

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

SONNIE WELLINGTON HEREFORD, )  
IV, *et al.*, )

PLAINTIFFS, )

and )

UNITED STATES OF AMERICA, )

PLAINTIFF-INTERVENOR, )

V. )

HUNTSVILLE BOARD OF )  
EDUCATION, *et al.*, )

DEFENDANTS. )

NO. 5:63-cv-00109-MHH

**BRIEF OF HUNTSVILLE BOARD OF EDUCATION AND UNITED  
STATES IN SUPPORT OF JOINT MOTION FOR PARTIAL UNITARY  
STATUS AS TO TRANSPORTATION**

## I. INTRODUCTION

On April 24, 2015, the Court entered the Proposed Consent Order (“Consent Order”) submitted by the Huntsville City Board of Education (“District”) and the United States, via the Department of Justice (“DOJ”). (Doc. 450). Since that time, the District has worked to implement the terms of the Consent Order in cooperation with the DOJ. Regarding the transportation Green factor, the Consent Order states that “[t]he Parties agree that they will file a joint motion with the Court requesting that the Court declare the District unitary regarding transportation.” (Doc. 450, p. 85). Today, in compliance with the Consent Order and consistent with Freeman v. Pitts, 503 U.S. 467, 489 (1992), the Parties filed a Joint Motion for Partial Unitary Status as to Transportation (“Motion”). The Parties’ Motion is due to be granted because the District has operated and continues to operate its transportation system for students in a non-segregated and non-discriminatory manner, as required by this Court’s September 2, 1970 Order. (Doc. 299-1, p. 9). As this Motion makes clear, a grant of partial unitary status as to transportation does not relieve the District of its student assignment and equitable access to course offerings obligations, including obligations to ensure that Majority-to-Minority, Magnet, Advanced Placement, and After School Program students have adequate transportation to their assigned schools and/or programs.

## II. SUMMARY OF EVIDENCE

This brief proceeds in five parts. First, Section A below shows that, in keeping with the 1970 Order, the District regularly re-examines its transportation system and designs its “[b]us routes and assignment of students to buses [to ensure] the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.” (Doc. 299-1, p. 9). To show compliance with this requirement, the District submits the affidavit of the Transportation Coordinator for Huntsville City Schools, Scott Gillies.

Second, the evidence described in Section B shows that the District operates a non-discriminatory transportation system that provides all eligible students transportation on routes that are devised based on geographical and economical concerns, not the race of students. See Taylor v. Ouachita Parish Sch. Bd., 965 F. Supp. 2d 758, 767 (W.D. La. 2013) (granting unitary status where evidence demonstrated that “the School Board has a non-discriminatory transportation plan which provides the opportunity for bus transportation to and from school to all eligible students enrolled in the District by routes that are devised based on geographical and economical concerns, not the race of the students.”). To show compliance with this requirement, the District submits the affidavit of Scott Gillies.

Third, Section C shows that the District operates a non-discriminatory transportation system that does not unduly burden Black or White students. See

United States v. Jefferson County Sch. Dist., 63 F.Supp.3d 1346, 1352 (N.D. Fla. 2014) (“Green also requires courts to assess whether one race is more burdened than others by the school district’s system of transportation to school and extracurricular activities.”). In support of this showing, the District submits the affidavits of Scott Gillies; Matt Sachs, a demographer who assists the District in its implementation of the Consent Order; and Dr. George Smith, a District Data Strategist.

Fourth, Section D discusses the independent analysis of the District’s transportation system conducted by the United States. That analysis confirms that the District provides transportation to students on a non-segregated and non-discriminatory basis.

Finally, Section E shows that the District has worked in good faith to adhere to its transportation-related desegregation obligations and has demonstrated a commitment to maintaining its non-discriminatory practices in the future. To show good faith, the District submits the affidavit of Scott Gillies and the affidavit of Christie Finley, the Superintendent of the Huntsville City Board of Education.

**A. The District Regularly Re-Examines All Bus Routes.**

Scott Gillies is the Transportation Coordinator for Huntsville City Schools, and has been since January of 2013. (Gillies Aff., ¶ 1). Before holding this position, he was a General Manager for Durham School Services (“Durham”) from

April 2008 until January 2013. (Id. at ¶ 4). In that role, he was responsible for all facets of Durham’s transportation contract with the District. (Id. at ¶¶ 4-5). In sum, Gillies has nearly 12 years of experience with the District’s transportation system. (Id. at ¶¶ 1, 4-5).

Since transitioning to the role of Transportation Coordinator, Gillies has been responsible for examining the District’s transportation plan on a yearly basis, at minimum. (Id. at ¶¶ 2, 10). His re-examination often results in changes to the transportation plan required by the District’s new initiatives. (Id. at ¶¶ 16-17). For instance, when the District rezoned pursuant to the Consent Order, Gillies oversaw an increase in the number of bus routes from 133 to approximately 158. Likewise, when the District opened new magnet schools at Jemison High School and Williams Middle School, he ensured that the bus routes were calculated to meet the magnet students’ needs. (Id. at ¶ 16).

Gillies’s annual review takes place in July of each year. (Id. at ¶ 11). For his review, he starts with the routes in place at the end of the previous academic year and checks them for accuracy. (Id.). He reviews all routes, including neighborhood routes (both morning and afternoon), Majority-to-Minority (“M-to-M”) transfer routes, Magnet Program (“Magnet”) routes, and special education routes. (Id.). He also reviews arrival and travel times for all routes to confirm that each route consistently arrives on time and is a reasonable length. (Id.).

Gillies works with District administrators and Apple Bus Company<sup>1</sup> (“Transportation Contractor”) personnel to determine if there is any need for additional routes at a school. (Gillies Aff., ¶ 11). Before making any changes, he reviews feedback from riders and drivers and considers a number of factors such as travel time, safety concerns, and route efficiency.<sup>2</sup> (Id. at ¶ 12).

In summary, the District has re-examined its transportation system every year since the Consent Order was entered to ensure that all “[b]us routes and assignment of students to buses [are] designed to ensure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.” (Doc. 299-1, p. 9; Gillies Aff., ¶ 10). The District plans to continue this re-examination process to ensure that routes are accurate, efficient, and of a reasonable length, and to confirm that all students are being transported on a non-discriminatory basis. (Id.).

**B. The District Provides All Eligible Students Transportation on Routes that are Devised Based on Geographical and Economical Concerns.**

i. Determining Student Eligibility

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<sup>1</sup> The District does not own buses or directly employ bus drivers. Instead, the District contracts with a private company to provide these services. As a result of the bid law process, Apple Bus Company is the current contractor. Apple Bus Company took over the bus contract beginning in August of 2018. Prior to that, Durham School Services was the District’s bus contractor.

<sup>2</sup> For the District’s purposes, efficiency means ensuring routes are as short as possible while maximizing the extent to which students who live geographically proximate to one another are served by the same route. Efficiency is important for Gillies because the District pays the Transportation Contractor for each bus operated. (Gillies Aff., ¶ 14). The District pays approximately \$64,000 per year, per bus regardless of the number of students transported. (Id.); (see also Ex. 2 to Gillies Aff.). With well over 100 buses, the transportation budget is substantial.

The District has a policy to determine whether a student is eligible for transportation. (Gillies Aff., ¶ 24). That policy states that the following categories of students are eligible for transportation:

Elementary and middle school students (kindergarten through 8th grade) who live more than 2 miles from their school are eligible for school bus transportation (hereinafter “the 2-Mile Rule”).

High school students (9th through 12th grade) who live more than 5 miles from their school are eligible for school bus transportation (hereinafter “the 5-Mile Rule”).

Students who are approved for Majority-to-Minority Student Transfers and Magnet Schools are eligible for school bus transportation from their home/zoned school to the newly assigned school.

(Id. at ¶¶ 24a-c); (see also Ex. 9 to Gillies Aff.).

Additionally, the District provides transportation to other students on a discretionary basis. (Gillies Aff., ¶ 27). For example, the District provides transportation to students who would otherwise have to cross hazardous thoroughfares (hereinafter “hazard boundaries”). (Id. at ¶ 27). As an equitable measure, the District also provides transportation to students who, due to their socio-economic need and school attendance history, may have a significantly more difficult time getting to school (hereinafter “special circumstance boundaries”). (Id.). The District’s discretionary transportation policies – the hazard and special circumstance boundaries – have been in place since at least 2008. The District is constantly working to add, remove, and tweak these boundaries as necessary.

(Compare Id. at ¶ 27a (stating that Dawson Elementary School’s boundary began prior to 2008) with ¶ 27j (stating that a boundary for Lee High School was added in 2016)).

In addition to these discretionary boundaries, the District can grant special exceptions for students on a “case by case basis” if a parent follows the appropriate procedure and completes an exception form. (Gillies Aff., ¶ 25, Ex. 10 to Gillies Aff., Ex. 11 to Gillies Aff.). Since the 2013-14 school year, Gillies has received 62 formal exception requests, and has granted 46, or approximately 74% of the requests. (Gillies Aff., ¶ 26). The usual reason for denying a request is that a student lives too close to his or her school and granting the exception for one student would make all students in that area eligible for transportation. (Id.). This could result in overcrowding of buses. (Id.).

ii. Developing Routes and Bus Stops

As a starting point for the routes, the Transportation Contractor uses a routing software to develop the most efficient routes and to generate stops along each route. (Gillies Aff., ¶ 29). The Transportation Contractor’s software relies on student data provided by the District and student rider data created by the District’s bus drivers. (Id.). The Transportation Contractor’s software uses the following process to develop routes and bus stops:

1. The District’s staff inputs all student data into the District’s database called INOW;

2. INOW sends the student database to the Transportation Contractor's software. **Race is not part of the student data that is transferred from INOW to the Transportation Contractor's software.**
3. The Transportation Contractor's software automatically downloads the data and uses the information to populate its own database.
4. Many students in the District's database have a wrong address or no address at all. This is caused by errors in the data provided by families of students to the schools. When this occurs, District personnel work with the Transportation Contractor to manually correct these errors.
5. The Transportation Contractor's software pulls each student's address from the transferred data and uses the addresses to develop an eligible rider list.
6. Using the eligible rider list and address data, the Transportation Contractor's software creates the District's bus routes and bus stops. The software relies on geographic mapping software to determine the most efficient and safe routes for students.

(Id. at ¶ 29(a)-(f)).

Once this process is completed, Gillies begins his annual review process discussed in Section II(A) above. (Gillies Aff., ¶¶ 11-17). Gillies reviews all routes generated by the Transportation Contractor's software. (Id. at ¶ 11). He checks the accuracy of all routes to ensure that all stops are safe and appropriate. (Id. at ¶¶ 11, 30.). He also reviews each route's departure and arrival time to ensure that route lengths remain under ninety (90) minutes. (Id. at ¶ 13). In

addition, Gillies works with the Transportation Contractor to determine if there is a need to change the number of buses serving each school. (Id. at ¶ 11).

When performing his review process, Gillies may make changes to the generated routes or add additional routes. (Gillies Aff., ¶ 12). The factors he considers when making these changes include: the length of time that students will be on each bus; the students' arrival time; any possible safety concerns on each route; the number of students on each bus; and possible ways to increase efficiencies by, for example, using neighborhood route buses to support M-to-M transfer routes. (Id.). He also receives feedback about the routes from the bus drivers and the student riders. (Id.). He considers that feedback to revise and improve the bus routes. (Id.). Gillies's goal is to ensure that each bus route is as efficient as possible while keeping the routes at or below the District's goal of a maximum ride time of ninety (90) minutes for each student. (Id. at ¶ 13).

Neither the District nor the Transportation Contractor assigns specific students to a bus. (Id. at ¶ 28). Instead, Gillies and the Transportation Contractor work together, using the above process, to select the pick-up locations that best serve students in each neighborhood. (Id.). The District ultimately publishes the pick-up locations where buses will stop on its transportation webpage, and it is up to students and their families to get to the most convenient stop. (Id.).

Importantly, at no point during this process is a student's race ever considered. (Id. at ¶ 31). Race is not considered to determine which students are eligible for bus transportation. (Id.). Nor is race considered to determine routes and bus stops. (Id.). Instead, the District uses "a non-discriminatory transportation plan which provides the opportunity for bus transportation to and from school to all eligible students enrolled in the District by routes that are devised based on geographical and economical concerns, not the race of the students." Taylor, 965 F. Supp. 2d at 767.

**C. The District's Transportation System Does Not Unduly Burden Black or White Students.**

To prove that the District operates a transportation system that does not unduly burden Black or White students, the District calculated its eligible and actual rider data and then examined that information alongside data regarding route times. In calculating eligible rider data, the District worked with Matt Sachs of Cooperative Strategies. (Gillies Aff., ¶ 32); (see also Exs. 1-7 to Sachs Aff.). Sachs, a Geographic Information Systems ("GIS") Analyst, used the District's transportation policies and student residence information to create eligible rider data for the 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, and 2018-19 school years.

Once eligible rider data was compiled, the District worked to generate actual rider data. Doing so proved difficult given 1) changes in the District's

transportation provider between the 2017-18 academic year and the 2018-19 academic year, and 2) the fact that the District does not assign specific students to each bus but instead requires its Transportation Contractor to design the routes with pick-up points that best serve eligible students. (Gillies Aff., ¶¶ 28, 33). From 2013-14 to 2017-18, the years when Durham School Services was the transportation contractor, the District utilized Gillies’s Alabama State Department of Education (“ALSDE”) transportation reports and data manually created with the assistance of Durham bus drivers to generate actual rider data. (Id. ¶¶ 22-23, 34-35). By cross-referencing this actual rider data with demographic information contained in its student management database, the District was able to identify the racial composition of each bus route’s ridership for the 2015-16, 2016-17, and 2017-18 school years. (Id. ¶¶ 35, 40-42). For the 2018-19 school year, when Apple Bus Company was Transportation Contractor, the District utilized data collected during the student registration process and information collected by Apple bus drivers to generate actual rider data (including the racial demographics of each bus route’s ridership). (Id. ¶¶ 48-53).

After the District compiled eligible and actual rider data, its Data Strategist, Dr. George Smith, analyzed that data to determine whether the District’s transportation system disproportionately burdens Black or White students. (Smith Aff., at ¶¶ 1, 4-11). In conducting this analysis, Dr. Smith examined the

percentage of Black, White, and Other students who were eligible for transportation. As illustrated in the table below, he found that the percentage of Black students eligible for transportation has been similar to the percentage of eligible White students historically. (Id. ¶ 13). He also found that the racial makeup of eligible riders was similar to the racial makeup of the District for the corresponding academic year. (Id. at ¶ 14).

<b>Bus Eligibility</b>									
School Year	Total Black Students in the District	Total White Students in the District	Total Other Students in the District	Eligible Black Students	Eligible White Students	Eligible Other Students	% of Total Black Eligible	% of Total White Eligible	% of Total Other Eligible
13-14	9,385	10,064	4,080	3,374	3,506	1,029	36%	35%	25%
14-15	9,291	9,877	4,451	3,199	3,437	1,230	34%	35%	28%
15-16	9,622	9,643	4,758	3,839	3,370	1,451	40%	35%	30%
16-17	9,683	9,453	4,979	3,529	3,329	1,877	36%	35%	38%
17-18	9,534	9,315	5,133	3,378	3,312	1,970	35%	36%	38%
18-19	9,400	9,130	5,404	3,282	3,305	2,071	35%	36%	38%

When reviewing the percentage of Black, White, and Other students who were eligible due to the hazard boundary and special circumstance boundary transportation policies (depicted in the table below), Dr. Smith found that large numbers of Black students were eligible for transportation based on these policies. (Id. at ¶ 15a-d, 16). Accordingly, rather than discriminating against Black students, the hazard boundary and special circumstance boundary transportation policies actually expand student access to transportation. (Id. at ¶ 17).

<b>Hazard Boundary (HB) and Special Circumstance (SCB) Boundary Eligibility</b>									
School Year	Eligible Black Students	Eligible White Students	Eligible Other Students	Black Students Eligible by HB and SCB Policies	White Students Eligible by HB and SCB Policies	Other Students Eligible by HB and SCB Policies	% of Black Eligible by HB and SCB Policies	% of White Eligible by HB and SCB Policies	% of Other Eligible by HB and SCB Policies
13-14	3,374	3,506	1,029	958	173	159	28%	5%	15%
14-15	3,199	3,437	1,230	834	182	210	26%	5%	17%
15-16	3,839	3,370	1,451	1,001	182	230	26%	5%	16%
16-17	3,529	3,329	1,877	982	164	318	28%	5%	17%
17-18	3,378	3,312	1,970	902	160	333	27%	5%	17%
18-19	3,282	3,305	2,071	912	169	324	28%	5%	16%

Having concluded that the District’s transportation policies do not unduly burden Black or White students with respect to access, Dr. Smith next analyzed actual rider data and route time data, disaggregated by race, to determine whether the District’s implementation of bus transportation unduly burdens Black or White students with respect to route length. (Smith Aff., ¶¶ 18, 20-21). After controlling for distance transported, Dr. Smith found that – apart from the 2015-16 school year – the average route time for Black students was shorter or no different than the average route time for White students. (Id. at ¶ 31). He therefore concluded that there was no disproportionate burden systematically or consistently imposed on Black students in terms of transportation time. (Id. at ¶ 32). The table below shows the results of his analysis:

Year	Black Avg RT	White Avg RT	Other Avg RT	Significant Differences?
2015-16	50.8	48.8	51.2	Black Time Longer Than White Time; No Difference with Other Time
2016-17	51.8	52.6	51.9	White Time Longer Than Black Time; No Difference with Other Time
2017-18	45.9	51.2	47.3	White and Other Time Longer Than Black Time
2018-19	46.8	46.6	45.3	No Difference with White Time; Black Time Longer Than Other Time
Avg RT = Average route time in minutes; means presented are adjusted for the ANCOVA analysis; sample sizes are equivalent to sample sizes in the ANOVA analyses				

Finally, Dr. Smith analyzed the percentage of eligible students who actually rode the bus, disaggregated by race. (Id. at ¶ 33). He concluded that the data – outlined in the table below – varied and there was no clear pattern showing any burden on Black or White students. (Smith Aff., ¶ 34). The data was merely neutral. (Id. at ¶ 35).

Bus Usage Year-to-Year									
School Year	Eligible Black Students	Eligible White Students	Eligible Other Students	Actual Black Riders	Actual White Riders	Actual Other Riders	% of Eligible Black Who Ride	% of Eligible White Who Ride	% of Eligible Other Who Ride
15-16	3,839	3,370	1,451	1,574	1,522	813	41%	45%	56%
16-17	3,529	3,329	1,877	2,364	1,703	1,328	67%	51%	71%
17-18	3,378	3,312	1,970	2,522	1,700	1,384	75%	51%	70%
18-19	3,282	3,305	2,071	2,480	1,611	1,454	76%	49%	70%

In sum, Dr. Smith’s analyses make clear that the District’s transportation system does not disproportionately burden students on account of race. (Id. at ¶ 38).

**D. The United States' Review of the District's Student Transportation System Confirms that the District Provides Transportation to Students on a Non-Segregated and Non-Discriminatory Basis.**

In addition to the District's review of its own transportation system, the United States conducted an independent review of the District's transportation system confirming that the District provides transportation to students on a non-segregated and non-discriminatory basis. To conduct its review, the United States obtained electronic files – also known as shape files – from the District providing graphic representations of the routes that each bus travels to and from the various schools for the 2017-18 school year.<sup>3</sup> Those files were used in conjunction with District-provided spreadsheets containing student rider information for each bus operating that year. The ridership information included each rider's name, identification number, school, grade, race, home address, pick-up location, and drop-off location.

In analyzing the transportation information provided by the District, the United States engaged its own GIS experts to generate transportation maps for each Huntsville City school. These maps depicted student home addresses (color-coded by race), pick-up locations, and lines showing the path of each bus route.

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<sup>3</sup> The transportation review and analysis undertaken by the United States is extremely detailed and time consuming. In order to make the most effective use of its resources, the United States focused on the most recent year of transportation data available at the time it commenced its review and analysis. Because there have not been major changes in the manner in which the District develops routes and pickup stops, much less major changes in the routes and stops themselves, the United States' review and analysis provides a reliable picture of the District's transportation practices.

Using the maps and the student rider spreadsheets, the United States reviewed all of the District’s bus routes, except M-to-M routes, for indicators of race-based segregation, including overlapping bus routes in which buses with single-race ridership serve the same school(s).<sup>4</sup> At the conclusion of its review, the United States determined that there were no such indicators of race-based segregation. In light of this determination and the District’s practices outlined above, the United States concluded that the District has eliminated the vestiges of segregation in student transportation.

**E. The District has in Good Faith Complied with and Shown a Commitment to Its Desegregation Plan.**

“To be entitled to unitary status, not only must a school system eliminate the vestiges of *de jure* segregation to the extent practicable, but ‘local authorities [must] have in good faith fully and satisfactorily complied with, and shown a commitment to, the desegregation plan.’” Duval Cty. Sch., 273 F.3d at 974 (quoting Oklahoma City Pub. Sch. v. Dowell, 498 U.S. 237, 249-50 (1991)). To determine if a school board has shown good faith, courts consider whether the school board’s policies and actions “form a consistent pattern of lawful conduct directed to eliminating earlier violations.” Freeman, 503 U.S. at 491; see also Lockett v Bd. of Educ. of Muscogee Cty. Sch. Dist., 111 F.3d 839, 843 (11th Cir.

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<sup>4</sup> As noted above and in the parties’ Motion, a grant of partial unitary status on transportation does not relieve the District of its student assignment obligations, including its operation of a M-to-M program and its provision of transportation to students participating in that program. By virtue of the M-to-M program’s structure, M-to-M bus routes do have single-race ridership but that ridership is not a vestige of the dual system.

1997). In addition to looking backward to evaluate the District's conduct since implementation began, a good faith inquiry "requires that the court look into the future and consider whether the school district's record of performance inspires confidence that the district will continue to be concerned with the equality of educational opportunity for all of its students." Hoots v. Pennsylvania, 118 F. Supp. 2d 577, 588, 612 (W.D. Pa. 2000) (citing Mills v. Freeman, 942 F.Supp. 1149 (N.D. Ga. 1996)). The inquiry is, *in toto*, measuring the District's attitude, policies, decisions, and actions. See Hoots, 118 F.Supp.2d at 612 ("Good faith may also be measured by school board attitudes, policies, and decisions.").

i. The District has shown Good Faith since the Implementation of the Consent Order.

Since implementation of the 2015 Consent Order, the District has shown a consistent pattern of lawful conduct complying with all transportation obligations in both the 2015 Consent Order and the 1970 Order. Not only has the District worked tirelessly to collect, verify, and analyze the transportation data required for this Motion, but it has also spent substantial time over the past four years working with the United States to provide the information and data necessary for the United States to complete a full and independent review of the District's transportation system. (Gillies Aff., ¶¶ 54-55; Finley Aff., ¶¶ 6-8). This process involved many conference calls, site visits, and e-mail exchanges. (Finley Aff., ¶ 8); see Duval Cty. Sch., 273 F.3d at 974 (considering District's extensive consultation with

plaintiff during implementation as part of good faith analysis). During that time, the District acted promptly and in good faith to address any issues relating to transportation raised by the United States.

District personnel have also had daily communications with the Transportation Contractor regarding route lengths, efficiency, bus ridership, and the need for new stops or routes. (Gillies Aff., ¶ 20). Gillies has regularly communicated with the Transportation Contractor regarding complaints received from parents, and he has helped the Transportation Contractor develop the best way to respond to each. (Id.). Gillies has also performed his own daily analysis of arrival times, GPS bus tracking data, and route lengths to ensure maximum efficiency, accurate billing, and on-time proficiency. (Id. at ¶ 21).

Finally, the District has acted on the community feedback it has received regarding transportation. The Desegregation Advisory Committee (“DAC”), in particular, has provided feedback on transportation each year as part of its annual report. (Finley Aff., ¶ 9); see Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty., Fla., 244 F.3d 927, 945-46 (11th Cir. 2001) (considering District’s consultation with community members as part of good faith analysis). That feedback has led to many improvements in the District’s transportation system. (Finley Aff., ¶ 10). For example, the DAC expressed concerns about the District’s transportation system in both the 2016-17 Annual Report and the 2017-18 Annual

Report. (See Doc. 575-1 p. 10; Doc. 575-2, p. 6; Doc. 589, pp. 38-39 39). In response to those concerns (and concerns raised by the community at-large), the District re-bid its transportation services and selected a new bus contractor for the 2018-19 school year. (See Doc. 589, p. 56) (“The Board agrees that there were issues with the District’s transportation provider last school year, and this contributed to the Board’s decision to select a new bus contractor for the 2018-19 school year.”).<sup>5</sup>

ii. In the future, the District will Continue to Implement a Non-Discriminatory Transportation Plan.

Superintendent Christie Finley has reviewed the work of Scott Gillies, Dr. Smith, and Matt Sachs, and she has reviewed the District’s current transportation plans and procedures. (Finley Aff., ¶ 11). She believes in ensuring that the District’s students are able to get to school on safe buses in a timely and efficient manner. (Id. at ¶ 12). Thus, Superintendent Finley plans to continue the process of working with the Transportation Coordinator to ensure that the District’s transportation plans are fair and non-discriminatory. (Id. at ¶ 13). She intends to continue the use of the 2-Mile and 5-Mile Rule boundaries to ensure consistency in the District’s transportation plan. (Id. at ¶ 14). She also intends to continue the

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<sup>5</sup> While not directly related to the transportation Green factor, the DAC also raised concerns about potential transportation related barriers to participation in extracurricular activities by minority students. (Doc. 474-1, p.14; Doc. 575-1, p. 6). While the District did consider providing transportation for extracurricular activities, the District ultimately chose an alternative plan because of the high cost associated with additional bus routes. (Doc. 474-2, p. 6). The District implemented the Power Hour program in each of its High Schools in an effort to improve extracurricular participation. (Doc. 589, p. 28).

hazard and special circumstance boundaries because many of the students served by those boundaries are the most vulnerable in the District. (*Id.* at ¶ 15). Importantly, Superintendent Finley has no plans to make any major changes to the District’s transportation policies or current procedures. (*Id.* at ¶¶ 16-17).

In summary, Superintendent Finley plans to continue using the District’s current transportation policies and procedures should the Court grant the Parties’ Motion. (Finley Aff., ¶ 17).

#### **IV. Applying the Legal Framework**

When considering a petition for unitary status, this Court must determine whether the evidence shows that “the [District] ha[s] complied in good faith with the desegregation decree since it was entered, and ... the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma Cty., Okl. v. Dowell, 498 U.S. 237, 249-50. The parties submit that the evidence meets this standard.

The order applicable to the District directed the District to regularly re-examine its transportation system and to design its “[b]us routes and assignment of students to buses [to ensure] the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.” (Doc. 299-1, p. 9). The testimony of Gillies, Sachs, Dr. Smith, and Superintendent Finley – together with

the independent analysis conducted by the United States – demonstrate that the District has done just that. Gillies’s testimony shows that the District regularly re-examines its bus routes to ensure that they are safe, efficient, and timely. Gillies’s testimony also establishes that the District provides transportation on routes based on geographical and economical concerns, not the race of the students. The testimony from Gillies, Sachs, and Dr. Smith demonstrates that the District’s transportation policies are neutral and do not disproportionately burden Black or White students. Finally, the District’s conduct since implementation of the Consent Order, along with the testimony of Gillies and Superintendent Finley, shows the District’s good faith and its continued commitment to operating a non-discriminatory transportation system in the future. Taken together, this evidence demonstrates that the District has eliminated the vestiges of segregation and “has acted in good faith to maintain<sup>6</sup> non-discriminatory practices, [so the Court] may declare the district unitary in [transportation].” Taylor, 965 F. Supp. 2d at 766.

## **VI. Conclusion**

For the reasons discussed, the District has eliminated the vestiges of segregation and demonstrated good faith compliance with its obligations in the area of student transportation. Therefore, the Parties’ Joint Motion for Partial Unitary Status as to Transportation should be granted.

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<sup>6</sup> Although not binding on this Court, many district and circuit courts prefer evidence of approximately three years of sustained non-discriminatory practices, so, where possible, the evidence submitted in support of this Joint Motion dates back at least that far. See, e.g., Monteilh v. St. Landry Par. Sch. Bd., 848 F.2d 625, 629 (5th Cir. 1988).

RESPECTFULLY SUBMITTED this 21 November 2019.

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