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March 5, 2007

Re: Compliance with Court Ordered Desegregation Plan

Dear School Board Member,

On January 16, in response to my request for a copy of the federal court order, I received from Mr. Wilson a copy of the Revised Plan of Desegregation for the Year 1969-70 [hereinafter referred to as "Plan"]. The document I received is consistent with what has been provided to others who have recently made the same request.

I am attaching a copy of this Plan in a revised format since several of you, although you are responsible for compliance with this Plan, have apparently not been provided with a copy of it.

In the second paragraph of section VIII this Plan refers to a "further revised plan to be filed on or before January 1, 1970." This implies that there have been amendments to the attached Plan. Over five weeks ago, I asked Mr. Wilson if there had been any amendments to this Plan, but he has never responded.

I would certainly have expected to receive the most current implementation of the court ordered plan when I requested a copy of it. In the discussion which follows, I am assuming that the attached Plan is the current plan in effect.

After reading this Plan on several occasions, listening to commentary from some of you and Mr. Wilson regarding "the court order", and researching various aspects of the county's school system, I have become concerned that the Fayette County Board of Education is not in compliance with the requirements of our court ordered desegregation plan. It also appears there is some misinformation regarding whether or not the school zone lines can be changed.

Let me address the issue of changing school zone lines first, then I will discuss non-compliance.

### **Changing School Zone Lines**

In his sworn testimony on August 2, 2001, before the administrative law judges who were conducting hearings regarding the county's growth plan dispute, Mr. Wilson said:

We are under the Federal Court Order. We can't transfer across the boundary lines unless there's some kind of hardship or **you go back through the courts to get their approval** and so we had to build new schools in order to reduce [the teacher/student mandated ratio] throughout the State Of Tennessee.

At the Building Committee meeting on February 24 the following exchange took place:

Hoskins: They moved the boundary lines, too, where the kids will be going to different schools. [Referring to Shelby County]

Wilson: Right.

The court order already speaks to that.

Of course, I didn't get into this. We don't need to deal with this. And we aren't going to do that.

Whenever this comes up, we can speak to that. But the court order already speaks to when a zone becomes overcrowded. What you should do. So if you didn't do that, **you would be violating the law if you changed any lines.**

Shelton: That's what I'm saying. We're not changing any lines.

In discussions, it is made to appear that there is absolutely no way that the school zone lines can be changed from the way they were set decades ago in the Plan. Mr. Wilson is correct when he says it would be a violation of the law (the court ordered plan) if the lines were simply changed.

What has not been said is the fact, as Mr. Wilson told the judges, that the Board can go back to the courts and get approval for changes to the Plan. This option is further underscored in the attached Section G from the NCLB Public School Choice Guidance. Paragraph G-3 speaks to seeking court approval for amendments to a court ordered plan.

It should be made clear to the public that the school zone lines can, in all likelihood, be changed to reduce the number of students assigned to Oakland Elementary if the Board chose to do so and petitioned the courts to amend the Plan. It is the School Board's choice, not a court mandated requirement at this point, that changing the zone lines for Oakland in order to reallocate a portion of the *entire* school membership without regard to grade has not been pursued as a solution to the Oakland overcrowding.

After all the rhetoric about the "court order" and "not changing lines" over the last few months, it is indeed ironic that Option #2 and Option #3 presented to the Board by Mr. Wilson at the November 30 special meeting both require *zone lines to be changed*. Any solution that removes a grade from Oakland and splits it between Northwest and Southwest will need the Northwest and Southwest zone lines to be changed for that grade in order to designate which children will go to each school.

Why the Board finds it acceptable to change the lines for some grades but has been unwilling to even discuss changing the lines for the entire school is unclear. Ms Lewis told the parents at the West Junior High meeting, "I'm not in agreement with [changing the boundary lines]. And then, if you did do that, you're going to have people that are angry, saying 'Why did you put my house out of the line. I want my child to stay in the line.'" Changing the lines to divide a grade between Northwest and Southwest will run into the same problem, but Ms Lewis and others of you voted to do just that in Option #3. Mr. Wilson sat by and never mentioned that you will be violating the law.

### **Possible Non-Compliance with the Court Ordered Desegregation Plan**

#### **1. Procedure When a Zone Is Overcrowded**

Section II C in the Plan addresses this as follows:

When all schools in a zone are overcrowded, the students living closest to a school in another zone will be transferred across zone boundaries, without regard to race, to the closest school in the county.

As can be seen in the above exchange at the Building Committee meeting on February 24 and on several other occasions, Mr. Wilson has said that the court order speaks to what should be done when a zone becomes overcrowded. He has never explained what the court order actually says to do, only that it speaks to this situation. Likewise, no Board member has ever asked him what action the court order requires, other than Mr. Barnes at Thursday's meeting but that discussion got cut off.

Failure to execute the action designated by the Plan to address the overcrowded condition at Oakland could be construed as non-compliance with the Plan.

Moving children en masse by grade to other schools in lieu of following the Plan's stated course of action to resolve an overcrowded zone might well require the approval of the Court.

Note: The net effect of implementing the Plan's procedure is the same as changing the zone lines except that it must be applied each time overcrowding occurs rather than addressing it on a more long term basis with adjusted zone lines.

#### **2. New Zone Lines**

When East Jr High and West Jr High came on line, two new zones were established.

Did the Board of Education seek court approval for these new zones?

#### **3. Approval of New Construction**

In the second paragraph of Section VIII the Plan says that no contracts for new construction are allowed prior to the approval of a further revised plan. Presumably the revised plan was to include an explanation of any new construction.

This suggests that court approval is required for the construction of new schools.

**4. Choice for Zone III - Jefferson and Somerville**

Section I B sets forth a methodology for allowing students to choose between the schools available within zones I – V. At this time only Zone III contains two elementary schools. All students in Zone III are required to exercise a choice of schools annually.

Is a choice of schools being done each year for Zone III?

The map of school zones provided to me in December shows a zone for Jefferson and a different zone for Somerville. Has a separate zone for each school been approved by the Court?

**5. Transfers Across Zone Boundaries**

Section II specifies only four conditions wherein a student may transfer across zone boundaries:

- A. Change of residence of the entire family to another zone.
- B. Necessity to attend Garnett Special Education School.
- C. When all schools in a zone are overcrowded, the students living closest to a school in another zone will be transferred across zone boundaries, without regard to race, to the closest school in the county.
- D. The children of teachers may attend the school at which their parents teach (where the appropriate grade is available).

The Plan's set of conditions raises quite a few questions about the reasons reported for out of zone transfers (see attached report):

**a. Public School Choice under No Child Left Behind**

The Plan does not allow for transfers based on a parent's choice of school.

Paragraph G-3 in the attached page from the NCLB Public School Choice Guidance says that if choice is not allowed within the parameters of a court ordered plan, then the LEA needs to seek court approval for amendments to the plan.

Has the Court approved amendments to the Plan to accommodate Public School Choice?

**b. Choice NCLB**

According to Mr. Wilson, "Choice NCLB" on the transfers report is not the same as "Public School Choice". Although requested on 1/19/07, no explanation has been provided as to how "Choice NCLB" is administered.

Has the Court approved amendments to the Plan to accommodate "Choice NCLB"?

**c. Hardship**

A hardship transfer is not provided for in the Plan.

Has the Court approved amendments to the Plan to permit hardship transfers?

**d. Voluntary Transfers**

No provision for a voluntary transfer is included in the Plan.

Has the Court approved amendments to the Plan to allow voluntary transfers?

**e. Majority to Minority Transfers**

The establishment of a 25% minority at certain schools appears to have been a requirement of the initial maximums set for formerly white schools at the time the plan was implemented.

Adjusting the minority balance in a school by means of a transfer across zone boundaries is not prescribed by the Plan.

A "majority to minority" transfer that contributes to the overcrowding of a school which is to then be corrected by transferring students out of the overcrowded school "without regard to race" appears to make no sense within the framework of the Plan.

Has the Plan been amended to allow "majority to minority" transfers?

**f. Transfers at Parent's Request**

I personally know of two transfers to Oakland which were requested by parents simply because they wanted the first child to go to Oakland then later asked that the second child go there because the first child was there. Neither request was done through any NCLB process.

Has the Plan been amended by the Court to allow transfers based solely on the personal desires of the parents?

**6. Board Policies in Conflict with the Plan**

**a. 6.205 Student Assignment**

Paragraph 2 of this policy states:

Parents may elect to enroll their children in any school in the school system provided the parent provides transportation to and from that respective school and provided that such choice does not cause overcrowding in the chosen school.

This policy raises the same question as 5.f. above.

**b. 6.206 Transfers Within the System**

This policy permits consideration of a transfer request for reasons of racial majority to minority schools and various hardships.

This policy raises the same questions as 5.c. and 5.e. above.

I would think that compliance with the court ordered plan would be facilitated if the applicable school policies conformed to the requirements of the Plan.

Note: These two policies are also in conflict with one another. The transfer policy says "Every 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." In direct opposition, the Student Assignment policy says "Parents **may elect** to enroll their children in any school in the school system."

Note: The transfer policy says that transfers "shall be considered only upon **written request** to the director of schools." I personally know of one transfer where a written request was not required.

I thought you should be made aware of these areas where the actions and/or policies of the Board of Education may not be in compliance with the court ordered plan.

Sincerely,

*Dana Pittman*

Dana Pittman

PS: I am also attaching a report of Public School Choice transfers. This report documents 14 additional transfers to Oakland which are not included in the 105 count frequently cited at meetings.

cc: Myles Wilson, Superintendent of Schools

Attached: Reformatted copy of Revised Plan of Desegregation for the Year 1969-70  
Section G from the NCLB Public School Choice Guidance  
Out of Zone Transfers Report  
Public School Choice Transfers

# No Child Left Behind Public School Choice

## *Non-Regulatory Guidance*

Draft -- February 6, 2004

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### **G. DESEGREGATION AND CIVIL RIGHTS ISSUES**

**G-1. Must an LEA provide the option to transfer if the LEA is complying with a desegregation plan?**

Yes. If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from offering students the option to transfer *[34 C.F.R. Section 200.44(c)(1)]*.

**G-2. What if a desegregation plan limits the opportunity for students to transfer?**

The LEA must still implement public school choice under Title I. However, the LEA should take into account the requirements of the plan in determining how to implement the Title I choice option *[34 C.F.R. Section 200.44(c)(2)]*.

**G-3. What if the desegregation plan is a court-ordered plan or a plan entered into with the Department's Office for Civil Rights?**

An LEA that is operating under a court-ordered plan should first determine whether it is able to offer choice within the parameters of its plan. If it is not able to do so, the LEA needs to seek court approval for amendments to the plan that permit a transfer option for students enrolled in schools identified for school improvement, corrective action or restructuring. If the LEA is unable to secure changes to the plan that permit a transfer option, the LEA will be out of compliance with Title I. If that occurs, it should notify the SEA and this Department of its request to the court and of the court's decision *[34 C.F.R. Section 200.44(c)(3)]*.

## Fayette County Schools

### Oakland Elementary

Total number of students out of zone - 105

From Central (Choice NCLB) - 13

Majority to Minority Transfer - 36

From Somerville (Choice NCLB) - 22

From Southwest (Choice NCLB) - 6

From Northwest (Choice NCLB) - 7

From LaGrange-Moscow (Choice NCLB) - 4

Parent works at Oakland (Court order) - 6

Hardships granted - 10

Homebound - 1

### Southwest

From Oakland (Volunteered to transfer) - 5

From Oakland (Parent works at Southwest) - 1

From Central - 1 PK - 2 Hardships - 2

### Central

From Somerville - Hardship - 9

From Jefferson - Hardship - 5

### Jefferson

From Oakland - Hardship - 4

From LaGrange/Moscow - Hardship - 1

### LaGrange - Moscow

From Central - Hardship - 1

### Northwest

From Oakland - Volunteered to transfer - 13

### West Jr. High

From East - Choice - 8

### Somerville

From Central - Choice NCLB - 39

From Jefferson - same zone (not out of zone) - 6

### East Jr. High

None

Note: Students and parents names, addresses, telephone numbers and SS#'s cannot be given to the public because of privacy laws.

# MEMORANDUM

TO: Myles Wilson  
 FROM: James Teague  
 DATE: January 3, 2007  
 RE: Public School Choice numbers

The 2004-2005 school year was the first year that Public School Choice was implemented in Fayette County. The following transfers have been documented based on Public School Choice as it applies to the No Child Left behind Act.

## 2004-2005 (11 transfers)

Transferred from Southwest to Oakland

Grade K – 1 student  
 Grade 2 – 1 student  
 Grade 4 – 1 student  
 Grade 5 – 1 student  
 Grade 6 – 2 students

Transferred from Central to Oakland

Grade 1 – 1 student  
 Grade 3 – 1 student  
 Grade 4 – 1 student

## 2005-2006 (11 transfers)

Transferred from Central to Somerville

Grade K – 1 student  
 Grade 1 – 1 student  
 Grade 2 – 1 student  
 Grade 3 – 1 student

Transferred from Central to Oakland

Grade 2 – 1 student  
 Grade 5 – 2 students

Transferred from Central to Jefferson

Grade K – 1 student  
 Grade 4 – 1 student

Transferred from Southwest to Oakland

Grade 1 – 1 student  
 Grade 5 – 1 student

## 2006-2007 (4 transfers)

Transferred from East Junior to West Junior

Grade 7 – 2 students  
 Grade 8 – 1 student

Transferred from Central to Somerville

Grade 6 – 1 student