

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.))	Case No.: 5:63-cv-109-MHH
)	
HUNTSVILLE BOARD OF))	
EDUCATION, et al.,))	
)	
Defendants.))	

ORDER

The United States and the Huntsville Board of Education have submitted a joint motion in which they ask the Court to release the Huntsville Board of Education from federal supervision of the public school district's transportation system. (Doc. 671). The Board has submitted four affidavits in support of the motion (Docs. 671-1 through 671-25), and the parties have filed a joint brief in support of their motion (Doc. 672). The Court has studied these materials.¹

¹ The Huntsville Board submitted a small batch of records under seal because the records contain information personal to students and their parents. (Docs. 674). The Court has reviewed the sealed documents.

Since 1970, this Court has supervised the Board's operations to ensure that the Huntsville public school district, "once segregated by law," has "take[n] all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system." *Freeman v. Pitts*, 503 U.S. 467, 485 (1992); Doc. 67. In *Green v. County School Bd. of New Kent Cnty., Va.*, 391 U.S. 430 (1968), the United States Supreme Court provided a non-exhaustive list of factors that a district court should examine when a public school district formerly segregated by law files a motion for release from federal supervision. "The *Green* factors are a measure of the racial identifiability of schools in a system that is not in compliance with *Brown* [*v. Board of Education*, 347 U.S. 483 (1954)]." *Freeman*, 503 U.S. at 486. Transportation is one of the enumerated *Green* factors. 391 U.S. at 435; *see also Freeman*, 503 U.S. at 486.

A district court's objective in supervising a public school district formerly segregated by law is two-fold: the court must ensure that the public school board responsible for the district's policies and procedures eliminates the constitutional violation, and the court must "restore state and local authorities to the control of a school system that is operating in compliance with the Constitution." *Freeman*, 503 U.S. at 489. In *Freeman*, the United States Supreme Court held that a district court may, in its discretion, "order an incremental or partial withdrawal of its supervision and control" over a public school district. 503 U.S. at 489. When considering a motion for release from federal supervision, a district court must "address itself to

whether the Board has complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” *Bd. of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 249-50 (1991). “The good-faith component has two parts. A school district must show not only past good-faith compliance, but also a good-faith commitment to the future operation of the school system through ‘specific policies, decisions, and courses of action that extend into the future.’” *Lee v. Anniston City School Sys.*, 2004 WL 2359667, at *4 (quoting *Dowell v. Bd. of Educ. of Oklahoma City Pub. Sch.*, 8 F.3d 1501, 1513 (10th Cir. 1993)); *see also Hoots v. Pennsylvania*, 118 F. Supp. 2d 577, 612 (W.D. Pa. 2000) (“In addition to looking backward to assess the defendants’ conduct during the course of the litigation, a good faith inquiry . . . look[s] into the future, and consider[s] whether the school district’s record of performance inspires confidence that the district will continue to be concerned with the equality of educational opportunity for all of its students. . . . Good faith may [] be measured by school board attitudes, policies, and decisions.”).

Consistent with *Green*, *Dowell*, and *Freeman*, the Court grants the parties’ joint motion for withdrawal of federal supervision over the Huntsville Board’s transportation system because the Board has fulfilled the transportation requirements in the 1970 desegregation order. The 1970 desegregation decree obligated the Huntsville Board of Education to design “[b]us routes and assignment of students to

buses” in ways that ensure “the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis” and to regularly re-examine the district’s transportation system to confirm that routes and student assignments to those routes are maintained on a non-segregated, non-discriminatory basis. (Doc. 67, p. 8). The record does not allow the Court to determine whether the Huntsville Board has complied in good faith with its desegregatory obligation concerning its transportation system since 1970, but the record confirms that since the Court issued a supplemental consent order in this matter in 2015, the Board has complied in good faith with its transportation obligation under the 1970 desegregation order.

The record demonstrates that since 2015, the Huntsville Board has not assigned students in the public school district to particular bus routes on the basis of race. Safety, efficiency, and stakeholder input have driven the district’s transportation policies and practices. (Doc. 671-1, pp. 4-6, 17-19). The Board has adopted a formal, written transportation policy. (Doc. 671-1, p. 100). In addition, the Board, on a discretionary basis, makes bus transportation available to students who live on busy or hazardous thoroughfares or who, due to socio-economic status, have difficulty getting to school. (Doc. 671-1, p. 12). The Board has labelled these discretionary policies as “hazard boundaries” and “special circumstances boundaries.” (Doc. 671-1, p. 12).

The record demonstrates that since 2015, “the percentage of Black students

eligible for [public] bus transportation [has been] similar to the percentage of White students eligible for bus transportation,” “Black students have [had] similar access to bus services compared to White students,” and Black students have experienced “no significant difference in route times” as compared to White students so that Black students have not been more burdened by the district’s transportation policies than White students. (Doc. 671-24, pp. 4, 10, 12).² The United States, through independent data analysis, has confirmed that the Huntsville Board of Education “provides transportation to students on a non-segregated and non-discriminatory basis” and that the Board “has eliminated the vestiges of segregation in student transportation.” (Doc. 672, pp. 16-17).³

With respect to its obligation to demonstrate a good-faith commitment to operate its transportation system in a non-discriminatory manner after federal supervision ends, the Board has represented to the Court that its Transportation Coordinator plans to re-examine, alter, and update the district’s bus routes at least annually “to ensure that all routes are accurate, efficient, and of a reasonable length,

² Data regarding actual travel time was not available to the Board’s witness who conducted the statistical analysis of the Board’s transportation data, so the Court’s finding regarding relative burdens is based on travel route times rather than actual travel time. (Doc. 671-24, p. 11).

³ The parties report that between November 22, 2019 and December 10, 2019, the Board “solicited community feedback after making a draft” of the parties’ joint motion “available for review by the public.” (Doc. 672, p. 20, n. 6). The Board offered members of the public an opportunity to provide feedback concerning the motion. (Doc. 672, p. 20, n. 6). In their joint motion, the parties have not identified feedback that they received during the review period.

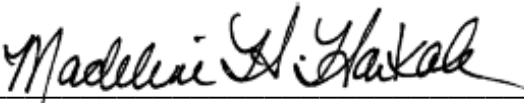
and to confirm that all students are being transported on a non-discriminatory basis.” (Doc. 671-1, p. 3). The district’s superintendent has represented that she plans to continue to use the Board’s transportation policies “to ensure the District continues to operate a fair and non-discriminatory transportation plan.” (Doc. 671-25, p. 5, ¶¶ 14-15).⁴

Because the Huntsville Board has demonstrated that it has, in good faith, eliminated to the extent practical the vestiges of *de jure* segregation from its transportation system and is committed to operating its transportation system in a non-discriminatory manner after federal supervision ends, the Court releases the Board from supervision of its transportation system under the 1970 desegregation order. This order does not release the Board from its specific, ancillary transportation obligations relating to student assignment and equitable access to course offerings under the 2015 consent order; this order pertains only to the Board’s core transportation obligations under the 1970 desegregation order. (See Doc. 671, pp. 2, 4). The Court reminds the Board that operation of its transportation system

⁴ The superintendent states that she plans “to retain the District’s current transportation practices as long as the District’s finances permit.” (Doc. 671-25, p. 5, ¶ 16). In their joint submission, the parties have not provided information that suggests that the district is financially unable to maintain its current transportation policies and practices. The superintendent also states that she has “no plans to make any major changes to the District’s current transportation policies or procedures.” (Doc. 671-25, p. 5, ¶ 17). This statement implies that the superintendent is willing to make minor changes to current transportation policies or procedures. The Court is concerned about these conditional statements but suspects that the Court’s ongoing supervision of the Huntsville Board under the balance of the *Green* factors will provide incentive for the Board to maintain the policies and practices that produced this order.

remains subject to the Fourteenth Amendment, 498 U.S. at 250, and encourages the Board to continue to act on recommendations from the DAC concerning transportation, (Doc. 672, pp. 19-20).

DONE and **ORDERED** this 3rd day of January, 2020.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE