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

SONNIE WELLINGTON HEREFORD, IV, *et al.*,	)	
PLAINTIFFS,	)	NO. 5:63-cv-00109-MHH
and	)	
UNITED STATES OF AMERICA,	)	
PLAINTIFF-INTERVENOR,	)	
V.	)	
HUNTSVILLE BOARD OF EDUCATION, *et al.*,	)	
DEFENDANTS.	)	

JOINT MOTION FOR PARTIAL UNITARY STATUS AS TO TRANSPORTATION

On April 24, 2015, this Court entered the Proposed Consent Order submitted by the Huntsville City Board of Education ("District") and United States, via the Department of Justice ("DOJ"). (Doc. 450). Since that time, the Board has worked to implement the terms of the Consent Order in cooperation with the DOJ. The Consent Order states that "[t]he Parties agree that they will file a joint motion with the Court requesting that the Court declare the District unitary regarding transportation." (Doc. 450, p. 85). In compliance with the Consent Order and

consistent with Freeman v. Pitts, 503 U.S. 467, 489 (1992), the Parties move this Court for a declaration of partial unitary status as to transportation. The Parties' Motion is due to be granted because the District has operated and continues to operate its student transportation system in a non-segregated and non-discriminatory manner, consistent with the Court's September 2, 1970 Order. (Doc. 299-1, p. 9).

I. SCOPE OF MOTION

The District's only obligation in the transportation section of the Consent Order is to work with the DOJ to file this joint motion. (Doc. 450, p. 85). The Consent Order does, however, impose obligations on the District related to other Green factor areas, and some of those obligations involve the District transporting specific groups of students. With this Motion, the Parties do not seek to relieve the District of these obligations. Instead, the Parties seek a declaration of partial unitary status as to the District's core transportation policies and procedures, which are described in the Parties' Brief in Support of this Joint Motion.

The Parties understand that the Court must weigh many factors when deciding how to rule on this Motion. In Freeman, the Supreme Court explained that a court assessing unitary status should consider:

> [1] whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn;

> [2] whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system; and
>
> [3] whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

Freeman, 503 U.S. at 491 (numbering added).

The Parties' brief demonstrates that the District has met the first and third factors. In particular, the brief explains that the District provides student transportation on a non-segregated and non-discriminatory basis and that the District has demonstrated good faith commitment by responding promptly to requests and inquiries from the DOJ, working with counsel for the DOJ and the Proposed Private Plaintiffs to facilitate public status conferences with the Court, and adhering to the rigorous annual reporting requirements of the Consent Order, among other things.

Although the second factor outlined in Freeman requires a more nuanced analysis, there are two primary reasons why it poses no bar to a declaration of partial unitary status as to transportation. First, the language of the Consent Order itself supports a finding that retention of judicial control over the District's core transportation practices – including identification of eligible riders, development of transportation routes, and specification of pickup stops – is unnecessary to achieve

compliance with other areas of the Consent Order. The transportation portion of the Consent Order tacitly acknowledged that the District did not need to take further affirmative steps to ensure that students were provided transportation on a non-segregated and non-discriminatory basis, as it requires only that the District work with the United States to file the present motion. While the Consent Order does impose some student assignment and equitable access to course offerings obligations on the District that involve transportation as an ancillary matter, those obligations are clearly outlined in the student assignment and equitable access to course offerings sections of the Order. The Consent Order does not condition partial unitary status as to transportation on the District's compliance with these other obligations because the obligations are – at their core – obligations related to student assignment (either between school or within school). Because this Court will continue to have judicial supervision over student assignment and equitable access to course offerings, retention of judicial supervision over the transportation Green factor is not required.

Second, the language contained in this Motion explicitly acknowledges that a grant of partial unitary status as to transportation will not exempt the District from the obligations found in the student assignment and equitable access to course offerings sections of the Consent Order that involve transportation as an ancillary

matter (see Doc. 450, pp. 17- 18; 39; 51; 54-55).[1] Given that the party bound by the obligations outlined in the Consent Order and the party monitoring compliance with the Consent Order both agree that a declaration of partial unitary status as to transportation does not alter the Court's oversight of obligations outlined in other areas of the Consent Order (including those that involve transportation as an ancillary matter), retention of judicial control over the transportation Green factor is unnecessary.

II. JOINT STATEMENT OF THE LAW

A. *Duty to Desegregate, the Green Factors, and Partial Unitary Status*

As this Court is well aware, "[t]he Supreme Court's decisions in Brown v. Bd. of Educ., 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) ("Brown I"), and Brown v. Bd. of Educ., 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) ("Brown II"), placed all *de jure* segregated school systems under a constitutional obligation to desegregate." Holton v. City of Thomasville School Dist., 425 F.3d 1325, 1336-37 (11th Cir. 2005). In accordance with this obligation, Judge Hobart Grooms affirmatively ordered the District to take measures to desegregate in a September 2, 1970 Order.

The September 2, 1970 Order detailed the District's obligations with regard to the factors outlined in Green v. County Sch. Bd., 391 U.S. 430, 435–37 (1968).

[1] These include obligations to ensure that Majority-to-Minority, Magnet, Advanced Placement, After School Program, and Career Academy students have adequate access to their programs, including transportation facilitating such access.

These factors, called the Green factors, include student assignment, faculty, staff, extracurricular activities, facilities, and transportation. See Holton, 425 F.3d 1325, 1337-38. All six Green factors "must be free from racial discrimination before the mandate of Brown is met." Holton, 425 F.3d at 138 (quoting Freeman, 503 U.S. at 486). However, a school system under a desegregation order may petition the Court for partial unitary status once it has eliminated the vestiges of *de jure* segregation as to a particular Green factor. See Freeman v. Pitts, 503 U.S. at 489 ("A federal court in a school desegregation case has the discretion to order an incremental or partial withdrawal of its supervision and control.").

B. *District's Desegregation Obligations as to Transportation*

The Court's September 2, 1970 Order establishes the District's obligations as to transportation. Those obligations are as follows:

> The transportation system shall be completely re-examined regularly by the superintendent, his staff, and the school board. Bus routes and assignment of students to buses will be designed to insure [sic] the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

(Doc. 299-1, p. 9).

The April 2015 Consent Order does not alter these obligations. Instead it states that "[t]he Parties agree that they will file a joint motion with the Court requesting that the Court declare the District unitary regarding transportation." (Doc. 450, p. 85).

C. *Framework for Unitary Status as to Transportation*

As with any Green factor, this "Court should address itself to whether the [District] ha[s] 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., Indep. Sch. Dist. No. 89, Oklahoma Cty., Okl. v. Dowell, 498 U.S. 237, 249-50, (1991); see also Freeman, 503 U.S. at 491; Taylor v. Ouachita Par. Sch. Bd., 965 F. Supp. 2d 758, 766 (W.D. La. 2013).

This general framework appears to be the one best suited to resolving this Joint Motion because "[n]o rigid guidelines exist by which to gauge unitary status with regard to transportation." Taylor, 965 F. Supp. 2d at 766-67 (citing Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 22-31 (1971)). What is clear is that the Court may grant the District partial unitary status as to transportation "when transportation is provided on a non-discriminatory basis." Hoots v. Pennsylvania, 118 F. Supp. 2d 577, 588 (W.D. Pa. 2000) (citing Coal. to Save Our Children v. State Bd. of Educ. of State of Del., 90 F.3d 752, 768 (3d Cir. 1996)); Stell v. Bd. of Pub. Educ. for City of Savannah, 860 F. Supp. 1563, 1577 (S.D. Ga. 1994).

To make this showing, the District "cannot create or maintain routes based on race." Taylor, 965 F. Supp. 2d at 767. Instead, the evidence must demonstrate that the District "has a non-discriminatory transportation plan which provides the

opportunity for bus transportation to and from school to all eligible students enrolled in the District by routes that are devised based on geographical and economical concerns, not the race of the students." Id. Even if some of the District's bus routes are majority one-race, partial unitary status is appropriate if "th[ose] routes exist as a result of residential housing patterns in the neighborhoods, subdivisions, or housing developments served by the schools." Id.

Finally, in resolving motions like the one before this Court, many courts consider the balance of transportation "burdens" between Black and White students. See, e.g., United States v. State of Ga., Meriwether Cty., 171 F. 3d 1333, 1341 (11th Cir. 1999). The nature of the burdens will vary in each case, but, generally speaking, travel time is one such consideration. Swann, 402 U.S. at 30-31.

III. EVIDENTIARY SUPPORT

In support of this motion, the parties submit the following:

1. Brief of the Huntsville City Board of Education and United States in Support of the Parties' Joint Motion for Partial Unitary Status as to Transportation.
2. Corresponding evidentiary support, including:
    a. The affidavit of Scott Gillies and attached exhibits;
    b. The affidavit of Matt Sachs and attached exhibits;

c. The affidavit of Dr. George Smith and attached exhibits;

d. The affidavit of Superintendent Christie Finley; and

e. The documents filed under seal this same day.

RESPECTFULLY SUBMITTED this 21 November 2019.

/s/Christopher M. Pape
Christopher M. Pape
J. R. Brooks
Zachary B. Roberson
Attorneys for Defendants

OF COUNSEL
LANIER FORD SHAVER & PAYNE, P.C.
P. O. Box 2087
Huntsville, AL 35804
Phone: 256-535-1100
Fax: 256-533-9322

For Plaintiff-Intervenor United States of America:

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

/s/Andrea Hamilton
ANDREA HAMILTON
SHAHEENA SIMONS
KELLY GARDNER
JENNIFER MARANZANO
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., N.W. – 4CON
Washington, D.C. 20530
Phone: (202) 514-4092
Fax: (202) 514-8337