**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**DALLAS DIVISION**

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| **UNITED STATES OF AMERICA,** | § | |
| | § | |
| **Plaintiff,** | § | |
| | § | |
| **v.** | § | **Civil Action No. 3:70-cv-4101-O** |
| | § | |
| **THE TEXAS EDUCATION AGENCY, et al.,** | § | |
| | § | |
| **Defendants.** | § | |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Currently before the Court is Richardson Independent School District's ("RISD") Motion for Declaration of Unitary Status (ECF No. 18). The Court conducted an evidentiary hearing on this matter beginning April 24, 2013. The Court sets out its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). The following findings of fact and conclusions of law are based upon the pleadings, testimony, evidence, and exhibits admitted at the hearing. The Court has reviewed the record in its entirety, and had the opportunity to observe the witnesses presented at the hearing to assess their credibility and weigh their testimony. The Court provides a clear understanding of the bases of its decision in accordance with the level of detail required in this Circuit. *See Century Marine Inc. v. United States*, 153 F.3d 225, 231 (5th Cir. 1998). Any finding of fact that should be construed as a conclusion of law is hereby adopted as such. Any conclusion of law that should be construed as a finding of fact is hereby adopted as such. For the reasons explained below, the Court finds that RISD's Motion for Declaration of Unitary Status (ECF

No. 18) should be and is hereby **GRANTED**.

## I. PROCEDURAL & FACTUAL BACKGROUND

The Procedural and Factual Background is fully set out in the Court's July 27, 2012 Findings of Fact & Conclusions of Law ("July 2012 Findings"). In sum, the Court previously found RISD unitary in all respects except for the areas of student assignment in its elementary schools as well as faculty and staff assignments. The Court held an evidentiary hearing beginning April 24, 2013, to address these remaining issues. The matter is ripe for determination.

## II. ANALYSIS

"The ultimate inquiry in determining whether a school district is unitary is whether (1) the school district has complied in good faith with desegregation orders for a reasonable amount of time, and (2) the school district has eliminated the vestiges of prior de jure segregation to the extent practicable." *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 297 (5th Cir. 2008) (citing *Freeman v. Pitts*, 503 U.S. 467, 492, 498 (1992); *Hull v. Quitman Cnty. Bd. of Educ.*, 1 F.3d 1450, 1454 (5th Cir. 1993)). The Court has already found that RISD complied in good faith with the Desegregation Order in this case for a reasonable amount of time. *See* Findings 4-5, July 27, 2012, ECF No. 127. Nevertheless, Plaintiff has continued to argue that RISD failed to comply in good faith. The Court's previous findings and conclusion with respect to RISD's good faith compliance stand. Therefore, the Court need only address the second prong of the unitary analysis: whether RISD has eliminated the vestiges of prior de jure segregation to the extent practicable.

"Regarding the requirement that a school district eliminate the vestiges of prior de jure segregation to the extent practicable, 'every reasonable effort [must] be made to eradicate segregation and its insidious residue,' although complete racial balance is not required." *Anderson*,

517 F.3d at 298 (quoting *Ross v. Hous. Indep. Sch. Dist.*, 699 F.2d 218, 227-28 (5th Cir. 1983)). "Rather, the emphasis is on whether 'the school district has done all that it could to remedy the segregation caused by official action.'" *Id.* (quoting *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1037, 1314 (5th Cir. 1991)); *see also United States v. Fordice*, 505 U.S. 717, 728 (1992) ("[W]e have consistently asked whether existing racial identifiability is attributable to the State . . . ."). "To guide courts in determining whether the vestiges of de jure segregation have been eliminated as far as practicable, the Supreme Court has identified several aspects of school operations that must be considered, commonly referred to as the *Green* factors: student assignment, faculty, staff, transportation, extracurricular activities, and facilities." *Anderson*, 517 F.3d at 298 (citing *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 250 (1991); *see also Green v. Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430, 435 (1968)). The Court turns first to the issue of student assignment in RISD's elementary schools before addressing the issue of faculty and staff assignments.

**A. Student Assignment**

In its July 2012 Findings, the Court declared that RISD had achieved unitary status with respect to student assignment at the high-school and junior-high levels. *See* Findings 6-10, July 27, 2012, ECF No. 127. The Court withheld entering a finding of unitary status at the elementary-school level because RISD had failed to meet its burden of demonstrating that elementary school assignments were not vestiges of de jure segregation. *See id.* at 10-15. The Court concluded that RISD had not presented any evidence that it temporarily achieved maximum practicable desegregation before subsequent demographic changes intervened resulting in re-segregation. *See id.* The Court also concluded that RISD had not demonstrated with argument or evidence that

further desegregation is impracticable. *See id.* Therefore, the Court directed RISD to either remedy these briefing deficiencies or construct a plan to achieve further desegregation in the area of elementary student assignment. *See id.* at 18-19, 21. RISD submitted additional evidence and argument asserting it achieved unitary status. Based on the evidence and additional briefing, the Court finds that RISD has achieved unitary status with respect to student assignment in RISD's elementary schools, and any further efforts to desegregate are impracticable.

The Court begins its analysis following the directives of Supreme Court precedent. *See generally Freeman v. Pitts*, 503 U.S. 467 (1992). "As the de jure violation becomes more remote in time and . . . demographic changes intervene, it becomes less likely that a current racial imbalance in a school district is a vestige of the prior de jure system." *Id.* at 496. Moreover, the "causal link between current conditions and the prior violation is even more attenuated if the school district has demonstrated its good faith." *Id.* Here, the Desegregation Order has governed RISD's actions since 1970. During the past four decades, RISD has taken great strides to become compliant with the 1970 Desegregation Order and the subsequently entered 1997 Plan. *See, e.g.*, Findings 5, July 27, 2012, ECF No. 127. Because of these efforts, the Court found in its July 2012 Findings that RISD was in good faith compliance with the 1970 Desegregation Order. *See id.* Furthermore, the Court notes that RISD has filed annual reports over this time frame detailing the racial composition of its elementary school students. During this time, Plaintiff never objected to these reports, much less challenged the elementary student assignments or faculty and staff assignments in RISD. It was not until RISD moved for declaration of unitary status, some forty years after the Court entered the 1970 Desegregation Order, that Plaintiff raised objections to what it believes is a continued unconstitutional practice.

Against this backdrop, Plaintiff objects that RISD's reassignment practices have caused or contributed to racial disparity or imbalance in RISD. According to Plaintiff, RISD's reassignment practices, which include overflows, intra-district transfers, relocations, magnet school assignments, and majority to minority transfers, further segregated RISD. The Court has already heard, considered, and ruled on Plaintiff's objections to RISD's reassignment practices. *See, e.g.*, Findings 5, July 27, 2012, ECF No. 127. For instance, in its July 2012 Findings, the Court found that Plaintiff had complied in good faith with the Court's Desegregation Orders in this case and that the cumulative effect of transfers authorized by RISD was not segregative. *Id.* Nevertheless, out of an abundance of caution, the Court considers Plaintiff's theory that RISD's reassignment practices increased racial disparity in RISD.

Plaintiff contends that the "crux" of this case is whether RISD's actions have caused or contributed to racial disparity throughout the district. RISD, who has the burden of proof, has demonstrated with argument and evidence that the cumulative effect of its reassignments did not cause or contribute to racial disparity in RISD. This conclusion is based, in part, on the credibility of one of RISD's expert witnesses, Dr. Christine Rossell, and the opinions she offered during her testimony. Dr. Rossell testified that RISD has not assigned or reassigned students in a way that has caused or contributed to racial disparity in the district. She used the index of dissimilarity—a tool frequently relied on by courts in desegregation cases—to demonstrate that RISD's reassignment practices have not caused racial disparity in the district. *See, e.g.*, *Coalition to Save Our Children v. State Bd. of Educ.*, 90 F.3d 752, 761-62 (3d Cir. 1996) (concluding that district court's reliance on Dr. Rossell's use of the index of dissimilarity was proper). Further, Dr. Rossell testified that overflows, transfers, magnet schools, and mandatory reassignments have had no measurable effect

on racial imbalance in RISD. Indeed, even Plaintiff's expert, Mr. Matthew Cropper, provides data that buttresses Dr. Rossell's conclusion.[1] According to Mr. Cropper's data, 19,101 out of 20,472 elementary school students attend the school in the neighborhood in which they live, which means 1,371 (6.6%) of elementary school students do not attend their neighborhood school, including 161 white students and 183 black students. *See* Pl.'s Ex. 654 (Cropper Report), at 10. Factoring in that there are more white students in the district than black students, the Court finds that the difference of 22 students is not a measurable difference. To the extent there is a measurable difference, RISD has offered evidence and argument that it has not caused or contributed to racial imbalance in the district. Indeed, the Court has previously found that RISD has complied in good faith with the 1970 Desegregation Order and the 1997 Plan. *See* Findings 4-5, July 27, 2012, ECF No. 127. Accordingly, RISD has met its burden in demonstrating that RISD's actions, when taken cumulatively, have not caused or contributed to racial disparity in the district.

Mindful that Plaintiff does not bear the burden of proof, Plaintiff's presentation does not alter the Court's finding that RISD has not caused or contributed to racial disparity in the district. Plaintiff provided the testimony of three experts in an attempt to show that RISD caused or contributed to racial disparity in the district. Mr. Cropper stated that his report and testimony were offered to "determine if racial disparities amongst schools are attributable to the district's action." *See* Pl.'s Ex. 654 (Cropper Report), at 2. Mr. Cropper concluded that RISD has caused or causes this racial disparity because RISD (1) reassigns white students out of primarily diverse schools and into

[1] As noted below, the Court finds Mr. Cropper's data is of little evidentiary value. That being the case, in this part of the Court's Findings it is using Mr. Cropper's data to demonstrate how even Plaintiff's data, which is being offered to establish that RISD reassigns students in a way that increases the racial imbalance in the district, demonstrates that the cumulative effect of the reassignment practices did not have a measurable difference. The Court further notes that RISD has demonstrated without reference to Mr. Cropper's data that the cumulative effect of RISD's reassignment practices did not cause or contribute to racial imbalance in the district.

predominantly white schools, and (2) reassigns black students out of primarily white schools and into predominantly black schools. Mr. Cropper arrived at this conclusion based on "live in" and "attend in" data. According to Mr. Cropper, this data shows a snapshot of the races of students who in fact attend their "neighborhood school." The Court finds Mr. Cropper's conclusion and the entirety of his testimony problematic for a number of reasons, including the following. First, Mr. Cropper's data does not account for the fact that a number of the reassignments are initiated by a parent. Although RISD ultimately decides whether to grant or deny these reassignments, Mr. Cropper in his data does not account for the myriad reasons why parents make these requests—reasons wholly unrelated to race. Second, as to certain schools opened after 1997, RISD constructed them to relieve overcrowding. Mr. Cropper provides neither credible evidence nor argument to challenge RISD's showing that the redrawing of attendance lines and new school construction were designed to address population growth and overcrowding in these schools. *See, e.g.*, *Flax v. Potts*, 915 F.2d 155, 163 (5th Cir. 1990) (rejecting argument that school district increased segregation by constructing schools "in black neighborhoods when [the district] knows that these schools will continue to be more than 97% one-race schools"); *United States v. Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d 670, 680 (M.D.N.C. 2009) (finding "that any school construction or redrawing of attendance lines was designed to address population growth and school overcrowding, and did not contribute to present racial imbalances"). Indeed, RISD has shown that, for example, new schools such as Audelia Creek and Thurgood Marshall were opened to alleviate overcrowding. It has also shown that the local community supported the school openings, the bi-racial advisory committee ("BRAC")—created by the 1970 Desegregation Order—approved the school openings, and Plaintiff never objected to the school openings. Thus, Mr. Cropper's conclusion with respect to new school construction and the

redrawing of attendance lines that RISD perpetuated or increased racial disparity is against the great weight of the evidence. Finally, Mr. Cropper's report is inaccurate at times. For example, in Mr. Cropper's report on page 9, he states that "[i]n April 1998, there was 1 school . . . that was predominantly black (or over 50% black)." Pl.'s Ex. 654 (Cropper Report), at 9. However, later on that same page, Mr. Cropper highlights three schools that in April 1998 were "predominantly black." *See id.* This inaccuracy damages the overall credibility of Mr. Cropper's report and testimony. For many of the same reasons, the Court gives less weight to another one of Plaintiff's expert witnesses, Dr. Larry Winecoff. Notably, Dr. Winecoff states that he agrees with the conclusions drawn by Mr. Cropper and that he relied on Mr. Cropper's report and findings to draw his own conclusion that RISD caused or contributed to racial imbalance in the district.

Having addressed what Plaintiff deems the "crux" of this case, the Court turns to whether RISD has eliminated the vestiges of prior de jure segregation to the extent practicable in the area of student assignment in elementary schools. "Student assignment within a school district is relevant to determining whether a school district has remedied, to the extent possible, the vestiges of prior de jure segregation." *Anderson*, 517 F.3d at 298-99 (citing *Dowell*, 498 U.S. at 250). "While racial imbalance in a particular school is relevant [to this analysis], racial imbalance, without more, does not violate the Constitution." *Id.* (citing *Cavalier ex rel. Cavalier v. Caddo Parish Sch. Bd.*, 403 F.3d 246, 260 (5th Cir. 2005)). "Once the racial imbalance [in student assignment] due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors." *Id.* (quoting *Freeman*, 503 U.S. at 494). Accordingly, "immutable geographic factors and post-desegregation demographic changes that prevent the homogenation of all student bodies do not bar judicial recognition that the school system is unitary." *Price*, 945 F.2d

at 1314 (quoting *Ross*, 699 F.2d at 225).

The school district may use demographic evidence to rebut the presumption that current racial imbalances are the result of de jure segregation in two ways. *See, e.g.*, *NAACP Jacksonville Branch v. Duval Cnty. Sch.*, 273 F.3d 960, 988-89 (11th Cir. 2001) (Barkett, J., dissenting in part). First, if a district can demonstrate that it temporarily achieved maximum practicable desegregation, but subsequent demographic changes intervened and resulted in re-segregation, the school district has shown that current racial imbalances are the result of demographic factors beyond the district's control. *See Freeman*, 503 U.S. at 493-95. Second, the district may establish that further desegregation of the district is impracticable as a result of drastic changes in the district's demographics. *See Duval*, 273 F.3d at 988-89 (citing *Dowell*, 498 U.S. at 634); *see also Flax v. Potts*, 725 F. Supp. 322, 324 (N.D. Tex. 1989).

Here, neither the case law nor the 1970 Desegregation Order governing this case requires RISD to achieve a specific racial balance. *See Milliken v. Bradley*, 418 U.S. 717, 740-41 (1974); *Ross*, 699 F.2d at 227-28. The Court has not imposed any such requirement, nor does it do so today. As a starting point for its analysis, the Court used a plus or minus 20% deviation from the district-wide average of black, white, or Hispanic students as a guideline for identifying racial imbalance. Using this 20% deviation, there is a total of twenty-four of RISD's elementary schools (59%) that were racially imbalanced in 2012. *See* Findings 11, July 27, 2012, ECF No. 127.[2] As noted above,

[2] In its July 2012 Findings, the Court previously identified twenty-six schools that were racially imbalanced in 2012. *See* Findings 11, July 27, 2012, ECF No. 127. Having rerun the numbers, the Court finds that there were twenty-four elementary schools that had a racial imbalance in 2012. These elementary schools are Aikin, Audelia Creek, Bowie, Brentfield, Canyon Creek, Carolyn G. Bukhair, Dartmouth, Dobie Primary, Dover, Forest Lane Academy, Forestridge, Greenwood Hills, Mark Twain, Mohawk, Moss Haven, O'Henry, Prairie Creek, RISD Academy, Skyview, Spring Creek, Spring Valley, Stults Road, Thurgood Marshall, and White Rock. None of the following schools had a racial imbalance in 2012: Arapaho Classical Magnet, Big Springs, Hamilton Park Pacesetter Magnet, Jess Harben, Lake Highlands, Math/Science/Technology Magnet, Merriman Park, Northlake, Northrich, Northwood Hills, Prestonwood, Richardson

the Court was initially unable to determine whether any of these schools achieved a period of racial balance such that any connection between the de jure segregation and the current racial imbalance was severed. After conducting a second hearing, receiving new evidence, and reading additional briefing, the Court is of the opinion that RISD has demonstrated that a number of the twenty-four schools identified as racially imbalanced as of 2012 had previously achieved racial balance, but subsequent demographic changes intervened resulting in the 2012 imbalance.

One major demographic change in the district overall has been the influx of Hispanic families in the area. In 1970, Hispanics comprised 114 of 16,216 elementary school students (less than 1%), whereas in 2013, Hispanics comprised 9,643 of 22,816 elementary school students (42%). *Compare* Def.'s Post-Trial Ex. 4 (1970 Report), *with* 2013 Annual Report, Ex. 1 (Ethnic Distribution), ECF No. 182. Another major demographic change has been the decrease in the number of white elementary school students in the district. In 1970, whites comprised 15,537 of 17,638 elementary school students (88%), whereas in 2013, whites only comprised 5,931 of 22,816 elementary school students (26%). *Compare* Def.'s Post-Trial Ex. 4 (1970 Report), *with* 2013 Annual Report, Ex. 1 (Ethnic Distribution), ECF No. 182.[3]

Seven of these schools—Dartmouth, Greenwood Hills, Mark Twain, Moss Haven, Skyview, Spring Creek, and White Rock—achieved periods of racial balance before subsequent demographic

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Heights, Richardson Terrace, Richland, Springridge, Wallace, and Yale.

[3] According to RISD's 1970 report, RISD had a total of 491 black elementary school students (3%). *See* Def.'s Post-Trial Ex. 4 (1970 Report). Today, according to RISD's most recent annual report, RISD has a total, 5,175 black elementary school students (23%). *See* 2013 Annual Report, Ex. 1 (Ethnic Distribution), ECF No. 182.

changes intervened making further desegregation impracticable.[4] RISD has shown that these demographic changes and others have happened outside of its control, resulting in the current racial imbalance in the seven schools. For instance, Skyview, which opened in 1971 as a one-race white school, was racially balanced from 1983-1986, before the influx of Hispanic families transformed the school to a predominantly minority school. Another example is White Rock. In 1970, White Rock was 99% white. *See* Def.'s Ex. 262 (School Data), at App. 70-71. From 1970 to 2006, White Rock became more diverse. *See id.* Indeed, in 1998, White Rock was roughly 53% white, 33% black, and 11% Hispanic, and in 2006, it was roughly 46% white, 34% black, and 18% Hispanic. *See id.* This trend towards more racial balance discontinued after an apartment complex in the White Rock area was demolished. Mr. Harkerload, who has worked for RISD for over twenty years and, as part of his role as Deputy Superintendent for Finance and Support Services, is familiar with the district's demographics, explained that the demolition of this housing, which was replaced by the construction of higher value housing, correlated with an increase in white families moving into the area and accounted for the increase in white elementary students at White Rock. Plaintiff did not dispute this conclusion. The other five schools experienced similar demographic changes as those experienced by either Skyview or White Rock. Based on the foregoing, the Court finds that RISD has demonstrated that the causal chain between the de jure segregation and any current racial imbalance is broken with respect to the aforementioned schools. Accordingly, the Court finds that Dartmouth, Greenwood Hills, Mark Twain, Moss Haven, Skyview, Spring Creek, and White Rock are not vestiges of de jure segregation.

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[4] *See* Def.'s Ex. 262 (School Data) (demonstrating racial balance at Dartmouth (2002-2006), Greenwood Hills (1998-2006), Mark Twain (1997-2002), Moss Haven (1997-2003), Skyview (1983-1986), Spring Creek (1997-2001), and White Rock (1989-2008)); *see also* Def.'s Ex. 270 (Pairing of Schools).

Given the aforementioned finding, the Court is left with seventeen schools out of forty-one that were racially imbalanced as of 2012. The Court next turns to Audelia Creek, Carolyn G. Buckhair, and Thurgood Marshall elementary schools. As stated above, not all racial imbalances are vestiges of segregation. *See Freeman*, 503 U.S. at 496. A racial imbalance is a vestige insofar as it is causally related to the prior de jure violation. *See id.* Here, RISD has met its burden in showing that the construction of these three schools is not traceable to the de jure violation. Importantly, all three schools were constructed to address population growth and overcrowding, and operate according to the neighborhood school concept. Further, the community supported and the BRAC approved the schools' construction with the knowledge that the schools would operate as predominantly minority schools. Plaintiff never objected to the opening of these schools with their attendance boundaries. Additionally, other courts have found that the construction of one-race schools to alleviate overcrowding does not preclude a finding of unitary status. *See, e.g.*, *Flax*, 915 F.2d at 163; *Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d at 680. Based on the foregoing, the Court finds from the evidence that Audelia Creek, Carolyn G. Buckhair, and Thurgood Marhsall are not vestiges of de jure segregation.

The Court is left with fourteen schools out of forty-one that were racially imbalanced as of 2012.[5] Courts have long recognized that an abundance of racially identifiable or one-race schools within a school district may preclude a court's finding of unitariness. Nevertheless, the Supreme Court has made clear that the presence of "some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by

[5] The fourteen remaining schools are Aikin, Bowie, Brentfield, Canyon Creek, Dobie Primary, Dover, Forest Lane Academy, Forestridge, Mohawk, O'Henry, Prairie Creek, RISD Academy, Spring Valley, and Stults Road.

law." *Swann*, 402 U.S. at 26; *see also Ross*, 699 F.2d at 226. A number of courts, both inside and outside of the Fifth Circuit, have ended federal supervision of a school district despite the existence of racially identifiable schools in the district. *See, e.g., Flax v. Potts*, 725 F. Supp. 322, 326-29 (N.D. Tex. 1989), *aff'd*, 915 F.2d 155 (5th Cir. 1990); *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987); *Stell v. Bd. of Pub. Educ.*, 860 F. Supp. 1563 (S.D. Ga. 1994). For example, in *Ross v. Houston Independent School District*, the Fifth Circuit affirmed a finding of unitary status in a district where 55 out of 226 schools had a student population that was 90% or more black. 699 F.2d at 226. The Fifth Circuit affirmed the district court even though Houston Independent School District was roughly 20% white, 38% black, and 42% Hispanic, and the number of racially identifiable schools during the period of federal court supervision had increased. *Id.* According to the Fifth Circuit, a "unitary system does not require a racial balance in all of the schools. What is required is that every reasonable effort be made to eradicate segregation and its insidious residue." *Id.* at 227 (citations omitted).

Therefore, the question is whether RISD has made every reasonable effort to eradicate the de jure segregation. In its July 2012 Findings, the Court directed RISD to submit evidence and argument that current demographics and other facts in RISD make further desegregation impracticable if that was RISD's position. Findings 12-15, July 27, 2012, ECF No. 127. The Court directed RISD to pay particular attention to *Swann* and its progeny. *Id.* at 13-15. The *Swann* methods include tools such as: an optional majority-to-minority transfer program, "ethnic balancing, altering of attendance zones, elimination of one-race schools, pairing, and busing." *See Ross*, 599 F.2d at 224. The Court concludes that RISD has shown that implementation of the *Swann* methods for these remaining schools in RISD is impracticable. Accordingly, the Court finds that RISD has

rebutted the de jure presumption, entitling it to a finding of unitary status with respect to RISD's elementary schools.

As a starting point for the *Swann* analysis, the Court notes that RISD is a large school district in terms of numbers and geographic area, spanning parts of the cities of Richardson, Dallas, and Garland. RISD enrolls thousands of elementary school students. The elementary schools have operated on a neighborhood school concept—where children generally attend schools near their homes—since the beginning of the desegregation process. In an effort to desegregate its elementary schools, RISD has implemented magnet programs, redrawn attendance zones, and has a majority-to-minority transfer program. RISD is a much different district today, in terms of demographics, than it was when the 1970 Desegregation Order went into effect.[6] In 1970, the school district was overwhelmingly white. The elementary school students generally attend their neighborhood schools. Before and after the Court approved the 1997 Plan, the BRAC, RISD's Board of Trustees, and the community supported the neighborhood school concept. *See* Findings 3-4, July 27, 2012, ECF No. 127 (describing the 1997 Plan).

There are three main pockets of areas in the district where a racial imbalance exists.[7] In the northwest corner of the district there are a number of racially imbalanced white schools. These schools are Bowie, Brentfield, Canyon Creek, Mohawk, and Prairie Creek. Just south of those

[6] *See supra* (comparing demographics in RISD in 1970 and 2013).

[7] The Court has already found that a number of the schools that are located in one of the three main pockets are not vestiges of the dual system because they either achieved a period of racial balance or the Court found that they were opened to alleviate overcrowding. *See supra* Part II.A. The Court includes them in this section to demonstrate how further desegregation of the fourteen remaining schools is impracticable.

schools is a pocket of five Hispanic schools that were racially imbalanced as of 2012.[8] These schools are Carolyn G. Bukhair, Dobie Primary, Dover, RISD Academy, and Spring Valley. These schools are all clustered together in a two-mile radius. Towards the southeastern part of the district, there is another cluster of schools. Except for Audelia Creek, Forest Lane Academy, and Thurgood Marshall, which were built after 1997 to alleviate overcrowding in RISD, schools in this area operated as one-race white schools in 1970, but they have since become racially identifiable black or Hispanic schools. These schools are Aikin, Forestridge, Northlake, Skyview, and Stults Road. Separating these three pockets from one another are highways, busy roads, and long distances, which makes combining them with one another impracticable. Mr. Harkerload, Deputy Superintendent for Finance and Support Services, credibly testified that the demographics of the district have changed outside of the district's control. In sum, the district is faced with a very challenging demographic situation as it has tried and continues to try to implement the *Swann* desegregation tools.

For its part, RISD has demonstrated that further desegregation and implementation of the *Swann* desegregation tools are impracticable. The Court agrees with Dr. Rossell's conclusion that trying to further implement the *Swann* desegregation tools in RISD would be both impracticable and ineffectual. For example, Dr. Rossell testified that mandatory reassignment of students on the basis of race, clustering or pairing, busing, and redrawing of attendance lines is an impracticable alternative in RISD. Indeed, Dr. Rossell stated that there is good reason to believe that, given

[8] The Court has never made any finding that there is a history of de jure segregation with respect to Hispanic students in RISD. Nor has there been any finding that RISD has intentionally discriminated against Hispanic students. While RISD is not required to remedy any racial imbalance with respect to Hispanic students, the Court nevertheless considers whether RISD has demonstrated that further desegregation of the imbalanced Hispanic schools is impracticable. *See United States v. Gregory-Portland Independent School District*, 654 F.2d 989, 1006-07 (5th Cir. 1981) (concluding that the school district did not have a duty to remedy an "ethnic imbalance" of Hispanic schools).

RISD's demographics and the current trend that RISD is becoming more Hispanic, forcing further *Swann* obligations onto the district is futile and will decrease diversity district-wide. Moreover, Dr. Rossell also demonstrated to the Court how opening up magnet schools or "better publicizing" an already existing majority-to-minority policy will have no measurable effect on increasing racial balance in the district. Mr. Harkelroad confirmed many of Dr. Rossell's conclusions. Mr. Harkelroad demonstrated that further desegregation in RISD is impracticable because of the prohibitive costs associated with implementation as well as the logistical hurdles facing both students and administrators. For instance, Mr. Harkelroad explained how pairing, clustering, and redrawing attendance lines ignores the challenges associated with retrofitting classrooms, moving and adjusting English as a Second Language ("ESL") programs or other specific curricula between schools, busing of children over long distances and sometimes hazardous routes, and the community backlash likely to accompany such changes. Although it was not the intent of his testimony, even Plaintiff's own expert provides the Court with an example of how impracticable it would be to force students to attend schools in other parts of the district for the sake of racial balance. Plaintiff's attorney asked Mr. Winekoff to explain how overflowing students to different schools in the district would decrease the racial identifiability. To illustrate his point that this change in policy is practicable, Mr. Winekoff stated that it is as simple as taking Bowie students, who ordinarily would be overflowed to Brentfield, and instead overflowing them to Audelia Creek. The Court believes this example undermines the credibility of Mr. Winekoff and underscores the impracticability of mandatorily reassigning students around the district for the sake of racial balance. For Bowie students to get to Audelia Creek, elementary aged students would be traveling from one side of the district to the other, during rush hour traffic, while crossing over busy streets and a major highway.

Asking students from these schools or from other schools to travel this distance and spend this time during the school week would place a major burden on the students and would detract from their ability to learn. These types of concerns illustrate the practicable difficulties facing RISD to further implement the *Swann* factors at the elementary school level.

The Court also reaches its conclusion as to impracticability based on the testimony of RISD administrators. Having heard their testimony and observed their conduct during the hearings, the Court finds that the RISD administrators were very credible. The RISD administrators had a long history of working for RISD, were aware of the 1970 Desegregation Order, and understood the challenges facing the district, demographic and otherwise. For instance, Mr. Freeman, RISD's Director of Special Projects, demonstrated how further pairing, clustering, and redrawing of attendance are impracticable in RISD because of the demographics of the district and the problems associated with realigning curricula, finding school capacity, and dealing with the community backlash likely to accompany a change to the neighborhood school concept. Countering Plaintiff's argument, Mr. Freeman identified some of the problems with Mr. Cropper's report. To demonstrate the practicability of pairing, Mr. Cropper advocates dividing up schools to achieve more racial balance. Mr. Cropper suggests that it is practicable to pair Moss Haven's Kindergarten through second grade students with Stults Road's third through sixth grade students. As demonstrated by Mr. Freeman, however, Mr. Cropper's report does not demonstrate practicability because it ignores issues related to the aligning of curriculum, the educational benefits of attending the same school for six consecutive years, and the communication between teachers of the various grade levels. Mr. Cropper's report is also problematic because it advocates for the pairing of schools where the taint of de jure segregation once existed but has since dissipated. *See Swann*, 402 U.S. at 24 ("Neither

school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system."); *see also Freeman*, 503 U.S. at 496 ("The vestiges of segregation that are the concern of the law in a school case may be subtle and intangible but nonetheless they must be so real that they have a causal link to the de jure violation being remedied."); *Ross*, 699 F.2d at 225; *Flax*, 725 F. Supp. at 328. Therefore, the Court finds that Mr. Freeman has credibly shown that further desegregation in RISD is impracticable.

Based on the foregoing, the Court finds that RISD has met its burden in showing that further desegregation of its elementary schools is impracticable. Accordingly, the Court finds that RISD has achieved unitary status with respect to elementary student assignment.

**B. Faculty and Staff Assignment**

The 1970 Desegregation Order incorporated the *Singleton* requirements as to faculty and staff assignment by providing that principals, teachers, teacher-aides, and other staff who work directly with students at a school must be assigned in a non-discriminatory manner and "shall be assigned so that in no case will the racial composition of a staff indicate that a school is intended for black students or white students." Def.'s Post-Trial Ex. 1 (1970 Order), at 2-3; *Singleton*, 419 F.2d at 1218. The 1970 Desegregation Order requires, where necessary to carry out this plan, the reassignment of faculty and staff as a condition of future employment. *See id.* While incorporating *Singleton*, the Desegregation Order did not establish a specific guideline for RISD to meet in order to satisfy its *Singleton* obligations, as by requiring that the ratio of white or black teachers in any particular school be within a 15% range of the district-wide ratio. *See, e.g.*, *Anderson*, 517 F.3d at

304. At a minimum, however, *Singleton* requires that the racial composition of faculty and staff within the district's individual schools be substantially the same as the racial composition of faculty and staff throughout the district. *See Singleton*, 419 F.2d at 1218.

In the July 2012 Findings, the Court refrained from finding that RISD had achieved unitary status with respect to faculty and staff assignment. The Court directed RISD to submit additional evidence of the racial composition of *all* staff members who work directly with children. Without such evidence, the Court stated that it was unable to "determine whether RISD has achieved unitary status with regard to assignment of such staff members." Findings, July 27, 2012, ECF No. 127. Since the Court's July 2012 Findings, RISD has submitted evidence of all staff members who work directly with children. *See* Findings 17-19, July 27, 2012, ECF No. 127. In 2012, RISD reported a total of 3,381 *employees* who work directly with children, including: 2,445 white employees (72.32%); 433 Hispanic employees (12.81%); 383 black employees (11.33%); and 55 Asian employees (1.63%). *See* Def.'s Ex. 267 (Employee Data). Again, neither the 1970 Desegregation Order nor *Singleton* impose on RISD an obligation to meet a racial balance. Nevertheless, using a plus or minus 15% ratio as a starting point, only four schools—Parkhill Junior High School, Bowie Elementary, Jess Harben Elementary, and Prairie Creek Elementary—have a 15% or more racial imbalance with respect to white employees working directly with children. The mere presence of racial imbalance in these four schools does not indicate that the schools are racially identifiable. Rather, the fact that there are so few schools that fall outside the 15% ratio indicates that RISD is not assigning staff who work directly with children in a racially identifiable way. Moreover, the Court heard testimony of RISD's commendable recruiting efforts and that it has complied in good faith with the Court's 1970 Desegregation Order. Based on the foregoing, the Court finds that RISD

has demonstrated that assignment of *all* staff who work directly with children is not a vestige of de jure segregation.[9]

The Court further directed RISD to address with argument or evidence any racial imbalances in *faculty* assignment, and whether mandatory reassignment of faculty would help RISD meet its *Singleton* obligation. As of April 15, 2013, RISD reported 2,551 teachers, including: 1,908 white teachers (76.1%); 275 Hispanic teachers (11%); 265 black teachers (10.6%); and 103 teachers designated as other (4.1%). *See* Annual Report, Ex. 1 (Ethnic Distribution), ECF No. 182. The 1970 Desegregation Order does not provide an explicit mechanism for how to assign the faculty members in RISD. Rather, the 1970 Desegregation Order requires RISD to make faculty assignments in a non-discriminatory manner such that the racial composition does not indicate that particular schools in RISD are intended for black or white students. As a starting point, the Court looks at whether white or black teachers in any particular school varied more than 15% from the district-wide average. Applying the 15% standard to RISD, the Court finds that seventeen of the fifty-five schools have an imbalance with respect to either black or white faculty. These schools include: Aikin (60.87% white faculty); Audelia Creek (21.74% black faculty); Bowie (94.4% white faculty); Brentfield (91.18% white faculty); Carolyn G. Bukhair (27.78% Hispanic faculty); Dobie Primary (51.52% Hispanic faculty); Dover (43.9% Hispanic faculty); Forest Lane Academy (25.53% black faculty); Greenwood Hills (21.88% Hispanic faculty); Hamilton Park Pacesetter Magnet (22.22% black faculty); Mark Twain (29.41% Hispanic faculty); O'Henry (58.06% white faculty); Richardson Heights (59.38%

[9] The Court ordered RISD to submit evidence of all staff members who work directly with children in the district. RISD included faculty and non-faculty members in its submission. The Court finds that including faculty members in its submission does not preclude a finding that RISD has achieved unitary status with respect to faculty and staff assignment. Indeed, RISD has demonstrated that all faculty and all staff working directly with children are not assigned in a racially identifiable way.

white faculty); RISD Academy (27.42% Hispanic faculty); Spring Valley (26.67% Hispanic faculty); Stults Road (31.91% black faculty); and Thurgood Marshall (34.04% black faculty).

RISD has rebutted the presumption that any imbalance in the district with respect to faculty assignment is a result of de jure segregation. The Court reaches this conclusion, in part, based on RISD's unique system of hiring and assigning faculty members. RISD employs a "centralized and a decentralized system" for hiring and assigning faculty. The system is centralized in so far as RISD pools together potential faculty members and interviews them centrally. In this way, RISD is able to capitalize on its "extensive minority recruiting efforts" identified in the Court's July 2012 Findings. *See* Findings 16, July 27, 2012, ECF No. 127. The system is decentralized in so far as each school principal then interviews faculty applicants from the collective pool and makes recommendations to the district as to which faculty members he or she wants to hire for their particular school. As RISD administrators and principals testified throughout the hearing, a principal's recommendation amounts to an assignment of that faculty member to the principal's respective school. This system empowers principals to build their own effective corps of teachers, while allowing RISD to meet its *Singleton* obligation.

While a principal's recommendation to hire a faculty member from the applicant pool amounts to an assignment, the Court notes that RISD has demonstrated that it has not abdicated its responsibility to comply with the 1970 Desegregation Order and *Singleton*. RISD has not only demonstrated its awareness of its obligations under the 1970 Desegregation Order, but also communicates these obligations to each individual principal every time a hiring decision is made. Dr. Fernando Medina, who serves as the Executive Director of Human Resources for Elementary Staffing for RISD, testified that he works closely with all of the principals in RISD to interview and

hire minority candidates. Indeed, Dr. Medina stated that he focuses on those schools where white faculty is above the district-wide ratio and schools where black faculty is above the district-wide ratio. Furthermore, the Court heard testimony that RISD requires principals to (1) come up with a plan to hire more minority teachers and (2) interview as a matter of course at least one minority candidate for each open faculty position. Even given these commendable efforts, the fact remains that some of the schools in the district have not been able to find a racial balance that is commiserate with the district-wide average. For instance, the principal of White Rock Elementary, Nancy Kinzie, testified that she recruits black faculty to White Rock Elementary, uses her own personal diversity plan, uses a faculty committee to focus on interviewing minority candidates, reviews her interview questions to ensure they are not racially biased, and works closely with RISD's human resource department to find and recruit diverse faculty candidates to White Rock Elementary. Nevertheless, the fact that there are some schools, such as White Rock Elementary, with a faculty racial imbalance does not warrant a denial of unitary status with respect to faculty assignment. Rather, RISD has demonstrated that any imbalance in faculty assignments is not tied to the history of de jure segregation. Indeed, faculty members, both black and white, have exercised and continue to exercise their choice to interview and accept positions at schools of their choice for reasons wholly unrelated to improving racial balance. RISD has also demonstrated that it has made strides in its assignment of black faculty to predominantly white schools. From 2007 to 2012, RISD has gone from fourteen schools with no black faculty to having black faculty in all schools. Def.'s Ex. 266 (Black Faculty Data).

Plaintiff argues that the simple solution to any racial imbalance is mandatory reassignment, which the 1970 Desegregation Order provides is a tool to be used where necessary for RISD to meet

its *Singleton* obligations. However, RISD has met its burden of demonstrating that mandatory reassignment is an impracticable policy because it will harm its minority recruiting efforts instead of improving faculty diversity. The Court reaches this conclusion based on the testimony of Dr. Medina, Principal LaShon Easter, Principal Kinzie, and Patti Kieker, who are all familiar with the challenges facing RISD with respect to hiring and assigning faculty members. All four witnesses explained the deleterious consequences of implementing a mandatory reassignment plan for faculty members in RISD. Importantly, a mandatory reassignment plan would hurt RISD's ability to recruit and retain qualified teachers. If RISD were to implement such a plan, talented teachers would forego opportunities at RISD in favor of school districts without a mandatory reassignment policy on the basis of race. Indeed, Principal Easter provided a real-world example of the consequences of such a policy. Principle Easter is an African-American female. She was originally hired by Dallas Independent School District ("DISD"). DISD mandatorily assigned her to a school that DISD "felt was best" for her. She testified that she left DISD because the mandatory assignment policy limited her professional options and this policy indicated to her that DISD was not treating her as a professional. Since leaving DISD, Principal Easter has built an exemplary career in RISD, where she has taught for over ten years and has risen to the rank of principal of Northrich Elementary. This real world example of the consequences of implementing a mandatory reassignment policy jeopardizes the success RISD has experienced in minority faculty recruiting. *See* Findings 16, July 27, 2012, ECF No. 127. Moreover, applying mandatory reassignment to RISD would diminish each principal's ability to effectively manage his or her school because mandatory reassignment does not account for the unique needs of each school that are wholly unrelated to racial balance. Dr. Medina and principals in the district testified, and the Court is convinced, that implementing a mandatory

reassignment policy in the district will diminish the quality of education available to all students in RISD, result in decreased retention of minority faculty, and lead to a less diverse faculty. Accordingly, the Court finds that RISD has proven that mandatory reassignment of faculty in RISD is impracticable. Based on the evidence, the Court concludes that RISD has achieved unitary status with respect to faculty assignment.

## III. CONCLUSION

After considering the evidence and the applicable authority, the Court finds that RISD has achieved unitary status in the areas of student assignment as well as assignment of faculty and staff. Accordingly, it is **ORDERED** that RISD's Motion for Declaration of Unitary Status (ECF No. 18) is **GRANTED**.

Signed this 23rd day of July, 2013.

**Reed O'Connor**
**UNITED STATES DISTRICT JUDGE**