

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

ANTHONY T. LEE, et al.

Plaintiffs, and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and *Amicus Curiae*, and

NATIONAL EDUCATION
ASSOCIATION, INC.

Plaintiff-Intervenor

v.

MACON COUNTY BOARD OF
EDUCATION, *et al.*,

Defendants.

Civil Action No. 70-S0251-S

Miscellaneous Case No.
2:07-mc01944-CLS

Calhoun County School System
(Judge C. Lynwood Smith, Jr.)

CONSENT ORDER

This Consent Order arises out of the good faith efforts of Plaintiffs Lee, *et al.*, Plaintiff-Intervenor and *Amicus Curiae* United States of America (the "United States") (collectively, the "Plaintiff Parties"), and Defendant Calhoun County Board of Education (the "District"), to address and resolve the District's school desegregation obligations. This agreement is jointly entered into by the United States, the District, and the Private Plaintiffs (collectively, the "Parties"). The District agrees to comply with the terms of this Consent Order.

I. PROCEDURAL HISTORY

This action is part of the statewide school desegregation litigation, *Lee v. Macon County Board of Education*, which was initiated in 1963. On July 16, 1963, the United States was added

as plaintiff-intervenor and amicus curiae "in order that the public interest in the administration of justice would be represented." *Lee v. Macon County Bd. of Educ.*, 267 F. Supp. 458, 460 (M.D. Ala. 1967). On March 22, 1967, the Court ordered the State Superintendent of Education to notify several school systems, including the District, that they were required to adopt a desegregation plan for all grades beginning with the 1967-68 school year. *Id.* at 482. On June 19, 1970, this case was transferred from the Middle District of Alabama to the Northern District of Alabama, where Calhoun County is located.

This Court entered an initial order outlining a desegregation plan for the District on August 16, 1971. The 1971 Order has been modified on numerous occasions, including by an order entered on December 14, 2007, in which the Court expressed concern about the "dwindling minority teacher population within the Calhoun County school system, and the priorities accorded the capital improvement needs of the various schools within the system." (2007 Order at 3). The Court "directed the parties to suggest a new reporting format that would address teacher recruitment and allocation of capital improvements as well as any other matters determined by the parties." (July 19, 2010 Order at 3).

The Court again raised concerns about facilities and faculty in its July 19, 2010 Order, noting that in these areas "more work needs to be done." (2010 Order at 9). The Court observed that "the strategies employed by the Board to attract, hire, and retain minority employees have not been adequate" and that "the Board needs to be more consistent in maintaining its facilities assessment data and in the capital planning process." (*Id.* at 9). The 2010 Order called for training for the Board, the Capital Planning Committee, recruitment or hiring committees, and administrators on their obligations under the Order. (*Id.* at 10-11). The Order also directed the Board to develop new personnel procedures "to address the recruitment, hiring, and assignment

of faculty and certified staff, including practices directed at the recruitment of minority faculty.” (*Id.* at 11). Finally, the Order instructed the District to seek specific approval from the Court before beginning construction on any new building project or project involving substantial expansion or renovation. (*Id.* at 17). The Court emphasized that the 2010 Order was “intended to, in the areas addressed, provide a ‘road map to the end of judicial supervision’ and toward unitary status.” (*Id.* at 9) (citing *NAACP v. Duval Cnty. Sch. Bd.*, 273 F.3d 960, 963 (11th Cir. 2001)).

II. BACKGROUND

On February 15, 2008, the United States initiated a review of the District’s compliance with its desegregation obligations. In the course of that review, on multiple occasions between 2008 and 2014, the Plaintiff Parties requested information and the District produced data on student assignment, extracurricular activities, faculty and staff, facilities, and transportation. In March 2014, the Plaintiff Parties conducted a site visit of several of the District’s schools and requested supplemental information regarding the District’s progress toward unitary status.

The Plaintiff Parties reviewed the data provided by the District, as well as publicly available data, to assess the District’s compliance with its obligations under the 1971 Order and subsequent orders. The United States informed the District that, in its opinion, the District has satisfied its obligations in the areas of transportation, student assignment, extracurricular activities, and facilities. The Private Plaintiffs have since concurred in that assessment. The Plaintiff Parties also informed the District that, in the areas of faculty and staff and student discipline, additional progress is needed before the District’s obligations in those areas are met. The District concurs with that assessment. The Parties agree that compliance with this Consent Order will result in the District fulfilling its obligations in the areas of faculty and staff and

student discipline.

III. LEGAL STANDARDS

The ultimate inquiry in determining whether a school district is unitary is whether the district has: (1) fully and satisfactorily complied in good faith with the court's desegregation orders for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* segregation 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. See *Missouri v. Jenkins*, 515 U.S. 70, 88-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248-50 (1991); *Manning v. Sch. Bd. of Hillsborough Cnty.*, 244 F.3d 927, 942 (11th Cir. 2001); *Lockett v. Bd. of Educ. of Muscogee Cnty. Sch. Dist.*, 111 F.3d 839, 843 (11th Cir. 1997).

The Supreme Court has identified six areas, commonly referred to as the "*Green* factors," which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated the vestiges of the prior dual school system to the extent practicable. These factors are: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. *Green v. Cnty. School Bd. of New Kent Cnty.*, 391 U.S. 430, 435-42 (1968); *Jenkins*, 515 U.S. at 88; *Dowell*, 498 U.S. at 250. The *Green* factors are not intended to be a "rigid framework"; indeed, the Supreme Court has approved consideration of other indicia, such as quality of education, in evaluating whether a district has fulfilled its desegregation obligations. See *Freeman*, 503 U.S. at 492-93. A court may allow partial or incremental dismissal of a school 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. *Id.* at 490-91.

This Court has determined that this Consent Order is consistent with the objectives and requirements of the Fourteenth Amendment to the Constitution of the United States of America, applicable federal law, and the extant orders in this case.

The Court thus **ORDERS, ADJUDGES, and DECREES** the following:

IV. STIPULATED FACTS

At the request of the Plaintiff Parties, the District has provided information related to the *Green* factors. Analysis of this data demonstrates that the District has met the required standards in the areas of student assignment, transportation, extracurricular activities, and facilities. A review of District data raised concerns, however, in the areas of: (1) faculty and staff, and (2) student discipline.

A. Faculty and Staff

In the 2014-2015 school year, the District reported that it employed 526 full-time teachers, 36 principals and assistant principals, 72 certified staff,¹ and 18 central office administrators and certified staff.

The District has made limited progress in hiring and retaining minority faculty and staff since the 2010 Order. African American teachers make up 6.1% of the District's faculty in 2014-2015 compared to 4.7% during the 2010-2011 school year. Seven of the District's 18 schools have one African American teacher or none at all. Fifteen of the District's 18 schools have no African American administrators. Fourteen of 17 schools have no African American certified staff. African American principals and assistant principals make up 8.3% of the total number of

¹ In this Consent Order, "certified staff" refers to staff who hold a teaching, administrative, or specialized certificate from the State, but who are not serving as full-time teachers or administrators. These include guidance counselors, librarians, reading coaches, reading interventionists, speech therapists, resource personnel, and other similar positions.

such positions in 2014-2015 compared to the same percentage – 8.3% – during the 2010-2011 school year. African American certified staff make up 4.2% of the number of such staff in 2014-2015 compared to 7.1% in 2010-2011. African American central office administrators and certified staff make up 16.7% of those positions in 2014-2015 compared to 12.5% in 2010-2011. The District's targeted minority recruitment efforts have had marginal effect in the effort to increase the number of African American faculty and certified staff.

B. Student Discipline

The Plaintiff Parties have reviewed discipline data and disciplinary policies and procedures, and conducted interviews with District personnel responsible for the administration of discipline. The District's discipline data indicates that African American students were significantly more likely than white students to be referred for disciplinary action and to be subject to exclusionary consequences at a majority of the District's schools during the 2011-2012 and 2012-2013 school years. This disparity was most evident for minor infractions, and existed across multiple categories of consequences, including in-school detention, out-of-school suspensions, and corporal punishment.

C. Student Assignment

A review of District data reveals no evidence that school and classroom assignment decisions improperly consider race. Likewise, the District's student transfer data and policies show no evidence of racial discrimination.

D. Transportation

The Plaintiff Parties have reviewed transportation data provided by the District. The District provides transportation to all eligible students on a non-discriminatory basis.

E. Extracurricular Activities

The Plaintiff Parties have reviewed information provided by the District concerning extracurricular activities. The District provides all students an equal opportunity to participate in sports, student government, extracurricular activities, and co-curricular activities.

F. Facilities

The Plaintiff Parties have reviewed facilities data and information provided by the District, and has found no evidence of racial discrimination with respect to facilities.

V. STIPULATED REMEDIES

As indicated above, the sole remaining issues identified by the Plaintiff Parties in relation to the desegregation of the District regard its efforts to recruit, hire, and retain African American faculty, administrators, and certified staff and its policies and practices related to student discipline. Although the District denies any continuing liability for the disparities described above, the District has agreed to take certain good faith, practicable steps to address these outstanding issues.² The Court finds and the parties agree that once these actions are fully implemented the District will have remedied the remaining faculty/staff and student discipline issues and will be entitled to a declaration of full unitary status after the conclusion of the monitoring/reporting period, as detailed below.

A. Faculty and Staff

1. Within fourteen (14) days of the entry of this Order, the District shall contact the Southeastern Equity Center ("Faculty Equity Consultant"), with a request for technical assistance and training on best practices related to the hiring, recruitment, and retention of diverse faculty and certified staff. The United States will also contact the Southeastern Equity Center to request that it provide such assistance to the District.

² See *Jones v. Caddo Parish*, 704 F. 2d 206, 221 (5th Cir. 1983).

2. The Faculty Equity Consultant shall collaborate with the District to complete a comprehensive review of the District's hiring and recruitment policies and procedures, including the District's Personnel Plan ("Personnel Plan"). In conducting this review, particular attention shall be given to the manner in which the District's hiring and assignment protocol affects:
 - (a) the number of African American faculty and certified staff recruited, hired, and retained by the District; and
 - (b) the assignment of faculty and certified staff to schools on a non-discriminatory basis.
3. Drawing on the findings and conclusions the Faculty Equity Consultant makes as a result of the comprehensive review described in paragraph 2, the District shall work with the Faculty Equity Consultant to propose revisions to its hiring and recruitment protocol and Personnel Plan. Among other things, the proposed revisions shall:
 - (a) clearly describe the District's goal for achieving and maintaining a diverse faculty and staff;
 - (b) require that all District personnel involved in recruitment and hiring follow a uniform set of guidelines/policies that identify and take account of the District's affirmative desegregation obligations, including those related to the equitable assignment of faculty and certified staff among the District's schools;
 - (c) provide for the development and implementation of a targeted recruitment and hiring program designed to increase the number of African American faculty and certified staff hired and retained by the District, including specific provisions addressing the manner in which the District announces and/or advertises vacancies, the District's recruitment

strategies, the District's interview and hiring process, and the District's efforts to retain faculty and certified staff;

(d) describe any incentives the District may employ to target its recruitment efforts and/or incentivize African American faculty and certified staff to apply for positions within the District;

(e) include measures and protocols designed to ensure that African American faculty and certified staff are not disproportionately assigned to schools with disproportionately high numbers of African American students but instead are equitably distributed among schools with historically low numbers of African American students and schools with historically high numbers of African American students.

(f) require that all District personnel involved in recruitment and hiring be trained annually on how to implement the new recruiting and hiring policies; and

(g) include any necessary improvements to procedures for documenting recruiting and hiring decisions, tracking the impact such decisions have on the racial composition of the District's faculty and staff, and maintaining records appropriate for monitoring the District's compliance with the revised recruitment and hiring policies and procedures.

4. The District shall submit the proposed revisions to the Plaintiff Parties for review no later than sixty (60) days after completion of the review and revision process undertaken by the Faculty Equity Consultant as set out above. The Plaintiff Parties shall advise the District whether it approves or disapproves of the proposed revisions within thirty (30) days of receiving them. The District shall implement all approved proposed revisions within thirty (30) days of receiving the Plaintiff Parties' approval. If the Plaintiff Parties

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object to certain of the proposed revisions, the parties will work together in good faith to develop mutually agreeable policies and procedures.

5. With assistance from the Faculty Equity Consultant, the District shall adopt and implement a Professional Development and Mentorship Program ("Program") for faculty beginning with the 2015-2016 school year. This Program will be designed to cultivate and train a racially diverse pool of internal administrative talent. The Program should include information about necessary certification and minimum requirements to become an administrator in Alabama, information about pathways to and resources for administrative certification, comprehensive notification to current faculty members about the Program, and a mentoring or pairing component for both those who are already certified to be administrators and those who are seeking such certificates.
6. In consultation with the Faculty Equity Consultant, the District shall develop and implement mandatory annual training for all faculty/staff involved in the recruitment, hiring, retention, or assignment of faculty/staff. The training shall cover the following, among other things:
 - (a) the District's affirmative desegregation obligations with respect to the recruitment, hiring, retention, and assignment of faculty, staff, and administrators;
 - (b) all targeted recruitment efforts and strategies designed to increase the number of qualified African American faculty/staff hired by the District.
7. As soon as practicable but by no later than March 1, 2015, the District shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under paragraphs 1 to 7 above.

Compliance and reporting

8. Beginning October 15, 2015, and continuing until the monitoring of this Consent Order has concluded, the District shall provide the Plaintiff Parties with an annual status report describing all activity conducted pursuant to paragraphs 1 to 7.
9. The annual status report shall be filed with the Court no later than October 15 of each year and shall include, among other things:
 - (a) a description of all targeted recruitment efforts and strategies used to increase the number of African-American faculty and certified staff hired and retained by the District, including descriptions of outreach efforts and recruitment events and the name and title of District staff who participated in these efforts;
 - (b) the results of the targeted recruitment efforts and strategies referenced above, including but not limited to: the total number faculty and certified staff vacancies; the total number of candidates interviewed for faculty and certified staff positions, the total number of African-American candidates interviewed for faculty and certified staff positions, the total number of job offers made for faculty and certified staff positions, the total number of job offers for faculty and certified staff positions made to African-American candidates, the total number of candidates hired for faculty and certified staff positions, the positions for which those candidates were hired, and the total number of African-American candidates hired;
 - (c) all handouts, power points, agendas, and other materials used in connection with the District's annual training on hiring and assignment protocol;

- (d) documentation reflecting the names and positions of all faculty/staff who received annual training on the District's hiring and assignment protocol and the date(s) on which they received it; and
- (e) a summary of participation in the Professional Development and Mentorship Program.

C. Student Discipline

1. Within fourteen (14) days after entry of this Order, the District shall contact the Southeastern Equity Center with a request to consult with the District on discipline issues ("Discipline Equity Consultant"). The United States will also contact the Southeastern Equity Center to request that it provide such assistance to the District.
2. The Discipline Equity Consultant shall review the District's discipline policies and procedures (including the District's Code of Conduct) and recommend revisions that:
 - (a) specify appropriate behavior, identify the social-emotional skills required to display such behavior, and outline the strategies and other efforts that should be undertaken to assist students in developing such skills and achieving the behavior goals specified;
 - (b) provide clear guidance regarding discretionary discipline, including but not limited to the use of concrete definitions of prohibited conduct and specific criteria for assessing and responding to infractions;
 - (c) limit the use of exclusionary discipline such as suspensions and expulsions – particularly in response to low-level misbehavior – by encouraging the use of a continuum of graduated disciplinary alternatives (e.g., behavior contracts, loss of

privileges, reflective writing assignments, conflict resolution, and restorative justice practices);

- (d) ensure that disciplinary consequences imposed for misbehavior minimize students' loss of instructional time and that students who do lose instructional time as a result of exclusionary discipline are provided opportunities to make up missed work; and
 - (e) articulate specific criteria governing students' entitlement to return to their home schools following in-school suspension, out-of-school suspension, or placement in an alternative educational setting.
3. The District shall be responsible for any costs associated with its retention of the Discipline Equity Consultant.
 4. The District shall give the Discipline Equity Consultant access to any and all data, documents, and information that he or she deems necessary to satisfy the terms of this Consent Order.
 5. The District shall request that the Discipline Equity Consultant provide a written report outlining his or her findings and recommendations related to the review described above.
 6. Within sixty (60) days of receipt of the written report from the Discipline Equity Consultant, the District shall submit to the Plaintiff Parties for review and approval its proposed revisions to the District's disciplinary policies and procedures (which shall account for the Discipline Equity Consultant's recommendations).
 7. The District's submission shall identify any recommendation(s) made by the Discipline Equity Consultant that were not included in the District's proposed revisions and provide

a detailed explanation of the reasons why the District chose not to adopt the recommendation(s). The submission shall also identify any revision(s) the District proposes in lieu of those recommended by the Discipline Equity Consultant and the reasons such alternative revision(s) should be considered equally effective.

8. The Plaintiff Parties shall not unreasonably withhold approval of the District's proposed revisions and shall communicate its approval or disapproval within thirty (30) days of receiving the District's proposals. If the parties disagree regarding the proposed revisions, the parties shall negotiate in good faith to resolve such disagreements. If the parties are unable to resolve any disagreement regarding revisions to the District's discipline policies and procedures within a reasonable period of time, either party may seek judicial intervention.
9. After the Plaintiff Parties approve the District's proposed revisions, the District shall adopt the proposed revised disciplinary policies and procedures within thirty (30) days.
10. The District shall distribute annually materials containing the revised disciplinary policies and procedures in their entirety to students and employees. The District's website shall also contain the revised disciplinary policies and procedures in their entirety.

Implementation of Positive Behavioral Intervention and Support Program

11. In consultation with the Discipline Equity Consultant, the District shall develop and begin to implement a plan for expanding positive behavior interventions and supports ("PBIS") throughout its schools before the beginning of the 2015-2016 school year.

12. Through its use of PBIS, the District shall identify and promote strategies for teaching, encouraging, and reinforcing positive student behavior without resort to exclusionary discipline. These strategies should do the following, among other things:
- (a) facilitate the establishment of a positive school culture by constructively teaching school rules and social-emotional skills;
 - (b) positively reinforce appropriate student behavior
 - (c) emphasize and document early intervention for misbehavior before resort to exclusionary discipline, except in instances where the safety of students and/or staff is threatened; and
 - (d) incorporate a continuum of graduated consequences for increasingly serious and continued misbehavior.
13. The District shall provide its faculty and staff with the resources and support needed to implement the PBIS program.
14. As part of its expansion of PBIS, the District – in collaboration with the Discipline Equity Consultant – shall develop and implement a mandatory training program for all of its instructional faculty and staff. The training provided to instructional staff and administrators shall be tailored in light of each faculty or staff member's job responsibilities and shall cover the following topics, among others:
- (a) all discipline-related policies and procedures (including the Code of Conduct) which District faculty and staff must follow or enforce, including the manner in which such policies and procedures are properly interpreted and applied;

- (b) effectively defining, teaching, modeling, and applying positive behavior interventions and supports, both inside and outside the classroom;
- (c) providing constructive feedback, re-teaching, and fostering skill-building in response to student behavior concerns;
- (d) using the corrective techniques outlined above as primary responses to all low-level misbehavior;
- (e) effectively communicating behavior concerns to students before resorting to disciplinary consequences (particularly those consequences requiring exclusion from educational programs), except in instances involving serious and immediate threats to safety;
- (f) implementing culturally-responsive classroom management and discipline techniques;
- (g) using restorative justice practices in response to student misbehavior; and
- (h) other strategies for building and maintaining a positive, supportive, and inclusive educational climate.

15. As part of its expansion of PBIS, the District shall develop and implement processes and procedures for collecting discipline data at both the school and District levels. The data collected shall include:

- (a) information regarding the number of referrals for discipline;
- (b) the specific conduct prompting each referral

- (c) the outcome of the referral (*i.e.*, in-class disciplinary action, in-school suspension, out-of-school suspension, expulsion, referral to law enforcement, etc.) and the reasons for that outcome;
- (d) the identity of the person(s) making the referral and determining the sanction, including each individual's name and position;
- (e) all positive behavior supports and corrective action attempted prior to referral for discipline; and
- (f) the name, race, ethnicity, sex, disability, and grade level of the student(s) referred and all other students involved in the underlying incident.

16. The discipline data referenced in paragraph 15 above shall be stored in an electronic database created and maintained by the District.

17. On an ongoing basis, a central administrator designated by the District ("Discipline Administrator") shall evaluate the discipline data collected pursuant to paragraph 15. In conducting this evaluation, the Discipline Administrator shall do the following:

- (a) identify any racial disparities in disciplinary referrals and/or the outcome of such referrals;
- (b) take all affirmative steps needed to assess the cause(s) of such disparities, other contributing factors, and the needs of affected students; and take appropriate action based on that assessment; and
- (c) identify and address any other areas of concern arising from review of the District's discipline data.

18. The Discipline Administrator shall serve as a direct point of contact for all student and parent/guardian complaints regarding the administration of discipline and shall work with central administrators and school-level personnel to resolve all such complaints and concerns.
19. The Discipline Administrator's name, title, office address, e-mail address, and telephone number shall be published on the District's website and in all District publications containing discipline policies and procedures.

Compliance and Reporting

20. As soon as practicable after the Discipline Equity Consultant is retained, the District shall provide the Plaintiff Parties with the name, address, qualifications and experience of the Discipline Equity Consultant; a copy of any contracts, agreements or memoranda of understanding between the District and the Discipline Equity Consultant; and the timeline for completion of services.
21. The District shall provide the Plaintiff Parties with a list of all information provided to the Discipline Equity Consultant. If the Discipline Equity Consultant has requested information that the District has not provided, the District shall provide a list of the requested information and the reasons that information was not provided.
22. The District shall provide the Plaintiff Parties with a copy of the Discipline Equity Consultant's written report, as described in paragraph 5 above, within 14 days of receipt.
23. Beginning October 15, 2015, and continuing until the monitoring of this Consent Order has concluded, the District shall provide the Plaintiff Parties with an annual status report describing all activity conducted pursuant to paragraphs 1 to 19.

24. The annual status report shall be filed with the Court no later than October 15 of each year and shall include:

- a. a report containing all discipline data collected pursuant to paragraph 15 above for the immediately preceding school year;
- b. the Discipline Administrator's evaluation of discipline data conducted pursuant to paragraph 15 and a description of all corrective action undertaken by the District as a result of that evaluation;
- c. all handouts, power points, agendas, and other materials used in connection with the District's mandatory PBIS training program;
- d. documentation, including but not limited to sign-in sheets, showing the names and positions of all instructional faculty and staff who received mandatory PBIS training and the date(s) on which they received it.

VI. FINAL TERMINATION

Having found that the District has satisfied its desegregation obligations in the areas of transportation, student assignment, extracurricular activities, and facilities, the Court hereby withdraws its jurisdiction over those areas of the case.

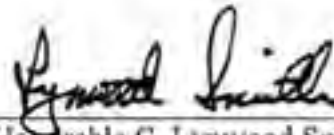
Continued judicial supervision of this case will be limited to ensuring that the District: (1) takes all actions identified in this Consent Order; and (2) refrains from taking any actions that reverse its progress in desegregating the school system. The parties commit to negotiate in good faith any disputes that may arise, but the Plaintiff Parties shall have the right to seek judicial resolution of any noncompliance.

The District retains the burden of eliminating the vestiges of de jure segregation in the areas still under this Court's supervision, and may move for a declaration of complete unitary status no sooner than forty-five (45) days after the Plaintiff Parties receive the October 2017 compliance report.

VII. EFFECT OF PRIOR ORDERS

The Court's Order of July 19, 2010, is no longer in effect with the exception of the reporting requirements in paragraphs 1-6 of Section H. All other Orders not inconsistent herewith remain in full force and effect.

SO ORDERED, this 12th day of February, 2015.



The Honorable C. Lynwood Smith, Jr.
United States District Judge