

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

SONNIE WELLINGTON HEREFORD,
IV, *et al.*,

PLAINTIFFS,

and

UNITED STATES OF AMERICA,

PLAINTIFF-INTERVENOR,

V.

HUNTSVILLE BOARD OF EDUCATION,
et al.,

DEFENDANTS.

Case No.: 5:63-cv-00109-MHH

PLAINTIFF-INTERVENOR UNITED STATES' RESPONSE
TO THE HUNTSVILLE CITY BOARD OF EDUCATION'S UNOPPOSED
MOTION FOR PARTIAL UNITARY STATUS AS TO FACULTY AND STAFF

Plaintiff-Intervenor the United States (“United States”), by and through undersigned counsel, respectfully submits this Response to the Unopposed Motion for Partial Unitary Status as to Faculty and Staff (“Motion”) filed by the Huntsville City Board of Education on April 5, 2023 (ECF No. 758).

**DEFENDANT'S
EXHIBIT
234**

I. BACKGROUND¹

This school desegregation case was filed on March 11, 1963 against Defendant Huntsville Board of Education (“Board” or “District”). On August 12, 1963, this Court entered an order restraining and enjoining the Board from discriminating against plaintiffs on the basis of race or color in the assignment, transfer, or admission to public schools in the City of Huntsville, Alabama. (Aug. 13, 1963 docket order.) In 2015, after months of Court-ordered mediation stemming from the parties’ contested 2014 hearing on student assignment issues, the United States and the Board jointly proposed the entry of a comprehensive consent order designed to facilitate the Board’s attainment of unitary status. This Court entered the joint proposed consent order (“Consent Order”) on April 24, 2015 following an evidentiary hearing. (ECF No. 450.) Since that time, the United States has monitored the District’s compliance with the Consent Order’s terms.

II. DISCUSSION

A. Legal Standard

“The goal of a school desegregation case is to convert promptly from a *de jure* segregated school system to a system without ‘white’ schools or ‘black’ schools, but just schools.” *Lee v. Autauga Cnty. Bd. of Educ.*, 2004 WL 1699068, at *5 (M.D. Ala. July 30, 2004) (citing *Green v. Cnty. Sch. Bd.*, 391 U.S. 430, 442 (1968)). Once the school system attains this goal, it is declared “unitary” and control of the school system is returned to the local school board. *See Freeman v. Pitts*, 503 U.S. 467, 486-89 (1992). In determining whether a school district operating under an order to dismantle a *de jure* segregated school system should be declared

¹ More detailed recitations of the history of this case are set forth in the Court’s May 20, 2014 Order (ECF No. 329) and June 30, 2014 Memorandum Opinion (ECF No. 364) and are not repeated here.

unitary, a court must inquire whether the school district has complied in good faith with the desegregation decree, and whether the vestiges of prior de jure segregation have been eliminated to the extent practicable. *NAACP, Jacksonville Branch v. Duval Cnty. Sch. Bd.*, 273 F.3d 960, 966 (11th Cir. 2001) (citing *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995), and *Freeman*, 503 U.S. at 492); *see also Manning v. Sch. Bd. of Hillsborough Cnty., Fla.*, 244 F.3d 927, 942 (11th Cir. 2001), cert. denied, 534 U.S. 824 (2001); *Lockett v. Bd. of Educ. of Muscogee Cnty.*, 111 F.3d 839, 842–43 (11th Cir. 1997). Where a school district seeks only a partial declaration of unitary status, the inquiry is limited to whether there has been “satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn.” *Freeman*, 503 U.S. at 491. To determine if a school district has shown good faith in striving to meet its desegregation obligations, courts consider whether the school district’s policies and actions “form a consistent pattern of lawful conduct directed to eliminating earlier violations.” *Id.*; *see also Lockett*, 111 F.3d at 843. The good-faith showing has two components: a school district must show not only past good-faith compliance, but also a good-faith commitment to the non-discriminatory future operation of the school system through “specific policies, decisions, and courses of action that extend into the future.” *Dowell v. Bd. of Educ. of the Oklahoma City Pub. Sch.*, 8 F.3d 1501, 1513 (10th Cir. 1993).

A school district seeking to meet its desegregation obligations in the area of faculty and staff must “develop policies and procedures to ensure that faculty and staff [a]re assigned to schools across the district so that no school would be identified as a white or black school by the race of the school’s faculty.” *Lee v. Butler Cnty. Bd. of Educ.*, 183 F. Supp. 2d 1359, 1365 (M.D. Ala. 2002) (citing *Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969), rev’d on other grounds, 396 U.S. 290 (1970)). In addition to this general

obligation, in this case, the Huntsville City Board of Education must take additional action in the area of faculty and staff under the Consent Order's terms. In particular, the Consent Order requires the District to:

- ensure that the racial composition of each committee involved in the recruitment, hiring, assignment, retention, or promotion of administrators, faculty, and certified staff approximates the District-wide racial composition of certified staff, except in exigent circumstances;
- ensure the equitable selection of Black principals;
- maintain practices that assign Black principals such that they are equitably distributed among schools with disproportionately low numbers of Black students and schools with disproportionately high numbers of Black students;
- ensure that pay decisions are based solely on non-racial criteria and document the basis for any non-formula or non-schedule salary determinations;
- ensure that the demotion, suspension, dismissal/termination, or other discipline of any District employee, whether pursuant to a reduction in force or not, is based solely on non-racial criteria and that the application of any such criteria is documented;
- maintain practices that assign classroom teachers such that the racial breakdown of teachers within each school reflects the District-wide average for the grade levels served by that school within +/- 15 percentage points;
- maintain a variety of records for certified staff for not less than two years and permit the United States the right to review any such records; and
- make public various data and reports through the filing of annual compliance reports with the Court.

B. Compliance

The District has satisfactorily complied in good faith with the *Singleton* standard and the specific obligations imposed by the Consent Order. Since the Consent Order's entry in 2015, the District has supplied all of the required data and other reports related to faculty and staff in November of each year. For the last eight years, the United States has reviewed and analyzed these data and reports—which are extensive and cover nearly every aspect of the District's recruitment, hiring, retention, and promotion of faculty and staff—on an annual basis, regularly following up with the District to request any additional data or information that may be required to assess its compliance. The District has adequately responded to each of the United States' requests for additional information and has allowed the United States access to all requested records. Based on its years-long review and analysis of the District's implementation of the Consent Order's faculty and staff provisions, the United States has reached the following conclusions:

- Racial Composition of Employment Committees – The District's employment committees—which are used to make decisions about the hiring, retention, and promotion of District employees—have consistently met or exceeded the Consent Order requirements for diverse composition. While the District initially identified large numbers of instances in which employment committees relied on an exigency to justify the lack of representativeness within a particular committee, those instances have decreased over time and have been virtually nonexistent during the last four years of reporting.

- Central Office Administrators – The District has substantially increased the number of Black certified administrators in its central office since the Consent Order's entry. Recent reporting shows that 44% (12 of 27) of all certified administrators in the central office are Black

compared to approximately 26% (7 of 27) at the time of the District's first compliance report. These certified administrators hold a variety of positions, including Deputy Superintendent of Learning Supports, Director of Instruction for Elementary Programs, Magnet Coordinator, and Coordinator of Federal Programs, among others.

- Equitable Selection of Black Principals – The District has made significant progress in its selection of Black principals. Shortly after the Consent Order's entry, the District reported that there were 13 Black principals District-wide. This number has steadily increased, and the District now has 22 (50%) Black principals District-wide. This is nearly double the initial number of Black principals in a district where the total number of schools has remained relatively stable over time. In addition to the increase in raw numbers of Black principals, the United States' review of reporting data since 2015 shows that the District has offered interviews to Black applicants for principal positions at rates similar to or greater than their White counterparts. While disparities initially existed in the post-interview rates at which the District hired Black and White principals (and those disparities favored White principal applicants), the gap in post-interview rates of hire has narrowed over time, and the District has hired the two groups of interviewees at similar rates in recent years. More broadly, the District has maintained a robust pipeline of Black administrators. Nearly 66% of the District's assistant principals are Black. Black assistant principals have consistently represented more than 50% of all assistant principals since the Consent Order's entry. The District's reporting data since 2015 shows that the District has selected Black and White assistant principal candidates for interviews at similar rates, and the rates at which candidates in the two groups are hired suggests no systemic racial discrimination in the assistant principal hiring process.

- Equitable Assignment of Black Principals – The District’s inaugural reporting under the Consent Order showed that while White principals appeared to enjoy leadership opportunities across schools with predominately White student body populations and those with predominately Black student body populations, Black principals appeared to be limited to leadership opportunities largely at schools with predominately Black student populations. Recent reporting shows that leadership opportunities for Black principals span schools with varying student body compositions. According to that reporting, 59% of Black principals lead schools with predominately Black student populations. This number has trended downward over the last several years. Consistent with that trend, the proportion of schools with predominantly White student bodies being led by Black principals has increased over time. The proportion of Black and White principals who lead magnet schools is relatively equal.

- Teacher Hiring – The racial composition of the District’s teaching force has been relatively stable from 2015 to the present. The percentage of Black teachers District-wide has hovered around 30% and the percentage of White teachers District-wide has hovered around 70%. The United States has reviewed and analyzed multiple years of hiring data for all vacancies within the District. That analysis has consistently shown that—in any given year—a greater proportion of Black applicants has been hired than the proportion of White applicants hired. While the overall number of White applicants is greater than the number of Black applicants—and the number of White teachers hired in a given year thus exceeds the number of Black teachers hired—the results of this analysis support a finding that the District has not systemically discriminated against Black applicants on the basis of race.

- Adverse Employment Actions – The racial composition of teachers experiencing adverse employment actions (including suspension, demotion, dismissal/termination, resignation or

retirement in lieu of termination, and non-renewal) has varied from year to year but does not reveal patterns of discrimination based on race or the application of race-based criteria. Each year, non-renewals for non-tenured teachers have constituted the largest number of adverse employment actions. The United States' review from 2015 to the present revealed that the percentages of Black and White teachers not renewed generally approximated their percentages in the District's overall teaching force. The numbers of suspensions, demotions, and dismissals/terminations each year were relatively small and thus do not lend themselves to comparison to the percentage of Black and White teachers District-wide.

In addition to the United States' annual review of data regarding adverse employment actions, the United States has conducted a statistical review of adverse employment actions each year from 2017-2018 to 2020-2021. This review required that different types of adverse employment actions be aggregated given the small number of adverse employment actions in certain categories. The review revealed that the proportions of Black and White certified staff experiencing adverse employment actions generally approximated one another, though Black certified staff were dismissed at slightly higher rates. In each of the four school years examined, the differences between Black and White certified staff adverse employment actions never differed by more than 1.5 percent. The United States' close review of the various categories of adverse employment actions and their incidence since entry of the Consent Order does not indicate systemic discrimination on the basis of race.

- Salary Determinations – The United States has reviewed various data and information the District has reported related to central office salaries and pay following promotion. This review has not shown any indication of differential pay on account of race, nor has the United States received any such complaints.

- Incentive Pay – During the early years of the District’s implementation of the Consent Order, the United States identified significant gaps in the amount of incentive pay awarded to teachers assigned to predominately Black schools and those assigned to predominately White schools (with the latter holding the advantage). These gaps generally decreased over time until 2020, when teachers assigned to predominately Black schools received greater incentive pay, on average, than teachers assigned to predominately White schools. The District subsequently discontinued incentive pay and has not reinstituted it.

- Teacher Degree Attainment – The United States identified only two reporting years (2016, 2022) when a statistically significant association existed between the predominant race of students within a school and teacher possession of higher-level professional degrees (including Master’s degrees and Ph.D.’s). Differences between the proportion of teachers with higher-level degrees at Black and White schools have generally decreased over time.

- Teacher Certification – The United States’ review of the District’s teacher certification data during the first few years of the Consent Order’s implementation revealed a statistically significant association between the predominant race of students in schools and teachers with non-traditional certifications (with a greater proportion of teachers at predominately Black schools holding non-traditional certifications than the corresponding proportion of teachers at predominately White schools). The differences in the proportions of teachers at predominately Black and predominately White schools holding non-traditional certifications decreased after several years of Consent Order implementation. In 2018 and 2019, for example, the differences were 0.7% and 0.1%, respectively. In 2020, this difference was 1.1%. It decreased to 0.6% in 2021 but increased in 2022 to 6.2%. Variability in the size of these differences (which have generally been fairly small) across years does not show that the District consistently places

significantly greater numbers of teachers with non-traditional certifications at predominately Black schools than at predominately White schools. Although the size of the difference in 2022 is large relative to recent years, the United States notes that this may be connected to the current teacher shortage due in part to the COVID-19 pandemic.

- Teacher Experience – Data reported by the District early in the implementation of the Consent Order showed a statistically significant association between the predominant race of students in a school and teacher experience. The data initially reflected a higher proportion of teachers at predominately White schools having more than three years of experience than the corresponding proportion of teachers at predominately Black schools. More recently, however, the United States’ analysis of the District’s reporting data does not show a statistically significant association between the predominant race of students in a school and teacher experience. Moreover, the proportion of teachers at predominately Black schools with less than three years’ experience has generally decreased since the entry of the Consent Order.

- Teacher Assignment – The District’s *Singleton* ratio obligations are memorialized in the Consent Order’s requirement that the District assign classroom teachers such that the racial breakdown of teachers within each school reflects the District-wide average for the grade levels served by that school within plus or minus 15 percentage points. Since the Consent Order’s entry, the composition of faculty at the vast majority of the District’s schools has generally complied with the *Singleton* ratio set forth in the Consent Order. The number of schools whose faculty composition does not comply with applicable *Singleton* ratios has ranged between three and eight most years. While a couple of schools have repeatedly fallen outside of the applicable range (e.g., Jemison High School, McNair Junior High School, Montview Elementary School), the remaining schools falling outside of the *Singleton* ratio vary from year to year. The degree to

which schools falling outside of the *Singleton* ratio are non-compliant also varies. In a number of instances, schools have fallen outside of the *Singleton* ratio by three percentage points or less. In these cases, compliance or non-compliance with the ratio could turn on the status of just one or two teachers. The District's most recent reporting related to the *Singleton* ratios appears to be an aberration from the trends in the District's *Singleton* compliance since 2015. That reporting shows the highest number of schools out of *Singleton* compliance since 2015, although only five of the schools deviate from the *Singleton* ratios by greater than six percentage points. The remainder appear to be out of compliance by only a few percentage points, which means—as noted above—that the difference between compliance and non-compliance could be the status of just one or two teachers. This unusual reporting may be explained by the District's operating under atypical constraints given recent teacher shortages. In any event, in most cases—including those where the underlying school deviates from *Singleton* compliance by more than six percentage points—the faculty of the relevant school is diverse. A school may fall outside of the *Singleton* ratio but have nearly equivalent numbers of Black and White teachers. Even in those schools that have persistently missed the applicable ratio, roughly one third (or more) of the schools' teachers have a racial background different from the teachers in the majority.

III. CONCLUSION

The findings above represent just a snapshot of the detailed review and analysis the United States has conducted annually of data and information reflecting the District's operations in the area of faculty and staff. During that time, the District has cooperated with the United States, responded fully to its questions and concerns, and demonstrated a good-faith commitment to the operative Consent Order provisions and non-discriminatory practices in its recruitment, hiring, promotion, and retention of faculty and staff. The District's Motion has been public since

November 1, 2022, and members of the community have had the opportunity to comment on the Motion and the District's operations with respect to faculty and staff. The United States is not aware of any ongoing concerns or allegations of racial discrimination in the District's recruitment, hiring, promotion or retention of faculty and staff. For these reasons, and for the reasons set forth above, the United States has concluded that the District has met its desegregation obligations with respect to faculty and staff and does not oppose the District's motion for a declaration of partial unitary status in this area.

Respectfully submitted,

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

SHAHEENA A. SIMONS, Chief
Educational Opportunities Section

KELLY GARDNER, Deputy Chief

s/ Jessica Polansky
BRIGID BENINCASA
JESSICA POLANSKY
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
Washington, D.C. 20530
(202) 514-4092

Attorneys for Plaintiff-Intervenor

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2023 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Jessica Polansky
Jessica Polansky