

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:68cv7111

SCHOOL BOARD OF FRANKLIN  
CITY, VIRGINIA, et al.,

Defendants.

**AGREED ORDER OF DISMISSAL**

In March, 2007, the United States initiated a review of the Franklin City School Division. Based on an analysis of the information provided by the school system, the record in this case and other data, the United States advised defendants that, in its view, the School Board of Franklin City has fulfilled its affirmative desegregation obligations under the Fourteenth Amendment and other applicable federal law, entitling defendants to a declaration of unitary status and termination of this litigation. As indicated by the signatures of Plaintiff United States and Defendants School Board of Franklin City and Division Superintendent of Schools of Franklin City, below, the parties concur that the Franklin City School Division ("Division") has achieved unitary status and this case should be dismissed.

**I. PROCEDURAL HISTORY**

Under the *de jure* segregated system, the School Board of Franklin City ("Board") operated four schools and maintained a separate elementary school and a separate high school for black and white students and faculty. In 1965, the Board initiated a "Freedom of Choice" plan resulting in a small percentage of black students attending the formerly all-white schools, but no white students attending the all-black schools. On November 29, 1968, the United States initiated this action,

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seeking to enjoin the Board from failing to disestablish the dual, racially segregated system of schools. Following a hearing and appeal of the approval of the Board's plan that would leave most black students in segregated schools, the Board was ordered to submit a plan for a unitary school system. *See, United States v. Sch. Bd. of Franklin City*, 428 F.2d 373, 374 (4th Cir. 1970) (appeal consolidated with Southampton County case).

In the 1969-70 school year, 2,283 students attended Franklin City School Division schools, 1,175 or 51 percent of whom were black. The Board continued to operate four schools. No white students attended either of the schools designated for black students while black students comprised approximately 18 percent of the students at the white elementary school and 10 percent of the students at the white high school. The Board employed 104 teachers, 53 or 51 percent of whom were black. Three of the 26 faculty members at the elementary school designated for black students were white, but there were no white teachers at the high school designated for black students.

Following the remand from the Fourth Circuit Court of Appeals, the parties, in consultation with the United States Department of Health, Education and Welfare, developed a plan to desegregate Franklin schools. This court approved the plan in a Consent Order entered on October 2, 1970. Desegregation was accomplished by reconfiguring the Division's four schools so that all students in a single grade attended the same school. During the 1970-71 school year, the Division operated a lower elementary school housing grades 1-3, an upper elementary housing grades 4-7, a junior high school with grade 8 (and grade 9 for a portion of each day), and a high school with grades 10-12 (and grade 9 for a portion of each day). Over the years, the Division made changes to the grades assigned to each school as a result of the addition of kindergarten and pre-kindergarten programs, the gradual decline in enrollment, and building obsolescence.

## **II. BACKGROUND**

Prior to 1963, the Southampton County School Division included the Town of Franklin. On January 1, 1961, the City of Franklin was created and became a completely separate and independent political subdivision. The City of Franklin purchased the county schools located within its boundaries and commenced the operation of a separate school division in 1963. Because these former county schools had served an area larger than the City of Franklin, the Southampton Division did not have the capacity to house all students in the system since a number of students who had attended schools now within the Franklin City School Division continued to reside within the Southampton Division. Under an agreement between the two school divisions, some students residing within the Southampton Division attended Franklin City Division schools while Southampton constructed additional facilities. Franklin City annexed additional areas of Southampton County in 1985 and 1995, thus expanding the area of the Franklin City school system.

Questions arose about whether there were improper student transfers between the two school divisions. In September, 1988, the Department of Justice received a complaint from the Southampton Board alleging that substantial numbers of interdistrict student transfers were occurring between the Southampton and Franklin school divisions, and that these transfers were impeding the desegregation of Southampton schools. After conducting an investigation, the United States and the two school divisions negotiated in good faith in an effort to resolve this dispute without litigation and in an amicable manner. The United States entered into informal agreements with the two divisions that, among other things, provided operating procedures for reviewing and monitoring student transfers for the respective school divisions.

### III. STIPULATED FACTS

In March 2007, the United States initiated a review of Franklin's desegregation efforts. Based on the information and data provided, the record in this case, and all the surrounding facts, the United States advised the Board that it had fulfilled its affirmative desegregation obligations and was entitled to dismissal of this longstanding school desegregation case.

**Student Assignment:** The Franklin City School Division continues to assign students in a single-grade configuration, that is, all students in a grade attend the same school. The Division now operates three schools, a pre-K-5 elementary school, a grade 6-8 middle school, and a grade 9-12 high school. There are 1,362 students enrolled in the current school year, of whom 1,034 or 76 percent are black.

**Faculty/Staff Assignment:** The Board dismantled the dual system of assigning faculty and staff to *de jure* segregated schools in the 1970-71 school year, and now maintains nondiscriminatory employment policies and practices related to the recruitment, hiring and assignment of teachers and staff. The Board employs 141 certified staff members, of whom 49 or 35 percent are black.

**Transportation:** The Board maintains nondiscriminatory transportation policies and practices and operates a unitary student transportation system.

**Extracurricular Activities:** The Division offers a wide variety of student activities. Student participation in sports, student government, clubs, extracurricular and co-curricular activities reflects the equal opportunity to participate that the Board provides to all students.

**Facilities:** Division facilities are operated on a non-discriminatory manner.

#### IV. LEGAL ANALYSIS

It has long been recognized that the goal of a school desegregation case is to promptly convert a *de jure* segregated school system to a system without "white" schools or "black" schools, but just schools. *Green v. County School Bd. of New Kent County*, 391 U.S. 430, 442, 88 S. Ct. 1689, 1696 (1968). The success of this effort leads to the goal of ultimately returning control to the local school board since "local autonomy of school districts is a vital national tradition." *Freeman v. Pitts*, 503 U.S. 467, 490, 112 S.Ct. 1430, 1445 (1992) (quoting *Dayton Bd. of Education v. Brinkman*, 433 U.S. 406, 410, 97 S.Ct. 2766, 2770 (1977)). Returning schools to the control of local authorities "at the earliest practicable date is essential to restore their true accountability in our governmental system." *Id.*

The ultimate inquiry concerning whether a school district operating under a school desegregation order to dismantle a *de jure* segregated school system should be declared unitary is 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. *Belk v. Charlotte Mecklenburg Bd. of Educ.*, 269 F.3d 305, 318 (4th Cir. 2001) (citing *Board of Educ. v. Dowell*, 498 U.S. 237, 249-50 (1991)). The Supreme Court has identified six areas, commonly known as the "*Green* factors," which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated vestiges of a prior dual school system to the extent practicable: (1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. *Green*, 391 U.S. at 435. *See also Dowell*, 498 U.S. at 250; *Belk*, 269 F.3d at 318-19. Among these factors, student assignment can be considered the most critical because "state-mandated separation of pupils on the basis of race is the essence of the dual system." *Belk*, 269 F.3d at 319.

Based on the information and data provided by the Board, and on all the surrounding facts, the Court finds that the Board has complied with the Court's desegregation orders for a reasonable period of time, has eliminated the vestiges of past *de jure* discrimination to the extent practicable, and is operating a unitary school system. Students and faculty in the Franklin system attend and teach at all schools in the Division. The Court concludes, therefore, that the Franklin City School Division and the Division Superintendent of Schools of Franklin City have met the legal standards for a declaration of unitary status, and the Board and Superintendent are entitled to dismissal of this action.

Accordingly, it is hereby ORDERED that all prior injunctions in this case are DISSOLVED, jurisdiction is TERMINATED, and this case is DISMISSED WITH PREJUDICE.

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

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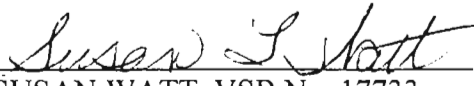
UNITED STATES DISTRICT JUDGE


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