IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

CIVIL ACTION NO. 1:83-CV-00293-MPM

HORACE WILLIE MONTGOMERY, ET AL. **PLAINTIFFS**

VS.

STARKVILLE MUNICIPAL SCHOOL DISTRICT, ET AL. **DEFENDANTS**

And

WILLIAM HARRIS, ET AL. **PLAINTIFFS**

VS.

OKTIBBEHA COUNTY SCHOOL DISTRICT, ET AL. **DEFENDANTS**

JOINT REPLY OF DEFENDANT SCHOOL DISTRICTS
TO RESPONSE OF UNITED STATES

The Starkville School District and the Oktibbeha County School District (together "the Districts"), by their respective counsel, jointly reply to the Response filed by the United States to the Districts' motion to approve a desegregation plan for the consolidated Districts to be effective with the date of their consolidation on July 1, 2015. The Districts renew their request for expedited consideration of their motion so that a desegregation order may be in place effective July 1, 2015.

I. Consolidation

The Mississippi Legislature mandated consolidation and formed a Commission to make recommendations on future actions for the provision and transition of services of the consolidated school district in order to improve both the quality of education and the efficiency

with which it is delivered. The legislative action arose against the backdrop of the Oktibbeha County School District having twice been placed under state conservatorship, in 1997 for a period of five years and again in 2012. The Governor's Proclamation of 2012 found an "extreme emergency situation . . . that . . . jeopardizes the safety, security and educational interests of the children enrolled in the schools of this District because of serious violations of accreditation standards, violations of state law, and a continued pattern of poor student performance, which without intervention could result in the continuation of an inadequate and unstable educational environment, thereby denying the students . . . the opportunity to learn, to excel, and to obtain a free and appropriate public education." [14-9]. Oktibbeha continues to operate under conservatorship. The purpose of consolidation was to provide a better education for county students. Although desegregation was not the purpose of consolidation, the Commission and the Districts recognized that the Districts have desegregation obligations under their respective orders and should have a desegregation order for the consolidated district.

II. Legal Standards

The end purpose of a desegregation order is to remedy a constitutional violation to the "extent practicable" and to restore the school system to the control of the local school board. *Missouri v. Jenkins*, 515 U.S. 70, 102 (1995). A school district has a duty to eliminate the vestiges of segregation "to the extent practicable." *Holton v. City of Thomasville School District*, 425 F.2d 1325, 1337 (11th Cir. 2005). A school district is not required to achieve "maximum desegregation." *Anderson v. Canton Municipal Separate School District*, 232 F.3d 450, 455 (5th Cir. 2000) (quoting *Monteilh v. St. Landry Parish School Board*, 848 F.2d 625, 632 (5th Cir. 1988)). The U.S. Supreme Court rejected the idea that a school district must eliminate vestiges of *de jure* segregation "to the maximum extent practicable, not to the maximum potential.

Missouri v. Jenkins, 515 U.S. at 101. This Court has discretion to determine what is practicable under the particular facts and circumstances of the consolidation of these two school districts.

The remedial powers of a federal equity court are not unlimited, and "one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions." *Missouri v. Jenkins*, 515 U.S. at 51.

There must be a Constitutional violation before a federal court's authority to fashion a remedy is triggered.

> The well-settled principle that the nature and scope of the remedy are to be determined by the violation means simply that federal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation, or if they are imposed upon units that were neither involved in nor affected by the constitutional violation.

Milliken v. Bradley, 433 U.S. 267, 281-82 (1977) (citing *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976); *Hills v. Gautreaux*, 425 U.S. 284, 292-296 (1976)). In other words, any federal court order (or modification thereof) "must directly address and relate to the constitutional violation itself." *Id*. "Second, the decree must indeed be remedial in nature, that is, it must be designed as nearly as possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." *Milliken v. Bradley*, 433 U.S. at 280-81 (internal quotations omitted). Third, courts "must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution." *Id*. "School authorities have the primary responsibility for elucidating, assessing, and solving these problems ...." *Brown v. Board of Education of Topeka, Kansas*, 349 U.S. 294, 299 (1955).

Racial imbalance in a school is "not tantamount to a showing" that the District has not complied with its desegregation obligations. *Freeman v. Pitts*, 503 U.S. 467, 494 (1992) (emphasis added).

> Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance [in student assignment] due to the *de jure* violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors. *Swann*, 402 U.S., at 31-32, 91 S.Ct. at 1283-1284 ("Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary").

Id. *See also, Anderson v. School Board of Madison County*, 517 F.3d 292, 297-299 (5th Cir. 2008); *Flax v. Potts*, 915 F.2d 155 (5th Cir. 1990); *Tasby v. Black Coalition to Maximize Education*, 771 F.2d 849 (5th Cir. 1985); *Ross v. Houston Independent School District*, 699 F.2d 218 (5th Cir. 1983).

Where a change in the demographics of a school "is a product, not of state action, but of private choices, it does not have constitutional implications." *Freeman v. Pitts*, 503 U.S. at 495. "As the *de jure* violation becomes more remote in time and these demographic changes intervene, it becomes less likely that a current racial imbalance in a school is a vestige of the prior *de jure* system. The casual link between current conditions and the prior violation is even more attenuated if the school district has demonstrated its good faith." *Freeman v. Pitts*, 503 U.S. at 496.

III. Student Assignment

The Government takes issue with leaving East Oktibbeha Elementary School with the same attendance zone that it has had since 1970. It does not argue that the school should have been closed and the students moved to the Starkville schools. Instead, it charges the projected enrollment of the school is virtually one race (black), and that its attendance zone should be altered to include kindergarten through second grade students who attend Starkville's Sudduth Elementary, thereby decreasing the black percentage and increasing the white percentage of enrollment.

Neither Districts' desegregation orders set any required racial quota for schools in the respective districts.

East Elementary 's projected enrollment (94% black, 5% white, 1% other) is not far off the Consolidated District's projected enrollment, with a reasonable deviation. The Consolidated District's projected total student racial makeup is 69% black, 26% white, and 4% other. Using a deviation of ±20%, a school may have a range of 49% to 89% black and not be considered racially identifiable. East Elementary is only five percentage points out of this range. Using a tighter deviation of ± 15%, the permitted range would be between 54% to 84% black, and East is 10 points out of this range.

Percentages are misleading because of the small size of the school. A few students of one race radically affect the analysis. Using the Government's figures, East Elementary has a capacity of 334 with a projected enrollment of 298, leaving room for approximately 36 students. If it were somehow possible to create a special attendance zone within Starkville so that 36 students in grades K-2, all of whom were white, were bused out to East Elementary, the projected enrollment would be 280 blacks, 50 whites, and 4 other race students, and the resulting

percentages would be 84% black, 15% white, and 1% other, all within the acceptable deviations. But to achieve this racial quota, it would be necessary to pinpoint 36 white children in kindergarten through second grade and bus them out of the city, practically past the school they currently attend or out of their neighborhood where they live, and lengthen their bus rides, all for the sake of achieving a racial quota. The Government's proposal to bus the very youngest students (kindergarten, first and second graders) is a mandatory reassignment which will give rise to complaints from parents who wish to have their young children close to them, not farther away when they likely work in Starkville. Mandatory reassignments also risk the loss of white and black students who may opt instead for private school or homeschooling, thereby lessening real integration. Further, it is doubtful as a practical matter that this "special attendance zone" of students could be all white and would necessarily include some blacks, which would further diminish the impact on racial balance. Additionally, such a reassignment puts East Elementary at full capacity, thereby defeating efforts to maintain a low pupil-teacher ratio to offer an improved education to the county students.

IV. Grade 6

First, we must clarify that Armstrong Middle School, as currently constructed, will serve all city sixth graders and all consolidated district seventh and eighth graders. No classroom additions are underway for the 2015-16 school year. The proposed classroom addition is a fall-back plan in the event that the new MSU middle school is not built. Therefore, housing county sixth graders in West and East Elementary is viewed as temporary, until either a new middle school is constructed or new classrooms are added to Armstrong Middle. The District remains optimistic that within two or three years a new middle school will be constructed to house all

students, county and city, for grades 6-8. If not, additions will be made to Armstrong to serve them.

Next, we must dispel the impression that the Commission and the Districts failed to consider alternatives to the sixth grade configuration. In fact, the original plan was to place all sixth grade students at Overstreet School, which is operated jointly by the two Districts as an alternative school. Ultimately, the decision was made not to use Overstreet for the sixth grade because the building is more than 100 years old; some classrooms are located in the basement; and the high costs of necessary renovation. Further, busing the alternative school students to Maben—more than 20 miles from Starkville—was deemed a poor plan for students already in alternative school.

Nonetheless, in a spirit of compromise, the District is willing to place portables at Armstrong so that it may serve all sixth grade students in the Consolidated District on the same campus. The District intends to locate elective classes in the portables so that all students will have their regular education classes in the building. This proposal also has the advantage of eliminating any distinctions between the elective course offerings made to county sixth graders.

V. Faculty

Under the Districts' proposed plan, East and West Oktibbeha High Schools, both of which serve grades 7-12, are closed and all students are moved to Armstrong Middle School or Starkville High School. Consequently, the certified faculty members (administrators, teachers, counselors, and librarians), teaching assistants, and any other staff who deal directly with instruction of students will be notified of any open positions resulting at the consolidated middle and high school due to consolidation and voluntary retirements, etc. The Government complains that this method—which does not guarantee positions at the consolidated schools—is racially

discriminatory. The Government claims the Oktibbeha high schools' faculty and staff are "72% and 84% black, respectively," while "faculty and staff at Starkville High School are, respectively, approximately 37% and 48% black." [20, p. 12] (citing to SOCSD-000070-000071). Its allegations are flawed for several reasons.

East High has 31.5 total employees (principal, faculty, and staff), of which 26 (83%) are black and 5.5 (17%) are white. West High has 30 total employees (principal, faculty and staff), of which 25 (83%) are black and 5 (17%) white. Of the employees at East High, the certified employees (principal, counselor, librarian, and teachers) and the non-certified teacher assistants, all of whom work directly with students, total 21.5; we refer to these positions as "faculty." The racial makeup of the East High faculty is 16 (74 %) black and 5.5 (26%) white. The "staff" consists of custodians, secretary, security officer, bus drivers, and cafeteria workers. East High's staff totals 10 and is 100% black. At West High, the faculty positions total 21, of which 16 (76%) are black and 5 (24%) are white. The staff positions total 9, all of whom are black.

By comparison, the combined faculties at Armstrong Middle and Starkville High (after deducting the 12 sixth grade teachers at Armstrong so that we compare employees serving grades 7-12) total 204, of which 82 (40%) are black, 119 (58%) are white, and 3 (2%) are other races. The two schools' combined staffs total 55, of which 50 (91%) are black and 5 (8%) white.

To put the racial percentages for faculty into perspective, the Center for American Progress in May, 2014, analyzed teacher diversity, finding that teacher demographics for the State of Mississippi for 2011-12 (the last year data were available) were 73% white, 25% black, and 2% other races.[1] The national average is much lower—7% black. Using this state-wide and national data as a comparison, Starkville's middle and high school faculties at 40% black is well above the state average and significantly above the national average.

[1] http://www.scribd.com/doc/221645148/Teacher-Diversity-Revisited-A-New-State-by-State-Analysis

The Government supports its challenge to hiring employees from the closed county schools with the charge that it places a heavier burden on blacks because the Oktibbeha schools have a higher percentage of black faculties. But the better comparison is actual numbers. The Government advocates non-renewing all faculty for grades 7-12 in both Districts, which means not only non-renewing the 32 blacks and 10.5 whites in the county high schools but also non-renewing 82 blacks and 119 whites and 3 other races from the Starkville middle school and high school. The Government's proposal burdens 82 more blacks from the city school district or almost three times as many as are "burdened" in the county system.

The Government's proposal disrupts the entire faculty for both middle and high schools and contravenes state law regarding certified employee's rights with regard to non-renewal. The Government raises the specter of resulting employment litigation by Oktibbeha employees, but if assessing potential litigation, the Government's proposal likely will ensure litigation if Starkville employees' contracts were now non-renewed in contravention of state law.

The Government argues in footnote that compliance with state teacher employment law "is inconsistent with Defendants' federal desegregation obligations, as ordered by this Court." [20, p. 15, fn.3]. The Government never points to specific language in the orders nor offers any proof to support its position that the desegregation orders are frustrated by state employment laws.

There have been no complaints by plaintiffs in these cases against Starkville or Oktibbeha for their separate efforts to recruit and retain minority faculty and staff. The Starkville recruiting team has black members who attend job fairs at Mississippi State University and Jackson State University. The Assistant Superintendent in Starkville has the specific duty of

overseeing recruitment of minorities. The Consolidated District will follow Starkville practices with respect to recruiting.

Further, State Accountability Reports demonstrate the relative success and failures of the faculties of the three high schools and support the decision that any burden, if there is one, should be placed on faculties that have accounted for poor student performance. The chart below compares the three high schools by accountability rating, graduation rates and percentage of students passing state tests.

School	Year	Accountability Rating	Graduation Rate %	Algebra 1 % Passing	Biology % Passing	English % Passing	U.S. History % Passing
Starkville High School	2012	C	76.8	75.6	75.5	64.1	68.2
	2013	C	66.6	66.1	76	73	67.3
	2014	C	75.4	80	70	72	75
East Oktibbeha County High School	2012	F	72.7	40.7	28.6	64.7	48.4
	2013	D	75.4	53.4	48.6	37.1	57.1
	2014	D	59.3	73	67	58	63
West Oktibbeha County High School	2012	F	58.3	54.5	60	47.6	46.4
	2013	D	58.9	72.7	58.8	57.9	47.6
	2014	D	64.4	63	68	29	73

The Starkville High faculty has the better accountability record over the last three years. And that is particularly underscored by reasons, among others, of poor student performance that led the State Board of Education to place Oktibbeha under conservatorship twice.

VI. Bi-Racial Advisory Committee

The Board of the Consolidated District will, upon formation, be biracial and will continue Starkville's long history of having black membership and black leadership on its board. There is

no reason to anticipate any change in the importance of black voices on the board. The Government ignores the implementation of the Court's desegregation orders by Starkville. Plaintiffs in the Starkville case have not raised any charge against Starkville that it has not complied with its desegregation obligations. The last time the Government alleged misconduct by Starkville was in 1988 regarding student transfers. The Government ultimately withdrew its allegations against Starkville, and this Court dismissed the Government's claim. [1, pp. 26-27].

Further, the Government ignores the history of Starkville's committee system, which encourages participation by persons from all over the district. Examples include the Shared Decision Making Committee, consisting of parents, community members, teachers, staff and administrators at each school for use of Title I funds; a SOARS committee at each school consisting of parents, teachers, and administrators with regard to improvement of academic performance; a district-level PTO committee that takes suggestions from school PTOs; and a Strategic Planning Committee, which included 47 parents and business and community leaders in formulating Starkville's strategic plans. All of these committees may be utilized to consider matters dealing with desegregation obligations.

VII. Reporting

The proposed desegregation order of the Districts includes all information which either district currently is obligated to report. The Starkville District has routinely filed its reports, and there is no reason to believe that the Consolidated District will not improve upon the delinquent filing history of the Oktibbeha District. The Oktibbeha District has never been under a traditional reporting requirement except with regard to reporting of faculty assignments in its 1987 Consent Order and its steps to comply with student transfer requirements as a result of its 1988 Consent Decree. But the Government now seeks additional information that goes well

beyond the current reporting requirements and into areas about which no complaints have been raised.

For example, the Government wants on an annual basis a detailed narrative history for each and every employment decision made by the Consolidated District, including information on every applicant for each position. The Government specifically proposes (1) a list of vacancies occurring/created and filled for school-based administrators, faculty and staff (separately listing certified and non-certified), by school, and by position; (2) the number of applicants for each vacancy, by race, ethnicity, school, positions being filled, rank and type of certificates, area of endorsement and highest degree; (3) identification of individuals to whom offers were made to fill each vacancy (separately listing certified and non-certified staff), by position filled, school, race, ethnicity, and whether the person ultimately hired was an existing employee of the school district at the time of hire, or a new hire from outside the school district, and if an existing employee, identify the departing school and position. [20, p. 21]. First, compilation of all this detailed information is burdensome. Second, the racial makeup of existing faculty and staff in both districts does not evidence racial discrimination.

Next, the Government wants an annual list of extracurricular activities with competitive enrollment (e.g., tryouts or eligibility requirements) and the number of students by race/ethnicity who sought to participate and those who were and were not selected. The Districts agree to supply copies of a yearbook for the consolidated high school which will show photographs of extracurricular activity participation. The middle school does not have a year book. Middle schools only offer extracurricular activities to seventh and eighth grade students, not sixth grade. Elementary schools do not have yearbooks, and they also do not offer extracurricular activities. To satisfy the Government's requirements, the Districts would have to make each coach and or

sponsor of competitive activities maintain detailed records of everyone who might tried out for team and the reasons they were not selected. Plaintiffs in the Starkville case and the Government in the Oktibbeha case have not lodged any complaints that black students were discriminated against in tryouts or activities with eligibility requirements. The Districts object to items 7-10 of the Government's proposed reporting requirements. [20, p.21-22]

Finally the Government wants student discipline data for all instances of in-school suspension, out-of-school suspensions, referrals to alternative school, and expulsions, with all such data disaggregated by race, grade, level, and infraction. This is no mention in the existing desegregation orders of student discipline. Again, neither the plaintiffs in the Starkville case nor the Government in the Oktibbeha case have complained that student discipline is racially discriminatory. It is merely attempting to place a heavy reporting burden on the newly consolidated district.

For the reasons set forth above and in their Joint Motion, the Starkville School District and the Oktibbeha County School District respectfully request the Court grant their Joint Motion to Approve Desegregation Order for Consolidated School District and all other relief this Court deems necessary.

Respectfully submitted, this 5th day of June, 2015.

STARKVILLE SCHOOL DISTRICT

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CERTIFICATE OF SERVICE

I do hereby certify that on this date, I filed electronically the foregoing with the Clerk of this Court using the ECF system which will send notification of filing to all registered counsel of record.

I also certify that I have on this date sent a copy of the foregoing via electronic mail and U.S. Mail, first class, postage pre-paid to the following:

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