UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA, ***Plaintiff***	*	
	*	**CIVIL ACTION NO. 66-12071**
v.	*	
	*	
LINCOLN PARISH SCHOOL BOARD, LOUISIANA BOARD OF REGENTS, AND LOUISIANA BOARD OF TRUSTEES FOR THE STATE COLLEGES AND UNIVERSITIES, ***et al.***	*	**JUDGE ROBERT G. JAMES**
Defendants	*	

* *

MEMORANDUM OF LINCOLN PARISH SCHOOL BOARD
IN OPPOSITION TO UNITED STATES' MOTION FOR FURTHER RELIEF

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MEMORANDUM OF LINCOLN PARISH SCHOOL BOARD
IN OPPOSITION TO UNITED STATES' MOTION FOR FURTHER RELIEF

Three (3) distinct "systems" of elementary and secondary public education are geographically located in Lincoln Parish, Louisiana. The Lincoln Parish School District (the "District") is governed and operated by the Lincoln Parish School Board (the "Board"), a political subdivision of the State of Louisiana responsible under State law for providing free public education to any student in grades K-12 who resides in Lincoln Parish. The other two systems are A.E. Phillips Laboratory School at Louisiana Tech University ("Phillips" or "Louisiana Tech") and Grambling University Laboratory Schools ("Grambling"), both of which are governed and operated by their respective universities and serve students residing in any Parish who voluntarily choose to attend by meeting enrollment standards and pay tuition set by the respective system. Although the Board, Louisiana Tech, and Grambling have worked cooperatively throughout the years, they each remain distinct legal entities responsible for their own desegregation obligations.

The first issue that should be addressed by this Court whether the laboratory school systems are so situated in this action that their respective desegregation responsibilities should be as those imposed upon charter schools; and, if so, whether an affirmative remedies can be ordered given the status of the Board's desegregation decree - which is largely dismissed and poised to be fully unitary in November 2013. If this Court determines that desegregation remedies are appropriate, the next issue, insofar as the pending Motion relates to the Board, is whether this Court can subject the Board to a legal obligation to remedy, in any measure, the *de jure* segregation at either laboratory school systems at Grambling or Louisiana Tech based either on the Board's control or governing authority over either laboratory school system or on the Board's engagement in any interdistrict violation which adversely affected the desegregation efforts of either university. The Board submits that, under either scenario, it is cannot be held responsible for the desegregation of the laboratory school systems at either Grambling or Louisiana Tech. Thus, the Board submits the following in opposition to the United States' motion for further relief ("Motion") insofar as it seeks to obligate the Board to desegregate either university lab school system.

As further detailed below, the United States has based its effort to require the Board to assist Louisiana Tech and Grambling in the desegregation of their respective laboratory school systems on a faulty premise - that the Board has a legal obligation to "fund" and to "provide a number of educational and operational services to the lab schools" and, thus, "plays a critical role in the operations and maintenance of the lab schools" which results in the Board sharing responsibility for the failure of Louisiana Tech and Grambling to desegregate its own schools. First, the United States incorrectly states that the Board funds either laboratory school system. As admitted by the United States and both Louisiana Tech and Grambling, the Board is merely the conduit through which State funding flows, funding that is based on the student enrollment at the respective laboratory schools.

Secondly, the Board provides certain services and works cooperatively with Louisiana Tech and Grambling via respective contractual agreements that do not obligate them beyond the four-corners of those agreements. Finally, the United States erred in its assessment of the Fifth Circuit's reasoning for placing the laboratory schools under this Court's supervision in the Board's desegregation action. In fact, the efforts toward unitary status by the Board have been steady and successful, leading to a 2012 grant of unitary status in all Green areas with the exception of one *and* all with no involvement or consideration of the laboratory schools. The Fifth Circuit's concern that the presence of the laboratory schools in the Parish might affect the Board's ability to reach unitary status was not realized. The Board has done all that it voluntarily agreed to do to assist Louisiana Tech and Grambling with its desegregation efforts;[1] there is no evidence that the Board is any way lawfully responsible for the operation of either laboratory school system; and there is no evidence that the Board has engaged in any inter-district violation which would support obligating it to perform any desegregation remedy in the laboratory school systems. Therefore, the Board submits that the Court should deny the United States' motion for further relief as against the Board.

I. PROCEDURAL BACKGROUND

A. The District's Desegregation Decree

On June 8, 1966, the United States of America (the "United States") instituted this action against the Lincoln Parish School Board (the "Board" or the "District") for the purpose of ending the historical and traditional *de jure* segregation of the public schools governed by the Board. On August 5, 1970, the Court entered a Decree which set a desegregation plan intended to allow the School Board to eradicate the prior *de jure* segregation and bring the Board into unitary status - that

[1] *See* Motion to Dismiss and Memorandum in Support filed contemporaneously with this Memorandum.

is, operating with none of the intentional discrimination against black students which had previously resulted in separate white and black schools in the District.[2] With the exception of an order entered in 1971 which allowed certain school consolidation and closure,[3] no subsequent orders affected the substantive provisions of the 1970 Decree[4] until the entry of the 2012 Superceding Consent Decree.[5]

To this point in the history of the Board's desegregation case, the Louisiana Tech and Grambling laboratory schools were ***never*** included or even mentioned tangentially in *any* of the pleadings or orders entered in the Board's desegregation case. As footnoted by the United States in its memorandum, in its decision to put the laboratory schools under this case, the Fifth Circuit stated that "[p]resumably the laboratory schools were excluded from the terms of the consent decree so that their admissions policies would reflect those of their parent universities, which operate under 'freedom of choice.'"[6] There is no cause to *presume* the reason because the reason for that non-inclusion was that the laboratory schools were ***not and have never been*** a part of the Lincoln Parish School District or operated or governed, in whole or part, by the Board.

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[2]The 1970 Decree effectively replaced the original order which was entered on August 1, 1969.

[3]*See* 1971 Decree, Prior Orders, Ex. A at pp. 17-18.

[4]From 1970 until 1996, the School Board filed with the Court its annual reports documenting its compliance with the terms of the 1970 Decree; from 1996 forward, the annual reports were provided, by agreement, only to the United States Department of Justice (the "DOJ"). In 2008, this Court entered an order instituting new annual reporting requirements for the School Board and, since that time, the School Board has filed its annual reports with the Court. *See* Rec. Docs. 3, 6, and 12.

[5]Superceding Consent Decree, Rec. Doc. 55.

[6]*Copeland v. Lincoln Parish Sch. Bd.*, 598 F.2d 977, 979 n.5 (5th Cir. 1979).

B. The Addition of the Laboratory Schools' Desegregation Issues

On July 13, 1979, the Fifth Circuit Court of Appeals issued a decision which, *inter alia*, directed this Court to add as defendants in this desegregation case the Louisiana Board of Regents and the Louisiana Board of Trustees for the State Colleges and Universities, for the purpose of inserting into this action the desegregation issues related to the laboratory schools located at and operated by Grambling State University ("Grambling") and Louisiana Tech University ("Louisiana Tech"), which schools were operating within the geographical boundaries of Lincoln Parish.[7] On February 12, 1980, this Court complied with the Fifth Circuit's order, and these state Boards were added as defendants for the purpose of ending the *de jure* segregation which existed at the laboratory schools run by both public universities.[8]

C. The University Laboratory Schools' Consent Decree

On July 13, 1984, the Court entered a Consent Decree, which had been agreed upon by all parties, setting forth a separate and distinct desegregation plan for each university laboratory school obligating Grambling and Louisiana Tech, respectively, to take certain affirmative actions regarding each *Green* factor and obligating the School Board to provide specified transportation to Grambling and general cooperative assistance to both universities in the implementation of their respective plans.[9] The Consent Decree specifically indicated that, after a three (3) year period, either Louisiana

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[7] *Copeland*, 598 F.2d 977.

[8] Memorandum Ruling entered 2-12-80 on the paper docket at p. 4, Rec. Doc. 1.

[9] 1984 Consent Decree, Prior Orders, Ex. A at pp. 19-44.

Tech or Grambling could make a motion to be declared unitary;[10] however, neither university ever made such a motion.

From 1984 through 1987 and in 1992, Louisiana Tech filed the annual reports required of it by the Consent Decree, but no report has appeared on the docket since 1992.[11] According to the court docket, Grambling has never filed the required annual reports.[12] No further orders concerning the desegregation of the laboratory schools have been entered in this action.

D. The Recent Activity in and Current Posture of this Case

No action of any nature was entered into the record of this case from 1996 until August 14, 2008 when this Court revised the School Board's annual reporting requirements.[13] After the District filed its 2008 report, the Court suggested that either party (i.e., the United States or the Board) could move forward with an appropriate motion or other action regarding unitary status.[14] Following a status conference held on December 14, 2009, the Court ordered the DOJ to conduct a unitary status review of the Board's operations.[15] On January 24, 2011, the DOJ filed its initial report regarding its unitary status review and reported to the Court that it had concerns with the desegregation status of the Louisiana Tech and Grambling laboratory schools and questions regarding the inclusion of

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[10]1984 Consent Decree, Prior Orders, Ex. A at p. 43.

[11]*See* Paper Docket at pp. 12-13, Rec. Doc. 1.

[12]*Id.* at pp. 12-13.

[13]Memorandum Order, Rec. Doc.2.

[14]Minute Entry, Rec. Doc. 4.

[15]Memorandum Order, Rec. Doc. 2

the universities in this action.[16] Thus, the DOJ undertook an investigatory review not only of the desegregation progress and status of each defendant (the Board, Grambling, and Louisiana Tech, respectively) but also of the propriety of continuing to include the universities in this case. The Board cooperated fully with the DOJ's investigation.

On May 24, 2011, the DOJ filed the United States Status Report[17] which was the culmination of its investigation. The Status Report included a short unitary status review focusing on the Board's compliance with its desegregation obligations within its District schools, which ultimately led to the United States consenting to a declaration of unitary status in the Board's operations related to teacher assignment, staff assignment, extracurricular activities, facilities, and transportation as well as specific provisions to resolve a singular issue remaining as to student assignment.[18] According to the Superceding Consent Decree, the Board has implemented the remaining student assignment provisions and is on schedule to obtain full unitary status and dismissal of its desegregation decree in November 2013.

Subsequently, the Court allowed the United States to engage in discovery regarding the laboratory school issues and the Board fully cooperated. Now, the United States has filed its Motion for Further Relief, seeking, *inter alia*, to hold the Board responsible for a remedy to desegregate the laboratory school systems operated and governed by Louisiana Tech and Grambling.

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[16]Status Report, Rec. Doc. 16.

[17]Status Report, Rec. Doc. 25.

[18]Superceding Consent Decree, Rec. Doc. 55.

Because the Board has no authority or control over the laboratory schools, it does not take any position and, therefore, does not respond to the instant Motion insofar as it seeks further relief as against Louisiana Tech or Grambling. The Board submits this Memorandum to provide the clear facts and legal standards which support the denial of the Motion as to any relief against the Board.

II. LEGAL STANDARDS AND ANALYSIS

A. Desegregation Standards for Charter Schools

The United States outlined the legal precedent involving the inclusion of charter schools in public school district desegregation cases. Significantly, as the United States stated, "where the operation of non-traditional public schools, like charter schools and lab schools, **adversely affects the remedial desegregation order of the school district** in which they are physically located, federal courts have the authority to order such schools to comply with that district's desegregation decree.[19] In the *Cleveland v. Union Parish School Board* case, this Court has approved the establishment of a charter school under the condition that the school's operation "will neither undermine the continuing desegregation efforts of [the District] nor promote segregation."[20]

An examination of the relevant decisions of the Fifth Circuit and the District Court reveals that the same reason expressed in *Union Parish* was the premise for inserting the university laboratory schools in the Board's desegregation action. As recognized by the Fifth Circuit, "the composition of the Grambling and Louisiana Tech schools clearly lay outside the scope" of the

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[19]United States' Memorandum, Rec. Doc. 82-1 at p. 33 (citing this Court's decision in *Cleveland v. Union Parish Sch. Bd.*, 570 F. Supp. 2d 858 (W.D. La. 2008)(unpublished) and *Berry v. Sch. Dist. of City of Benton Harbor*, 56 F. Supp. 2d 866, 870 (W.D. Mich. 1999)).

[20]*Union Parish*, 2009 WL 1491188, at *7..

District's desegregation decree.[21] It was that premise upon which this Court originally denied the United States' motion to bring the laboratory schools into this action, stating:

> The reason for the additional parties is to litigate issues of discrimination and segregation in the laboratory schools at Grambling State University and Louisiana Tech University. These issues are not adjuncts to the issues of discrimination and desegregation in schools under the jurisdiction of the Lincoln Parish Board. [This action was] concerned only with schools under the jurisdiction of the Board. Thus, the interests of justice and clarity require that the United States seek its relief in a separate suit rather than in the pending [one].[22]

However, the Fifth Circuit rejected the Court's determination that "'justice and clarity require[d]'" denying the addition of the universities' laboratory schools issues into this case, concluding:

> [t]o the contrary, an independent determination that the laboratory schools should be desegregated will surely affect any ongoing litigation under the [District's] decree. It would be much more reasonable to allow the Government to proceed within the context of this ongoing litigation and thus avoid possible duplicative actions and orders.[23]

With this, the Fifth Circuit found that the laboratory school issues should be inserted into this action because of an anticipated affect on the Board's desegregation efforts.[24] It was upon this speculation and cautionary prediction that the Fifth Circuit justified the insertion of the laboratory school issues into this action - the same reason that charter schools are required to be brought into the parish desegregation action.

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[21] *Copeland*, 598 F.2d at 981-82.

[22] *Id.* at 982 (quoting Judge Stagg's opinion).

[23] *Id.*

[24] *Id.* at pp. 978 and 982.

However, is it now clear that the Fifth Circuit's fear did not materialize. As a matter of fact, in its unitary status review of the Board's operations, the United States ***never, in any way***, brought into consideration any issues regarding the laboratory schools affecting or not affecting any of the Board's operations. The United States agreed that the Board had achieved unitary status in faculty assignment, staff assignment, extracurricular activities, facilities, and/or transportation.[25] The United States agreed to provisions intended to accomplish unitary operations in the final area of student assignment ***without any regard or reference*** to the laboratory schools.[26] It is absolutely clear from the consensual resolution of all *Green* factors in the District that the laboratory schools have ***not*** affected the Board's desegregation efforts in any way. Certainly, the laboratory schools' operations did not adversely affect the Board's ability to achieve unitary status. Further, if the Board's actions adversely affected the laboratory schools ability to desegregate, surely the United States would have raised such an issue as a roadblock to the Board's unitary status. Neither situation existed, nor is such argued by the United States now.

In recognition of the governing authority of the respective universities over their laboratory schools, the desegregation of those schools was addressed in a decree separate and apart from the desegregation of the District schools. The 1984 Consent Decree specifically obligated *the universities* - not the Board - to desegregate their respective laboratory schools.[27] The Board ***voluntarily*** agreed to help the desegregation efforts of the laboratory schools via only five (5)

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[25]*See* Superceding Consent Decree, Rec. Doc. 55 at pp. 4-9.

[26]*See Id.* at pp. 4-7, 9-19.

[27]1984 Consent Decree at pp. 4-40 (Grambling/Alma J. Brown Laboratory School) and 40-41 (Louisiana Tech/A.E. Phillips Laboratory School), Prior Decrees, Ex. A.

particular obligations set out in the Consent Decree.[28] No evidence has been revealed which suggests that, in the twenty-seven (27) years since the entry of that decree, the District's desegregation efforts under its own decree have been affected, adversely or otherwise, by the desegregation efforts of either of the universities' laboratory schools or vice versa.

In the *Union Parish* case, the school district had not obtained unitary status in any area of operation; therefore, this Court required the charter school to comply with the active desegregation decree. Importantly, the public school board was ***not*** required to take any affirmative action with regard to the charter school's obligations under the desegregation order.

Unlike the *Cleveland* case, in this case, the Board has already obtained unitary status in every area except student assignment and that factor is poised, via consent of the United States, for unitary status to be granted in November 2013. There is no evidence that either university laboratory school system can "undermine the continuing desegregation efforts" of the Board because there are no active desegregation orders governing the District with regard to faculty assignment, staff assignment, facilities, or quality of education. There is no evidence that the operations of the laboratory schools at either Grambling or Louisiana Tech will "promote segregation" at the Board's schools since the United States has already consented to and the Board has implemented the provisions that are set to result in full dismissal of the Board's desegregation order in a few short months. As such, if the same legal standards that govern the enforcement of desegregation orders against charter schools apply to laboratory schools, there is ***no basis*** for further relief against

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[28] 1984 Consent Decree at pp. 5, 12, 15, 8, 16, and 23, Prior Decrees, Ex. A. *See Missouri v. Jenkins*, 515 U.S. 70, 88, 91, 115 S. Ct. 2038 (1995) ("[*V*]*oluntary* interdistrict remedies may be used to make meaningful integration possible; citing *Jenkins v. Missouri*, 855 F.2d 1295, 1302 (8th Cir. 1988)).

Grambling or Louisiana Tech as to any factor that is not before this Court per the Board's desegregation order - and certainly there is ***no basis*** for any desegregation remedy on those factors to be imposed against the against the Board.

If the laboratory schools and charter schools are legally analogous, then any order related to the laboratory schools here would necessarily expire when the primary desegregation order is dismissed. If not, the only alternative result would be that the 1984 Consent Decree is, in fact, a self-sustaining, independent order related only to the desegregation of the laboratory school systems and not tied to the Board's desegregation order. That result, in and of itself, signifies that the Board has no control or authority over the laboratory school systems because, if it had, those schools would have been included in the unitary status consideration of the Board's operations.

B. Alternatively, No Legal Ground to Obligate the Board to Desegregate the University Laboratory School Systems

The United States wants to obligate the Board to expend its funds to help desegregate these two (2) laboratory school systems that it neither is legally responsible for operating or governing nor has adversely affected.. The Board alternatively submits that it has not committed any act that would subject it to any affirmative obligation to desegregate the university laboratory schools. None of the evidence procured during the United States' discovery process in this case reveals any facts that support its position as to the Board. As previously presented to the Court in its response to the United States' initial report on this issue, the Board submits that the facts regarding the legal status of and relationships between the Board and the laboratory schools must first be distinguished from the fiction.

1. No Board Control or Authority over University Laboratory Schools

The Fifth Circuit specifically acknowledged that the university laboratory schools located within Lincoln Parish "were, and still are, run by the State Board of Education and by the university officials."[29] Both Grambling and Louisiana Tech have expressly agreed that their laboratory schools are independent legal entities which are wholly owned, operated, controlled, and governed by the respective university. The Board submits the following in support of this uncontested conclusion.

a. Grambling's Laboratory Schools

Grambling "readily admits that the Laboratory School as a legal entity is a State facility as opposed to a local or parish facility."[30] The governance and control of the laboratory schools by Grambling is abundantly clear in its own responses to information requests propounded by the Grambling stated that its middle and high schools "report to the College of Education at Grambling State University" and the "chief administrative officer of the unit is the Dean of the College of Education who serves in the capacity of the superintendent."[31] Grambling further stated that its elementary laboratory school "is operated under the administration of [Grambling]" and "is a department of the College of Education (COE) at Grambling State."[32] Like the middle and high schools, the elementary school's chief administrative officer is the Dean of the College. The chief

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[29] *Copeland*, 598 F.2d at pp. 978-79 n.4.

[30] Grambling State University's Lab Schools' Response to the United States' Status Report [25], Rec. Doc. 38 at p.2.

[31] Grambling Response to Information Requests, Exhibit C to Opposition at pp. 1, 6.

[32] *Id.* at p. 1.

administrative officer of the unit is the Dean of the college of Education who serves in the capacity of the superintendent.

Grambling currently operates Alma J. Brown Elementary School, Grambling Middle School, and Grambling High School. It is undisputed that all of the facilities are located on the Grambling campus and are owned by Grambling.

From a historical perspective, in 1914, the Board recommended the consolidation of one of its schools operated for black students in the Grambling area (the Allen Green School) with the Lincoln Parish Training School, a Grambling area school for black students that had been established years before as a private school but by 1918 was totally publically funded.[33] In 1928, the Board requested the State of Louisiana to take charge of the Lincoln Parish Training School. The State did so and the institution became a state-funded college known as the Louisiana Negro and Industrial Institute, expanding its program from elementary and secondary grades to freshman college courses. Through the years, Grambling has administered its elementary and secondary grades as laboratory schools as a means of providing its prospective teachers with on-site teaching experiences. Grambling recently stated its mission, goals, and purposes for the laboratory schools "to mirror the original mission of the University" and "to supporting and advancing the purposes and the goals of the university."[34]

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[33]The summary of the history of the laboratory schools is taken from *Public Education in Lincoln Parish*, a historical account written by Earvin Ryland and published in 1984. The book is apparently no longer in publication; however, pertinent excerpts are provided in Exhibit B and a copy of the book will be made available to the Court upon request. This history is fairly consistent with the short history provided on the Grambling Middle School webpage which can be located through the link at www.http://www.gram.edu.

[34]Grambling Response, Ex. C at pp. 1, 6.

The historical records clearly show that in ***1928 - 85 years ago*** - the State took over the governance and operations at what would eventually become the Grambling laboratory schools. Neither the historical documentation nor any other evidence indicate that the Board has any governing authority or administrative control over Grambling's laboratory schools. The Grambling laboratory schools are clearly an integral part of Grambling's operation and under the sole legal authority and control of Grambling. The Board has absolutely no governing authority or control over the Grambling laboratory schools.

b. Louisiana Tech's Laboratory School

Louisiana Tech governs and operates A.E. Phillips ("Phillips"), a K-8 school which is located on the Louisiana Tech campus in facilities owned by Louisiana Tech. Around 1910, the Louisiana Industrial Institute (the early predecessor of Louisiana Tech) initiated a "practice school" of five (5) grades which was to be used for its teacher training.[35] The laboratory school has never been under the jurisdiction of the Board but has continually been administered by Louisiana Tech (in its various prior forms), which in turn has been directly under the jurisdiction of the Louisiana State Board of Education.

Over the years, the laboratory school served the purpose of providing a venue for the college students to observe and practice teaching as well as for the testing of new instructional materials and curriculum ideas.[36] Louisiana Tech recently stated that, among its mission, goals, and purposes for

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[35]This historical summary also is taken from *Public Education in Lincoln Parish*, as referenced above, and pertinent parts are provided in Ex. B.

[36]*Public Education in Lincoln Parish*, Ex. B at p. 11.

its laboratory school, it serves as a site for Louisiana Tech education majors to observe and practice effective teaching strategies in a supportive environment.[37]

Louisiana Tech has confirmed the location of the school on its campus.[38] Louisiana Tech also confirmed that its laboratory school "is not considered part of Lincoln Parish [public schools] with regards to state/federal accountability".[39] Furthermore, the response indicates that Louisiana Tech has full administrative control over the funding which supports its operations. As with Grambling, neither the historical documentation nor any other evidence indicates that the Board has any governing authority or administrative control over Louisiana Tech's laboratory school. The Louisiana Tech clearly exercises the sole legal authority and control over its laboratory school, which is its own historical creation and present operation.

c. Operations

Although the status of Grambling and Louisiana Tech as the sole governing and controlling authorities over their respective laboratory schools is historically and legally supported *and* while the MOU and supporting Financial Accounting Summaries show the lack of independent financial support of the university laboratory schools by the Board, the District's relationship with the university laboratory schools has been undeniably blurred, confused, and complicated by public misperception. Contrary to this misperception and the United States' argument which perpetuates it, the laboratory schools are not "*primarily* responsible" for their day-to-day operations - they are solely and ultimately responsible.

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[37]Louisiana Tech Response to Information Requests, Ex. D at p. 3.

[38]*Id.*

[39]*Id.* at p. 11.

In support of its argument that the Board exerts control in the operations of the laboratory school systems, the United States points to several areas in which the Board has, by virtue of federal or state law or the MOU, provided services to the laboratory schools. However, as clarified below, none of these circumstances give the Board any control or responsibility over the operations of the laboratory schools beyond its obligation, as explained.

(1) Special Education Services

The United States argues that the Board "hires and places itinerant special education teachers, gifted and talented teachers, school nurses, and other professional staff who work at the lab schools" and provides pupil assessment services for special education students at the laboratory schools. The District provides special education services, including staff and assessments, to the laboratory schools pursuant to its obligations under the Individuals with Disabilities Education Act ("IDEA"),[40] which requires the Board to provide such services to District residents regardless of where they choose to go to school.[41] Since before 2004, the District has provided such services to students with disabilities who attend Phillips and since 2005 to students with disabilities who attend Grambling's laboratory schools.[42] The District provides these services to students at all the laboratory schools as required by federal and state law and receives federal funding in partial compensation for such services.[43] The special education teachers are District and remain under the

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[40]20 U.S.C § 1400 *et seq.*

[41]Shipp Declaration, Exhibit E to Opposition at ¶¶ 2-5.

[42]*Id.* at ¶¶ 2-3.

[43]*Id.* at ¶ 5.

full administrative control of the District.[44] They are just assigned by the District to address the needs of special education students at Phillips and Grambling.

(2) Cafeteria, Maintenance, and Transportation Services

The United States contends that the Board's provision of cafeteria workers, services, and equipment to Grambling as well as transportation services to both Grambling and Louisiana Tech demonstrates that the Board has some control over the day-to-day operations at the laboratory schools. All services provided by the Board are performed in accordance with the contractual agreement between the Board and the respective university; however, the respective university has full authority to contract with any other entity to provide such services and the MOU's explicitly provide that either party can terminate the agreement unilaterally[45] - surely not a provision indicating that the Board has ultimate control over any aspect of the laboratory schools' operations addressed therein.

The Board provides transportation services to and from school in accordance with State law, which demands that the Board transport students residing in the Parish to any school in the Parish which the student chooses to attend.[46] Providing transportation pursuant to State law does not result in any authority of the Board over either laboratory school system's authority to operate its own transportation or to reject the transportation as provided by the Board via the State law. Any further transportation is agreed upon via the respective MOU, as addressed below.

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[44] *Id.*

[45] See Memoranda of Understanding, Declaration of Danny Bell, Exhibit G to Opposition at Attachment 1 p. 3 and Attachment 2 p.3.

[46] LA. REV. STAT. §17:158.

(3) Faculty In-Service

The United States argues that the Board has some control over the laboratory school systems because it allows the laboratory school principals to participate in principal meetings and laboratory school teachers to participate in District professional development programs. At the request of the laboratory schools, the Board does allow the laboratory school employees to take advantage of these professional development opportunities[47]; however, there is nothing to suggest that the Board has control over whether these opportunities are taken or not. Likewise, there is nothing to suggest that every opportunity is open to the laboratory school employees. Further, there is absolutely nothing to suggest that the mere participation in District in-service activities could result in the Board having any control over these employees. There is no dispute that the respective universities recruit, hire, and fire they own employees; the Board has no authority or input in that regard.[48]

(4) Extracurricular Activities

The United States argues that the Board allows laboratory school students to participate in certain activities and academic opportunities in the District. Pursuant to its MOU with Louisiana Tech, the Board allows seventh and eighth grade students at Phillips to participate in the Ruston Middle School football program.[49] This provision works to the mutual benefit of both parties. Phillips does not offer an athletic program, so the students get the opportunity to play football.

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[47]30(b)(6) Deposition of Lincoln Parish School Board, through its Representative, Danny Lee Bell, Superintendent (excerpts), Exhibit H to Opposition at p. 13/11-13; Deposition of Rosalind Russell, Exhibit I to Opposition at pp. 40/19-25, 41/1-6.

[48]30(b)(6) Deposition of Grambling State University, through its Representative, Vicki Renee Brown, Ph.D. (excerpts), Exhibit F to Opposition at pp. 88/22-25, 89/1-15; 30(b)(6) Bell Deposition, Ex. H at p. 35/7-8.

[49]Memoranda of Understanding, Bell Declaration, Ex. G at Attachment 2 p. 2.

Because nearly 100 percent of the students from Phillips matriculate to Ruston High School following completion of the eighth grade at Phillips, the high school's athletic program realizes a direct benefit from the early training of these athletes.[50] The MOU provision gives absolutely no control or authority over which children choose to participate from Phillips or over Phillips in general. This is the only extracurricular activity in which Phillips' students participate.[51] Grambling has not requested any such participation, because it maintains an athletic program at its laboratory schools.

In the past, the Board has permitted laboratory school students to participate in a parish-wide academic awards program. However, there is nothing to suggest that the Board had control over which students were chosen to be honored, and the purpose was to honor all students who lived in the Parish, regardless of where they chose to attend school. No control over or responsibility for the operations of the laboratory schools could reasonably be inferred from the Board's gratuitous honoring of students who excelled.

Neither university has requested that its students be permitted to participate in any other extracurricular activity.

(5) Board's Website

As a courtesy, the District previously provided a link on its website to the webpages maintained by the university laboratory schools.[52] A new District website was established in 2010 and, to avoid confusion in the future, the links to the university laboratory schools were removed.[53]

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[50]See Bell Deposition, Ex. H at pp. 56/13-25, 57/1-13.

[51]*Id.* at p. 57/15-19.

[52]Bell Declaration, Ex. G at ¶ 9.

[53]*Id.; see* www.lincolnschools.org.

d. Funding

Apart from the Court-ordered obligations requiring the Board to expend funds to provide transportation for the benefit of desegregation efforts of Grambling, the Board has no legal authority or responsibility to expend funds for the benefit of any person or entity other than its own students and school operations. Particularly, the Louisiana Constitution specifically prohibits such expenditures, deeming such to be "illegal donations" of public funds.[54] And Louisiana law prohibits the Board from expending local funds acquired through voter-approved taxes on any item not specified in the call for such tax.[55] The State, however, does require that the Board act as the fiscal agent for purposes of distribution of funding via the Minimum Foundation Program ("MFP") to the university laboratory schools.

1) Fiscal Agent

The provision of resources is not by financed by the District's general funds. The Board does serve as the fiscal agent for the university laboratory schools. All "in-kind" resources are provided pursuant to the MOU's by mutual agreements of the respective parties and are funded through MFP funds, either as reimbursement, direct payments, or indirect provision of administrative services.

In 2006, a Resolution of the Louisiana House of Representatives directed the Legislative Fiscal Office to review the means and methods of funding the State's nine (9) university laboratory

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[54]LA. CONST. ART. 7, § 14(A).

[55]La.Rev.Stat. §33:2714; *see Denham Springs Eco. Dev. Dist. v. All Taxpayers, Property Owners*, 894 So.2d 325, 333 (La.2005); *Conachen v. East Baton Rouge Parish Sch. Bd.*, 30 So.3d 820, 823 (La.App.1 Cir.2009). The tax calls relevant to this issue have always been limited to support of the schools operated by the Board. *See* Tax Calls, Exhibit O to Opposition at pp. 1, 6-7, 13, 17-18.

schools, including those at Grambling and Louisiana Tech.[56] The result of that study was a fourteen (14) page report which addressed the complex and unique ways that funding of the various laboratory schools has been handled.[57]

Unlike the Louisiana State University and Southern University laboratory schools, which receive their funding directly from the State without involvement of the local parish school district, the report confirmed the process utilized by Grambling and Louisiana Tech (as well as the Northwestern University laboratory schools) with the Board as the fiscal agent through which funding flows directly and indirectly.[58] It is clear that the "support" provided by the Board to each university for the operation of the laboratory schools has been in the form of passing along, either directly or indirectly, funds meant for the operation of the laboratory schools and for the benefit and best interests of the students as consideration contractually agreed upon by the District with each university.

2) Memoranda of Understanding

At least since 2003, the District has entered into separate administrative agreements with both Grambling and Louisiana Tech through which the respective parties formalized their agreements for the Board's provision of specified services in exchange for compensation for same. In 2007, the Board entered into its most recent "Memorandum of Understanding" ("MOU") with each

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[56]House Resolution No. 133, 2005 Regular Legislative Session, Louisiana House of Representatives.

[57]*Report to the House Committee on Education of the Louisiana Legislature*, April 2006, Exhibit K to Opposition.

[58]*Report*, Ex. K at pp. 4-5.

university.[59] Consistent with its role as fiscal agent for both universities, the District agreed via these MOU's to provide both direct and indirect disbursement of funds for the support and operation of the respective laboratory school systems.

The majority of the MOU provisions simply formalized the method by which the District would distribute funding it received on behalf of each university - whether by cutting a check directly to the respective university, reimbursing the universities for certain expenses, performing services in lieu of direct payments, or other method. Some of the terms included in each MOU related to legal obligations under the 1984 Consent Decree, state law, and federal law while others resulted from continued tradition-based services that developed over the years between the Board and the university laboratory schools rather than the legal relationship between the entities.[60] In accordance with the respective MOU, the District has received MFP funds based on the laboratory schools' reported student enrollment and, in turn, distributed portions of those funds to the universities and/or its employees directly and utilized portions to provide benefits to university employees and to provide supplies, equipment, instructional services, and administrative services.

3) Analysis of MFP Flow from Board to Laboratory School Systems

The District undertook an extensive examination of its financial records in order to provide Financial Accounting Summaries which set out the amount of funds which have flowed through the District pursuant to the MOU and/or Consent Decree for the benefit of the respective laboratory school systems.[61] The United States also retained an expert, Nicholas D'Ambrosio, Jr., who also

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[59]Bell Declaration, Ex.G at ¶ 3 and Attachments 1-2.

[60]*See* Bell Declaration at ¶¶ 4-5, Ex. F.

[61]Declaration of George Murphy, Exhibit J to Opposition at ¶¶ 2-4 and Attachments 1-2.

examined each parties' financial records to make the same determination. Importantly, Mr. D'Ambrosio acknowledged that the Board does not actually fund the laboratory school systems from its own sources but receives MFP and federal funds on behalf of the laboratory schools and is authorized to distribute those funds based on a "district-determined formula",[62] which in this case is formalized by the MOU between the Board and the respective universities.

Examining whether the Board effectively distributed the MFP and other funds received on behalf of the universities, Mr. Ambrosia relied on the Financial Accounting Summaries prepared by the Board and records submitted by the universities for three (3) consecutive years. First, he concluded that the records of the Board and Louisiana Tech reconciled and there was nothing to suggest that the Board's Financial Accounting Summary as to Louisiana Tech was not complete and accurate.[63] On the other hand, Mr. D'Ambrosio concluded that the Grambling records were not accurate and, thus, were unreliable, finding that the Grambling accounting personnel acknowledged that the Board had provided all funds required under the MOU and Consent Decree.[64] The reliability of the Board's Financial Accounting Summaries, therefore, was confirmed by Mr. D'Ambrosio.

As demonstrated by Mr. D'Ambrosia's conclusions, the MFP and federal funding allocations for the representative years and the Board's payment of such funds, either directly or indirectly, have been duly accounted, as follows:

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[62]Expert Witness Report of Nicholas D'Ambrosia, Jr., Exhibit L to Opposition at pp. 3-5 (quoting the Cowen Institute for Public Education Initiatives at Tulane University, "Public School Funding in Louisiana," April 2011; citing to April 2006 Report to the House Committee on Education of the Louisiana Legislature by the Legislative Fiscal Office).

[63]D'Ambrosia Report, Ex. L at pp. 5-7. Mr. D'Ambrosia's analyses were based on an examination of records from three (3) consecutive years - 2008-2009, 2009-2010, and 2010-2011.

[64]*Id.* at p. 8.

MFP and Federal Funds Allocated and Paid by the Board[65]				
	Louisiana Tech		Grambling	
Year	Allocation	Paid	Allocation	Paid
2008-2009	$1,555,781	$1,338,281	$2,023,470	$2,496,304
2009-2010	$1,63,153	$1,394,751	$1,601,656	$2,284,674
2010-2011	$1,554,127	$1,440,543	$1,568,170	$2,055,074
cumulative	$4,746,061	$4,173,575	$5,193,296	$6,836,052

Mr. D'Ambrosia's report confirms that the Board has provided more than the allocated amount of MFP and federal funding to Grambling, an excess amount which covers the services provided to Grambling for the transportation costs required by the 1984 Consent Decree and other services covered by the MOU. While the funds passed on to Louisiana Tech do not directly equal the amount of the funds received via the MFP and federal funding, Louisiana Tech has acknowledged that it has received benefits pursuant to the MOU that satisfies the difference. Therefore, the financial accounting demonstrated that the Board has properly and lawfully received and passed on funds, directly and indirectly, that were owed to the universities from the MFP and federal sources.

The United States points out that "the MFP formula contemplates that all public schools in the state (including lab schools) will be supported through a combination of state funding and locally-generated revenue" and argues that the laboratory schools "do not receive a significant amount of local funding from the Board." As discussed above, the State Constitution prohibits the Board from giving the laboratory school systems money and State statute prohibits the Board from

[65]Extrapolated from D'Ambrosia Report, Ex. L at Schedules 8, 9, 10.

expending local tax funds for any purpose not reflected in the tax calls. Mr. D'Ambrosia compared the MFP and federal funds passed on to the laboratory school systems with the funds expended by the Board on its District schools; however, he failed to account for funding provided by the respective universities in his analysis.[66] Surely, the governing body of the respective laboratory school system is obligated to provide an amount of money toward its own operational needs, just as the Board does from its own sources for its own schools.

The Board is *not* legally obligated to provide any more funds to either laboratory school system than is attributable to their respective MFP funds. The Board is *not* legally obligated to provide additional funding to either laboratory school system in order to bring either system's funding up to the level which it, as a public Parish school system, has available to it to run its schools. Thus, Mr. D'Ambrosia creates "per-pupil" comparisons that are based on a faulty premise, at best, and such comparisons are irrelevant to the determination of whether the Board has any legal obligations beyond the passing-on of MFP funds to the laboratory school systems.

Significantly, Mr. D'Ambrosia concluded that there was nothing to suggest that the Board has not properly complied with the terms of the respective MOU's regarding transportation and teacher salaries. He found that the Board used the same methodology to calculate the number of teachers that are to be funded from the MFP for the laboratory schools as for the District schools. The financial records demonstrated that the Board does not expend funds independently that were

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[66]Further, the Board receives federal funding that cannot be proportionately compared to the laboratory schools due to the number of District versus laboratory school students and/or other factors upon which the funding was based. And, Mr. D'Ambrosia failed to account for the fact that Grambling enrolls a large percentage of students who do not reside in Lincoln Parish; thus, even if the local taxes were permissible spent for laboratory school students, the amount would be based *only* on Lincoln Parish residents.

not required by the MOU or by law. In sum, Mr. D'Ambrosia did not find any evidence that the Board was doing any more than transferring, either directly or indirectly, MFP and federal funds received by the Board on behalf of the laboratory school systems to the respective university. There is nothing in Mr. D'Ambrosia's report to suggest that the Board has any direct and/or ultimate control over any aspect of the operations of either laboratory school system.

Grambling admitted that the Board has no obligation to provide total funding of the laboratory school system's operations but only that amount agreed to in the MOU.[67] The United States suggests that the Board "could voluntarily agree to increase the overall funding it provides to the lab schools." The Board submits that, with an order from this Court, it could provide directly to each university the per pupil allocation from the MFP and the universities could assume all federal funding responsibilities, including assumption of all special education obligations. However, in addition to the constitutional and statutory prohibitions against expending funds not for the furtherance of its own operations, the Board is - as is every other public school board in the State - under serious financial strain due to several adverse factors at work in the State.[68] Providing additional funds not directly attributable to the MFP generated by the laboratory school system student enrollment is not an option but would be a serious financial strain or even disastrous.

The financial evidence clearly shows that the Board is simply the conduit for funding from the State and not an independent funding source for either Louisiana Tech or Grambling. The

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[67] 30(b)(6) Deposition of Grambling State University, through its Representative, Leon Sanders, Vice President for Financial & Administration (excerpts), Exhibit M to Opposition at pp. 63/23-25, 64/1-2, 69/2-13.

[68] There has been no increase in the per pupil level of funding provided by the State for the last five (5) years, while state-mandates costs of health care and retirement have risen exponentially.

financial evidence also clearly shows that the amount of money provided to Grambling for services under its MOU is in excess of the MFP and federal funding received on its behalf and, if anything, correction of that overpayment may be necessary to eliminate possible constitutional or statutory violations by unlawful expenditure of public funds by the Board.

e. Racial Disparities at the Laboratory Schools

The laboratory schools at Grambling and Louisiana Tech were operated as *de jure* segregated public schools in the formerly dual **university** system in the State of Louisiana - **not** in the Lincoln Parish School District. As established by the indisputable facts above, Grambling and Louisiana Tech govern and operate their respective laboratory schools with direct and ultimate oversight by the Louisiana Board of Elementary and Secondary Education ("BESE") and the Louisiana Board of Regents ("Regents"). The Board has no control or authority over student assignment, teacher assignment, facilities, or quality of education at the laboratory schools.

1) Student Assignment

The Board has absolutely no control or authority over the recruitment or enrollment of students at either laboratory school system. The Status Report references the 100 percent black student population at the Grambling laboratory schools and states that it "substantially exceed[s] the proportions in the Board's Ruston zone, in which the schools are physically located, and of Lincoln Parish as a whole".[69] The comparison of the Grambling student enrollment with the District's student enrollment, whether in the Ruston attendance zone or District-wide, is a wholly misleading statement as it appears to suggest that Grambling has an obligation to have its student body reflect

[69]Status Report at p. 8, Rec. Doc. 25.

that of the District or that the Board has some control over how Grambling effects its enrollment. Nothing in the 1984 Consent Decree speaks to Grambling having to even try to reflect the Lincoln Parish District enrollment ratios. The simple fact that the Grambling laboratory schools are physically located in the District's Ruston attendance zone should make no difference in the desegregation plan for Grambling, especially since many of its students come from outside Lincoln Parish.[70] Importantly, it is improper and unrealistic to hold a university laboratory school to the same racial ratio as the public school district in which it is physically situated, especially when the laboratory school charges tuition and enrolls students from multiple parishes.

2) Faculty Assignment

Mr. D'Ambrosia confirmed that the Board utilizes the same formula, based on State-based student-teacher ratio, for determining the amount of teachers to be funded by the MFP for both its own schools and both Grambling and Louisiana Tech.[71] The United States complains that Grambling's ability to recruit teachers is adversely affected by the Board's utilization of that formula, because Grambling teachers in excess of those paid via that MFP formula are paid less due to not receiving the supplements provided by that formula. The reason for this result is a prime example of the difference between how Grambling and Louisiana Tech handle their respective operations. Louisiana Tech utilizes its own funds to compensate for the additional teachers that the formula does not cover whereas Grambling simply does not. However, Grambling admits that the Board has no

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[70]Based on Grambling's student enrollment records for school year 2010-2011 submitted to the DOJ in March 2011, nearly thirty percent (30%) of the students enrolled in its schools are not Lincoln Parish residents. *See* Bell Declaration at ¶ 6, Ex. G. According to the testimony of the Grambling witnesses, however, the number of out-of-parish students at Grambling may be as many as 40-45%. Deposition of Sandra Murphy Boston (excerpts), Exhibit N to Opposition at p. 17/5-14..

[71]D'Ambrosia Report, Ex. L at p. 12.

responsibility to pay more than the formula amount per the MOU and that the university has to add additional teachers as it deems necessary.[72] Grambling's failure to expend any funds of its own to pay for teachers which it deems necessary above the number computed by the same student-teacher ratio-based formula cannot be attributed to the Board.

The Board has no control or authority over the recruitment, employment, supervision, evaluation, discipline, and/or termination of the staff at either Louisiana Tech or Grambling. As noted above, the *only* teachers assigned to Grambling who are employed by the Board are those providing special education instruction and services pursuant to the District's obligations under the IDEA.[73] The presence of the District's special education personnel or of District employees provided relative to any provision of the MOU does not indicate any authority or control of the Board over the faculty or other personnel employed by Grambling.

Furthermore, the Board has been declared unitary in faculty and staff assignment at its own schools in the District. The United States never raised an issue that it was interfering with or otherwise taking any action that would be adverse to either Louisiana Tech or Grambling achieving unitary operations in faculty or staff assignments.

The United States compares the 89% black faculty at Grambling and 4.5% black faculty at Louisiana Tech to the 13.3% District-wide black faculty employed by the Board. Such comparison of faculty ratios has *never* before been performed in the history of this case. The fact that these separate systems are located in the same parish should *not* subject the laboratory schools or the

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[72]Sanders Deposition, Ex. M at pp. 16/21-24, 42/4-13, 63/23-25, 64/1-2.

[73]Declaration of Kathy Shipp at ¶ 5, Ex. J. The provision of special education services is discussed in detail below.

District to any ratios outside their respective systems. Such would be wholly improper given the lack of employment authority or control over the others' staff.

3) Facilities

The laboratory school facilities are state-owned and maintained by the respective university.[74] As clearly explained in the Legislative Fiscal Office report:

> The process for obtaining funding for capital outlay is essentially the same for each lab school. The university lab school building is a state owned building, as it is a university building. To obtain capital outlay funding for the lab school building the school must set priorities, which are then submitted to the respective university and prioritized along with other university projects. The university in turn must send their prioritized list to the university board. The university board will set priorities for projects for all of their universities and then that list is sent to the Board of Regents. From that point the Division of Administration's Facility and Planning Control will analyze projects that may be placed in the Capital Outlay Bill.
> ....
> [T]here may be needs of the school that are greater than what the tuition may support. The school may obtain funding from the university's operating budget to make necessary repairs. ... While the process of obtaining funding to maintain lab schools is the same, it is different than a regular public school. The school district maintains their buildings, as they are not state buildings. To maintain their buildings the school district has the opportunity to pass local taxes.[75]

Grambling has admitted that this is the process for funding facilities construction, maintenance, and repair.[76] There can be no doubt that Grambling and Louisiana Tech are responsible for their respective laboratory school facilities. The Board has no control over the physical property and has no legal authority to expend funds or to go on the grounds, without permission, for the

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[74] *Report*, Ex. E at p. 5.

[75] *Id.*

[76] Sanders Deposition, Ex. M at pp. 23/4-25, 24/1-8, 30/9-17, 69/2-13.

purpose of maintaining, repairing, or constructing any Grambling or Louisiana Tech laboratory school facility.

The United States has suggested and Grambling has taken the position that the Board should be held responsible for affirmatively providing assistance, monetarily and otherwise, to Grambling because the Board has not constructed a school in the city of Grambling and thereby forcing students who live in the city of Grambling to attend the university laboratory schools. This argument is wholly without justification. First, at the same time the Fifth Circuit considered the addition of the laboratory schools to this action, it also soundly rejected a challenge to the Board's decision not to build a school in the city of Grambling.[77] Secondly, the city of Grambling is within the Ruston attendance zone and students who reside in that community are free to, welcome, and do attend District public schools in that zone. In sum, there is nothing more than rhetoric to support Grambling's inference that the District has "used" the Grambling laboratory schools as "the" public schools in the Grambling community. This argument, is made, should be soundly rejected by this Court as unsupported in fact and/or law.

In any event, the Board has been declared unitary in the operation of its facilities. The Board provides adequate school facilities to serve all students who reside in Lincoln Parish. There is no evidence to support the assignment of any obligation to the Board for improvements to or construction of facilities for Grambling or Louisiana Tech.

4) Quality of Education

The Board has no authority or control over either universities' laboratory school programs and would, therefore, have no stake in and can not be held accountable for such matters - as to either

[77] *Copeland*, 598 F.2d at 980-81.

universities' laboratory schools. The university laboratory schools are *not* part of the District for accountability purposes.[78] The Legislative Fiscal Office noted that Grambling and Louisiana Tech do not report their school performance scores with the District's scores.[79]

2. Interdistrict Relief Unjustified

The United States urges that the Board must share in the responsibility for desegregating the laboratory school systems at Grambling and Louisiana Tech. As demonstrated above, this position rests on erroneous conclusions regarding the Board's legal authority and responsibility in the control and governance of the laboratory schools. Clearly, the Board, Grambling, and Louisiana Tech each operate distinct, autonomous public school systems, legally unrelated except through the contractual MOU agreements. When remedial measures would affect two (2) or more autonomous school systems, such remedies would be interdistrict in nature and, thus, the court must demand the satisfaction of certain requisite legal standards before such remedies could be imposed.[80] Although previously raised by the Board, the United States has ignored this legally sound foundation upon which the Board's defense to the instant Motion rests.

In this case, the requirements for interdistrict remedies are not present. Neither the 1984 Consent Decree nor any other Court rulings found or otherwise referred to the existence of any racially discriminatory acts of the Board which would justify the imposition upon it of an interdistrict remedy for the benefit of either of the universities' laboratory schools. No evidence

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[78] *See* Bell Declaration, Ex. G at ¶7; Louisiana Tech Response, Ex. D at p. 11.

[79] *Report*, Ex. K at p. 6.

[80] *Taylor v. Ouchita Parish Sch. Bd.*, 648 F.2d 959, 969 (5th Cir. 1981).

suggests that the District, Grambling, and/or Louisiana Tech have engaged in any intentional racially discriminatory acts that have caused segregation within any of the three educational systems.[81] United States Supreme Court precedent, as followed by the Fifth Circuit as well, instructs that court-ordered interdistrict relief is not justified under the circumstances present in this case.[82]

Even if interdistrict relief would somehow be deemed proper, the Board would show that court-ordered interdistrict remedies would not be appropriate with regard to any of the factors raised above. As to the student assignment, the situation in this case is not akin, for example, to those where interdistrict student transfers may adversely impact desegregation in adjacent school systems. Here, students and their parents make a personal decision to apply to attend and pay tuition to attend their laboratory schools of choice. Such personal choices are beyond the control of the Board - and, indeed, the university laboratory schools themselves - for which a school system under a desegregation order cannot be held responsible.[83] The Board would submit that to attempt to reflect a certain racial ratio in laboratory schools which operate with students who elect to attend and are required to pay tuition to do so would be far beyond impracticable.

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[81] *See Milliken v. Bradley*, 418 U.S. 717, 744-45 (1974) (must show racially discriminatory acts have been a substantial cause of interdistrict segregation).

[82] *See, e.g., Milliken,* 418 U.S. at 744-45 (interdistrict remedy requires showing of racially discriminatory acts of one school district have been a substantial cause of segregation in an adjacent district); *Jenkins*, 515 U.S. at 88, 90 (proper response to an intradistrict violation is an intradistrict remedy where there is no interdistrict violation and effect; interdistrict goal to attract nonminority students from adjacent district is pursuit of "desegregative attractiveness" which is beyond the scope of the court's broad remedial authority); *Taylor,* 648 F.2d at 968-69 (intradistrict problems of two separate and autonomous school districts without interdistrict violation and effect do not allow interdistrict remedy); *United States v. State of Mississippi*, 921 F.2d 604, 608 (5th Cir. 1991) (where system's enrollment and racial composition remained stable during the relevant period, no significant interdistrict segregative effect)

[83] *Flax v. Potts*, 915 F.2d 155, 161-62 (5th Cir. 1990).

As for the faculty and staff issues, while a virtually all-black faculty is indeed a concern for Grambling, the Board cannot control the personal preference of teachers who apply for and choose to be hired by Grambling as opposed to apply for and be hired by the Board. There is no evidence that the Board has engaged in any racially discriminatory act which would discourage black teachers from applying and/or accepting positions with the District or which would encourage black teachers to apply to and/or accept positions with Grambling instead. Certainly, the Board has consistently acted in good faith with regard to its obligations to maintain lawful faculty ratios in all of its schools inasmuch as it has obtained unitary status in that area. Grambling chooses not to compensate all of its teachers the same thereby creating the disparate salaries of which the United States and Grambling complains. Faculty racial make-up is a matter based on personal choices of the teachers and may be influenced by the decision of Grambling - unlike Louisiana Tech - to fund its own teachers beyond the standard student-teacher ratio formula. The factors contributing to the faculty assignment problems at both Grambling and Louisiana Tech are beyond the control of the Board.

III. CONCLUSION

The documented facts set forth herein above demonstrate the lack of any authority, governance, or other control over either the Grambling or the Louisiana Tech laboratory schools in any *Green* factor area of operation. In every area, Grambling and Louisiana Tech each have such legal obligation as to their respective laboratory schools. The misconceived notion that the School Board is legally authorized to and responsible for all or part of the operation of these independent, state-owned, and state-operated institutions is based on a fundamental misunderstanding of the legal relationship between and among the entities in favor of the community's traditional desire and comprehension of that relationship. The obligation to provide those Parish students who *choose* to

go to a university laboratory school with the desired educational opportunities - including unitary school operations - rests squarely on the owners and operators of those schools: Grambling and Louisiana Tech through BESE and the Board of Regents.

Contrary to the urging of the United States, the laboratory schools were ***not*** part of the system of public schools in Lincoln Parish operated by the Lincoln Parish School Board and, thus, the desegregation orders in this case ***never*** enjoined the Board in any regard to the laboratory schools. The desegregation issues applicable to the Board, the Grambling laboratory schools, and the Louisiana Tech laboratory school, respectively, are distinctively different and not inter-related. None of the three has governing or operational authority over either of the others which could implicate a legal responsibility to desegregate any schools but their own.

The United States argues that the laboratory schools at Grambling and Louisiana Tech "could not exist without the Board's various functions in its capacity as the lab schools' fiscal agent, or without the many services that the Board is obligated to provide under federal law, state law, and the agreements with the lab schools." To the contrary, as set out above, Grambling and Louisiana Tech have full authority and control over its own operations and both are free to pursue and obtain legislation which would provide direct payment of all state funding and/or to instruct the Board to make direct payment of the MFP allocations, to assume responsibility for federally-supported services under IDEA, and to contract with independent, private providers for any service now provided by contract with the Board.

The Board has, contemporaneously with this Opposition, filed a Motion seeking a ruling that is has complied with its obligations under the 1984 Consent Decree and that it should be dismissed from any further remedial relief regarding the desegregation of the university laboratory schools.

In conjunction with that Motion, the Board respectfully requests that this Court deny the Motion for Further Relief as to it and enter an order finally dismissing the Board from the desegregation issues related to the Grambling and Louisiana Tech laboratory school systems.

Respectfully submitted, this the 19th day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **OPPOSITION** was filed electronically with the Clerk of Court by use of the CM/ECF system, which will send a notice of electronic filing to counsel registered with the Court for receipt of pleadings by email.

BATON ROUGE, LOUISIANA this 19th day of July, 2013.

s/Pamela Wescovich Dill
Pamela Wescovich Dill