

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HERMON HARRIS, JR., ET AL.,

Plaintiffs,

v.

ST. JOHN THE BAPTIST PARISH SCHOOL
BOARD, ET AL.,

Defendants.

CIVIL ACTION NO.:
13,212 SECTION A

CONSOLIDATED WITH

CIVIL ACTION NO.:
90-cv-01669 SECTION A

HON. JAY C. ZAINY

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF EXPEDITED MOTION FOR
FURTHER RELIEF, DISCOVERY, AND AN EVIDENTIARY HEARING**

INTRODUCTION

Since at least 2016, significantly elevated levels of a volatile organic chemical and a likely human carcinogen, chloroprene, have been detected on the grounds of Fifth Ward Elementary, a public school serving predominantly Black children in St. John the Baptist Parish. Breathing this chemical in even small amounts is understood to cause cancer through genetic mutations and other health ailments that are particularly grave for young, small children like those who are at Fifth Ward Elementary. In addition to these serious health consequences, chloroprene exposure can also hamper children's education, hurting their concentration and ability to attend school and learn.

For years, scientific experts have advised the St. John the Baptist Parish School Board (the "Board" or "District") about the dire consequences of chloroprene exposure and the fact that Fifth Ward Elementary students face unacceptably high cancer risks based on the school they are assigned to by the Board to attend. Faced with this information, the Board has taken no action to relocate the children of Fifth Ward Elementary to an environmentally safe facility. For over a year,

Plaintiffs have attempted to collaborate with the Board to close Fifth Ward Elementary. However, the Board has vacillated in its commitment to closing the school, presenting several proposals to the public for closure but ultimately failing to vote on any of them. The Board's delay means that several hundred children, almost all of whom are Black and Hispanic, remain exposed to unacceptably high concentrations of a carcinogen simply because they must go to school each day.

The Board's continued operation of a formerly all-Black school such as Fifth Ward Elementary in environmentally unsafe facilities violates its affirmative and continuing duty under court decrees and the Constitution to equalize its facilities. Plaintiffs are left with no other choice but to seek judicial intervention to enjoin the Board from continuing its operation of inferior school facilities at Fifth Ward Elementary School as it did during the *de jure* era.

Plaintiffs therefore request that this Court: (a) grant their request for limited discovery concerning the instant Motion; (b) hold an evidentiary hearing in July 2024 on the instant Motion; (c) at the Court's earliest convenience, schedule an in-person conference with the parties to discuss Plaintiffs' request for limited discovery and the scheduling of an expedited evidentiary hearing; and (d) ultimately, grant Plaintiffs' request for further relief in the instant Motion to close Fifth Ward Elementary and relocate its students to La Place Elementary prior to the commencement of the 2024-25 school year.

BACKGROUND

I. Procedural History and Operative Court Decrees Regarding Facilities

On March 1, 1963, Plaintiffs Hermon Harris, Jr. et al. ("Plaintiffs") filed this class action against the St. John the Baptist Parish School Board (the "Board" or "District") on behalf of Black children and their parents, caregivers, and grandparents residing in St. John the Baptist Parish, Louisiana, alleging that the Board was operating a racially segregated school system, including the

operation of all-Black schools in inferior facilities, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Original Complaint [Ex. 1]. In 1965, this Court found that the Board operated a racially segregated education system in violation of the Fourteenth Amendment and ordered the Board to dismantle this dual system.

In 1966, the Fifth Circuit ordered all school districts in the Fifth Circuit, including the District here, to equalize the facilities of formerly all-Black schools. *United States v. Jefferson Cnty. Bd. of Educ.*, 372 F.2d 836 (5th Cir. 1966), *aff'd on reh'g*, 380 F.2d 385 (5th Cir. 1967) (the “1966 Fifth Circuit Order”). With respect to facilities, the 1966 Fifth Circuit Order provides:

SCHOOL EQUALIZATION

(a) Inferior Schools. In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment . . . of quality equal to that provided in schools previously maintained for white students . . . **If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible . .**

..

Id. at 899-900 (emphasis added).

In 1967, this Court entered a more detailed order (the “1967 Court Order”). With respect to facilities, the Order required the Board’s construction and renovation projects to effectuate the “development and continuation of a unitary status.” *Id.*

Two years later, this Court entered an additional order. 1969 Court Order [Ex. 2]. With respect to facilities, the 1969 Court Order states, “[t]he selection of sites for schools to be constructed in the future, the selection of schools to be enlarged or altered, and all other future construction programs shall effectuate the development and continuation of a unitary school system serving the educational needs of the community without regard to race.” *Id.* at 5.

In December 1969, the Fifth Circuit ordered the District and other school districts in the Fifth Circuit to add the following facilities equalization provision into their desegregation plans: “All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.” *Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969), *rev’d on other grounds, Carter v. W. Feliciana Par. Sch. Bd.*, 396 U.S. 290 (1970) (the “1969 Fifth Circuit Order”).

In November 1992, this Court granted a consent decree. *See* Doc. 53 (the “1992 Consent Order”) [Ex. 3]. The 1992 Consent Order includes a facilities equalization provision that closely mirrors the facilities provision from the 1969 Fifth Circuit Order: “All school construction, school expansion, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the prior dual school system.” *Id.* at 9. The 1992 Consent Order did not supersede the prior Court Orders.

II. Factual Background

A. The St. John the Baptist School Board & District

1. Current Status

According to the Board’s Spring 2024 (and most recent) Student Assignment Report, there are 5,133 students in the District. *See* Doc. 219-3 at 2. 74.77% of the students in the District are Black, 15.33% of the students are Hispanic, and 9.33% of the students are white. No student who identifies as white attends school in St. John Parish’s West Bank.¹

¹ As of the 2023-24 school year, the District consists of the following schools and grade configurations: East St. John High School (9th-12th); St. John the Baptist STEM Program (9th-12th); West St. John High School (8th-12th); LaPlace Elementary School (K-8th); East St. John Preparatory Academy (5th-8th); West St. John Elementary School (PK-7th); John L. Ory

B. Fifth Ward Elementary School

Fifth Ward Elementary is located at 158 Panther Drive in Reserve, Louisiana 70084. According to the Board’s Spring 2024 student assignment report, Fifth Ward Elementary serves 334 students. *Id.* 77.2% of these students are Black; 16.8% of the students are Hispanic; and 5.1% of the students are white. *Id.* The Board’s attendance zones determine the composition of Fifth Ward Elementary’s student body. Very few Fifth Ward Elementary students live in the school’s neighborhood. *See* Declaration of William S. Cooper (“Cooper Decl.”) [Ex. 4 ¶ 12]. During the 2022-23 school year, the chronic absenteeism rate of Fifth Ward Elementary students (26.2%) exceeded that of the District (20.7%) and the State (20.4%). *See* Declaration of Dr. Adrienne Katner, D.Env., M.S. (“Katner Decl.”) [Ex. 5 ¶ 39].

1. The History of Fifth Ward Elementary

Fifth Ward High School was built in 1952 in the all-Black neighborhood of Reserve. *See* Education Resource Center on School Desegregation 1969 Desegregation Report (the “1969 Desegregation Report” Ex. 6]) at 17. In the 1968-69 school year, after the *de jure* era, it remained an all-Black school serving 612 students. *Id.*

According to a 2011 book from the *Images of America Book Series* about the history of the Reserve community (the “Reserve Book”), Fifth Ward High School was closed in 1969, and the school’s facilities were converted into a junior high school, named Reserve Jr. High School, serving grades 8th-9th for all St. John Parish East Bank students. Reserve Book (2011) [Ex. 7]. Reserve Jr. High School’s facilities were later torn down, and in 1993, the Board built a new school

Communications Magnet Elementary (K–8th); Lake Pontchartrain Elementary (PK–8th); Garyville/Mt. Airy Math & Science Magnet School (PK–8th); Emily C. Watkins Elementary (PK–8th); and Fifth Ward Elementary School (PK–4th). The District also operates the St. John Alternative Program. All of the schools are located on the East Bank of St. John the Baptist Parish, except West St. John Elementary and High Schools, which are located on the parish’s West Bank.

at the exact same site. *Id.* at 5. This school was named Reserve Elementary School, and it served grades kindergarten through 6th grade. *Id.* It was later renamed Fifth Ward Elementary. *Id.*

2. Fifth Ward Elementary’s Environmentally Unsafe Facilities

Fifth Ward Elementary is located half a mile southwest of the center point of the Denka Performance Elastomer facility (“Denka”). Cooper Decl. ¶ 10 [Ex. 4]. The school is separated from DuPont Construction Road, the primary route of egress and ingress to Denka, by 1,500 feet. *Id.* Approximately 150 yards separate Fifth Ward Elementary from the fence line of Denka. Katner Decl. ¶ 51 [Ex. 5]. Denka was built in 1968 as an industrial plant that emits chloroprene. *Id.* ¶ 33. Chloroprene is a “colorless, volatile liquid raw material” that scientists have understood since at least 1936 can cause “irreparable damage to most vital organs.” *Id.* ¶¶ 6-7.

In 2010, the Environmental Protection Agency (“EPA”) determined that chloroprene “is a ‘likely and potent’ multisite human carcinogen,” meaning that “it can impact more than one organ system.” *Id.* ¶¶ 8, 10. Breathing chloroprene damages DNA, and these genetic “mutations increase the likelihood that a person who breathes chloroprene will develop certain cancers”—including to the liver and lungs—“over the course of their lifetime.” Roseman Decl. ¶ 26 [Ex. 8]. “[V]ery small amounts of this chemical are sufficient to mutate genetic material and trigger cancer.” Katner Decl. ¶ 8 [Ex. 5].

Chloroprene exposure has driven residents of the census tract where Denka and Fifth Ward Elementary are located to have a “significantly higher” “risk of developing cancer . . . than the national average.” Roseman Decl. ¶ 13 [Ex. 8]. Ninety percent of that increased cancer risk was caused by chloroprene exposure. *Id.* Chloroprene can also cause other respiratory diseases and problems, such as asthma, headaches, dizziness, insomnia, fatigue, cardiac palpitations,

gastrointestinal disorders, and damage to the liver, kidneys, lungs, and circulatory, immune, and central nervous systems. Katner Decl. ¶¶ 37-38 [Ex. 5].

Given Fifth Ward Elementary’s close proximity to Denka and its position in the path of prevailing winds that carry chloroprene into and onto the school’s indoor and outdoor facilities, the air quality at Fifth Ward Elementary’s facilities is compromised, rendering the school’s facilities environmentally unsafe *See* Roseman Decl. ¶¶ 17b., e. [Ex. 8]. Since at least 2016, air quality monitoring has shown consistently elevated levels of chloroprene in the air at Denka’s fenceline. Katner Decl. ¶ 30 [Ex. 5]. During an 11-month period from 2019 to 2020, the average level of chloroprene detected at the monitors closest to Fifth Ward Elementary was six times higher than the permissible level set by the EPA, with some peak concentrations measuring 80 times greater than the limit. Roseman Decl. ¶ 38 [Ex. 8].² Even when Denka had to temporarily shut down its facilities in 2021 because of Hurricane Ida, ambient chloroprene levels detected at Fifth Ward Elementary were over four times the level permitted by the EPA, with the highest sample measuring over 11 times above the EPA limit. *Id.* ¶ 43.d. [Ex. 8]. Around that time, chloroprene was also detected in the urine of residents who lived near Denka. Katner Decl. ¶ 14 [Ex. 5]. A 2021 community survey found that people, including children who live in the census tract of Denka and Fifth Ward Elementary, “reported health symptoms associated with chloroprene and air pollution compared to those residing in homes over a mile away from the facility.” *Id.* ¶ 39.

² This limit, known as the “maximum individual risk level” or an “acceptable” standard, is only meant to be a temporary standard “while the polluter is installing additional controls.” Roseman Decl. ¶ 16 [Ex. 8]. The EPA has recognized that the limit considered “safe” is actually 100 times lower than this temporarily permitted MIR standard. *Id.* In other words, when the chloroprene levels detected at Fifth Ward are 80 times greater than the EPA’s MIR, the levels are actually 8000 times greater than the level of chloroprene understood to be “safe.” *Id.* ¶¶ 38-40.

Children are “exquisitely sensitive to mutagens” like chloroprene because they are growing and therefore have increased cell division when their DNA is “vulnerable” to mutations. Katner Decl. ¶9 [Ex.5]; Roseman Decl. ¶10 [Ex.8]. Moreover, children often breathe more air relative to their body weight and “during critical windows of development,” exposure to hazardous chemicals like chloroprene “can cause irreversible damage to developing organs and systems.” Roseman Decl. ¶¶10g., 15 [Ex. 8]. Given children’s heightened sensitivity to exposure to mutagenic carcinogens like chloroprene, the EPA has stated that, for the same level of exposure, the risk of cancer should be multiplied by three for children between the ages of two and 16. Roseman Decl. ¶¶ 12, 30. In other words, if an eight-year-old is exposed to chloroprene that is 4 times the EPA’s “acceptable” limit, they will face an increased risk of cancer equivalent to the exposure to chloroprene that is 12 times the EPA’s “acceptable” limit. *Id.* In the short-term, chloroprene exposure can cause increased illness and therefore additional absences from school. Katner Decl. ¶¶ 39-40 [Ex. 5]. According to the EPA, short term exposure to chloroprene can also impair children’s performance at school by hampering their ability to concentrate, calculate, or memorize information. Roseman Decl. ¶ 43 [Ex. 8].

As of January 2024, the average air concentration at Denka’s fence-line monitors remained two times above the EPA standard. Katner Decl. ¶ 30 [Ex. 5]. Since 2021, Denka has also had four emergency incidents, including the release of 374 pounds and 820 pounds of chloroprene in September 2023 and January 2024, respectively. *Id.* ¶ 45.

The risks associated with attending school at Fifth Ward Elementary are further compounded by the school not having an indoor gymnasium for its children to utilize for physical education or if necessary, for recess. *See* Roseman Decl. ¶ 45 c. [Ex. 8] (“Elementary school children require physical exercise and, in the absence of a gymnasium in the building (a significant

and well-recognized facility deficiency) children would need to be able to play and exercise outside the building – an activity likely to result in increased exposure”). The absence of the gym, and Fifth Ward Elementary’s facilities’ inability to keep out chloroprene permeating from near Denka into and onto its facilities renders these facilities unsafe. *Id.* ¶ 71 (“In summary, filtering chloroprene from school ventilation systems is both technically challenging and practically impractical”).

3. The Board’s Awareness of Fifth Ward Elementary’s Uniquely Environmentally Hazardous Facilities

As discussed in detail in a status report filed by Plaintiffs on July 14, 2023, public health experts and governmental agencies have affirmed the serious effects of Fifth Ward Elementary students’ exposure to chloroprene. *See* Doc. 198 at 4-11. In 2021, Dr. Adrienne Katner evaluated the risks posed by chloroprene to children at the schools in St. John the Baptist Parish and concluded that “Fifth Ward Elementary students likely face unacceptably high cancer risks based only on the years of school attendance (i.e., 6 years from Pre-K to 4th grade), and based solely on chloroprene levels detected in air after emission control technologies were installed (in 2018).” Katner Decl. ¶ 12 [Ex. 5]. Again in a 2022 study, Dr. Katner concluded that children at Fifth Ward Elementary may face “unacceptably high cancer risks” and should be relocated away from Denka (*see Id.* ¶ 17)—a conclusion with which the EPA agreed in an October 2022 letter to the Louisiana Department of Health (“LDH”) and Louisiana Department of Environmental Quality (“LDEQ”). *Id.* ¶ 21. In March 2023, Dr. Katner and environmental scientist Wilma Subra attended a Board meeting and presented to the Board regarding the air quality in and around Fifth Ward Elementary School. *Id.* ¶ 17.

Local community advocates, including lifelong Black residents of the community where Fifth Ward Elementary is located, and at least one former Board member, Patrick Sanders, have

also lamented that children at Fifth Ward Elementary face serious health and educational consequences because of the poor air quality of the school's facilities caused by chloroprene emissions from Denka. *See* Doc. 198 at 4-11. In April 2023, a parent of a child attending Fifth Ward Elementary, who also attended the school as a child, expressed concern at the environmental conditions of the school's facilities, and the impact of the facilities conditions on the health and safety of her child. WWNO Article (Apr. 25, 2023) [Ex. 9]. In August 2023, Black community advocates Carolyn Jean Baptist, Mary Hampton (a lifelong resident of Reserve), and Erica Lumar (an employee of the District) penned an op-ed in St. John Parish's local newspaper, the L'Observateur, urging the Board to close the Fifth Ward Elementary due to its environmentally hazardous facilities. L'Observateur Opinion Article (Aug. 23, 2023) [Ex. 10].

Yet to date, the Board continues to operate Fifth Ward Elementary in environmentally hazardous facilities.

C. The Board's Refusal to Collaborate with Plaintiffs to Close Fifth Ward Elementary

In their July 27, 2023 Status Report, Plaintiffs provide this Court with a detailed discussion of their efforts since May 2023 to collaborate with the Board to close Fifth Ward Elementary, and the Board's abrupt end to this collaboration. *See* Doc. 198 at 12-17. In summary, on May 3, 2023, the Board's counsel expressed to Plaintiffs in an email that "the current [Fifth Ward Elementary] closure consideration appears to be on a fast track." Email from Pamela Dill (May 3, 2023) [Ex. 11]. The Board therefore proposed a site visit of East Bank elementary schools to identify viable options to relocate Fifth Ward Elementary's students. *Id.* A two-day site visit was held on May 24-25 (*see* Doc. 198 at 13), with the parties understanding that the Board was considering to at least temporarily close Fifth Ward Elementary before the 2023-24 school year. *See* Email from John Blanchard (July 12, 2023) [Ex. 12].

On July 7, the Board stated that it had retained a demographic expert to complete a redistricting proposal of elementary schools on the East Bank that would include closure of Fifth Ward Elementary “potentially as soon as next week.” Email from Victor Jones (July 7, 2023) [Ex. 13]. However, the following week, the Board abruptly changed its plans, stating that it was now only willing to do so “for the 2024-25 school year.” Email from John Blanchard (July 12, 2023) [Ex. 12].

On July 27, 2023, this Court held a status conference to address the issues raised in Plaintiffs’ July 2023 Status Report. Doc. 202. The Court ordered a follow-up status conference with the parties on August 30, 2023, and stated that it “remains optimistic that a joint proposal” to close Fifth Ward Elementary “will be submitted prior to the conference.” *Id.* at 2-3. Despite Plaintiffs’ consistent efforts since the July 27 Status Conference to collaborate with the Board, the Board still had not voted on an interim proposal to close the school by the time of this Court’s August 30 status conference. *See* Emails from Victor Jones, James Eichner, and John Blanchard (August 1-16, 2023) [Ex. 14].

After numerous unsuccessful requests for the Board’s outstanding redistricting proposal of elementary schools on the East Bank, Plaintiffs learned about the Board’s redistricting proposal at three public hearings held on January 30 through February 1, 2024. *See* Board Public Hearing Minutes (January 30, 2024) [Ex. 15]; Board Public Hearing Minutes (January 31, 2024) [Ex. 16]; Board Public Hearing Minutes (February 1, 2024) [Ex. 17]. After the Board’s Public Hearings, Plaintiffs next sought to collaborate with the Board to have it vote on a proposal to close Fifth Ward Elementary and move the school’s students, faculty, and staff to a single location. In an email on February 6, 2024, Plaintiffs asked if the Board would vote on the publicly presented redistricting proposal at the February 8 Board meeting, only to learn that it would not. Emails from

Beth Caldwell and Bob Hammonds (February 6, 2024) [Ex. 18]. Later that month, the Board's counsel notified Plaintiffs and the United States that the Board would discuss its redistricting proposals at its February 29 Board workshop. Emails from John Blanchard (February 27, 2024) [Ex. 19]. However, following that workshop, the Board's counsel notified Plaintiffs and the United States that "while the Board is still considering closure of [Fifth Ward Elementary]...[n]o decisions have been made." Emails from Akhi Johnson and Bob Hammonds (March 4, 2023) [Ex. 20].

The Board's next two meetings, on March 7 and March 26, included no discussion or vote on Fifth Ward Elementary. *See* Board Meeting Minutes (March 7, 2024) [Ex. 21]; *See* Board Special Meeting Minutes (March 26, 2024) [Ex. 22]. On the night before the Board's April 11 meeting, that meeting's agenda included a vote to close Fifth Ward Elementary and send its students to East St. John Prep. Email from Victor Jones (April 11, 2024) [Ex. 23]. However, hours before the meeting, the agenda item concerning Fifth Ward Elementary was removed from the Board's agenda, in violation of Louisiana's open meetings laws.³ *Id.*

In an April 12 email, Plaintiffs' counsel urged the Board to hold a special meeting to close Fifth Ward Elementary and relocate its students to La Place Elementary. *See* Email from Victor Genecin (April 12, 2024) [Ex. 24]. The Board next discussed, but did not vote on, the closure of Fifth Ward Elementary at its April 25 workshop. *See* Board Meeting Agenda (April 25, 2024) [Ex. 25]. At the April 25 workshop, the Board presented four different proposals for closing Fifth Ward Elementary. *See* Board Fifth Ward Consolidation Proposals (April 25, 2024) [Ex. 26]. One proposal, Plan C, included relocation to La Place Elementary as previously urged by Plaintiffs. *Id.*

³ *See* La. R.S. 42:19 A.(1)(b)(ii)(aa) ("The agenda shall not be changed less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting.").

The Board also shared the impact that each proposal would have on the transportation times of children currently assigned to Fifth Ward Elementary. *Id.*

A vote to close Fifth Ward Elementary and relocate its students to East St. John Prep was on the agenda of the May 9 Board meeting. *See* Board Meeting Agenda (May 9, 2024) [Ex. 27]. However, “[o]n the advise of legal counsel,” the Board agreed “to keep Fifth Ward Elementary open for the 2024-2025 school year and develop a comprehensive plan for all of our school sites moving forward.” *See* Board Meeting Minutes (May 9, 2024). [Ex. 28]. Since the May 9 Board meeting, the Board has had no public discussions on Fifth Ward Elementary or a redistricting proposal at its meetings. *See* Board Meeting Minutes (May 23, 2024) [Ex. 29]; Board Meeting Agenda (June 6, 2024) [Ex. 30].

Ultimately, the Board went from committing to a plan to close Fifth Ward Elementary before the 2023-24 school year; to a plan to close the school before the 2024-25 school year; to now making no concrete commitment to closing Fifth Ward Elementary.

ARGUMENT

I. Further Relief Is Warranted to Cure the Board’s Ongoing Violations of Its Desegregation Obligations with Respect to Fifth Ward Elementary’s Inferior Facilities.

As a result of the Board’s failure to collaborate with Plaintiffs to follow through with its varying proposals to close Fifth Ward Elementary, Plaintiffs assigned to Fifth Ward Elementary by the Board attend school in indoor and outdoor facilities that are environmentally hazardous due to its close proximity to Denka, thereby rendering the school’s facilities unequal and inferior. Nearly all white elementary-aged children in the District, on the other hand, attend schools in facilities that do not present with such heightened risks of chloroprene exposure as that of Fifth Ward Elementary, because of their schools’ location being farther away from Denka. Expedited

further relief is therefore necessary to cure the Board's ongoing violation of its facilities equalization obligations, for the health and welfare of the nearly all-minority (and mostly Black) population of schoolchildren who have been assigned to Fifth Ward Elementary by the Board.⁴

In school desegregation cases, the Supreme Court has held the District Court “should address itself to whether [1] the Board ha[s] complied in good faith with the desegregation decree since it was entered, and [2] whether, in light of every facet of school operations, the vestiges of past *de jure* segregation ha[ve] been eliminated to the extent practicable.” *Bd. of Educ. of Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237, 238 (1991). “To guide courts in determining whether the vestiges of *de jure* segregation have been eliminated as far as practicable, the Supreme Court has identified several aspects of school operations that must be considered, commonly referred to as the *Green* factors: student assignment, faculty, staff, transportation, extracurricular activities, and **facilities.**”) *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 298 (5th Cir. 2008) (emphasis added) (citing *Green v. Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430, 435 (1968)).

This Court has yet to make a finding that the Board has achieved unitary status; and as such the Board has a “continuing” and “affirmative duty” to comply with its obligations under the Constitution and the Operative Court Decrees (*see Freeman v. Pitts*, 503 U.S. 467, 516) (Blackmun, J., concurring) and to “take whatever steps might be necessary” to “achieve[] the greatest degree of desegregation possible under the circumstances.” *Davis v. E. Baton Rouge Par. Sch. Bd.*, 721 F.2d 1425, 1435 (5th Cir. 1983); *Green*, 391 U.S. at 435, 437-38.

⁴ In its July 27, 2023 and August 30, 2023 Minute Entries, this Court instructed Plaintiffs to identify the basis for subject matter and remedial jurisdiction for the relief they seek in the instant Motion. *See* Docs. 202, 204. Plaintiffs respectfully submit that their allegations of the Board's non-compliance with its obligations under the Constitution and the Operative Court Decrees to equalize its facilities fall squarely within this case. *See United States v. Lawrence Cnty. Sch. Dist.*, 799 F.2d 1031, 1043 (noting that plaintiffs in a school desegregation case seeking remedy for a school district's “noncompliance with a desegregation order” or a constitutional violation have “invoke[d] federal jurisdiction.”).

A. Fifth Ward Elementary’s Environmentally Hazardous Facilities Have Created Racial Disparities Among the District’s Elementary Schools on the East Bank.

The Board’s continued operation of Fifth Ward Elementary’s environmentally hazardous facilities has created racial disparities among the District’s elementary schools located in the East Bank with respect to other *Green* factors including student assignment and faculty and staff assignment. *See Freeman*, 503 U.S. at 486, 497 (Supreme Court observing that “[t]he *Green* factors are a measure of racial [disparities] of schools in a system” that has not achieved unitary status, and that “[t]wo or more *Green* factors may be intertwined or synergistic in their relation.”).

1. The Board’s Operation of Environmentally Hazardous and Therefore Inferior Facilities at Fifth Ward Elementary

The Board’s desegregation obligations to equalize the facilities of schools that were all-Black during the *de jure* era such as Fifth Ward Elementary, include the duty to ensure that these schools’ facilities are healthy and safe. As observed by the Supreme Court in *Missouri v. Jenkins*:

The improvement of school facilities is an important factor in the overall success of [a] desegregation plan. **Specifically, a school facility which presents safety and health hazards to its students and faculty serves both as an obstacle to education as well as to maintaining and attracting non-minority enrollment.** Further, conditions which impede the creation of a good learning climate, such as heating deficiencies and leaking roofs, reduce the effectiveness of the quality education components contained in this plan.

515 U.S. 70, 142 (1995) (quoting *Jenkins v. Missouri*, 855 F.2d 1295 (5th Cir. 1295, 1305)) (quotation marks omitted). Accordingly, courts have determined that school boards complied with their desegregation obligations by closing historically Black schools with unsafe facilities. *See e.g., Mims v. Duval Cnty. Sch. Bd.*, 447 F.2d 1330, 1332-33 (5th Cir. 1971) (finding that a school district under the same 1966 and 1969 Fifth Circuit Orders as the Board here acted in “good faith” in closing a Black school located in close proximity to a city incinerator, a poultry company, and

a polluted creek that was “still producing highly noxious odors which even permeate[d] the school cafeteria.”); *see also Hill by and through Hill v. Greene Cnty. Sch. Dist.*, 848 F. Supp. 697, 703-04 (1994) (upholding school board’s decision to not re-open a historically Black school because the “buildings pose a significant health hazard to faculty and students who would attend the facility and breathe its atmosphere.”). Further, the Fifth Circuit in *Davis v. Bd. of Sch. Comm’rs of Mobile Cnty.* found that a school board under the same 1966 and 1969 Fifth Circuit Orders as the Board here, complied with its facilities equalization obligations when the board did not select a site in a Black neighborhood to construct a new school due to the site’s environmentally unsafe conditions. 483 F.2d 1017, 1019-20 (5th Cir. 1973).

2. The Board’s Policy of Assigning and Bussing Minority Students to Fifth Ward Elementary’s Inferior Facilities

The Board assigns and busses minority students who live farther away from Denka than where Fifth Ward Elementary is located, to the school’s environmentally unsafe facilities. Present day, Fifth Ward Elementary is not a neighborhood school, as very few of the children who attend school there actually live in the neighborhood where the school and Denka are located:

Figure 3: 5th Ward Students – Distance to Denka from Residence (0 to 2.5 mi. subset of SY 2022-23 Geocoded Students)

Distance in Miles to Denka from Residence	Total	White	% White	Black	% Black	Hispanic	% Hispanic	Other	% Other
<.5	4	0	0.0%	4	100.0%	0	0.0%	0	0.0%
.5 to 1.0	21	0	0.0%	21	100.0%	0	0.0%	0	0.0%
1.0 to 1.5	43	2	4.7%	36	83.7%	4	9.3%	1	2.3%
1.5 to 2.0	105	1	1.0%	88	83.8%	16	15.2%	0	0.0%
2.0 to 2.5	75	6	8.0%	49	65.3%	20	26.7%	0	0.0%
Subtotal (0-2.5 mi.)	248	9	3.6%	198	79.8%	40	16.1%	1	0.4%
All	284								

Cooper Decl. ¶ 20, Figure 3 [Ex. 4]. Based on geocoded student enrollment data, only 25 of the 248 geocoded students live within one mile from Fifth Ward Elementary and Denka. *Id.* Nearly all of Fifth Ward Elementary students—223—live at least one mile away from the school and Denka; and of these 223 children, 173 are Black, 40 are Hispanic, and 9 are white. *Id.* A substantial number of the 248 geocoded students at Fifth Ward Elementary—136 (47.9%) live closer to LaPlace Elementary than to Fifth Ward Elementary. *Id.* ¶ 32.

While the Board’s student assignment plan moves Black children on the East Bank toward Denka by assigning them to Fifth Ward Elementary, it does not do the same for white children. Based on the Board’s Spring 2024 Student Assignment Report, of the 369 white students attending elementary schools in the District, nearly all of these students—340—attend schools located on the East Bank that are at least 2.4 miles away from Denka. *See* Doc. 219-3 at 2; *see also* Cooper Decl. ¶ 16 [Ex. 4] (Figure 2 discussing the distance between Denka and all of the District’s elementary schools located on the East Bank). What this means is that white elementary-aged children in the District are not at a significant risk of attending a school where the air quality is compromised due to chloroprene permeating into and onto the school’s indoor and outdoor facilities. *See* Roseman Decl. ¶ 93 [Ex. 8]. (“[P]ollutants, such as chloroprene from the Denka plant tend to remain closer to the original pollution/emission source (Denka) as opposed to traveling significant distances (.5 mi. – 1 mile) and remaining at the concentrations found closer to the source.”).

A policy such as the Board’s that has the effect of disproportionately assigning and bussing Black children out of their neighborhoods to schools with inferior, unsafe, or otherwise terrible facilities marks these children as inferior. *See NAACP v. Lansing Bd. of Educ.*, 559 F.2d 1042, 1052 (6th Cir. 1977) (“[T]he existence of relatively inferior facilities at minority schools is

another indicium of the Defendants' segregative purpose.”) (citing *Berry v. Sch. Dist. of Benton Harbor*, 505 F.2d 238, 242 (6th Cir. 1974)); *Mitchell v. McCunney*, 651 F.2d 183, 189 (3d Cir. 1981) (“[T]he school board has an obligation to implement a student reassignment plan that will not dislocate black students significantly more than white students.”).

3. The Board’s Policy of Disproportionately Assigning Black Elementary Teachers to Fifth Ward Elementary’s Inferior Facilities

Related to the Board’s disproportionate assignment and bussing of Black children to the environmental hazardous facilities at Fifth Ward Elementary, the Board’s actions have also resulted in the disproportionate assignment of Black elementary school faculty and staff to the school. *See Freeman*, 503 U.S. at 497 (Supreme Court observing that “student segregation and faculty segregation are often related problems.”).

Figure 4: SY 2023-24 East Bank Faculty – Distance to Denka from Classroom

East Bank Elementary Schools	Distance to Denka		Total Teachers	% White	% Black	% Hispanic	% Other
	(miles)						
LaPlace Elem.	2.6		107	23.4%	74.8%	0.9%	0.9%
E. St. John Prep (5- 8)*	1.3		48	18.8%	79.2%	2.1%	0.0%
5th Ward Elem.	0.5		54	18.5%	79.6%	1.9%	0.0%
Lake Ponchartrain	3.9		100	36.0%	63.0%	1.0%	0.0%
John L. Ory Magnet	2.4		45	28.9%	71.1%	0.0%	0.0%
Garyville Magnet	5.7		61	19.7%	80.3%	0.0%	0.0%
Emily Watkins Elem	2.7		70	48.6%	47.1%	1.4%	2.9%
All			591	40.4%	57.2%	1.4%	1.0%

Based on the data obtained from the Board’s Spring 2024 Faculty and Staff Assignment reports (*See Doc. 219-5*), 57.2% of elementary teachers assigned by the Board to schools on the East Bank are Black. *See Cooper Decl.* ¶¶ 24-25, Figure 4 [Ex. 4]. However, 79.6% of faculty assigned to Fifth Ward Elementary are Black. Additionally, Fifth Ward Elementary has the lowest percentage of white teachers for the District’s elementary schools on the East Bank (*id.*), thus creating a racial disparity with respect to the disproportionate assignment of Black elementary

faculty and staff to Fifth Ward Elementary's environmentally hazardous facilities. *See NAACP*, 559 F.2d at 1052 (upholding district court's finding that the school board "pursued a practice of disproportionate assignment of minority teachers and administrators to predominantly Black schools, which, in turn, contributed to the racial identifiability of the schools.").

The foregoing racial disparities all flow from the Board's continued operation of Fifth Ward Elementary's environmentally hazardous, inferior facilities, in violation of its affirmative and continuing duty under the Constitution and the Operative Court Decrees to equalize its facilities.

B. The Board's Operation of Inferior Facilities at Fifth Ward Elementary Is a Vestige of the *De Jure* Era That Must Be Eradicated.

There is a legal presumption in this case that the Board's operation of the inferior facilities at Fifth Ward Elementary is a vestige of the Board's operation of inferior, all-Black schools during the *de jure* era because this Court has yet to declare the Board unitary in any of the *Green* factors. *See Freeman*, 503 U.S. at 505 (Scalia, J. concurring) ("[O]nce state-enforced school segregation is shown to have existed in a jurisdiction in 1954, there arises a presumption, . . . that any current racial imbalance is the product of that violation."). **This presumption is "often irrebuttable in practice."** *See United States v. Fordice*, 505 U.S. 717, 745 (1992) (Thomas, J., concurring) (emphasis added).

The Board's operation of inferior facilities at Fifth Ward Elementary can be traced to the *de jure* era. During the *de jure* era, Fifth Ward High School was operated by the Board as an all-Black school and its facilities were therefore "inherently unequal." *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954). Since 1968, chloroprene has and continues to permeate into Fifth Ward's indoor and outdoor facilities, rendering these facilities environmentally hazardous and therefore inferior. *See Roseman Decl.* ¶¶ 17b., e. [Ex. 8]. Since the origins of Fifth Ward in 1952 (*See*

Reserve Book [Ex. 7]), the Board has assigned Black children to attend inferior facilities at Fifth Ward Elementary. During the *de jure* era and to present, the Board has never concerned itself with equalizing Fifth Ward Elementary's facilities. *See, e.g., Flax v. Potts*, 464 F.2d 865, 869 (5th Cir. 1972) (Fifth Circuit holding that the Board failed to eliminate the vestiges where during and after the *de jure* era schools remained racially identifiable as Black with respect to student assignment); *Thomas v. Sch. Bd. of St. Martin Par.*, 544 F. Supp. 3d 651, 706 (W.D. La. 2021) (District Court finding the board failed to eliminate vestiges where during and after the *de jure* era, two formerly all-white schools remained racially identifiable as white due to a lack of Black teachers).

C. Further Relief is Warranted to Cure the Board's Violation of the Operative Court Decrees.

Even if the Board's continued operation of Fifth Ward Elementary's environmentally hazardous facilities is not a vestige of the *de jure* era, further relief still is warranted to compel the Board to comply with its facilities equalization obligations under the Operative Court Decrees.

Importantly, "to enforce" the Operative Court Decrees," this Court does "not need to find that [the Board] violated the Constitution, only that it violated the [Operative Court Decrees]." *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 335 (5th Cir. 2018). And, in seeking further relief, "no finding of an independent constitutional violation [is] necessary." *Id.* Neither do Plaintiffs have to prove that the Board acted in bad faith. *See Moore v. Tangipahoa Par. Sch. Bd.* 921 F.3d 545, 549 (5th Cir. 2019) (ordering further relief, despite finding that a district had acted in good faith and had not engaged in further discrimination.). This is because the "failure sufficiently to satisfy" the Court's Operative Orders "continues the constitutional violation." *United States v. Lawrence Cnty. Sch. Dist.*, 799 F.2d 1031, 1044 (5th Cir. 1986) (internal citation and quotation marks omitted). And actions by the Board that have a racially discriminatory effect will violate the Court's Operative Orders, regardless of the Board's intent. *Smith*, 906 F.3d at 339.

The Board's continued operation of Fifth Ward Elementary's environmentally hazardous facilities is a violation of the Operative Court Orders. The 1966 Fifth Circuit Order requires the Board to equalize the facilities of formerly all-Black schools such as Fifth Ward Elementary, and if equalization cannot be achieved, the school is to be closed "as soon as possible." *Jefferson*, 372 F.2d at 899-900. As discussed *supra* at A. 1., the Board's obligation to equalization obligations includes ensuring that the facilities of formerly all-Black schools are healthy and safe. Equalization here cannot be achieved and therefore, closure of the school is necessary to reduce the risk of adverse health and educational outcomes for the children of Fifth Ward Elementary. *See* Roseman Decl. ¶ 19 [Ex. 8]. The Board therefore violated the 1966 Fifth Circuit Order when it continued operating Fifth Ward High School at its location after Denka was built in 1968, and it continues to violate the Order to date. Further, the Board violated the 1966 Fifth Circuit Order and the site selection provisions from the 1967 Court Order, the 1969 Court Order, the 1969 Fifth Circuit Order, and the 1992 Consent Order when it constructed Fifth Ward Elementary in close proximity to Denka in 1993 (*See* Reserve Book [Ex. 7]), which rendered its facilities uniquely inferior due to the chloroprene exposure. Roseman Decl. ¶¶17b.-e. [Ex. 8].

Regardless of the Board's intent, its continued operation of Fifth Ward Elementary has resulted in the violation of the Operative Court Decrees.

III. Closure of Fifth Ward Elementary and Relocation of Its Students to La Place Elementary Is Necessary to Cure the Board's Failure to Equalize Its Facilities.

Given the serious health and educational consequences of exposure to chloroprene, and the Board's affirmative and continuing obligations under the Constitution and the Operative Court Decrees, Fifth Ward Elementary must be closed and its students relocated to a school away from Denka immediately, and prior to the commencement of the 2024-25 school year.

A. This Court Has Broad Remedial Authority to Order Further Relief in the Form of Closing Fifth Ward Elementary and Relocating Its Students to La Place Elementary.

This Court has the remedial authority to grant Plaintiffs' requested relief to close Fifth Ward Elementary and relocate its students to La Place Elementary in order to address the Board's constitutional and consent decree violations with respect to Fifth Ward Elementary.

The Fifth Circuit has crafted broad standards permitting federal district court judges to fashion equitable relief in school desegregation cases. In these cases, the objective is "to eliminate from the public schools all vestiges of state-imposed segregation." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). To achieve this goal, the Fifth Circuit has given district courts "broad" authority to order further relief, "for breadth and flexibility are inherent in equitable remedies." *Cowan v. Cleveland Sch. Dist.*, 748 F.3d 233, 239 (5th Cir. 2014) (citations and internal quotation marks omitted).

In remedying the Board's violation of its desegregation obligations, the Fifth Circuit has observed that desegregation techniques that are within the District Court's broad equitable power to order include: the adjustment of school attendance zone boundaries, *see, e.g., Flax v. Potts*, 864 F.2d 1157, 1162 (5th Cir. 1989), the establishment of magnet school programs, *id.*, majority to minority (M-to-M) transfer policies, *id.*, the integration of faculty and staff, *id.*, the pairing and clustering of schools, *see, e.g., Davis*, 721 F.2d at 1433, the busing of children, *see, e.g., Valley v. Rapides Par. Sch. Bd.*, 702 F.2d 1221, 1227 (5th Cir. 1983), and school closures, *see, e.g., United States v. CRUCIAL*, 722 F.2d 1182, 1189 (5th Cir. 1983).

B. There Are No Other Viable Alternatives for Plaintiffs Except to Close Fifth Ward Elementary Prior to the Commencement of the 2024-25 School Year.

This Court should use its broad powers of equitable relief to close Fifth Ward Elementary prior to the commencement of the 2024-25 school year because there are no other viable

alternatives available for Plaintiffs. Attempting to make improvements or any corrective measures to Fifth Ward Elementary’s facilities would be a futile effort. Ventilation systems cannot effectively filter chloroprene. Roseman Decl. ¶ 57 [Ex. 8]. And because these systems work by exchanging indoor with outdoor air, they are not a viable solution in places like Fifth Ward Elementary, where the outdoor air is contaminated. *Id.* The other possible options—reducing the number of hours that students are at school or requiring that prekindergarten to fourth grade students consistently wear personal protective equipment like respirators—are self-evidently illegal or inappropriate. Roseman Decl. ¶¶ 19, 78, 103. Given “the persistent and elevated presence of chloroprene in the air” and the particularly grave dangers that chloroprene exposure poses for young children, “the only viable and responsible option” is to eliminate the hazard by relocating the children to a facility “as far from the chloroprene emission source as possible.” *Id.* ¶¶ 20-79.

Relocating students from Fifth Ward Elementary to a location away from Denka is particularly important because nearly all (98.6%) Fifth Ward Elementary students are being bused *toward* the Denka facility and encountering greater chloroprene exposure in and on school’s facilities school. Cooper Decl. ¶¶ 7(a), 18 [Ex. 4]. By relocating Fifth Ward students, the District will “significantly minimize the dangerous chemical exposures and associated impacts.” Roseman Decl. ¶ 39 [Ex. 8]. Even for the 25 students who live a mile or less from the Denka facility, relocating them away from the plant during school hours will reduce the harms of chloroprene exposure, because during the six to eight hours that they attend school for five days a week, these students would be farther from Denka and their “effective exposures would be expected to be lowered by at least one-third.” *Id.* ¶ 107.

C. This Court Must Use Its Broad Equitable Powers to Close Fifth Ward Elementary and Relocate Its Students to La Place Elementary.

The Fifth Circuit is clear that a district court may grant the closure of a school in a district under desegregation orders, if certain circumstances exist. First, the closing of the school must perpetuate or re-establish the dual system. *See Hull v. Quitman Cnty. Bd. of Educ.*, 1 F.3d 1450, 1454 (5th Cir. 1993). Second, the closing of the school must not be for discriminatory reasons. *See Arvizu v. Waco Indep. Sch. Dist.*, 495 F.2d 499, 504-05 (5th Cir. 1974). Third, “even if the closure of the majority black school is not racially motivated, and even if it does not perpetuate or re-establish segregation; nevertheless, the burden of the closure and relocation [cannot] be disproportionately placed upon the minority students.” *Lee v. Geneva Cnty. Bd. of Educ.*, 892 F. Supp. 1387, 1395 (M.D. Ala. 1995).

All three of the foregoing conditions are present in Plaintiffs’ request for further relief. For one, closing Fifth Ward Elementary and relocating its students to La Place Elementary would not perpetuate or re-establish a dual system, but would instead result in Fifth Ward Elementary students attending a school that is less identifiable as Black, by reducing the percentage of Black students from 77.3% (the current percentage of Black students at Fifth Ward Elementary) to 74.6% (the percentage of Black students at La Place Elementary were all Fifth Ward Elementary students relocated to it). Cooper Decl. ¶ 7(b) [Ex. 4].

Additionally, Plaintiffs’ request for relief is clearly not rooted in discriminatory animus. Plaintiffs seek closure of Fifth Ward Elementary because of its environmentally hazardous and therefore inferior facilities, and the devastating impact that chloroprene exposure has on the health, safety, and education of hundreds of small children who are predominantly Black and secondarily Hispanic.

Finally, closure of Fifth Ward Elementary and relocation to La Place Elementary does not present a disproportionate burden on the Black schoolchildren of Fifth Ward Elementary for

several reasons. For one, relocation to La Place Elementary would place Fifth Ward Elementary in school facilities away from Denka (Cooper Decl. ¶ 7(a) [Ex. 4], thereby significantly reducing exposure to chloroprene. Roseman Decl. ¶¶ 17.b, 82, 96 [Ex. 8]. Relocation to La Place Elementary would also afford Fifth Ward Elementary children with the opportunity to attend a school that has a gymnasium. Additionally, based on the transportation impact analysis provided by the Board at its April 25, 2024 workshop (*See* Board Fifth Ward Consolidation Proposals [Ex. 26]), the transportation impact, of relocating Fifth Ward Elementary students to La Place Elementary is minimal. Cooper Decl. ¶¶ 31-32 [Ex. 4]. Plaintiffs submit that the burden here would be for the Board to continue to operate Fifth Ward Elementary for the upcoming 2024-25 school year. *See Mims*, F.2d at 1332-33 (5th Cir. 1971) (Fifth Circuit finding no burden was imposed on the Black community where a formerly all-Black school was closed due to its environmentally unsafe conditions).

CONCLUSION

The need for Black schoolchildren to be educated in school facilities that are healthy and safe goes to the very heart of *Brown v. Board*. For the foregoing reasons, Plaintiffs request that this Court: (a) grant their request for limited discovery concerning the instant Motion; (b) hold an evidentiary hearing in July 2024 on the instant Motion; (c) at the Court's earliest convenience, schedule an in-person conference with the parties to discuss Plaintiffs' request for limited discovery and the scheduling of an expedited evidentiary hearing; and (d) ultimately, grant Plaintiffs' request for further relief in the instant Motion to close Fifth Ward Elementary and relocate its students to La Place Elementary prior to the commencement of the 2024-25 school year in August.

Dated: June 12, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been delivered to all
Counsel of Record by the Court's electronic filing system on this 12th day of June, 2024.

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