

**U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section**

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January 28, 2008

BY U.S. Mail and Facsimile  
Superintendent Myles Wilson  
Fayette County School District  
P. O. Box 9  
Somerville, TN 38068  
Facsimile (901) 466-3725

Thomas Minor  
Minor & Johnston PC  
124 E. Market Street  
Somerville, TN 38068  
Facsimile (901) 465-4465

**Re:** McFerren & United States v. County Board of Education of Fayette County,  
C.A. 65-136

Dear Messrs. Wilson and Minor:

Thank you for helping to make the arrangements for my September visit to the schools operated by the County Board of Education of Fayette County ("the district"). Please express my appreciation to all the school district officials with whom I met during my visit.

We have reviewed the district's responses to our recent information request, as well as the information that I received during my visit. Based on that review, we have identified several areas where we believe that the district needs to take steps to comply with the existing desegregation orders and applicable federal law. Moreover, our review has raised additional questions, both of which are set forth below.

**Student Assignment**

**Assignment to schools**

The district has made several changes to the structure of its school system without obtaining approval of the court or providing notice to the court or the United States. In 1978, the date of the last docket entry in this case addressing student assignment, the district operated nine elementary schools, each of which went through the 8<sup>th</sup> grade, and one high school with two campuses, one for ninth and tenth grades, and a second for eleventh and twelfth grades. For the

1979-80 school year, in accordance with the court's July 1975 Order, the district paired Moscow and Springhill elementary schools, and thus operated eight elementary schools and one high school.

For the 2007-08 school year, the district is operating seven elementary schools, two junior high schools, and one high school. Since the 1980 school year, the district consolidated LaGrange Elementary with Moscow Elementary, constructed and opened two junior high schools, and changed the grade structure of each elementary school, in particular Oakland Elementary. Additionally, the district failed to close Somerville Elementary and rezone Somerville's students to Jefferson Elementary as was recommended by consultant Dr. Larry Winecoff and ordered by the court in July 1975. Each of these actions was taken without approval of the court or notice to the court or the United States.

A district such as Fayette which was once segregated by law and is still under a court order to desegregate has a duty and a responsibility "to take all steps necessary to eliminate the vestiges of the unconstitutional de jure system." Freeman v. Pitts, 503 U.S. 467, 485 (1992). This duty is critically important during times of school construction and closings because the consequences of these choices are far reaching. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 20 (1971). Not only has the district operated outside the relevant court orders, the actions of the district, to date, have not further desegregated the district's schools. Using a fifteen percent plus/minus variance from the district wide-ratio of black to white elementary students for the 2007-2008 school year, all of the district's elementary schools are racially identifiable. Data provided by the district show that in August 2007, black students comprised 57% (1125/1982) of the student enrollment in the district's elementary schools but comprised only 20% (52/258) of the student enrollment in Somerville Elementary, despite that school's central location in the county, and only 24% (141/595) of the student enrollment at Oakland Elementary, the district's largest elementary school. Both Somerville and Oakland were white schools when this lawsuit was filed and continued as such under the district's freedom of choice plan in the 1960s.

Moreover, the district has missed opportunities to further desegregation. As stated above, in 1975, Dr. Larry Winecoff worked as a consultant to the district and recommended closing Somerville Elementary and transferring all students to Jefferson Elementary. Consultant Report #2, May 16, 1975, submitted to the court on May 30, 1975. On June 5, 1975, the court entered an order, with the support of the district, amending the district's desegregation plan to require implementation of the recommendations in this report, including the closing of Somerville Elementary. The closing of Somerville and transferring of students to Jefferson was never undertaken by the district.

Secondly, the district had a recent opportunity to address the racial identifiability of Oakland Elementary. Last year, the district was presented with an opportunity to further desegregate the student enrollment of several schools when addressing concerns of overcrowding at Oakland Elementary. Oakland's attendance zone is between the zones of two elementary schools with predominantly black student populations—Southwest Elementary, which is 87% black, and Northwest Elementary, which is 88% black. Both of these schools have small student

populations in buildings that are under-utilized: Southwest's enrollment this year is 119 students in a building with a capacity for 450 students and Northwest's enrollment this year is 156 students in a building with a capacity for 400 students. Yet, when the district moved students to address the overcrowding at Oakland Elementary, the district moved the fifth and sixth grades to West Junior High instead of utilizing the available space in these neighboring elementary schools. Not only did this fail to further desegregation at the elementary school level, it had a negative impact on the racial make-up of the district's two junior highs. In the 2006-07 school year, West Junior High was 48% black and East Junior High was 74% black. With the addition of the 5<sup>th</sup> and 6<sup>th</sup> grades from Oakland to West and the addition of 9<sup>th</sup> grade to the high school, West's enrollment is now 41% black and East's enrollment is 78% black.

Given the district's affirmative duty to desegregate, please state what consideration has been given to addressing the racial identifiability of these schools. Please specifically address what consideration has been given to redrawing the attendance zones of Oakland, Southwest, and Northwest, as well as the attendance zones of Somerville and Jefferson. If a new school is built in the West end of the county as planned for by the district in its five year plan, how will attendance zones be affected?

### Transfers

Last spring, the Division requested transfer data from the district. The information provided in response, however, is incomplete in many respects. The information request sent to the district asked for the following information for the school years 2004-05 to 2006-07: the total number of students who have requested within-district transfers, indicating for each such request: the student's grade level, race or ethnic group, sending school (school which student is zoned to attend), receiving school (school to which transfer was sought), reason for the request, whether the transfer was granted or denied by the district, and the reason for granting or denying the transfer.

In response to the information request, the district provided charts for each school. These charts, however, are missing much of the requested data. Some of the schools failed to provide the race for the students who requested transfers, while others failed to provide the reasons for transfer requests. The charts provided for Southwest Elementary simply state that no data is available prior to 2006-07, although other schools have data regarding Southwest Elementary. Because of the lack of information, the Division cannot evaluate the propriety of many of the approved transfers. For example, Jacob Bennett and Taylor Bennett were permitted to transfer from Central to Oakland for the 2004-05 school year. Both students are white, and thus the transfers had a negative impact on the racial make-up of both schools, however, the district failed to state the reason for their transfer request. Other students are listed as being permitted to transfer from Central, but neither the race of these students nor the reason for the transfers is given.

We again request the district to provide complete information on the number of students who have requested within-district transfers, indicating for each such request: the student's grade

level, race or ethnic group, sending school (school which student is zoned to attend), receiving school (school to which transfer was sought), reason for the request, whether the transfer was granted or denied by the district, and the reason for granting or denying the transfer. Please provide the information for the 2004-05 school year to the present, including transfer information for the current school year. To make the task easier, the Division is only concerned with requests by students to attend a school other than the one they are zoned to attend based upon their home address, i.e., transfers requested under the Board of Education's Policy 6.206. We do not wish to receive information for students who have moved to a new attendance zone or have chosen to attend private schools. If the reason for a transfer is a parental choice because of NCLB, please refer to NCLB instead of simply saying parental choice.

Although the transfer information provided by the district is incomplete, the information still raises concerns that intra-district transfers are being approved even though the transfers hinder the district's efforts to desegregate, are inconsistent with the district's obligations and violate the district's transfer policies.

The district's written policy states "[e]very student is strictly required to attend the elementary school assigned to serve the attendance zone in which the student legally resides with his/her parent/guardian." Board Policy 6.206. Transfer requests are only considered for the following reasons: majority to minority transfers, instructional requirements for special education students, medical conditions, safety conditions, severe family hardship, and for the children of faculty members. Under the relevant desegregation orders, all students are required to attend the school to which they are zoned, with the only exception being majority-to-minority transfers. See Court Order of January 9, 1970 (approving and ordering into implementation the district's proposal that "all of the children in each particular zone [to] attend the elementary school shown in each such zone" and approving majority-to-minority transfers) and Court Order of June 5, 1975 (adopting the Consultant's Report of May 16, 1975 which states that all students should attend the zone in which they live).

The data provided by the district indicates that students are being permitted to transfer for reasons other than those permitted by the district's policies or relevant court orders. For example, multiple students have been permitted to transfer for "change in principal" and parent request, choice or recommendation when NCLB is not relevant. For example, several children transferred out of Jefferson to Central and Somerville over the course of three years because of "changes in principal." Additionally, numerous students were permitted to transfer in and out of Northwest based solely on parent recommendation.

In the 2006-07 school year, 16 students are listed as having transferred out of Oakland Elementary to Northwest Elementary and Southwest Elementary with the reason listed as "overcrowding/invitation." Of these students, 9 were black, 1 was Hispanic, and 6 were white. Were all students at Oakland invited to transfer because of overcrowding? If not, how were students selected to receive the invitation? Were these students invited to attend any other district school? Was transportation provided?

Finally, the forms indicate there have been no majority-to-minority transfer requests in the last several years. What steps is the district taking to advertise the majority-to-minority transfer option?

### **Faculty and Staff Assignment**

In the 2007-08 school year, black teachers comprised 48% (148/309) of all teachers assigned to the district's elementary schools. The faculty at Somerville and Oakland, the district's two schools with the highest percentage of white students, are only 12% and 25% black, respectively. In contrast, the faculty at Northwest and Jefferson, the district's schools with the largest percentage of black students, is 72% and 73%, respectively.

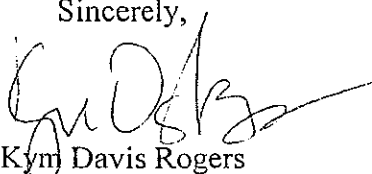
Similarly, the racial compositions of the staff at some schools deviate substantially from the racial composition of the staff (*i.e.*, non-certified employees, including secretaries, data clerks, food service, and custodians) in the district as a whole. In the 2006-07 school year, black personnel comprised 81% (203/252) of the staff employed by the district, but 37.5% (6/16) of the staff at Somerville Elementary.

The racial composition of the faculty and staff at these schools clearly identifies the racial composition of the student body. Please describe what steps, if any, the district has considered to address this situation.

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We request that you provide responses to our inquiries by February 15, 2007. If any questions arise, I can be reached at (202) 353-3504. Thank you for your cooperation and assistance.

Sincerely,



Kym Davis Rogers  
Trial Attorney

Educational Opportunities Section