go in" to the district's white schools. In time, other black students joined the plaintiffs and began to integrate the district's white schools. Ms. Laurie McCaulley, the current chair of the Board, explained that when she attended West Mastin Lake School, she was the only black child in her third grade class. (Doc. 447, p. 124).[2]

In the years that followed the Court's initial desegregation order, the transition to a nonracial system of education was slow. Enrollment data demonstrated that the student bodies of the district's elementary and secondary schools were no longer all white or all black. (September 16, 1970 Findings of Fact and Conclusions of Law, Attachments A and B). But the Supreme Court's decisions in *Brown v. Board of Education* and *Green v. County School Bd. of New Kent Cnty., Va.* required more. *Brown*, 347 U.S. 483 (1954); *Green*, 391 U.S. 430

[2] In 2012, the Board changed the name of West Mastin Lake Elementary School to James I. Dawson Elementary School.

(1968). *Green* mandated parity in "every facet of school operations – faculty, staff, transportation, extracurricular activities and facilities." *Green*, 391 U.S. at 435.

On August 28, 1970, the United States filed a motion for supplemental relief in which it asked the Court to direct the Board to "completely deestablish the dual school system in the City of Huntsville." (Doc. 1, docket sheet, p. 7). After hearing the motion, the Court ordered the Board to collaborate with the United States to prepare "a plan for a unitary school system not based on race which meets the requirements of law." (Doc. 299-1, p. 2). Consistent with the mandate of *Green*, the order required the Board to "announce and implement" policies to address: (1) desegregation of faculty and staff; (2) majority to minority transfers; (3) equity in school construction and site selection; (4) interdistrict transfers; (5) equity in services, facilities, activities, and programs, including athletics and other extracurricular activities; and (6) equity in transportation. (Doc. 299-1, pp. 4-9).

As time wore on, many of the requirements of the Court's 1970 order were not fulfilled, and demographic shifts in the Huntsville community unraveled the advances that the district had made in student assignments. African-American students in the district's predominantly black schools suffered the consequences of the district's failure to comply with the Court's mandate for equity in educational programs, services, facilities, and activities. One African-American gentleman

explained anecdotally that when he attended Johnson High School in the late 1970s, he "couldn't read . . . couldn't write." (Doc. 353, p. 243). He mastered those fundamental skills later in life. (*Id.*). Decades later, Ms. McCaulley was unable to enroll her sons in the district's gifted program "because we had some rules."[3] (Doc. 447, p. 127). According to Ms. McCaulley, as recently as 10 years ago, the district moved the AP teachers at Johnson High School to Grissom High School, leaving Johnson without AP classes. Ms. McCaulley remarked that when she was elected to the Board in 2009, there were no AP courses at Johnson or Butler, the two predominantly black high schools in North Huntsville. (Doc. 447, p. 124). As the Court already found, in 2014, the discrepancies between the academic offerings in the district's predominantly black schools and the district's predominantly white schools were striking. (Doc. 364, pp. 51-55, 73-78).

The parties' work in mediation provided insight into similar discrepancies in school discipline. The United States retained Dr. Anne Gregory, an expert in school discipline, to examine discipline rates and types of disciplinary action by race within the district. (Doc. 446, pp. 24-25). Based on her review of the district's discipline records for the 2013-2014 school year, Dr. Gregory found that the district's code of conduct "was applied differently to black students." (Doc.

[3] One of Ms. McCaulley's sons is now in Scotland working on his Ph.D., and her other son is the medical director of a hospital. (Doc. 447, p. 127).

446, p. 26). Specifically, "black students [] tended to receive, on average, more serious consequences for similar behaviors to white students." (Doc. 446, p. 23). During that school year, high numbers of black students were excluded from classroom instruction as a consequence of discipline. (Doc. 446, p. 28). Black students "were two times more likely to receive out-of-school suspension for similar behavior relative to white students who tended to receive a consequence such as in-school suspension, detention, letters home." (Doc. 446, p. 26). Black students were twice as likely as white students to be sent to the office, and teachers referred black students to the office (causing the students to lose instructional time) for minor or moderate behavior as opposed to behavior that implicated student safety. (Doc. 446, pp. 26-27).[4]

Much of this evidence suggests that as late as the 2013-2014 school year, the tenacious vestiges of *de jure* segregation were affecting the way in which African-American students in the district were treated.

Procedural Background for the Parties' Proposed Consent Order

On June 30, 2014, the Court directed the United States and the Board to mediation to attempt to negotiate "a roadmap to the end of judicial supervision."

[4] In performing her statistical analysis, Dr. Gregory ruled out other possible explanations for discipline disparities such as socioeconomic status and severity of conduct. Controlling for these alternative explanations enabled Dr. Gregory to conclude that race was "a robust predictor of whether a student received out-of-school suspension or not." (Doc. 446, pp. 28-29). The Board's discipline expert, Dr. Robert Peterkin, agreed that there are racial disparities in discipline in the Huntsville school district. (Doc. 446, p. 71).

N.A.A.C.P., Jacksonville Branch v. Duval Cnty. School, 273 F.3d 960, 963 (11th Cir. 2001). Over the seven months that followed, lawyers for the United States and the Board, Board members, district administrators, teachers, and various experts participated in more than 30 in-person mediation sessions with Chief Magistrate Judge Ott and countless additional hours of confidential negotiations. (Doc. 446, pp. 6, 15, 120-121; Doc. 447, pp. 30-32).[5] The parties and their experts analyzed vast amounts of data, and the United States gathered information through focus groups with hundreds of students and parents across the district. (Doc. 388, pp. 2; Doc. 446, p. 7). The product of their efforts is a proposed consent order that addresses in some detail student assignment; equitable access to course offerings and programs; extracurricular activities; faculty; facilities; and student discipline. (Doc. 389, p. 2; Doc. 411-1).[6]

On January 26, 2015, the Court granted the parties' request to present their proposed consent order to the Huntsville community. (Doc. 389). The Board posted the proposed consent order on the district's website in English and in Spanish and offered members of the community an opportunity to comment on the

[5] In an order dated July 14, 2014, the Court explained why the parties' discussions during mediation must remain confidential. (Doc. 370, pp. 4-5). For a description of the general process in public school desegregation mediations, *see* Doc. 447, p. 88. For a general description of the parties' meetings, *see* Doc. 446, pp. 120-22.

[6] The proposed consent order also mentions transportation, an area in which the district is prepared to petition for a declaration of unitary status. (Doc. 389, pp. 1-2; Doc. 411-1, p. 84).

proposal through a special website, www.proposedconsentorder.com. The district received more than 400 comments through the website. (Doc. 446, pp. 126, 134). The district also held three public forums at schools throughout the district. Representatives of the United States Justice Department facilitated those meetings. Everyone who attended the meetings, including the students who attended, had an opportunity to speak or to provide written comments about the proposed consent order. (Doc. 446, p. 206). In addition to the public forums, the district conducted a number of faculty meetings to discuss the proposed consent order with teachers. (Doc. 446, pp. 126, 131-134). Members of the Huntsville community wrote more than 50 letters to the Court regarding the proposed order. The Court placed those letters in the record. (Docs. 392-1, 392-2, 396-1, 397-1, 398-1, 400-1, 401-1, 403-1, 404-1, 405-1, 406-1, 406-2, 406-3, 406-4, 406-5, 406-6, 407-1, 408-1, 410-1, 413-1, 414-1, 416-1, 417-1, 418-1, 418-2, 419-1, 419-2, 419-3, 421-1, 424-1, 425-1, 425-2, 426-1, 427-1, 429-1, 430-1, 432-1, 433-1, 434-1, 435-1, 436-1, 437-1, 437-2, 437-3, 437-4, 437-5, 437-6, 437-7, 438-1, 439-1, 440-1, 441-1, 442-1, 443-1, 448-1, 448-2).

After the public meetings, the parties made a number of revisions to the proposed consent order. For example, the parties initially agreed that rising seniors would be grandfathered into the high schools that they currently attend and would not be subject to the student assignment provisions in the proposed order that

would require students in a number of neighborhoods to change schools. (https://sites.google.com/site/sapihsc/home/updates, January 29, 2015, 3:25 p.m. clarification) (last visited April 6, 2015). The revised proposed order extends the grandfather provision to rising juniors as well as rising seniors. (Doc. 411-1, p. 10). In addition, under the initial proposed order, the district planned to accept M-to-M transfer applications from December 1 through January 15 of each school year. (https://sites.google.com/site/sapihsc/home, Proposed Consent Order and Attachments, page 12) (last visited April 6, 2014). Parents expressed concern that the application period coincided with the winter holiday season. Under the revised proposed order, the district will now accept M-to-M transfer applications between November 15 and January 15. (Doc. 411-1, p. 13; Doc. 446, p. 147).[7]

In response to public feedback, the district also posted on the proposedconsentorder.com website answers to frequently asked questions. (Doc. 446, pp. 135-136). For instance, the district explained that student athletes who have to change schools under the terms of the proposed consent order will not have

[7] The district has explained that to run the M-to-M lottery and give students who receive transfers the opportunity to register at their new schools and try out for fall sports teams, the district must receive transfer applications by January 15 of the school year preceding the transfer. The revised proposed order enables parents/guardians who submit M-to-M applications during the November 15 through January 15 application period the opportunity to place their child's name on an M-to-M waitlist if the district denies the original transfer application. The proposed consent order also offers parents/guardians who do not apply for an M-to-M transfer during the November 15 through January 15 application period the opportunity to submit applications through the expiration of the waitlist period on July 15. (Doc. 411-1, p. 15).

to sit out a year before playing sports for their new school. And every high school may offer performing arts programs and classes, but these programs may not duplicate or compete with Lee High School's unique magnet program.[8] The district and the United States clarified that students who attend a non-magnet school on non M-to-M transfers, such as superintendent or personnel transfer, will enroll in their zoned school for the 2015-2016 school year, but parents and guardians may apply for a non M-to-M transfer prior to the start of the 2015-2016 school year. (https://sites.google.com/site/sapihsc/clarifications-and-amendments-to-the-pco, Clarifying Responses to Public Comments (last visited April 6, 2014); *see also* Doc. 447, pp. 53-54).

On February 19, 2015, the district held a final public meeting, during which the district provided copies of the amendments to the proposed consent order and offered an opportunity for public comment on those amendments. (Doc. 411, p. 2; Doc. 446, p. 135). On February 20, 2015, district superintendent Dr. Casey Wardynski and counsel for the Board presented the proposed consent order to the Board for discussion. At the conclusion of the public Board meeting, the Board voted unanimously to approve the proposed consent order. (Doc. 411, p. 2). The parties filed the updated proposed consent order with the Court, and the Court set

[8] This means, for example, that Grissom may continue to provide dance programs; however, Grissom may not add dance programs that duplicate or compete with Lee's offerings. The breadth and quality of the dance program at Lee must exceed the dance programs at other schools. (Doc. 446, pp. 200-01; Doc. 447, pp. 60-61, 74-75).

the parties' motion for approval of the proposed consent order for hearing. In addition, the Court appointed an independent expert to evaluate the proposed consent order. (Doc. 412).

Hearing on the Parties' Proposed Consent Order

The hearing on the proposed consent order began on March 11, 2015, the fifty-second anniversary of this lawsuit. The hearing spanned two days. Two experts on student discipline testified, one for the United States and one for the district. In addition, Dr. Wardysnki and Dr. Barbara Cooper, the district's deputy superintendent, testified about the work that the district plans to undertake if the Court approves the parties' proposed consent order. (Doc. 446, pp. 123-125, 142-144, 159-179; Doc. 447, pp. 56-67, 72-73). Mr. Carlos Gonzalez, the Court's independent expert, provided his evaluation of the parties' proposal, and he offered a number of suggestions for ways to enhance oversight of the implementation of the consent order and to provide ongoing opportunities for public feedback. (Doc. 447, pp. 85-113).

At the conclusion of the witness testimony, members of the Huntsville community who attended the hearing addressed the Court. Every member of the Board pledged support for the proposed consent order. (Doc. 447, pp. 122-128). Some of the individuals who spoke expressed enthusiastic optimism about the proposed order. Some members of the African-American community described

past broken promises from the Board but expressed cautious optimism about the proposed order. (Doc. 447, pp. 122-223).

Following the hearing on their motion for approval of the proposed consent order, the parties revised some of the provisions of the proposed order so that the current draft of the consent order reflects comments that the parties received from Mr. Gonzalez and from the Court. The record on the parties' joint motion for approval of the proposed consent order now is complete.

Analysis of the Parties' Proposed Consent Order

As the Court explained in its June 30, 2015 opinion, the Court's overarching goal in a school desegregation case is "to remedy the [constitutional] violation and, in addition, to restore [to] state and local authorities" the control of public schools. *Freeman v. Pitts*, 503 U.S. 467, 489 (1992). For the Board to receive a declaration of unitary status as to each of the *Green* factors, the Court must be satisfied that the district has abolished "'the system of segregation and its effects'" so that racial discrimination in public education is eliminated "root and branch." *Green*, 391 U.S. at 438, 440 (quoting *Bowman v. Cnty. School Bd. of Charles City Cnty.*, 382 F.2d 326, 333 (4th Cir. 1967) (Sobeloff, J., concurring)). Based upon its review of the parties' proposed consent order and the evidence that the parties have provided relating to their proposal, the Court finds that the consent order is an excellent vehicle to help the district advance towards a "nonracial system of public

education" that will eliminate the effects of the former segregated system and allow the district to return to local control. *Green*, 391 U.S. at 436.

As the Court noted in its June 30, 2014 opinion, most of the public schools in the district currently are predominantly white or predominantly black. (Doc. 364, p. 72). The most direct way "to convert promptly from a *de jure* segregated school system to a system without 'white' schools or 'black' schools, but just schools"[9] is to modify zone lines to diversify the live-in populations for public schools within the district. The parties have agreed to adjust the boundaries for a number of schools within the district so as to zone-in diversity. The most significant changes will occur in the Huntsville High School feeder pattern. Under the terms of the proposed consent order, the district will increase the black live-in population in the Huntsville High zone first by shifting Sonnie Hereford P-6 (currently named University Place Elementary), a predominantly black elementary school, from the J.O. Johnson/Jemison High School feeder pattern into the Huntsville High pattern.[10] Second, the district will modify the boundary for Blossomwood P-6, increasing the percentage of African-American students living in the Blossomwood boundary from 10.1% to 26.7%. Third, the percentage of

[9] *Lee v. Autauga County Board of Edu.*, 2004 WL 2359667, *4 (M.D. Ala. Oct. 19, 2004) (citing *Green*, 391 U.S. at 442).

[10] Under the student assignment plan that the district proposed in February 2014, Hereford would have remained in the feeder pattern for Jemison, a predominantly black high school. (Doc. 281, p. 22).

African-American students living in the boundary for Jones Valley P-6 will rise from 3.5% to 17.1%.[11] As a consequence of these elementary school boundary revisions, the percentage of African-American students living in the Huntsville Junior High boundary will increase from 9% to 31.4%, and the percentage of African-American students living in the Huntsville High boundary will increase from 10% to 17.4%. (Doc. 431, pp. 5-6; Doc. 447, pp. 34, 41-42).

The parties' proposal to better integrate the live-in populations in the Huntsville High feeder pattern focuses on boundary line revisions in the middle of the district where boundary modifications are most likely to accomplish racial diversification of the student bodies in the district's public schools. (*See* Doc. 447, p. 83). These changes are practical and consistent with the district's overall demographics. Even with these revisions, many of the schools in the district will remain racially identifiable under the terms of the proposed consent order, but a "school district is under no duty to remedy [racial] imbalance that is caused by demographic factors." *Freeman v. Pitts*, 503 U.S. 467, 491, 494 (1992).

To improve racial integration of the student bodies of schools situated beyond the center of the district, the parties' plan calls for reinvigoration of some of the district's magnet programs, programs which Dr. Wardynski identifies as

[11] In addition, a considerable number of the African-American students who currently attend Butler High School will live in the Hunstville High boundary under the terms of the consent order. (Doc. 431, p. 7; Doc. 447, p. 41; Board Ex. 30).

"pivotal." (Doc. 447, p. 19). The district already has implemented a marketing strategy designed to attract qualified students to the district's magnet programs. (Doc. 446, pp. 155-158).[12] To enhance the ability of the district's two magnet schools and four magnet programs to attract students, the district will ensure that each magnet school/program "has a curriculum that is unique," and the district "will not duplicate unique program components identified in the magnet program mission statement at other schools." (Doc. 411-1, pp. 20, 22; *see also* Doc. 411-1, p. 29; Doc. 447, pp. 60-61, 74-76). The district plans to recruit a total of 75 new students to New Century Technology High School and to the Creative and Performing Arts magnet program at Lee High School, and the district will recruit students to populate the College Academy that the district will open at Jemison High School during the 2016-2017 school year.[13] The College Academy will bring college professors and programming to the Jemison campus. (Doc. 447, pp. 76-77). The new magnet program will replace the space and law magnet programs at J.O. Johnson High School, programs that have not been very successful. (Doc. 411-1, p. 22; Doc. 447, pp. 61-63).

[12] Before the parties began their work on the proposed consent order, the district had taken initial steps to improve its magnet schools and programs. The proposed consent order further strengthens the magnet system. (Doc. 447, pp. 19-21).

[13] Through the College Academy, the district hopes to attract to Jemison, in the northern sector of the district, students who live in the Grissom and Huntsville High zones in the southern part of the district. (Doc. 447, p. 63).

Under the terms of the proposed consent order, the district will, for the foreseeable future, continue to use M-to-M transfers as another tool to integrate the student bodies of schools located beyond the center of the district. New rules governing the M-to-M transfer process are designed to ensure equitable access to M-to-M transfers. (*See e.g.*, Doc. 411-1, pp. 11-15; Doc. 146, pp. 149-50) (describing M-to-M application lottery). The district also plans to develop and implement a variety of measures designed to ease the transition from a transfer student's home school to the student's receiving school. (Doc. 411-1, p. 17). The proposed consent order calls for the district to actively recruit African-American students to attend Hampton Cove and Goldsmith-Schiffman elementary schools, two schools in which black students historically have been underrepresented. (Doc. 411-1, p. 18; Doc. 447, pp. 56-58). The district plans to use the M-to-M program to accomplish these enrollment goals. (*Id.*).[14]

[14] When the parties jointly moved for approval of Hampton Cove Middle School, the Board represented that it intended "to work toward a goal of 20% Black student population of Hampton Cove Middle School. The Defendant Board may attain that 20% by a variety of ways including majority to minority transfers, transfers under the No Child Left Behind Act, and special programmatic offerings." (Doc. 238, p. 2). When the district asked for permission to build a new elementary school to alleviate overcrowding at Hampton Elementary, the district represented that it would "set a goal of enrolling no less than 15% black students at both Hampton Cove Elementary and the new elementary school at the time of the opening of the new elementary school and will encourage No Child Left Behind and Majority-to-Minority transfers, among other means, to achieve the goal." (Doc. 255, p. 5; *see generally* Doc. 447, pp. 56-57). The district did not achieve either goal. Currently, the live-in black populations for Goldsmith-Schiffman Elementary and Hampton Cove Elementary are 2.4% and 3.2% respectively. Those populations will not change under the parties' proposed student assignment zones. (Doc. 411-6). The current black student enrollment at Goldsmith-Schiffman Elementary is 3.6% of the student body, and the current black student enrollment at Hampton Cove Elementary is 5.2% of the

Over the past few decades, African-American students in the district have used M-to-M transfers to gain access to the strongest academic programs that the district offers. Because the Board will be within its rights if it chooses to discontinue M-to-M transfers after the district obtains a declaration of unitary status, it is imperative that the district improve the academic programs in the district's predominantly black schools and afford equitable academic opportunities to all of the students in the district regardless of race.[15]

The proposed consent order contains a host of provisions relating to equitable access to course offerings and programs. (Doc. 411-1, pp. 40-61). The consent order requires, for example, equitable distribution of faculty to ensure that teachers at all of the district's high schools will have comparable credentials. (Doc. 411-1, p. 41; Doc. 446, pp. 159-60). The parties' plan addresses gifted programs at the elementary level and mandates that the strategies that the district uses to identify students for gifted programs take into account cultural bias. (Doc.

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student population. (*Id.*). Similarly, the current Hampton Cove Middle School zone has a 2.5% black live-in population, and that population is not projected to change under the parties' proposed revised student assignment zones. (*Id.*). Black students currently make up 4.9% of the student body at the middle school. (*Id.*). This data suggests that the district must rededicate itself to reaching the enrollment goals that it repeatedly has pledged for the predominantly white schools in the southeastern part of the district.

[15] When the Court asked Dr. Wardynski if his views on M-to-M transfers had changed, he acknowledged that M-to-M transfers "are a key component of desegregation," but he added that some desegregation measures "end when you are unitary." (Doc. 447, p. 84). Dr. Wardynski is committed to improving the schools in the northern segment of the district and building the reputation of the magnet program at Jemison to sustain desegregation in the predominantly African-American areas of the district. (*Id.* at 84-85).

411-1, p. 44). In addition, the order states that the district will encourage all students who demonstrate "the potential to succeed" to take AP, Honors, and IB courses, and the district "will develop a program of services to support students from groups historically under-represented in Honors, AP, and IB courses." (Doc. 411-1, p. 51; Doc. 446, p. 165). To remove financial barriers to accelerated academic programs, the district will provide financial assistance for students who cannot, for example, afford the fees for AP exams. (Doc. 411-1, p. 57; Doc. 446, p. 192). The district also will "provide high school students with access to preparation courses and activities for college entrance exams, such as the ACT, at no cost to students." (Doc. 411-1, p. 57). Significantly, the district has implemented a uniform class registration process so that the district will offer the same courses to every student in every grade of every high school in the district. (Doc. 446, pp. 166, 170).[16]

[16] Dr. Peterkin testified that if the district is successful in its efforts to improve the curriculum at predominantly black schools, rates of discipline may fall for African-American students. According to Dr. Peterkin, "a classroom is a place where students are able to thrive if they have a rigorous curriculum and effective teacher[s], and therefore behavioral problems are diminished." (Doc. 446, pp. 71-72). Dr. Peterkin opined that remedying inequitable academic opportunities is essential to improving school discipline. (Doc. 446, p. 74). Dr. Peterkin stated: "There's a sense of fairness and equity that has to permeate a school system, access not just to opportunity, but access to outcomes that has to be in the school system and in the school for students to demonstrate the kinds of behavior that we want them to learn and to foster within the school system." (Doc. 446, p. 72). Toward this end, equitable access to course offerings and extracurricular activities and the elimination of barriers to gifted programs and advanced placement courses play an important role in reducing disruptive conduct in the classroom and fostering a positive school climate. (Doc. 446, p. 73; *see also* Doc. 447, p. 67).

Because racial disparity in student discipline has caused a disproportional number of African-American students in the district to lose important instructional time in the classroom, the parties' proposed order contains strategies for addressing inequity in student discipline. Consistent with the terms of the proposed order, the district already is in the process of revising its code of conduct to reduce out-of-school suspension and promote alternative forms of discipline. (Doc. 446, pp. 13, 31, 48, 80).[17] The consent order also offers opportunities for professional development for faculty and school safety officers in the realm of student discipline. In addition, the district is working to better-integrate its alternative school into the fabric of the district's educational system. (Doc. 446, pp. 31, 77).[18]

These are the highlights of the proposed consent order. The 89-page order contains many other provisions concerning student assignment, academic programming, and racial disparities in student discipline. The order also addresses equitable access to extracurricular activities, racial diversity among school principals and faculty, and equitable facilities. (Doc. 411-1, pp. 62-73). As Mr.

[17] Dr. Peterkin pointed out that truancy and tardiness are "offenses that if we punish students for, we'll just push them further and further from us." (Doc. 446, p. 80). Dr. Peterkin also noted the importance of making students "full citizens in the school system and showing them how to be a full citizen." (Doc. 446, pp. 80-81, 97).

[18] As Mr. Gonzalez noted in his expert report, discipline is not traditionally one of the *Green* factors; however, "[t]he inclusion of such a section in a desegregation decree has become commonplace, and courts have routinely approved consent decrees in which the parties have agreed to modifications in a school district's disciplinary practices." (Court's Ex. 1, pp. 7-8 (collecting cases in footnote 19); *see also* Doc. 446, p. 61).

Gonzalez pointed out, although the proposed order contains some concrete action items, the order is, in many respects, "a plan to plan." (Court Ex. 1, p. 8; Doc. 447, p. 96). The flexibility that the proposed order affords to the district is appropriate and consistent with desegregation practices. (*Id.*). The flexibility enables the district to adapt its policies to the evolving demands placed on the district not only from the perspective of desegregation but also from the many other considerations that the district must balance.

The flexibility that the proposed order affords the Board and the district is anchored in an irreducible constitutional obligation: the district must eliminate the vestiges of *de jure* segregation. A plan to end federal court oversight of the district is merely words, and actions speak louder than words. Many of the terms of the parties' proposed roadmap for a declaration of unitary status resemble provisions from the Court's 1970 desegregation order. (*Compare* Doc. 67, ¶¶ 3.A, 3.B., 3.E., and Doc. 411-1, ¶¶ II.B., II.D., III.C, V., VI). Inattention to the clear mandate of the 1970 order has, in the words of the Board's attorney, allowed "[t]he practices that require us to be here" to go on for "too long." (Doc. 446, p. 15). Because the parties agree and the record demonstrates that full and faithful execution of the proposed consent order will enable the district to eliminate the effects of segregation "root and branch" and will pave the way toward a declaration of

unitary status (Doc. 446, p. 92; Doc. 447, p. 91), the Court approves the parties' proposed consent order. Now it is up to the district to act.

Enhancing the Potential for Success

The district already has demonstrated its commitment to back the words of the consent order with action. Before the Court approved the consent order, the district held a magnet program fair and began revising the district's Code of Conduct. (Doc. 446, pp. 31, 48, 81, 156-157; Doc. 447, p. 66). Edith Pickens, the district administrator charged with overseeing the implementation of the consent order, has created a 44-page document that assigns due dates and delegates oversight responsibility for various tasks identified in the consent order. (Doc. 446, pp. 123, 125; Board Ex. 18; Doc. 447, pp. 34, 93-94).

The consent order contains a number of provisions designed to enhance the district's ability to comply with the order. First, each section of the consent order contains annual reporting requirements. (Doc. 411-1, pp. 38-39, 60-61, 63-64, 68-70, 72-73, 84, 88). Consistent with this opinion, the Court will enter the consent order, and the Court will enter a separate order that consolidates the reporting requirements. The district's annual reports will enable the parties and the Court to consider retrospectively the work that the district has done in the preceding year to fulfill the district's obligations under the consent order.

To facilitate transparency and communication from all stakeholders on a more routine basis, the order requires the district to establish an Implementation Web Page. (Doc. 447, pp. 73, 94). That resource will provide information to the community about the steps that the district takes to fulfill its obligations under the consent order. Visitors to the web page may leave comments about the district's work on desegregation. (Doc. 447, p. 94).

In a related vein, the consent order requires the district to establish a Desegregation Advisory Committee or DAC. The DAC – composed of 10 parents/guardians and two 12th grade students from across the district – will "advise the Superintendent and [] inform the Court" about the committee's "assessment of the implementation of the terms of the Consent Order." (Doc. 411-1, p. 85). Dr. Peterkin, the Board's expert, believes that the DAC "is essential to the success of the court order." (Doc. 446, p. 109).

The district has organized quarterly meetings to review data and discuss input from principals and faculty. (Doc. 446, pp. 96-97). As Dr. Peterkin noted and Mr. Gonzalez confirmed, "the frequency with which you review your data is important so that you can change midstream if your program is not working or is not being implemented with fidelity." (Doc. 446, p. 83; Doc. 447, p. 96). Data collection will play an important role in the implementation of the proposed consent order: "It's the vehicle for change, if you don't know whether or not you

are making progress, and this document is based on belief in continuous progress and its value, then you cannot monitor the changes as they evolve for African American students." (Doc. 446, p. 90).

The Role of the Students

The consent order begins and ends with the district's students – all of its students. As Mayor Battle said when he spoke to the Court at the 2014 hearing in this case:

> The students are what we are here for. If we can make sure that every student, all 23,000 students in the city of Huntsville have the ability to achieve, have the ability to do something great in their life, I think we made a difference.

(Doc. 353, p. 224). Mr. Gonzalez testified that the parties' consent order "will improve the educational outcomes of all [of] the children in the district." (Doc. 447, p. 105). By way of example, the order's provisions that remove financial impediments to college preparatory programs will benefit all students within the district. So too will the district's plan to ramp up its math curriculum, so that all students are prepared to take Algebra by eighth grade. (Doc. 446, p. 163). Thus, while the proposed consent order is necessary to recalibrate racial inequities in areas such as academic programs and discipline, every student in the district will benefit from the work that the district is undertaking, fulfilling Dr. Wardynski's fundamental philosophy that "every child can learn" in a district whose culture is "focused on children, focused on achievement." (Doc. 447, pp. 9, 10).

Though educational opportunities for all of the district's students will increase under the consent order, the students who stand to benefit the most are the African-American students who have not had access to equitable programs or facilities. To those students, the Court expresses its support and encouragement. Through the consent order, the district has acknowledged what you have known all along: you are capable - you welcome challenging courses and high expectations in the classroom. The district believes in you and in your potential for success. We all do. Please take full advantage of the new opportunities that the district will offer you, and think about your roles as citizens of the community. Your community is making a significant investment in you and your academic success. What can you give back? Think about how much the City of Huntsville will benefit from the contributions that you will make in the years ahead as teachers and engineers, as doctors and lawyers, as artists and musicians. You are an integral part of your community and have so much to offer. Seize this opportunity by maintaining high expectations for yourselves as you demand an excellent education from your school system, and remember that those fortunate enough to obtain an excellent public school education have an obligation to hold open doors of opportunity for others.

In that regard, to the students who will have to change schools to accommodate new boundary zones, the Court expresses its thanks. The Court understands the apprehension that students may feel about changing schools. These changes often are a part of public school desegregation orders; you are not alone. (Doc. 447, p. 106). By your participation in the changes that the consent order requires, you are acting as fully-invested citizens of your community and opening doors of opportunity that have been closed for too long. Can you imagine walking in the shoes of the young black students who, fifty years ago, approached the doors of white schools and were told by state troopers that they were not welcome simply because of the color of their skin? Please let the courage of those students inspire you and remind you of the important contribution that you are making to enable your community to finally put that chapter of its history behind it. As Mr. Gonzalez explained, "African American children in this community" were the victims of "Jim Crow and segregation's ugly hand . . ." (Doc. 447, p. 107). A system of segregation so well-entrenched often requires courageous acts to eliminate the system's far-reaching consequences. Thank you for being agents of change in your community.[19]

[19] It is important to note that members of the African-American community have stated that they wish that white students did not have to change schools as part of the consent order. (Doc. 447, pp. 135, 194-195). Through letters and public comment, the Court has heard from students and parents who have asked the Court to grandfather into their current home schools the middle school and high school students who will be rezoned under the consent order. In response to these requests, the Court has taken a close look at school capacities and has considered testimony

The Role of the Community

Much of the work to implement the parties' proposed consent order is in the hands of the district, and the Board and the superintendent have made clear that implementation of the order is "job one." (Doc. 447, pp. 72, 122-128). Mayor Tommy Battle has expressed his support for the parties' consent order too. (Doc. 438-1; Doc. 447, p. 71). Following the hearing, the Court received a letter from Mayor Battle. He wrote:

> [E]qual education is a crucial element for our community's success. . . . As Mayor, I pledge to you that our community will work diligently to ensure that the changes and opportunities outlined in the agreement are followed. The consent decree is the right thing for our community. It will strengthen our city. To that end, our community will emphasize our partnership role in working together to provide every child the equal opportunity for an enriched academic experience. This cannot be accomplished solely by the school system, the school board or its superintendent, or by city government. It will truly take an entire community, working in concert, to achieve our goals. Now is the time for action, to roll up our sleeves, and to get to work to help our schools become the model of high quality and equal opportunity for all.

(Doc. 438-1).

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and the arguments of counsel concerning grandfathering. As much as the Court would like to accommodate the requests from parents and students – especially the students who were willing to share their concerns about changing schools – the Court has decided to support the choices that the parties have made with respect to grandfathering. In reaching agreement with the United States about the extent of grandfathering, the district has done exactly what the Court urged it to do – it has made desegregation a priority. (Doc. 447, pp. 46, 49). The Court will not undermine that commitment. As a practical matter, if the Court were to support the parents and students who have asked for more extensive grandfathering, the Court potentially would prolong the period of federal court oversight of the district because it would be many years before the live-in populations of the zones in the Huntsville High and Grissom zones would reach the capacities that the parties anticipate as a consequence of their student assignment decisions. Doing so would run afoul of the Court's obligation to return the district to local control. *See* p. 13, *supra*.

There is, indeed, a role for every member of the Huntsville community in the implementation of the consent order. The consent order is "a transformational document" (Doc. 447, p. 104); it is a game-changer. But as members of the community have pointed out, change is not always easy. (Doc. 353, p. 225). Offer the district feedback about the changes that the consent order will generate. As Mr. Gonzalez explained, community feedback is very important. (Doc. 447, p. 95, 98).[20] Please use the website that the district will establish. (Doc. 447, p. 73). If the district asks for help with focus groups, if you are able, please participate. (Doc. 447, p. 73). Encourage the district's students, teachers, and administrators and express your appreciation to them for their hard work.

Conclusion

Sometimes, a conversation needs to be focused and reinvigorated. That's what has happened here. With the invaluable help of Chief Magistrate Judge Ott, the parties were able to create a workable plan for progress toward a declaration of unitary status. The mediation process demanded respectful, frank communication; open-mindedness; and honest reflection and self-examination: the parties had "to learn tough things, to hear tough things, to see each side's perspective." (Doc. 447, pp. 29-30). But the mediation also gave the parties a chance to view "problems

[20] Members of the community already have expressed some concern about safe travel routes between some neighborhoods along Governor's Drive and Monte Sano Elementary School. The city will install a new turn signal at one of the intersections at issue to make it easier to cross Governor's Drive. (Doc. 447, pp. 42-43; Bd. Ex. 24).

and opportunities in [a] new light." (Doc. 447, p. 88). The Court thanks the parties for their hard work and extends special thanks to Chief Magistrate Judge Ott for the countless hours that he dedicated to the mediation in this case.

Based on what the Court has seen and heard, the Court is confident that, as Mr. Gonzalez put it, the parties and the superintendent are engaged, and there will not "be another [] period of indifference in this lawsuit." (Doc. 447, p. 97). At the end of the day, "we still have a 52-year-old case [] that has languished, and it's time for that to end and for these parties to bring this matter to fruition and a conclusion." (Doc. 447, p. 102). There is a light at the end of the tunnel, and it is bright, much like the future of the district and its public school students. If the district maintains its current energy and enthusiasm and the community remains united in purpose, the Court has little doubt that the Board will be able to demonstrate in the years ahead that it has fully and faithfully implemented the consent order. The Court looks forward to the day when it will be able to declare Huntsville's public school system unitary.

DONE and **ORDERED** this April 21, 2015.

Madeline H. Haikala

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE