UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

THERESA THOMAS, et al., Plaintiffs, v. ST. MARTIN PARISH SCHOOL BOARD, et al., Defendants.	Civil Action No. 6:65-11314

PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION FOR UNITARY STATUS
AND IN SUPPORT OF PLAINTIFFS' MOTION FOR FURTHER RELIEF

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STATUTES

La. Rev. Stat. Ann. §§ 17:151.3, 17:222(C)(1)..8

This case is before this Court again to vindicate the constitutional rights of Plaintiffs and the other members of the class to an integrated education free from the racial segregation and discrimination. Five years ago, the Superseding Consent Order (hereinafter, the "Consent Order") sought to bring Defendant St. Martin Parish School Board (the "Board" or "District") into compliance with its constitutional obligations. Doc. 211. The Consent Order adopted a school desegregation plan, which used a combination of zone changes, grade reconfigurations, and majority-to-minority ("M-to-M") transfers to attempt to integrate the District's schools. Doc. 211-1 at 6-17.[1] In addition, it required the District to hire, assign, and retain Black faculty in a non-discriminatory manner, Doc. 211-2 at 9-13, and adopt new policies designed to eliminate discrimination in student discipline and educational programs. Doc. 211-4 at 6-9.

Today, despite some successes, the District has failed to meet the objectives set forth in the Consent Order governing student assignment, faculty assignment, and quality of education, including student discipline and academic programs. For example, four of the District's nine elementary schools are racially identifiable in violation of the Consent Order, leaving a third of all Black elementary students at racially isolated schools. Likewise, the District has yet to undertake each of the agreed upon steps to improve academic outcomes and discipline. Rather than remedying discrimination, the District's half-hearted efforts have increased racial disparities. And formal discovery has only further confirmed that the District is not unitary in faculty assignment.

After six decades of litigation, the District's ongoing violations of the Consent Order compel this Court to deny its motion for unitary status. Instead, Plaintiffs respectfully request that this Court order the District take all practicable and reasonable steps to fulfill its constitutional obligation of achieving a public school system wholly free from racial discrimination. Among

[1] All pin-cites for ECF Docket ("Doc.") entries are to the "blue" page numbers stamped at the top of the as-filed versions of the relevant document.

other things, Plaintiffs propose that the Court close Catahoula Elementary School ("Catahoula") to immediately integrate three of the four racially identifiable schools, establish magnet programs at Early Learning Center ("ELC") and St. Martinville Primary School ("SMP"), and require the District to completely implement the Consent Order's promised reforms to faculty assignment and quality of education. This plan "promises realistically to work, and promises realistically to work now" to remedy the vestiges of discrimination. Green v. Cty. Sch. Bd., 391 U. S. 430, 439 (1968).

PROCEDURAL BACKGROUND

In 1965, over a decade after Brown v. Board, 347 U.S. 483 (1954), the Court ruled that the District was continuing to operate racially segregated schools in flagrant disregard of the law. Thomas v. St. Martin Par. Sch. Bd., 245 F. Supp. 601, 602 (W.D. La. 1965). This Court found that Plaintiffs had properly instituted this case as a class action, id. at 604, and that the Constitution demanded "the desegregation of the St. Martin Parish public schools." Id. at 602. The District adopted a "freedom of choice" plan, which gave any student the choice to attend a different school. Id. at 602. In 1969, however, the Fifth Circuit found the freedom of choice plan unconstitutional. Hall v. St. Helena Sch. Bd., 417 F.2d 801, 808 (5th Cir. 1969). On remand, this Court adopted a desegregation plan (the "1969 Decree") that required the District to establish attendance zones, pair schools, integrate faculty and staff, and take other steps to desegregate. Doc. 25-3 at 13-24. In 1974, after nearly ten years of active litigation, the Court placed this case on the inactive docket. See Doc. 25-10 at 2-4.

In 2012, this Court determined that this case remains open. Doc. 58 at 31; Thomas v. St. Martin Par. Sch. Bd., 879 F. Supp. 2d 535 (W.D. La. 2012). The Fifth Circuit affirmed that decision. Doc. 67; Thomas v. St. Martin Par. Sch. Bd., 756 F.3d 380, 387 (5th Cir. 2014).

On remand, the case returned to active litigation. In January 2016, this Court held an

evidentiary hearing, which included the presentation of expert testimony and reports by Plaintiffs and the Board. Doc. 186. Among other things, the facts demonstrated that the Board's deviations from the 1969 Decree and its failure to desegregate Catahoula had led to the racial isolation at several schools, including St. Martinville Primary ("SMP") and the Early Learning Center ("ELC"). See Doc. 151-1 at 13-18.

The Court then adopted the Consent Order, which continues to govern student and faculty assignment and quality of education, including student discipline and academics. Doc. 211 at 2-3. In May 2017, this Court amended the Consent Order by approving the District's request to add a Science, Technology, Engineering and Math ("STEM") Program at SMP starting in the fall of 2017. Doc. 222. The District has moved for unitary status in the areas of student assignment, faculty assignment and quality of education. Doc. 283, 365.

LEGAL STANDARDS

"The duty of a school board that has violated the Constitution and failed to comply with a corrective court order is not merely to avoid intentionally unconstitutional acts and to promise compliance with prior court orders." United States v. Lawrence Cty. Sch. Dist., 799 F.2d 1031, 1043 (5th Cir. 1986). Rather, in a district where, as here, "de jure segregation existed," the Board's "duty is to eliminate its effects 'root and branch.'" Cowan v. Cleveland Sch. Dist., 748 F.3d 233, 238 (5th Cir. 2014) (quoting Green v. Cty. Sch. Bd. of New Kent Cty., 391 U.S. 430, 436 (1968)).

To obtain unitary status in the remaining unresolved areas of student assignment, faculty, discipline, or quality of education,[2] the Board bears the "heavy burden," Green, 391 U.S. at 439, of proving to the Court that: (1) the Board is in "full and satisfactory compliance" with the Consent

[2] The Court has granted the District unitary status in the areas of staff assignment, extracurricular activities and transportation. Docs. 157, 281, 282. The District has filed an unopposed motion for unitary status with respect to facilities. Docs. 309, 339.

Order; (2) retention of control in one area is not "necessary or practicable" to achieve the District's compliance in another area; and (3) the Board 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 courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance." Freeman v. Pitts, 503 U.S. 467, 491 (1992). Good-faith requires both showing past good-faith compliance and an ongoing commitment to integration. Id. at 498. "The ultimate inquiry is whether the constitutional violator has complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination have been eliminated to the extent practicable." Missouri v. Jenkins, 515 U.S. 70, 89 (1995) (cleaned up).

Here, the District's ongoing violations of the Consent Order mean that it is not unitary. These violations require the Court to order further relief to ensure the District's compliance with its constitutional obligations.

Importantly, "[t]o enforce the consent decree, the district court [does] not need to find that [the District] violated the Constitution, only that it violated the consent decree." Smith v. Sch. Bd. of Concordia Par., 906 F.3d 327, 334 (5th Cir. 2018). And, in seeking further relief, Plaintiffs are not required to prove that the District is discriminating in any area where it requests unitary status, "as would be required to establish the right to relief ab initio." Lawrence Cty., 799 F.2d at 1043. "[N]o finding of an independent constitutional violation [is] necessary," Smith, 906 F.3d at 334; nor is a finding of 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 to sufficiently satisfy" the Consent Order "continues the constitutional violation." Lawrence Cty., 799 F.2d at 1044. And actions by

the Board that have a racially discriminatory effect will violate the Consent Order, regardless of the Board's intent. Smith, 906 F.3d at 333.

Moreover, bare compliance with the Consent Order does not entitle the District to unitary status. Rather, the Consent Order "require[s] evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed."[3] Doc. 211 at 7 n.2 (quoting Green, 391 U.S. at 439). Even if the District could show that it had faithfully implemented the Consent Order—which it cannot—the Court's "power to remedy segregation is not exhausted by its issuance of a decree that promises to, but does not, work." Lawrence Cty., 799 F.2d at 1044-45. Thus, if the Court ultimately finds that either: (1) the District has violated the Consent Order or, (2) despite the District's good faith efforts, the vestiges of discrimination remain, the Court retains the "broad" authority to order further relief, "for breadth and flexibility are inherent in equitable remedies."[4] Cowan, 748 F.3d at 239 (citations omitted).

ARGUMENT

I. Student Assignment

A. The Court Should Deny the Motion for Unitary Status Because the District's Ongoing Operation of Racially Identifiable Schools Violates the Consent Order.

Because of its failure to desegregate four of its nine elementary schools, the District is not unitary and is operating in violation of the Consent Order and the Fourteenth Amendment.

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[3] The Court carefully wrote the Consent Order to "avoid stating that Defendant's obligation was merely to take the actions outlined in the consent orders without looking to the results of those actions." Status Conference Minutes (Nov. 11, 2019), Doc. 303 at 3-4.

[4] Despite the Board's assertions about the timeliness of Plaintiffs' request for further relief, Def.'s Br. at 31, the Board admits that Plaintiffs regularly raised concerns regarding both the substance and integrity of the reporting. Id. The Consent Order does not require Plaintiffs to move for further relief after each objection. Doc. 211 at 16. Plaintiffs never waived their substantive concerns. Indeed, even a lack of any objection would be "insufficient to satisfy [the Board's] burden of proving [its] good faith compliance." United States v. Mississippi, No. 70-4706, 2014 WL 11290897, at *3 (S.D. Miss. Apr. 30, 2014).

To determine whether a district is unitary or whether further relief is needed, the "critical beginning point is the degree of racial imbalance" in the District. Freeman, 503 U.S. at 474. Here, the Consent Order adopted a plus or minus ("+/-") 15%-point variance as the desegregation standard. A school's compliance with this standard is calculated based on "the extent to which a school's student enrollment deviates from the district-wide student enrollment by race for the comparable grade levels, e.g., elementary, junior high, and high schools." Doc. 211-1 at 10-11.

As of October 2020, the District enrolls 7,026 students at sixteen schools. Of its students, 49.7% are white and 46.1% are Black. Ex. 1, Oct. 1, 2020 Enrollment Report. Students are required to attend the schools in the geographic zone in which they live unless they qualify for and are granted a transfer to another school. Doc. 211-1 at 39. Except for Stephensville Elementary (PK-8), the District's schools are in the Breaux Bridge Zone, Cecilia Zone, Parks Zone, or St. Martinville Zone.

Plaintiffs acknowledge that the Consent Order was largely successful in desegregating all schools in the Breaux Bridge, Cecilia, and Parks Zones. Plaintiffs also agree that, because of the distance, there is no practicable way to desegregate the racially identifiable Stephensville, id. at 17, and that the removal of the junior high grades from Catahoula integrated St. Martinville Junior High. Ex 2., Frankenberg, Jan. 17, 2020 Report at 3-4 ("Frankenberg 1/20"). All junior high and high schools are now in compliance with the Consent Order.

In contrast, the District has failed to desegregate the St. Martinville Zone's elementary schools. The St. Martinville Zone encompasses students assigned to St. Martinville High (grades 9-12), St. Martinville Junior High (grades 6-8), SMP (grades 2-5), ELC (PK-1), or Catahoula (PK-5). Doc. 211-1 at 15. Every student in this zone attends grades 6-8 at St. Martinville Junior High school and grades 9-12 at St. Martinville High school. Id. But, depending on their home address,

students in the PK-5 grades attend either Catahoula or ELC and SMP. Essentially, ELC and SMP are a single school located on two campuses insofar as all ELC students matriculate to SMP. Id.

The District's continued refusal to dismantle the one-race white Catahoula to integrate the predominately Black SMP and ELC schools contravenes the Consent Order and does not show the good faith necessary for unitary status. As explained below, for decades, the District has resisted implementing the measures necessary to desegregate these schools. Under the Consent Order, the District attempted to use zone changes and voluntary student transfers to integrate. After five years, the District's failure is clear. The time to "wait-and-see" whether these schools will desegregate without proactive interventions has passed. The obvious and sole remaining solution is to close Catahoula, which will immediately and finally integrate ELC and SMP. The arguments proffered by the District to further defer the integration of the St. Martinville Zone are meritless.

i. The St. Martinville Zone's Schools are Racially Identifiable.

In violation of the Consent Order, per Table 1 below, four of the District's nine elementary schools are racially identifiable, operating far outside the +/-15% desegregation standard. Three of these schools are in the St. Martinville Zone. Because of the District's non-compliance, a third (32.4% or 528/1,631) of all Black elementary students attend racially identifiably Black schools. Unquestionably, "white as well as Negro children benefit from exposure to ethnic and racial diversity in the classroom." Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457, 472 (1982) (cleaned up). But the desegregation of the District "at bottom inures primarily to the benefit of the minority, and is designed for that purpose." Id. Plaintiffs' primary concern then is ensuring that Black students in the St. Martinville Zone obtain an integrated education free from discrimination.

The District also asks the Court to ignore the racial isolation at ELC and Catahoula's PK-1 grades. Mem. in Supp. Of Mot. & Faculty Update at 6 & n.24, 10, Doc. 365-1 ("Def.'s Br.").

Yet the Consent Order is clear that, "in determining whether the District has achieved unitary status, [ ] the Court will not necessarily be bound by the parties agreement" to discount these grades. Doc. 211-1 at 11. The Court's position is consistent with precedent: there is "no justification for the non-inclusion of first grade students" or other mandatory grades. Flax v. Potts, 464 F. 2d 865, 869 (5th Cir. 1972). Unlike in the past, kindergarten is now mandatory. See La. Rev. Stat. Ann. §§ 17:151.3, 17:222(C)(1); cf. Lockett v. Muscogee Cty. Sch. Dist., 447 F.2d 472, 473 (5th Cir. 1971) (exempting an "entirely voluntary" kindergarten grade from desegregation).

Table 1: Student Enrollment in St. Martinville Zone as of October 1, 2020 (Ex. 1)

Total Elementary Schools (3,565 students)		White	Black	+/-
		49.7% (1,773)	45.8% (1,631)	
Catahoula Elementary	Total (130)	73.8% (96)	23.1% (30)	**- 22.7 B**
	2-5 (81)	75.3% (61)	21.0% (17)	**- 24.8 B**
Early Learning Center (333)		30.6% (102)	66.1% (220)	**+ 20.3 B**
St. Martinville Primary (441)		27.7% (122)	69.8% (308)	**+ 24.0 B**

This racial isolation is a clear vestige of segregation. As this Court previously found, Catahoula's white racial identity results directly from the fact that the District intentionally built it as a de jure segregated white school in a white town in the 1930s. Doc. 211-1 at 8. Both the Catahoula town and school continue to be overwhelmingly white today. Id.; see Lawrence Cty., 799 F.2d at 1044 ("Patently, during the de jure segregation era schools were built to accommodate students by race in areas where population was predominantly of a single race, and as a reasonably inferable result, parents who thereafter selected a place to live chose to reside near the racially segregated neighborhood schools."). The present racial identifiability of these schools is therefore the result of the District's past intentional decisions. See Davis v. East Baton Rouge Par. Sch. Bd., 721 F.2d 1425, 1435 (5th Cir. 1983) (holding a district responsible for the continued existence of one-race schools, which it had built in one-race areas in the de jure era).

Because Catahoula's racial identifiability is a vestige of segregation, SMP and ELC's racial identifiability is also presumed to be a vestige since "intentionally segregative school board actions in a meaningful portion of a school system, as in this case, creates a presumption that other segregated schooling within the system is not adventitious." Keyes v. Sch. Dist. No. 1, Denver, 413 U.S. 189, 208 (1973). And, as described below at 33, the racially identifiable faculty at these schools reinforces their racial identities. Thus, the District cannot meet its "burden" of showing that the current imbalance is not traceable to past segregation. Freeman, 503 U.S. at 494.

ii. The District's STEM Academy and Desegregation Efforts are Ineffective.

To address the racial isolation in the St. Martinville Zone, the District agreed to rezone a group of Black students to Catahoula and develop a program to "actively and affirmatively advertise, market, promote, and otherwise seek to encourage students and parents/guardians to use M-to-M transfers" to facilitate the voluntary movement of white students to SMP. Doc. 211-1 at 19. To that end, in the fall 2017, the District started a STEM Academy at SMP to "attract[ ] white students to the majority black St. Martinville schools" and ensure that students receive a rigorous and relevant education. District's Mot. for Approval of STEM Prog., Doc. 220-1 at 4. The District recently extended the STEM Academy to ELC for the same reasons. Def.'s Br. at 12.

These zone changes and the STEM Academy never achieved the desired desegregation. Although the rezoning increased Catahoula's Black enrollment from 7% in fall 2015 to 23% in fall 2020, it did nothing to integrate ELC and SMP. Moreover, Catahoula itself remains a racially identifiable school with Black enrollment 22-points below the districtwide numbers: far outside the desegregation standard. These persistent disparities are unacceptable under the Consent Order, which is explicit that, to reach unitary status, the M-to-M program sought to successfully "bring [SMP] and grades 2-5 at Catahoula Elementary into compliance with the +/-15% desegregation

standard prior to the end of the Consent Order's monitoring period." Doc. 211-1 at 16.

The District acknowledges that the STEM Academy "did not pan out[.]" Def.'s Br. at 9. That is an understatement. The STEM Academy has failed to attract white students from Catahoula (or anywhere else) to ELC or SMP. Over the last three years, only three white students have transferred from Catahoula to SMP. Frankenberg 1/20 at 4-5; Ex. 3, Francis Tr. 18:16–20:5, 24:10–25:3. Nonetheless, the District continues to assert that, rather than close Catahoula, the Court should rely on its hope that demographic shifts will eventually desegregate the St. Martinville Zone. Def.'s Br. at 9. The District's position, however, contradicts its admission that further rezoning the SMP and ELC community has "become demographically isolated." Def.'s Br. at 9.

Moreover, the District previously put its hopes on a STEM Academy. But, in three years, the STEM Academy has attracted three white students to SMP. Frankenberg 1/20 at 4. Yet the District ignores at least three deficiencies in the STEM Academy that are causing it to fail to attract enough M-to-M transfers to bring SMP and ELC into compliance.

First, the District is not implementing the STEM Academy in a manner that meaningfully differentiates SMP from other schools. The STEM Academy is a magnet program. An effective magnet program "promote[s] integration by drawing students away from their neighborhoods and private schools through distinctive curricula and high quality." Missouri v. Jenkins, 495 U.S. 33, 40 n.6 (1990). A magnet program's success will depend on its ability to offer a unique educational opportunity, which incentivizes students to leave their home schools. Frankenberg 1/20 at 8.

The STEM Academy, however, lacks distinctive curricula. The SMP principal, Ms. Lisa Sylvester, admits that most of the STEM Academy curriculum—i.e., PhD Science and weekly computer labs using i-Ready—is offered at other elementary schools. Ex. 4, Sylvester Tr. 21:25–23:24, 28:3–29:21, 29:22–31:4. The only unique aspect of the STEM Academy is the weekly

robotics lab and the optional extracurricular STEM club. Id. at 23:25–24:23, 31:5–8. Since March 2020, the robotics lab and STEM club have been unavailable due to the pandemic. Id. at 24:24–25:2. Rather than a unique, schoolwide magnet program, the STEM Academy largely involves the "initiatives being undertaken by some dedicated teachers. To successfully attract students, more evidence of a whole-school commitment is needed." Frankenberg 1/20 at 5-6; see Cowan v. Bolivar Cty. Bd. of Educ., 186 F. Supp. 3d 564, 607 (N.D. Miss. 2016) (rejecting a magnet proposal because the school district lacked the resources necessary to make it successful).

Second, because the STEM Academy was developed without community input, it failed to attract community support. In developing a magnet program, best practices dictate that the District survey families before implementing a magnet program to identify community interest in or support for a theme, like Montessori or the Arts. "This is essential to ensure that there will be enough demand to desegregate the school." Frankenberg 1/20 at 10. The SMP and Catahoula principals both testified that different magnet themes might have been more attractive and successful. Sylvester Tr. 33:14–37:1; Francis Tr. 23:8–24:9. Montessori schools, for example, have proven successful in other parishes. Frankenberg 1/20 at 8. But, in creating the STEM Academy, the District had no idea what theme would attract parents because it never asked. See Ex. 5, Blanchard 30(b)(6) Tr. 33:2-36:24 (Superintendent testifying that the District had only now, two years after the STEM Academy began, asked families about their interest in various themes).

The paltry number of white students who have used M-to-M transfers over three years is a strong indication that it is unrealistic to expect that the STEM Academy will ever integrate SMP. In fact, the SMP principal testified that 90% of STEM club students are Black, meaning that the club is more racially isolated than SMP's total enrollment (28% white, 70% Black). Sylvester Tr. 31:15–25. This strongly suggests that even the white parents already enrolled at SMP are not

interested in the STEM theme. See United States v. Pittman, 808 F.2d 385, 389 (5th Cir. 1987) (holding that magnet programs that only attract Black students to predominately Black schools "do not meet the constitutional test for dismantling a long established dual system").

Third, the District has not consistently or effectively market the STEM Academy. In the summer and fall of 2018, the District held public informational sessions, transported parents to on-site tours of the STEM Academy, and offered free summer school as an incentive for M-to-M students who transfer to SMP. Def.'s Br. at 12-13; Blanchard 30(b)(6) Tr. at 30:11–32:12. After 2018, however, the District did not try a similar summer program or marketing push. Blanchard 30(b)(6) Tr. 30:11–32:12. The District has not held M-to-M recruiting events at schools, nor organized public information sessions. Sylvester Tr. 15:25–17:10. Despite the purported desire to recruit students from Catahoula, the Catahoula principal testified that, if asked, she could not provide parents with information about the STEM Academy. Francis Tr. 20:19–21:9. The District's refusal to adequately market the STEM Academy dooms it to perpetual failure. See Fisher v. Tucson Unified Sch. Dist., 329 F. Supp. 3d 883, 907 (D. Ariz. 2018) (denying unitary status to a district that had not effectively marketed its magnet schools).

The District claims it has done all it can to market the STEM Academy and blames its failings on the parents who want to keep their students close to home. Def.'s Br. at 13. This is false. Significant evidence demonstrates that parish families are willing to transfer schools. For example, the M-to-M program helped to desegregate Parks Primary and Middle Schools because families were attracted to their high academic ratings. Blanchard 30(b)(6) Tr. 37:-39:6. The Parks schools' highly ranked academics essentially turns these schools into "natural" magnet schools. Once a week, Catahoula's gifted and talented students also go to Parks Primary. Frankenberg 1/20 at 6. No parent or student has complained to the Catahoula principal about any problems or burdens

associated with the weekly travel of gifted students to Parks Primary, or the M-to-M students who transferred to SMP, or rezoning to St. Martinville Junior High school. Francis Tr. 25:4-26:7. The District has not done what is practicable to also make SMP and ELC attractive to M-to-M students.

The STEM Academy essentially acts as a "freedom of choice" plan insofar as it leaves to white families the choice of staying at Catahoula or integrating SMP and ELC. Freedom of choice has "historically proven to be an ineffective desegregation tool." Cowan, 748 F.3d at 238. Here, as shown above, where "all the available empirical evidence indicate[s] that the plan is not likely to contribute to meaningful desegregation," the Court must order a more effective plan. Id. at 239.

iii. The District's Inaction and Insufficient Justifications Establish Bad Faith.

While a finding of no good-faith is not a prerequisite to denying the District's motion for unitary status, Moore, 921 F.3d at 549, bad faith is evident here from: (1) the District's refusal to offer an alternative or ongoing plan to desegregate the St. Martinville Zone schools; (2) its failure to consistently implement an aggressive marketing program for the Stem Academy; and (3) its continued assignment of white teachers to Catahoula and Black teachers to SMP and ELC. See Moses v. Washington Par. Sch. Bd., 379 F.3d 319, 326-27 (5th Cir. 2004) (holding that a school board lacked the requisite good faith where, despite some recent efforts, it operated a historically white school that had attracted very few minority students as transfers and hired no Black teachers).

First, the District's failure to "make every effort to achieve the greatest possible degree of actual desegregation" indicates a lack of good faith. Doc. 211-1 at 11-12 (quoting Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 26 (1971)). The District claims that it need not desegregate the remaining racially identifiable schools in the St. Martinville Zone. Def.'s Br. at 7-8. But this ignores the "general presumption against the maintenance of a system with substantially one-race schools," Davis, 721 F.2d at 1434, and that the maintenance of such schools is

"particularly unacceptable" here because the District is "relatively small," the concern is only three schools located nearby, the schools were never fully desegregated, and "the original purpose of this configuration of schools was to segregate the races." See Cowan, 748 F.3d at 238-39 (ordering the desegregation of four schools, despite a rural district's successful integration of its other schools).

The District further argues that the St. Martinville Zone's elementary schools should be ignored because these "students eventually" attend integrated junior high and high schools. Def.'s Br. at 8. This reasoning is "improper[ ]," however, because it would relegate students to racially isolated schools for half their mandatory grades. Lee v. Macon Cty. Bd. of Educ., 616 F. 2d 805, 809 (5th Cir. 1980) (rejecting a similar argument in favor of maintaining one-race elementary schools). Moreover, "early exposure to desegregation (e.g., elementary school ages or even younger) is associated more strongly with academic and social benefits of integration." Frankenberg 1/20 at 3.

The District also offers little evidence that it is "unlikely" to "return to its former ways." Bd. of Educ. v. Dowell, 498 U.S. 237, 247 (1991). While the Board does not intend to reverse the Consent Order's zone changes and consolidations, Blanchard 30(b)(6) Tr. 45:14–46:1, post-unitary status, the Board plans to end the successful desegregative M-to-M transfers between the Parks and St. Martinville Zones. Ex. 6, Blanchard Tr. at 15:11-18:19; see Frankenberg 1/20 at 11.

Second, the District's refusal to actively or aggressively market the STEM Academy is further strong evidence of bad faith. The primary purpose of creating the STEM Academy was to attract white students to desegregate the racially identifiable Black elementary schools in the St. Martinville Zone. Doc. 220 at 2. But, when the District's initial recruitment drive in Fall 2018 fell short, the District simply gave up rather than redoubling efforts as it should have. By failing to

invest the time, resources, and effort into desegregating SMP and ELC, the District effectively doomed integration to failure and presumed that the vestiges of de jure segregation would continue.

Third, "student segregation and faculty segregation are often related problems." Freeman, 503 U.S. at 497. But, as discussed below at 33, the District has continuously failed to hire or transfer teachers to integrate the faculty at Catahoula, which reinforces its white racial identity.

B. The Court Should Order the Desegregation of the St. Martinville Zone.

The District's recent inaction, under the "veil of neutrality[,] . . . demonstrates the kind of continued defiance of both the Constitution and the court order that requires, not just warrants, more than an order to obey the decree." Lawrence Cty., 799 F.2d at 1044. Because the District has decided to make "no effort to desegregate" the St. Martinville Zone schools that "were clearly segregated in 1969 and remain segregated today," the Court must order further relief. See, e.g., United States v. West Carroll Par. Sch. Dist., 477 F. Supp. 2d 759, 763 (W.D. La. 2007) (ordering the further desegregation of one-race white schools in a similar situation); United States v. Bertie Cty. Bd. of Educ., No. 2:67-632, 2003 WL 27380896, at *4-5 (E.D.N.C. Apr. 22, 2003) (same).

In deciding between Plaintiffs' proposed plan and the District's desire to maintain the status quo, the Court must "sort through the various proposed remedies, exclude those that are inadequate or infeasible and ultimately adopt the one that is most likely to achieve the desired effect: desegregation." Cowan, 748 F.3d at 240.

Plaintiffs' proposal is to close Catahoula and create magnets at SMP and ELC. This proposal is effective, feasible, and practicable. It would instantly desegregate SMP and ELC and, thereby, integrate the 33% of the District's Black elementary students who are now at racially identifiable schools. See Pittman, 808 F.2d at 390–91 (ordering relief for two Black schools that housed 40% of a district's Black elementary students "with a few segregated schools"); Davis, 721 F.2d at 1437 (rejecting a plan to leave 48% of Black elementary students in one-race schools).

Total enrollment at the reconfigured SMP would be 522 students, including 325 (62.3%) Black and 183 (35.1%) white students, and ELC would have 382 students, including 233 (61.0%) Black and 137 (35.9%) white students. The St. Martinville Zone would effectively come within +/- 15 of the 45.8% total Black elementary level enrollment. ELC would be just a point away.

Moreover, implementing new magnet programs at SMP and ELC will enhance their educational experiences and attractiveness to bring them into full compliance with the desegregation standard. Frankenberg 1/20 at 7. The District is perfectly capable of engaging in the extensive planning for the magnets that would be required before implementation, and this Court will only need to provide limited judicial monitoring after implementation. Id. 9-10. Startup costs could be offset by a federal magnet school grant and similar resources. Id. at 10.

Both SMP and ELC have facilities capable of accommodating Catahoula students. Sylvester Tr. 37:18-24. The influx of Catahoula teachers would address the reconfigured SMP and ELC's staffing needs. In fall 2016, the elimination of Catahoula's junior high grades resulted in the successful integration of St. Martinville Junior High. This recent experience is overwhelming evidence that an identical consolidation at the elementary schools would also be successful. Here, the "burden of busing the elementary school children is minimized by the previous establishment of busing for the older children." Valley v. Rapides Par. Sch. Bd., 702 F. 2d 1221, 1230 (5th Cir. 1983). Catahoula students will also benefit from Plaintiffs' proposal insofar as the combined schools will offer students more resources and better educational environments. Frankenberg 1/20 at 7-9; cf. Cowan, 186 F. Supp. 3d at 613. And, importantly, all children benefit from integration.

In stark contrast, the District's plan is simply to do nothing, which is an unacceptable given the ongoing persistence of racial segregation in the St. Martinville Zone. The Court cannot assent to the present circumstances wherein all elementary schools in the St. Martinville Zone are racially

identifiable and a third of all Black elementary students are in majority Black schools. Accordingly, Plaintiffs respectfully request that the Court adopt their proposal or, alternatively, order the District to design and adopt a plan that achieves at least the same level of desegregation.

II. Quality of Education

The Consent Order addresses quality of education with respect to student discipline and academic achievement. Contrary to the District's false claims that the "[l]egal authority" related to quality of education is "sparse, if non-existent," Def.'s Br. at 24, courts have long imposed and assessed the effectiveness of desegregation orders in this area. Freeman, 503 U.S. at 491; see, e.g., Milliken v. Bradley, 433 U.S. 267, 283-88 (1977) (collecting cases); Tasby v. Black Coal. to Maximize Educ., 771 F.2d 849, 855 (5th Cir. 1985) (achievement goals); United States v. Gadsden Cty. Sch. Dist., 572 F.2d 1049, 1052-53 (5th Cir. 1978) (advanced courses); United States v. Wilcox Cty. Bd. of Educ., 454 F.2d 1144, 1145 (5th Cir. 1972) (suspensions and expulsions).

For discipline, the Consent Order "addresses disproportionate assignment of exclusionary sanctions to Black students" because "the unnecessary use of exclusionary discipline can have serious, long-term, detrimental effects on student engagement and success." Doc. 211-4 at 8. Among other things, the District agreed to work with the Southeast Equity Assistance Center ("EAC") to improve classroom management and reduce racial disparities, id. at 8; revise its "Discipline Plan," id. at 14; and produce annual Discipline Reports. Id. at 16-18.

For academics, the Consent Order required the District to take a series of steps to increase Black graduation rates and attainment of college-ready diplomas, to reduce racial disparities in graduation, drop-out, and retention rates through specific interventions, and file annual reports. Id. at 19-25. And, to determine the Consent Order's effectiveness, the District must show "continuous progress" across three or more consecutive years by reducing the racial disparities in both discipline and academics from the baseline 2015-2016 school year ("the Baseline Year"). Id. at 21, 25.

Plaintiffs need prove "only that [the District] violated the consent decree," that is, "no finding of an independent constitutional violation [is] necessary." Smith, 906 F.3d at 334-35. Because the District has violated key provisions of the Consent Order on discipline and academics, the Court must deny unitary status and order additional relief. See Little Rock Sch. Dist. v. Arkansas ("LRSD"), 664 F.3d 738, 751 (8th Cir. 2011) (denying unitary status because a school district had not satisfied the terms of a settlement on discipline and academics).

A. The District's Failure to Take the Agreed Upon Steps to Ensure Fair Discipline Policies Violates the Consent Order and Requires the Denial of Unitary Status.

The Consent Order details steps that the District agreed to take to begin employing non-punitive and preventive discipline strategies, including requiring the incorporation of "a continuum of alternatives to exclusionary discipline[.]" Doc. 211-4 at 11-12.

Yet, in three ways, as explained below, the District continues to defy the Consent Order.

i. In Violation of the Consent Order, the District Has Not Employed Preventative and Non-Punitive Behavioral Supports to Address Racial Discrimination in Discipline.

The District's data demonstrates that, in practice, preventative and non-punitive behavioral supports are not being used at a significant level. During the 2018-2019 school year, for example, non-punitive behavior supports were used a total of just 90 times. See Doc. 277-1 at 38. In contrast, out-of-school suspensions ("OSS") were used 1,336 times during that same period. Id. at 11.

The revised Code of Conduct requires that nonpunitive behavior supports include a range of interventions, such as Behavior Intervention Plans, Behavior Contracts, Positive Intervention Behavior Support program ("PBIS"), Referral to Social Worker, Referral to School Building Level Committee, Restorative Approach, and Referral to Counselor, which the discipline code encourages. Ex. 14, 2018-2019 St. Martin Par. Discipline Handbook. The fact that these myriad preventive strategies were only applied 90 times in one school year—less than 7% of the total OSS

utilized that same year—demonstrates that the District has failed to adopt preventative approaches in a meaningful way in violation of the Consent Order. Ex. 9, Wiltz Tr. 132:4-133:6.

As Plaintiffs' expert, Dr. Anne Gregory, explains, in school districts that "aim to reduce racial disparities, many also increase their behavioral supports, prevention strategies, and intensive interventions for students with the greatest needs." Ex. 8, Gregory Feb. 4, 2020 Report at 8 ("Gregory 2/20"). As a result, she would expect the District's use of non-punitive supports to increase over time and be comparable to the rate of exclusionary discipline. Id. The District's data reveals the opposite: "the percentage of Black students receiving non-punitive behavioral supports was considerably lower relative to the percentage of Black students receiving one or more out-of-school suspensions." Id. at 9.

Fred Wiltz, the District Supervisor of Child Welfare and Discipline and the District's 30(b)(6) witness on the discipline issues, testified that he agrees with Dr. Gregory's assessment that: OSS rates for Black students are high, Wiltz Tr. 137:10-13; the percentage of Black students receiving interventions remains low, *id.* at 137:14-17; and there is a need to strengthen the use of interventions by teachers and the overall delivery of behavioral supports, id. at 137:18-25, 138:8-14. In short, he acknowledged that compliance with the Consent Order requires a far more expansive shift to using and tracking non-punitive behavior supports.

The Discipline Plan, however, has provided little detail about behavioral supports or a specific protocol for implementing the PBIS program. Gregory 2/20 at 10. Indeed, the District has supplied no information as to the frequency with which PBIS or other strategies are in fact used. Id. The Consent Order requires that, prior to using exclusionary discipline, the District document the use of non-punitive and preventative strategies. Doc. 193 at 7. But, troublingly, Mr. Wiltz testified that he cannot guarantee that schools are considering alternatives before issuing OSS.

Wiltz Tr. 134:3-21 ("I have no way of [e]nsuring that they're actually doing it."); id. at 135:20-21. Thus, in contravention of the Consent Order, the requirement to use alternatives to exclusionary discipline is not actually enforced by the District, nor is the requirement to document alternative strategies employed before relying on exclusionary discipline.

The District's plan identifies the use of "School Based Health Centers" to implement a conflict diversion program as an alternative to exclusionary discipline and as a way to address the underlying factors that lead to the negative behavior. But the District has admitted that the program "didn't get the participation [it] expected," and acknowledges the need "to enhance the conflict diversion program and provide schools with additional resources to further reduce the need to issue Out of School Suspensions." Doc. 277-1 at 4; see also Wiltz Tr. 88:25-89:15 (describing the conflict resolution program as "difficult" to get "off the ground" and not fully implemented).

Instead, the District primarily relies on its "Alternative to Suspension Program," which involves sending students to in-school suspension but allowing them to receive classwork using Chromebooks via Google Classroom to try and address the negative academic effects of exclusionary discipline. See Doc. 277-1 at 4. In short, the program is suspension with homework—not the type of alternative program envisioned in the Consent Order. Although the District should ensure that suspensions do not interrupt students' schoolwork, the Consent Order's goal is to avoid students' exclusions from the classroom in the first instance by using non-punitive or preventive strategies. Doc. 211-4 at 11-12.

Aside from the Alternative to Suspension program, the District rarely uses other alternatives to exclusionary discipline. Indeed, Mr. Wiltz could not name any other alternatives to exclusionary discipline required under the code of conduct. Wiltz Tr. 38:6-9.

ii. In Violation of the Consent Order, the District Never Provided the Contemplated Professional Development for Teachers to Support the

Discipline Plan Reforms.

The Consent Order required all educators who discipline students to complete four hours of discipline-related training per school year. Doc. 211-4 at 8-9. The training must cover fair and effective administration of discipline, including, but not limited to, cultural responsiveness, de-escalation tactics, and the use of conflict resolution programs. Id. at 8-12. The District provided only single or isolated professional development sessions on these topics, which are insufficient to foster real shifts in educators' practices. Rather, an effective program must include follow-up support through mentoring, coaching, demonstration, and performance feedback. Ex. 8, Gregory Oct. 26, 2020 Report at 7 ("Gregory 10/20"). For example, the EAC previously provided just one training on cultural diversity. Witlz Tr. at 94:14-95:6. In sum, the District has failed to equip educators with the necessary tools and training to use the alternative approaches envisioned by the Consent Order.

iii. In Violation of the Consent Order, Persistent or Increased Racial Disparities in Student Discipline Strongly Indicate Continued Racial Discrimination.

Given the District's failure to implement the Consent Order, it is unsurprising that racial disparities have persisted or increased. Doc. 277, July 2019 End-of-Year Discipline Report.[5] While racial disparities in discipline do not, standing alone, prove discrimination, "it is a red-flag for when discrimination may exist." Fisher, 329 F. Supp. 3d at 964-65. Yet, even alone discipline disparities raise triable disputes about whether the District is unitary. Lee v. Etowah Cty. Bd. of Educ., 963 F.2d 1416, 1426 (11th Cir. 1992). And persistent racial disparities may contribute to community complaints about fairness. Wiltz Tr. 56:11-58:22; see also Evans v. Buchanan, 582

[5] Given the closure of in-person instruction due to the COVID-19 pandemic, it was not appropriate to compare end-of-year data because students were not in the school buildings after mid-March 2020, which truncated the 2019-2020 school year. Dr. Gregory examined mid-year data to compare the last two school years and found no indication that there would have been dramatic decreases in the 2019-2020 end-of-year for Black student suspension rates if school had remained in-person. *See* Gregory 10/20 Supp. at 1.

F.2d 750, 772-73 (3d Cir.1978) (en banc) (ordering discipline code changes in response to student concerns about fairness); Lee v Macon Cty. Bd. of Educ., 490 F.2d 458, 461 (5th Cir. 1974) (same).

Nonetheless, the District appears to question the Court's ability to enforce the agreed upon quantifiable goals. Cf. Def.'s Br. at 15-16 (suggesting that Plaintiffs must prove unconstitutional discrimination in discipline to show a violation of the Consent Order). But the District "vested" this Court with authority to ensure its compliance with the Consent Order's terms, regardless of whether Plaintiffs can or could have proven illegal discrimination in student discipline. Cf. Smith, 906 F. 3d at 334 (holding that, by accepting a consent decree, a charter school had waived the argument that it had never violated the Constitution or that it should not have been subjected to a desegregation order). Even if the Consent Order requires the District to address disparities that do not, standing alone, prove discrimination, the Consent Order's terms remain binding. "Consent decrees are hybrid creatures, part contract and part judicial decree" and so "can sweep more broadly than can other forms of court-ordered relief." Smith, 906 F.3d at 334 (citations omitted).

The Consent Order requires the District to show "continuous progress" over three years by reducing the number of Black students who receive office referrals, in-school suspensions, and OSS, and reducing the number of Black students' lost instructional days as compared to the Baseline Year, Doc. 211-4 at 9, and to eliminate all racial disparities. Id. at 19. Because the District has not shown continuous progress, nor eliminated disparities, the District is in violation of the Consent Order. During the 2018-2019 school year, Black students were referred to the alternative school at 3.75 times the rate of white students compared to a disparity of 3.2 in the Baseline Year.[6] Doc. 277-1 at 5. Black students were referred to OSS at 1.98 times the rate of

[6] Because the District's data collection process is unreliable, its biannual reports likely underestimate the referral rates. While every school uses the electronic JPAM system to track punitive discipline, Wiltz Tr. At 105:5-11, only Breaux Bridge Junior and St. Martin Junior and Senior High schools use an electronic

white students versus a 1.92 disparity in the Baseline Year. Id. at 12. Black students were referred to in-school suspensions at 2.23 times the rate of white students compared to a 2.35 disparity in the Baseline Year. Id. at 8. Black students are referred to the office at 1.89 times the rate of white students versus a 1.76 disparity in the Baseline Year. Id. at 43.

The impact of the ongoing disparities is profound: Black students experience lost days of instruction at nearly twice the rate of white students: a disparity that increased from 1.92 in the Baseline Year to 1.96 today. In practical terms, in the 2018-2019 school year, Black students lost 5,673.05 lost days of instruction and white students lost only 2,407.41 days. Doc. 277-1 at 44.

And these statistics powerfully demonstrate the consequences of the District "not even attempt[ing] to implement" all the Consent Order's remedial measures or meet its goals, leaving little to "no evidence of a permanent good-faith commitment to the goal of eliminating racial disparities in discipline." See, e.g., LRSD, 664 F.3d at 751 (denying unitary status on discipline); Fisher, 329 F. Supp. 3d at 964-65 (finding that a school district had not sufficiently implemented a consent decree on discipline, which had resulted in continued racial disparities).

This recent school discipline data is also consistent with Dr. Gregory's findings in 2015 that, even controlling for factors like socioeconomic status and the severity of conduct, the District was engaged in discriminatory discipline. Gregory 2/20 at 1. The current data suggests that "the tenacious vestiges of de jure segregation" still affect the way the District treats its Black students. See Hereford v. Huntsville Bd. of Educ., No. 5:63-109, 2015 WL 13398941, at *3 & n.4 (N.D. Ala. Apr. 21, 2015) (acknowledging that a similar analysis performed by Dr. Gregory had "ruled out" all non-racial explanations for persistent racial disparities in discipline).

The District falsely asserts that racial disparities are unavoidable because they exist in other

(as opposed to a handwritten) note-taking process to track every referral. Id. at 107:5-11. The District has no process to ensure compliance with the Consent Order's reporting requirements. Id. at 76:15-77:5.

school districts. Def.'s Br. at 23. Dr. Gregory found that the rate of suspensions issued to Black students in the District's middle and high schools stand out as alarmingly high relative to national trends. Gregory 2/20 at 4, 16 (summarizing national school discipline data and data from similar, individual school districts). For example, in District's middle and high schools, just over 20% of Black students in 2018-2019 received one or more suspensions, which is significantly higher than the national average. Id. at 4. In 2015–2016, nationwide K-12 school data shows that 8% of Black students and 3.8% of white students received one or more suspensions. Id. That same year, 12.8% of Black students and 6.1% of white students received suspensions nationwide at the high school level. Id.; see also LRSD, 664 F.3d at 751 (denying unitary status on discipline and rejecting a board's argument that its discipline rates compared favorably to national rates).

B. In Violation of the Consent Order, the District has failed to Fully Implement the Agreed Upon Reforms and Racial Disparities in Academic Achievement Persist.

In the area of academics, the District bears the "burden" of proving that it has taken all "necessary steps" to "dissipate the continuing effects of past misconduct." Milliken, 433 U.S. at 289-90 (affirming a desegregation order requiring academic programming) (citations omitted).

The Consent Order properly "set[ ] forth quantifiable achievement goals that can easily be monitored by the court." Tasby, 771 F.2d at 855. The District's failure to meet the agreed upon achievement goals, Tasby v. Woolery, 869 F. Supp. 454, 474 (N.D. Tex. 1994), and eliminate racial disparities in student access to—and achievement in—academic programs draw the "inference of discrimination" regardless of intent. Gadsden Cty., 572 F.2d at 1052-53; see also Freeman, 503 U.S. at 483 (board not unitary in academics, despite "no intentional violation").

In any event, because the District acceded to the Consent Order, this is primarily a matter of contract, not constitutional law. See, e.g., Smith, 906 F.3d at 334; LRSD, 664 F.3d at 744-45.

The District has not satisfied the Consent Order's substantive terms and quantitative goals of compliance. The District agreed to show continuous progress to "eliminate all disparities identified in the Baseline Year," Doc.211-4 at 25, and to "reduc[e] intra-race and between-school variances for in-grade retention, graduations/dropouts and type of diplomas granted." Id. at 19. With respect to graduation and retention rates, the District must eliminate disparities above 5%, id. at 23-24, and "must justify" any disparities that it deems "impractical to eliminate." Id. at 24.

Rather than reducing disparities, the District has seen increased disparities in academic achievement since the Baseline Year. In all three high schools, there has been a decline in Black graduation rates that is one and a half (1.5) to four (4) times as great for Black students than white students between 2016-2017 (the "Baseline Year") and 2018-2019, the last school year unaffected by COVID-19. Ex. 10, Balfanz Feb. 17, 2020 Report at 3 ("Balfanz 2/20"). This has resulted in an increase in difference between Black and white graduation rates from Baseline Year to 2018-2019 in each high school. Id.

Similarly, Black students earn college preparatory diplomas, called "TOPS University Diplomas," at consistently lower rates than white students. TOPS University Diplomas are needed to apply to the state university system and are, therefore, a critical pathway to higher education. Id. at 4. Even at Cecilia High School and Breaux Bridge High School, where the rates have improved for both Black and white students, the racial disparities continue to persist. Id. at 4. "Increases in the percent of Black students earning TOPS University high school diplomas, and in the advanced courses required to obtain it, are still needed to close disparities with White students and provide equal access to this key pathway to adult success." Id. at 6. Overall, across the District, there was a seven-percentage point gap between Black and white students earning University Diplomas in 2018-19. Id. at 4. At Breaux Bridge High, for example, Black students were about

1.45 times in 2018-2019 and 1.34 in 2017-2018 less likely than white students to receive a TOPS University degree. Cf. Cowan, 186 F. Supp. 3d at 610 (finding inference of discrimination where 1.64 times as many white students were assigned to advanced courses as were enrolled in the relevant grades).

Notably, the data from the 2019-2020 COVID-19-impacted school year indicated a two-point increase in the gap between Black and white students receiving TOPS University Diplomas. Ex. 11, Balfanz Oct. 26, 2020 Report at 4 ("Balfanz 10/20"). This is so even with "one-time state policy changes" and pandemic specific interventions that likely drove improvements in graduation rates. Id. at 5-6.

In the two most recent school years unimpacted by COVID-19, "there has been a large increase in high school in-grade retention rates, in particular among Black students at two of the three high schools, resulting in significant disparities in 2018-19 in [Breaux Bridge and Cecilia High Schools]." Balfanz 2/20 at 6. During 2017-2018 and 2018-2019, the number of Black students retained in-grade rose dramatically, from 40 to 72. Id. Increases of Black in-grade retention is further indicia that the continued decline in Black graduation rates will continue as grade retention is a "key measure of how well a school and district is doing in keeping all their students on the path to high school graduation." Id. at. 5. In the lowest performing high schools, in 2018-19, 74% of Black students graduated, 39% earned TOPS University Diplomas, and 8.6% were retained in-grade. Id. at 2, 4, 6.

In the most recent school year, the state and the District undertook several measures to account for the abrupt interruptions to in-person learning caused by the COVID-19 pandemic. Specifically, the state decided that student coursework following March 13 would not be graded and would only be viewed as enrichment. Balfanz 10/20 at 2. The District doubled the normal

length of summer school, allowing students to take more classes during the summer, and provided students with computers to complete these studies remotely. Id. at 3. The evidence suggests that these additional interventions, dramatically improved graduation rates, in-grade retention rates, and the percentage of students graduating with a TOPS University Diploma in this most recent year. Id. at 5-6. There is an absence of evidence that the improvements in these percentages are due to long term efforts by the District and are not the result of these 2019-20 specific policies. Id. at 2. Moreover, even with dramatic increases to the overall percentages last school year, racial disparities worsened for the percentage of TOPS University Diploma graduates and only marginally improved for graduation rates and in-grade retention rates.

Further, amid the pandemic, Black students are significantly more likely to be in virtual learning. This means that in-person classes in the District have become disproportionately white as compared to total enrollment. Ex. 12, Frankenberg Oct. 20, 2020 Report at 6 ("Frankenberg 10/20"). The disparate racial impact of COVID-19 may explain Black families' hesitancy to return to in-person learning. Id. at 5. Nonetheless, the District must ensure that schools like St. Martinville Primary and Junior High, where over half of students are in enrolled in virtual programs, "have the same access to opportunity as in person students" and maintain student engagement and academic performance. See id. at 8 (offering recommendations to address racial disparities in-person and virtual school).

C. The District's Perfunctory Efforts to Enforce the Consent Order Show a Lack of Good Faith Commitment to Non-Discrimination as to Discipline and Academics.

The Court "must hold parties to the terms of a consent decree." Smith, 906 F.3d at 335 (citation omitted). And the District "cannot disavow its agreed-upon obligation to make a good-faith effort." LRSD, 664 F.3d at 757 (finding that a district had not complied with a consent order

on discipline). The District's failure to abide by the spirit or the letter of the Consent Order triggers this Court's powers to "redress the injuries caused by unlawful action." Freeman, 503 U.S. at 487. In addition to compliance with the consent order, proof of good-faith requires an ongoing and sincere commitment to non-discrimination. Dowell, 498 U.S. at 247.

With respect to discipline, the District's inaccurate suggestions that compliance with the Consent Order may prevent punishments for serious misbehavior demonstrates that it has not internalized the need for reform. Wiltz Tr. 129:24-130:10 130:20-131:5. As Dr. Gregory explains, alternatives to suspensions "need to be used in a widespread manner and not reserved exclusively for a small group of students who exhibit safety violations." Doc. 285-6 at 17 (Gregory Aug. 28, 2015 Report). This is because all students, including students who commit lower-level infractions, need to learn new behavioral skills, re-establish positive connections to school members, and make amends for harm. Id.

The District may also be conveying their apprehensions about discipline changes to teachers, which can discourage interest in reform and "damage" efforts to enforce the Consent Order. See Hereford v. Huntsville Bd. of Educ., No. 5:63-109, 2017 WL 5483734, at *12-14 (N.D. Ala. Nov. 14, 2017). And, as discussed in before, District personnel have relied on troubling racial stereotypes in disciplining students and in deciding which school staff to assign discipline related tasks. See generally Doc. 371. Such attitudes about Black people evince possible racial biases that weigh heavily against finding the District to have acted in good faith with respect to discipline. See United States v. Yonkers Branch-NAACP, 123 F. Supp. 2d 694, 718-19 (S.D.N.Y. 2000).

In academics, the District has not fully implemented the remedial actions required by the Consent Order. The District's reports evince "sparse or sporadic attention to key District-level actions" in school plans and professional development opportunities, that were designed to reduce

racial disparities. Balfanz 2/20 at 11. Dr. Balfanz details key omissions from the District and school plans after the initial plans developed in the first year following the Consent Order. Id. at 9-10. For example, in "several school reports, poor student attendance is presented as a reason for increases in-grade retention rather than a problem to be solved through the [Response to Intervention ("RTI")] process." Id. The schools essentially blame Black students for truancy without addressing the fact that "attendance issues, particularly in high school, are often linked to school policies, practices, disciplinary approaches, and climates." Id. at 10-11. Inattention to key issues, like absenteeism, discipline, and adequate professional development, suggest bad faith. Id.

D. The Court Should Order the District to Faithfully Employ the Consent Order's Measures to Remedy Discrimination in Discipline and Academics.

Under the Consent Order and desegregation law, the District had the duty "to design, select, and implement specific intervention programs" to remedy discrimination in discipline and academic achievement. LRSD, 664 F.3d at 756-57. Because the District has failed to fulfill this duty under the Consent Order, further relief is necessary with respect to discipline and academics. See Fisher, 329 F. Supp. 3d. at 966 (ordering further relief where a school district had not fully and reliably implemented a consent order and had seen "reversals of progress" in discipline).

i. Discipline

Plaintiffs' request for further relief in school discipline is modest. The District must fully implement the previously agreed upon remedial measures adopt a preventative approach and provide trainings focused on addressing the ways educator racial basis leads to racial disparities in punishment, especially for subjective offenses. The Court can and should order relief so that the District "ensure[s] that all students in a desegregated system [are] treated equally by teachers and administrators." Milliken, 433 U.S. at 276 (approving of similar relief).

Strengthen Prevention-Oriented Practices. There is an urgent need for the District to clarify

policies and procedures related to prevention strategies, delivery of behavioral supports, and alternatives to suspension. Gregory 1/20 at 14-15. A close examination of the data reveals that, in Breaux Bridge Junior High, Cecilia Junior High, Breaux Bridge High, and Cecilia High, about one-half of Black students have lost instruction because of exclusionary discipline. Doc. 277-1 at 45. These schools also have high percentages of Black students who are issued every category of discipline. As Dr. Gregory explains, this pattern of exclusionary discipline likely points to a need to create an engaging, trusting, supportive climate for Black students in which they trust the faculty. Gregory 2/20 at 13. Thus, the District needs to take additional steps to implement the PBIS framework and associated practices consistently to repair trust and support students. Id. Monitoring should focus on ensuring positive climate at these schools, including clarifying the PBIS procedures, strengthening its implementation, and documenting it with fidelity.

Increase the Use of Non-Exclusionary Alternatives. The Court should order the District to focus on using alternatives to suspensions, like the conflict diversion program, and to do an extensive analysis of why this program has not had full participation in the past. The Court should order that the conflict diversion program be fully implemented across all schools, as well as additional training focused on effective conflict resolution and restorative practices to repair trust and improve student-teacher relationships. Gregory 2/20 at 15.

Employ Professional Development that Focuses on Subjective Offenses. In 2015, Dr. Gregory found that "Black students are most commonly issued discipline referrals for lower-level reasons and for behavior educators perceive as disrespectful, disruptive, or disobedient." Doc. 285-6 at 18. It is essential to closely track referrals for these kinds of offenses, disaggregated by race. Because the District has failed to track school discipline by reason for referral, staff are still unable to critically assess the racial disparities, much less identify and address any potential

biases of teachers as sources of the disparities. The District presently has "no way" of knowing the racial biases of educators impact disciplinary practices. Wiltz Tr. 144:6-13, 144:20-145:23. In addition to improved data collection, the District should, as Dr. Gregory suggested, focus on training that explicitly focuses on race and ethnicity bias and its impact on discretionary discipline (especially for behaviors perceived as disrespectful, disruptive, or disobedient during discretionary moments in discipline decisions)." Doc. 285-6 at 18.

ii. Academics

As with discipline, Plaintiffs request for further relief are practicable and entirely consistent with the existing obligations in the Consent Order and ensuring good-faith compliance therewith.

Fortify Existing Trainings and Monitoring. The District should develop and, where possible, strengthen its training and monitoring regarding the RTI process to increase Black students' success in advanced courses and the TOPS University Diploma. Balfanz 2/20 at 12. For RTI, both the training and monitoring should focus on maximizing the impact of the interventions, including ensuring that the processes are faithfully implemented and ensuring that, as is currently required by the District's process, alternative evidence-based methods are tried when original strategies are not successful. Id. Regarding the TOPS University Diploma, the training should be geared toward developing challenging but supportive classroom environments so students are prepared to succeed in advanced courses. Id. This training should be multiyear, sustained, and include direct classroom or peer-based coaching. Id.

Apply the Lessons from the 2019-2020 School Year to Improve the RTI Process. Given the improved data in the last year, the District should attempt to make these gains sustainable by adopting practices that resemble the COVID-19-related interventions. The RTI system should, for example, be used to intensively intervene when seniors show the first sign of trouble in a course.

Balfanz 10/20 at 6. Tutoring supports should be made available to seniors who need to pass final exams to graduate. Id. And the District should analyze and replicate the conditions responsible for the large number of high school students that earned grade promotion through summer school. Id.

Early Recruitment and Preparation for Advanced Courses. The District should prepare and recruit middle grade students for high school advanced courses and intensify ninth grade supports to help more students transition into advanced high school coursework. Balfanz 2/20 at 13-14. Programs that have aligned middle school instruction with skills and knowledge needed for advanced high school coursework and that eased the transition through supports significantly increased the number of minority students participating and succeeding in high school courses.

Bolster Mentorship and Focus on Fostering Positive Relationships Within School. Strong, supportive, and caring relationships between students and adults in their school have been shown to be highly effective in combatting the impacts of poverty and other forms of bias. Id. at 14. Mentorship should be further developed as it does not appear to be prioritized by the District in its current plans or efforts. Id. The District should also develop school connectedness—which improves academic achievement and attendance—with activities that foster positive relationships among students, between students and educators, and between students and their schools. Id. at 15.

III. Faculty Assignment

The updated data from the 2019-2020 and 2020-2021 school years reinforces the need for further relief in faculty assignment and employment. Rather than showing a good-faith commitment, the District has regressed: in addition to the non-compliant schools identified in 2019, three more schools now have racially identifiable faculties. This regression is not surprising given that the District still has not complied with the Consent Order and the agreed upon plans, nor has the District taken other common-sense steps to address the racial isolation of its faculty.

A. In Violation of the Consent Order, the District's Actions and Inactions have Worsened the Problem of Racially Identifiable Faculty.

In the most recent data provided by the District, three additional schools have emerged as having Black-to-white faculty ratios outside the diversity goals, which adopt a +/- 15 desegregation standard for each grade band and require that no school's faculty have less than 10% Black faculty. In prior briefing, Plaintiffs discussed the racial identifiability of Catahoula and Stephensville, two elementary schools where the racial identifiability of their faculty reinforced the racial identifiability of student enrollment. Each school has consistently employed a single Black teacher and has had over 90% white faculty in nearly every year. Doc. 285 at 6. In the data for 2019-2020 and 2020-21, more schools have emerged with racially identifiable faculties. Parks Primary has lost three Black faculty members since October 2018, resulting in rapidly declining percentages of Black faculty members from that point until now (18% in October 2018 to 4.3% in October 2020). Frankenberg 10/20 at 9. Parks Primary currently has the lowest percentage of Black teachers in the District. Parks Primary now joins Catahoula and Stephensville as schools with one Black teacher each, despite Parks Primary's faculty being twice the size of both schools combined.

Further, as of October 2020, Cecilia Junior High has also regressed and now has a racially identifiably white faculty. Only 21.6% of Cecilia Junior High's faculty is Black, which is 17.4%-points lower than the districtwide middle school numbers. Frankenberg 10/20 at 12. Cecilia Junior High now employs two fewer Black teachers while adding three more white teachers. Id.

B. The District Has Not Acted in Good Faith to Address Faculty Concerns.

Through the operative orders, the District is required to both (1) hire additional Black teachers and (2) not discriminate in hiring, dismissing, or employing Black faculty members. Doc. 211-2 at 12-13. To date, the District still has not explained the reason that St. Martinville High has lost additional Black teachers in recent years. See Lee v. Conecuh Cty. Bd. of Educ., 634 F.2d 959,

963-64 (5th Cir. 1981) (finding that Black faculty attrition were evidence discrimination).

Moreover, the District has not adequately explained the attrition of Black teachers at Parks Primary. Though the District explains that a Black teacher at Parks Primary retired to bring the number of Black teachers from two to one, see Doc. 365-1 at 34, it has not provided any other explanation for the rapid decline in Black faculty since 2019. Despite the apparent need for robust retention efforts, the District has not developed formal means of assessing retention trends or intervening when attrition rises. Ex. 13, Polotzola Tr. at 65:2-66:1. Notably, the District has not made any specific efforts to retain Black teachers, Polotzola Tr. at 70:21-71:9, and has failed to recognize the need for improving retention at St. Martinville High School. Id. at 70:11-18.

Recent data show that hiring decisions continue to further the racial identifiability of faculty at certain schools. In 2020, the one faculty hired at Parks Primary was white, which furthered the racial identifiability of the school. See Frankenberg 10/20 at 14. In 2019 and 2020, Stephensville only hired white teachers and only had white candidates for open positions, reinforcing the racial identifiability of this school as well. Id. The Cecilia Junior High data is incomplete, but nonetheless, hiring decisions similarly exacerbated the racial identifiability of that school's faculty. Id. The October 2019 report indicates a white applicant was chosen over two Black applicants for a position teaching physical education at Cecilia Junior High School, and the October 2020 report shows that, in two of the three open positions in the school, all of the applicants interviewed were white. Id. And, despite hiring four new white teachers, the total number of white teachers at St. Martinville Junior High decreased over two years. Id. at 14-15.

Crucially, the District cannot rely on the racial makeup of the applicant pools to excuse its performance because the District has not taken the necessary steps to expand and diversify the applicant pool. The worsening segregation of faculty prior to COVID-19 is the result of inaction.

The District's execution of the hiring plan in the Consent Order is insufficiently robust. The District has not, as required by the recruitment plan, Doc. 211-2 at 28, maintained contact with District graduates who are in teacher preparation programs for the purpose of recruiting them later, Polotzola Tr. at 109:8-110:7. The District continues to regularly send white staff alone to job fairs and HBCUs. Id. at 80:9-23. Even when other educators have attended job fairs, the District has failed to provide a "comprehensive training" on recruitment, Doc. 211-2 at 27, instead opting for a simple presentation on what can and cannot be asked. Polotzola Tr. at 100:22-101:13. The District also failed to do other tasks in the Consent Order's recruiting plan, including the creating a recruitment video, compare Polotzola Tr. at 32:14-20 with Doc. 211-2 at 25, and posting the characteristics of the ideal candidate, compare Polotzola Tr. at 50:8-14 with Doc. 211-2 at 26.

Further, the District agreed to require teachers to transfer schools to satisfy the diversity goals. Doc. 211-2 at 13-14. Inexplicably, however, the District has often allowed teacher transfers that increased the racial identifiability of some schools' faculty. Frankenberg 10/20 at 15,

The District blames its own refusal to transfer teachers (as well as its inability to recruit Black applicants) on the unwillingness of teachers to work outside of their home communities. Polotzola Tr. 82:12-83:2. But many of the teachers who already work at Catahoula and SMP commute long distances from towns across St. Martin Parish and even from other parishes. Francis Tr. 39:2–18; Sylvester Tr. 42:11–23. The District's "failure to achieve compliance with regard to faculty/staff assignment is particularly disturbing because it is the one facet within the exclusive control" of the District. Brown v. Bd. of Educ. of Topeka, 978 F.2d 585, 590 n.5 (10th Cir. 1992).

CONCLUSION

For the reasons above, the Court should deny the District's motion for unitary status and order further relief to bring the District into compliance with its constitutional duty to desegregate.

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Respectfully submitted,

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