UNITED STATES DISTRICfT COURT
MIDDLE DISTRICT OF TENNESSEE

FRANCES SPURLOCK, et al,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No.: 3:09-00756
vs.	§	
	§	JUDGE SHARP
DAVID FOX, et al,	§	
	§	Class Action
Defendants.	§	
	§	
	§	
	§	
	§	

FOURTH AMENDED COMPLAINT

Come now the plaintiffs, by and through their attorneys, and show to the Court the following:

INTRODUCTION

1. This class action was initiated under 42 U.S.C. 1983 on August 31, 2009, for the purpose of redressing the defendants' adoption and implementation of a rezoning plan for the Metropolitan Nashville public schools that assigned or reassigned students on the basis of race and marked an intentional return to racially isolated and racially segregated schools in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment. The plaintiffs, black students attending the Nashville-Davidson County public schools and their parents or adult

representatives, allege that the defendant school district and Metro government officials and entities have intentionally decided to discriminate racially and to re-segregate Nashville public school students and public schools to make majority-black and majority-white schools even more identifiable as such, and have by official government policy marginalized black students in order to placate white parents and dissuade them from removing their students from the system. Upon notice, after the filing of the original complaint, a contested hearing was held on plaintiffs' request for a Temporary Restraining Order. After consideration and review of the affidavits of both parties and argument of counsel, this U. S. District Court issued the TRO. An evidentiary hearing on plaintiffs' motion for certain preliminary relief, including preliminary injunction, was held throughout the month of November, 2009, but the Court has not yet issued a ruling on the preliminary injunction. The deadline for discovery in this case is September 30, 2011. Trial in this case is scheduled for May, 2012. Since the filing of the original complaint through the present, academic test scores in the Metro Nashville schools have consistently declined under the defendants' rezoning plan except for the three academic magnet schools. Plaintiffs would show that the racial discrimination originally complained of has not abated, and so the nature of their discrimination claims herein remain.

JURISDICTION

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1331, 28 U.S.C. 1343 (a)(3)-(4), and 28 U.S.C. 1367 (a), as it is brought under 42 U.S.C. 1983 et seq. and the Fourteenth Amendment. Declaratory relief is available pursuant to 28 U.S.C. 2201 (a). Venue in this district is proper under 28 U.S.C. 1391 (b). Plaintiffs are citizens and residents of

the State of Tennessee, and the defendants are local government entities, office-holders, and citizens of Tennessee as well.

PLAINTIFFS

3. Plaintiffs FRANCES SPURLOCK and JEFFREY SPURLOCK are residents of Nashville, Davidson County, Tennessee and bring this action on behalf of themselves and their minor daughter, who was entering the sixth grade at the time this action was commenced after attending the Bellevue Middle School in the Hillwood cluster (subdistrict) the year before. Mr. and Ms. Spurlock and their daughter, who are African-American, wished to continue her education at the integrated Bellevue school but had been notified in the spring of 2009 that she would have to attend the John Early Middle School, a racially isolated school in the Pearl-Cohn cluster, commencing in August, 2009.

4. At various times in 2009, the Spurlocks were told by the defendants that their daughter could continue to attend Bellevue Middle School if they provided their own transportation; that she could seek a transfer back to Bellevue during the regular "open enrollment" period; that her only choices were John Early School or H.G Hill School, another middle school in the Hillwood cluster with a failing academic rating on the federal government's No Child Left Behind criteria; that the child could enroll at Bellevue Middle on the first day of school; that the family would have to apply for a hardship transfer, which was then denied and the denial was upheld by defendant Dr. Jesse Register, director of Metro schools, forcing them to enroll the daughter at either John Early School or H.G. Hill School.

5. The Spurlocks' daughter enrolled at John Early School in the Pearl-Cohn cluster at that time, but on August 24, 2009, some two weeks into the school year, the parents attended an open house at the school and were told by four teachers that the school did not have sufficient textbooks on hand to distribute any to the students. Tennessee state law requires free textbooks for enrolled students and has so provided since the 1950's. Plaintiffs' daughter then learned from one of her friends who continued to attend the predominantly white Bellevue Middle School that books were distributed to students there either on the first day of school (a Friday) or the second (a Monday). The textbook situation at predominantly black John Early was remedied only after an order from Judge William J. Haynes, Jr. at the hearing in this matter. In connection with the rezoning, textbooks were also denied to students at 70 other schools by the defendants.

6. While enrolled at the John Early school, plaintiffs' daughter was bullied, harassed, and physically challenged by unsupervised students, and felt she was unable to use the restroom at the school because of the threats made against her. Matters reached a point where this former fifth-grade honor student was in tears almost every day about having to go to school, until the ruling by Judge Haynes had her transferred back to the Bellevue Middle School under court order.

7. The rezoning plan forced plaintiffs Spurlock into these events and continues to force plaintiffs' child into attending a school system where defendants have failed to provide appropriate resources for schools that are not predominately white and where these defendants have deliberately intended to segregate students based on race.

8. Plaintiff CARROLL LEWIS is a resident of Nashville, Davidson County, and brings this action on behalf of herself and her minor granddaughter. Both Ms. Lewis and her granddaughter are African-American. In October, 2008, Ms. Lewis was advised by letter of the rezoning of Metro schools, and was told that she had only two options for her granddaughter to attend in 2009 -- her assigned school of John Early Middle School in the Pearl-Cohn cluster or a so-called choice school -- the Bellevue Middle School in the Hillwood cluster. John Early School had been a special magnet school in the 2008-09 school year, and still had signs and logos proclaiming it a magnet school to parents. On the assumption that it would remain so, Ms. Lewis chose that school for her granddaughter in 2009-10. The school the child had attended in 2008-09, the Martha Vaught Middle School in the Hillwood cluster, was going to be closed as a result of the new rezoning plan. In 2008-09, Martha Vaught's student population consisted of 118 white students [29.9%], 198 black students [50.3%], and 78 other students (Hispanic, Latino and other minorities) one of only two majority-black schools in the Hillwood cluster with Brookemeade Elementary School being the other. Both were eliminated under the defendants' new rezoning plan, and most of their black students were assigned to return back to the Pearl-Cohn cluster.

9. When Ms. Lewis accompanied her granddaughter to the first day of school in August of 2009, however, she found that John Early School was no longer a magnet school under the rezoning plan but rather just a regular school with a 96.3% black student body. She then requested a hardship transfer for her granddaughter to Bellevue Middle School, because she feared that the child, who was a quiet and good student, would be adversely influenced by the behavior of others at John Early School. In addition, the granddaughter wanted to try out for

cheerleader at Bellevue, and her brother was already going to school there and would have benefited from her presence. Nonetheless, the hardship transfer was denied by the defendants.

10. The rezoning plan forced plaintiff Lewis into these events and continues to force plaintiff's grandchild into attending a school system where defendants have failed to provide appropriate resources for schools that are not predominately white and where these defendants have deliberately intended to segregate students based on race.

11. Plaintiff Tennessee Alliance for Progress is a Tennessee not for profit organization, based in Nashville, whose first founding principle is "Providing educational opportunity, and the funding of education, are vital investments in our children, our State, and our future. Invest in education at levels that will ensure a skilled Tennessee work force and an informed citizenry." (http://www.tennesseeallianceforprogress.org/1/mission_principles). Further, Tennessee Alliance for Progress was co-sponsor and organizer of the community forum in North Nashville (the Pearl/Cohn schools cluster area) to educate the community regarding the segregationist effects of the rezoning plan.(See exhibit#1 to Walter Searcy deposition, and same booklet material in depositions of Plaintiff Spurlock, deposition of Reverend Inman Otey Sr., and deposition of Won Choi).

CLASS ACTION AND REZONING ALLEGATIONS

12. Plaintiffs bring this action for themselves and on behalf of all others similarly situated; that is a plaintiff class consisting of all students in the Metropolitan Nashville public school system who have been and are being directly affected by the defendants' adoption and implementation of the student assignment (rezoning) plan that was adopted by a 5 to 4 vote by

the Nashville School Board with every white member of the Board voting for the rezoning plan and four of the five black members of the Board voting against the rezoning plan. In the alternative, plaintiffs bring this action for themselves and on behalf of all others similarly situated; that is a plaintiff class consisting of all black and other minority students in the Metropolitan Nashville public school system who have been and are being directly affected by the defendants' adoption and implementation of the student assignment (rezoning) plan.

13. The rezoning plan was implemented by the defendants at the start of school in August 2009. The major thrust of the rezoning plan was to create a new assigned school for black and minority students in the Pearl/Cohn cluster for the purpose of intentionally removing black and minority students from schools in white neighborhoods. The constitutionality of this racially discriminatory rezoning policy/rule of the defendants under the Fourteenth Amendment and the official acts and decisions of the defendants flowing from the adoption and implementation of that rezoning is the question of law that is common to the class. The allegations by plaintiffs that the defendants acted with race based discriminatory intent and engaged in pretext as to the reasons for adopting the rezoning policy are questions of fact and law common to the class. The members of the plaintiffs' class are so numerous that joinder of all members is impracticable, the claims or defenses of the representative parties are typical of the claims or defenses of the class; and the representative parties will fairly and adequately protect the interests of the class, all as set forth herein.

14. A class action may be maintained if Rule 23(a) is satisfied and if: (1) prosecuting separate actions by or against individual class members would create a risk of:
(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests; (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action, all as set forth herein.

15. Plaintiffs seek certification as a class action on the ground that this case and the rezoning rule/policy of the defendants meets all the applicable requirements under Rules 23 (a), (b)(1)(A), and (b)(2). Based on the evidence presented at the November 2009 hearing on preliminary injunction in this case, discovery to date and the expert witness reports, the class in this case includes at least 2,215 black students affected by elimination of the mandatory non-contiguous transfer zones involving the Hillwood, Hillsboro, and Pearl-Cohn clusters; a total of at least 4,169 black students affected by the rezoning plan’s elimination of all such mandatory transfer zones; and 10,275 black students (out of 36,360) assigned to racially isolated schools

(defined as 80% or higher black enrollment) as a result of the adoption and implementation of the current plan and related actions by the defendants (there is some overlap in these numbers). The class is so numerous, therefore, that joinder of all members is impracticable. Rule 23 (a)(1).

16. There are questions of law or fact common to the class, and the claims of the representative plaintiffs are typical of those of the class, primarily whether the adoption and implementation of the challenged rezoning plan by the defendants amounts to intentional, de jure racial segregation and discrimination and unconstitutional assignment or reassignment of black students on the basis of race without any compelling justification, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment. The wrongs suffered and remedies sought by the representative plaintiffs apply generally to the class, so that final injunctive and corresponding declaratory relief would be appropriate respecting the class as a whole. Rule 23 (b)(2). By the same token, prosecution of separate actions by the hundreds of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class. Rule 23 (b)(1)(A).

17. Finally, it is clear that the representative parties will fairly and adequately protect the interests of the class. Rule 23 (a)(4). With respect to the named individual class members, paragraphs 3 to 10 above conclusively demonstrate that the families ardently desire a safe and high-quality educational experience for their students, that they were adversely affected in this regard by the adoption and implementation of the challenged rezoning plans and the actions taken by defendants thereunder, and that they sought and have continued to seek placement in integrated, diverse school settings where true growth and learning can be achieved. These

parents and their students have shown great courage and commitment to the aims of this action by coming forward as class representatives.

18. In addition, the undersigned counsel have already spent many hours identifying and investigating potential claims in this action, and in litigating a still pending preliminary injunction motion and other motions herein. Rules 23 (g)(1)(A)(i) and (iv). Plaintiffs' counsel possess extensive experience in handling civil rights litigation, including class actions and other matters of public importance including but not limited to Rayburn v. Bredesen, Chancery Court for Davidson County (ruling that the guns in bars law is unconstitutional); Groseclose ex rel. Harries v. Dutton,et al. (class action of death sentenced inmates in Tennessee challenging the death penalty and conditions of confinement on the Tennessee Death Row); Townsend v. Treadway,et al. and Townsend v. Clover Bottom, et al. (class actions of all residents of Clover Bottom Development Center for the Mentally Retarded challenging their involuntary servitude, conditions of confinement, and lack of treatment options); Allen v. Cole Layer Trumble and American Appraisal Associates, et al. (class action of all homeowners in Nashville, Tennessee challenging the validity and legitimacy of the mass property reappraisal program for property tax purposes). Attorney Lottman has served as an attorney for the Civil Rights Division, U.S. Department of Justice, worked on the famous Willlowbrook State School case in New York from 1973 to 1975, and after a favorable decision served as a member of the Willowbrook Review Panel and in anumber of other capacities in the case, which is still in the post-judgment phase. In private practice, he was also plaintiffs' lawyer in major Federal class actions against the Long Island Developmental Center, Letchworth Developmental Center, Bronx Psychiatric Center, and the New Jersey Neuropsychiatric Center, and was a Federal court master in cases involving the Pennhurst State School and Hospital in Pennsylvania, the Mansfield Training School in

Connecticut, and a number of State mental hospitals inNorth Carolina. In Tennessee, he served for 11 years as chair of the Quality Review Panel in the Clover Bottom mental retardation case in this district. From 1970 to 1973, Mr. Lottman was the lead attorney at the (then) Department of Health, Education, and Welfare for the Emergency School Assistance Program and the Emergency School Aid Act, Nixon-era school desegregation assistance programs, which involved him in drafting policies and regulations, reviewing hundreds of desegregation plans and compliance issues, and participating in dozens of hearings regarding these plans and issues. ESAP and ESAA made major inroads in those years in desegregating public school faculties and blocking public aid to segregated private schools

19. Plaintiffs' counsel are well versed in the law and procedures applicable to this case. Rules 23 (g)(1)(A)(b)-(c). Counsel are committed to and can and will provide for any additional legal, expert, or financial support that is necessary in this case. In general, the provisions of Rule 23 (g), F. R. Civ. P., seem primarily designed to assist a court in selecting class counsel when there is more than one applicant for the position, see Rule 23(g)(2), a problem that, for better or worse, is unlikely to arise herein due to the unpopular nature for most in handling civil rights cases. An inspection of counsel's work to date, in any event, will demonstrate that they can fairly and adequately represent and have so represented the interests of the members of the class.

20. As parents of and as MNPS students, Plaintiffs Spurlock and Lewis possess exactly the same interest and injury as the other 2,215 black students[1] who were rezoned by the defendants' policy. While defendants assert (without any proof) that some black students will differ in their

[1] "(MNPS) Implementation Update on Student Assignment Plan, 2010-11 Zoned Option Enrollment," dated 12/2/10.

schooling, such warrantless assertions do not affect and do not change the Court's ruling on the issues: the defendants' pretextual reasons and intent for rezoning, the racial segregation that defendants knowingly created with their policy; and the strict scrutiny standard the Court must use in deciding these issues.

21. The overriding common question of law and fact in this class action is whether defendants violated the Fourteenth Amendment. Brown v. Board of Education, 347 U.S. 483 (1954) and Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007) prohibit the defendants rezoning policy: the intentional discriminatory assignment of students to schools on the basis of race without any compelling justification for purposes of intentional governmental (de jure) segregation. As the Wal-Mart opinion stated it: commonality is the crux of the Rule 23(a) decision and the determination of such common issues (intent and segregation here) "will resolve an issue that is central to the validity of each one of the claims in one stroke."

22. The defendants intentionally developed and implemented a rezoning/student assignment plan that re-segregates many Nashville schools using racial identity as one of the major factors and combined with FARM data, as the major factor. The rezoning moved black students away from integrated school environments in the mostly white Hillwood and Hillsboro clusters (sub-districts) back into so-called "neighborhood" schools in the Pearl-Cohn cluster that were already racially isolated with 90% black (and more) student enrollments. The Court in one stroke can decide the 14th Amendment issue for the entire class by finding the defendants created the rezoning policy to racially re-segregate Nashville students and Nashville schools.

23. Despite minor differences between the individual plaintiffs as to their child's individual experiences in school, by ultimately deciding the intent and the segregation issue of the rezoning

plan the Court has the "capacity …{(in this} classwide proceeding to generate common answers apt to drive the resolution of the litigation" which the Wal-Mart decision this month held to be the critical determinant. As the Wal-Mart case states (citing General Telephone Co. of Southwest v. Falcon , 457 U. S. 147) "proof that an employer operated under a general policy of discrimination" is one way to justify class certification. Here the general policy of discrimination is the rezoning plan.

24. Plaintiffs presented expert testimony[2] that the rezoning policy had a clear segregative effect in the Pearl-Cohn, Hillwood, and Hillsboro clusters, and found no educational justification for isolating hundreds more minority students in their nearly all-black "neighborhood" schools. Vanderbilt University-based research conducted in Nashville schools, found that even with the benefit of additional resources, students cannot succeed when concentrated in these high minority/high-poverty school environments. The defendants were aware of the Vanderbilt research when they acted to consign the minority students to those schools[3]and simply chose to ignore it.

25. Plaintiffs believe the class should be certified as all the white, Hispanic, black and other students directly affected by the rezoning plan. Even if the class certification is limited to the black students, then based on the evidence presented at the November 2009 hearing on preliminary injunction in this case, the discovery and expert witness reports, the class includes at least 2,215 black students[4] affected by elimination of mandatory non-contiguous transfer zones involving the Hillwood, Hillsboro, and Pearl-Cohn clusters; a total of at least 4,169 black

[2] See testimony of Dr. William Rock, Dr. Leslie Zorwick, George Thompson, John Egerton, and Dr.Tommie Morton Young in Nov.2009
[3] See testimony of school board member Mark North.
[4] "(MNPS) Implementation Update on Student Assignment Plan, 2010-11 Zoned Option Enrollment," dated 12/2/10; Defendants' expert witness report of Dr. Leonard Stevens, p. 17.

students[5] affected by the rezoning plan's elimination of all such mandatory transfer zones; and 10,275 black students[6] (out of 36,360) assigned to racially isolated schools (defined as 80% or higher black enrollment) as a result of the adoption and implementation of the rezoning plan.The class is so numerous, therefore, that joinder of all members is impracticable. Rule 23 (a)(1).

26. Largely as a result of the above effects of the rezoning plan, the percentage of black students attending racially isolated regular schools (defined here as 80% black enrollment or more) rose from 22.3% to 24.7%[7] in the first year of the rezoning plan's operation, and the percentage attending such isolated schools in the entire system (including special schools) rose from 24.9% to 28.2%.[8] The latter number was essentially the same in 2009-10[9] and 2010-11[10] and represents more than 10,200 black students[11] spending their days in racially isolated schools.

27. Defendants engaged in a deliberate campaign to intentionally misrepresent the resources available to students and their parents. Such efforts included but were not limited to telephone calls, letters, website announcements, and even home visits. In at least one case, and many others based on information and belief, there was even a forged signature of class members to falsely state they were staying in the black community schools. In many cases the Defendants sent false or misleading information in the form of descriptions of the black community schools as magnet schools, and other enhancements, when the schools were not and are not.

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[5] "(MNPS)Implementation Update on Student Assignment Plan, 2010-11 Zoned Option Enrollment," dated 12/2/10; Defendants' expert witness report of Dr. Leonard Stevens, p. 17.
[6] "(MNPS) Implementation Update on Student Assignment Plan, 2010-2011 Demographic Changes,"; Plaintiffs' exhibist 123, 124, and 177.
dated 12/2/10; see also, e.g. Plaintiffs' exhibit 177.
[7] Testimony of Dr. William Rock at Vol. 2, p. 193.
[8] Plaintiffs' exhibits 123, 124, and 177.
[9] Plaintiffs' exhibits 123, 124, and 177.
[10] Plaintiffs' exhibits 123, 124, and 177.
[11] "(MNPS) Implementation Update on Student Assignment Plan, 2010-2011 Demographic Changes"; Plaintiffs' exhibits 123, 124, and 177.

28. Many white students, Hispanic and Latina students, Asian students, and Pacific Island students are also adversely affected by this deliberate and intentional action by the defendants to resegregate by race the students in the Nashville school system. As the scientific literature over the years has shown, children and students of every race are negatively affected by segregation policies based on race and ethnic origin.

29. Finally, the above summary of the issues demonstrates this class should be certified under Rule 23 (b)(2) since the defendants have acted on grounds that apply generally to the class (their rezoning policy), "so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" or under Rule 23(b)(3) based on the common questions of law and fact discussed above.

DEFENDANTS

30. The Metropolitan Board of Public Education consists of nine elected members, one member being elected from each of the nine school districts that comprise the city and county. Added together, the nine school districts cover all of Nashville and Davidson County. Nashville and Davidson County operates under a metropolitan form of government so that there is only one local government for the city and county known as the Metropolitan Government of Nashville and Davidson County. The defendant school board members who voted to adopt the discriminatory rezoning plan were DAVID FOX (since replaced by MICHAEL W. HAYES), STEVE GLOVER (since replaced by ANNA SHEPHERD), MARK NORTH, MARSHA WARDEN (replaced before the filing of this case by Alan Coverstone and then replaced by KAY

SIMMONS), and KAREN JOHNSON (since replaced by CHERYL D. MAYES). The school board members voting in the minority to reject the rezoning were GRACIE PORTER, GEORGE THOMPSON (replaced before the filing of this case by DR.SHARON DIXON GENTRY), JO ANN BRANNON, and EDWARD T. KINDALL. The school board members are sued in their official capacities as elected members of the defendant METROPOLITAN NASHVILLE BOARD OF PUBLIC EDUCATION, which is the immediate governing and policy-making body for the Metropolitan Nashville public school system. As such they have deliberately engaged in and maintained a policy of racial and ethnic discrimination by adopting and implementing a rezoning/student assignment plan that is based upon race and racial stereotypes and is intended and designed, inter alia, to remove African-American students from the Hillwood cluster and other majority-white or integrated schools and return many of these students to racially isolated, low-income, low-achieving "neighborhood schools" without legal or educational justification.

31. Defendants Shepherd, Mayes, and Hayes are substituted herein for former board members David A. Fox, Karen Johnson, and Steve Glover as a matter of law under Rule 25 (d), F. R. Civ. P.

32. Defendant METROPOLITAN NASHVILLE BOARD OF PUBLIC EDUCATION is sued in its capacity as the immediate governing and policy-making body for the Metropolitan Nashville public school system.

33. Defendant DR. JESSE REGISTER is sued in his official capacity as Director

of Schools for the Metropolitan Nashville public schools. Defendant Register is appointed by the defendant Metropolitan Nashville Board of Public Education, and as such he implemented the rezoning plan and administers and manages the challenged student assignment rezoning plan and all other aspects of public school operations.

34. Defendant METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY is sued in its capacity as the overall administrative and governmental body for all city and county government operations, including the Board of Public Education and the policies or customs the board adopts, such as the unconstitutional and racially discriminatory school assignment policy that is the subject of this litigation as well as the agency that manages and determines the location of government financed low income housing projects that this defendant locates so as to keep the Pearl/Cohn cluster overwhelmingly black. The Metropolitan Government supports the Board of Education and enforces and maintains its policies and customs by, inter alia, determining the annual budget for school operations, executing the truancy and child-neglect laws, and deployment of police officers as special officers in the public schools. As such, this defendant has both legal authority and budgetary control over the public school system and over the government low income housing projects.

35. The attorneys for the defendants accepted service of process in this case for all the defendants except Dr. Gentry and Mr. Kindall. Dr. Gentry and Mr. Kindall were personally served with the process in this case at their respective residences.

V. ADDITIONAL FACTUAL ALLEGATIONS

36. Background. The Metro Nashville school district consists of 133 schools serving grades pre-kindergarten through 12 in Nashville and surrounding Davidson County. In 2010 it enrolled 71,708 students and employed 5,064 teachers. The racial and ethnic composition of the student body in that yearwas 35,706 African-American (47.5%), 2,853 Asian/Pacific Islander (3.8%),11,882 Hispanic (15.8%), 105 Native American/Alaskan (0.1%), and 24,554 white (32.7%). The student body was almost evenly divided between females (49.2%) and males (50.8%), and 51,882 students were classified as economically disadvantaged (72.1%). Various sets of enrollment numbers can be found in the case documents, but the racial percentages here (taken from the Nashville school system's State report card for 2010) are approximately what they have been from 2008 through the present)

37. The school district is divided into 12 sub-districts, called clusters, which have considerable effect upon which schools students attend but do not appear to serve any other significant purpose. These clusters were established in the past and reflect for the most part racial and etnic groupings in the community. These clusters are determined, and their borderlines drawn, by the school board, and the board adopted or re-adopted the current lines when it approved the challenged student assignment plan now in effect. The clusters vary greatly in terms of student population and percentage of African-Americans, as seen in the following figures for the 2010-11 school year:

Cluster Enrollments

Cluster	Enrollment	Black %
Pearl-Cohn	3,555	81%
Whites Creek	3,537	78%
Stratford	3,811	69%
Maplewood	3,997	67%
Hunters Lane	6,635	52%
Antioch	5,994	44%
Cane Ridge	5,438	44%
Hillsboro	5,165	38%
McGavock	11,345	37%
Glencliff	5,924	28%
Hillwood	4,668	26%
Overton	7,663	23%

In 2010-11, a total of 10,370 students were considered to be attending "non-

zone" schools including, on information and belief, some but not all of the magnet schools plus other special programs. Of these students, 59% were black.

38. In the past, students attend schools located in the cluster where they live from kindergarten through high school unless they are African American students living in particular zones that were established under prior racial discrimination school cases in Nashville. It was possible before the rezoning plan for a students' family to choose a different school in another area or another cluster under a wide array of already existing procedures. One school choice mechanism, included in the current student assignment plan, allows students who live in what was previously a mandatory non-contiguous transfer zone to exercise a "zoned option" choice for a school in a different cluster, normally for the purpose of a more diverse educational environment. The defendants have claimed that 43% of eligible black students in the Pearl-Cohn cluster, and 47% of those in the former mandatory zones, transferred out to their "school of choice" in the 2010-11 school year. But a more detailed summary of total zoned option enrollment shows that while 45.8% of eligible students stayed in their assigned schools in 2009-10, that figure rose to 53.5% in 2010-11 and the percentage choosing their zoned option (out-of-cluster/diverse school) fell from 25.4% to 18.7%. "Other schools," a term of uncertain meaning, were chosen by 28.8% of the former mandatory transfer zone residents in 2009-10 and by 27.8% in 2010-11. While the basis for some of these numbers (obtained from the school district) is not clear, what is clear is overall out-of-cluster transfers **by this group** declined between the first and second years of the current rezoning plan.

39. The State's 2010 report card for the Metro Nashville schools, after the reassignment of students in the rezoning plan, portrayed dramatic differences in academic achievement between white and black students. In the elementary and middle schools (grades kindergarten to eight), 44.1% of black students scored "below basic" in mathematics and 17.4% were "proficient" or "advanced." (The "basic" grouping is omitted here in order to emphasize the highs and lows; proficient or advanced scores are the State's measure of accountability.) For white students in these grades, the corresponding figures were 22.1% "below basic" and 41.7% proficient or advanced. In the area of reading/language and writing, black students scored 22.1% "below basic" and 32.4% proficient or advanced, as compared to white students' 10.1% "below basic" and 57% proficient or advanced.

40. The picture was similar for students' reported performance at the high school level: in mathematics, blacks were 34.7% "below basic" and 31.8% proficient or advanced, while whites were 18.7% "below basic" and 53.6% proficient or advanced. Finallly, in reading/language and writing, 18.2% of black students were below basic level and 52.3 were proficient or advanced; for white students, the numbers showed 7.8% "below basic" and 75% proficient or advanced. Compared with these very large discrepancies, the graduation rates (2009 figures) were somewhat closer: 71.9% for black students and 77.1% for whites. (The State goal for 2009 was 90%.) It was later reported that the graduation rate for the district as a whole jumped to 82.9% in 2010. A similar pattern under the rezoning plan of declining academic test scores is documented by the ACT scores in Nashville high schools (with the exception of the two academic magnet high schools).

41. After the rezoning plan, for the 2009-10 school year, the Metro Nashville school system remained in serious jeopardy with regard to the No Schools Left Behind/Adequate Yearly Progress criteria. Its NCLB status was listed as "Restructuring 1-Improving," which could have been a step toward outside intervention if not for the relief granted to the district because of the catastrophic floods of 2010. Clearly, the test scores posted by black students adversely affected the system's overall performance and will continue to do so in the absence of dramatic change. Expert reports and testimony to date suggest that black students can learn more and perform better if not sequestered in high-minority, high-poverty schools located in poor and often dangerous neighborhoods. Greater integration- not less, more diversity-not less, and exposure to classmates with different experiences and aspirations are therefore necessary steps in resolving the district's academic difficulties.

42. According to the State report card, there were 6,688 suspensions of black students from Metro Nashville schools in 2009-10 (equivalent to 18.7% of all black students) and 221 expulsions (equivalent to 0.6% of black enrollment). The comparable figures for white students were 1,858 suspensions (7.6%) and 77 expulsions (0.3%). Almost two-thirds of all suspensions during the year were of male students, as were 80% of all expulsions, so it can be presumed that black male students were the most heavily impacted. Suspensions were actually somewhat lower for both blacks and whites in 2009-10 as compared to the previous five years, but the rate for black students was still almost 2 ½ times that for whites. While school discipline is a complicated area, experts agree that exclusion from school negatively affects academic performance; increases the likelihood of the student's dropping out of school altogether; leads to dangerous conduct like fighting, possession of weapons, and use of

drugs and alcohol; and causes a host of other psychological and relationship problems. Thus school discipline is another serious issue, entwined with questions of racial disparity if not discrimination, that now faces this troubled urban district.

43. The school board was the ultimate losing defendant in an earlier school desegregation case, Kelly v. Nashville Board of Education, which contined in various iterations for more than 40 years. The suit was not settled until 1998, when the district was declared "unitary" and the case was dismissed. The final settlement was not enforced however because, obviously, the case was no longer active and certain elements in the Nashville community decided to start electing candidates to the school board who would have an agenda and a focus on the rezoning plan that is the subject matter of this lawsuit. Meanwhile, continuing earlier trends, there was a shift in the racial makeup of the school district in the years after it was granted unitary status. After the lawsuit settlement, between the years 2000 and 2010, according to No Child Left Behind data, the percentage of black students remained relatively stable between 45% and 48% of the student body; while Hispanic population rose dramatically from 4% to 16%; and the proportion of white students fell even more dramatically, from 47% to 33%. In terms of raw numbers, black students increased by 4,814, to 35,706; Hispanics increased by 9,285, to 11,882; and white students fell by 9,910, to 24,554. During this time, the defendants' focus was not on avoiding further racial isolation, but rather on stemming the outflow of white students and their families and bringing previous departed white families back into the fold at the deliberate expense of other racial and ethnic groups. Adoption and implementation of the current student assignment rezoning plan and related actions were and are a major component of that effort; as alleged in this Complaint, however, these same plans and actions were deliberately aimed at isolating minorities in the

school system based on race and ethnicity to the detriment of African-American student and other student groups.

44. As a part of this plan, a political action group, originally located at the offices of the Nashville Area Chamber of Commerce, decided to focus on electing school board members who would, inter alia, select a director of schools to support the rezoning and establish the rezoning. According to the records of the Davidson County Election Commission, this group of business leaders and their family members and allies contributed many thousands of dollars to such candidates and routed other thousands of dollars through other education organizations to help elect and influence candidates for the school board. Their money or influence helped elect school board member Karen Johnson and others; helped defeat the selection of a recommended director of schools; helped select a director (Dr. Pedro Garcia) who initially supported the rezoning plan; helped secure their group as the only private group or organization who got a voice and an appointment on the Task Force appointed to write the rezoning plan. In fact, they not only got to be present for the deliberations and discussions of the Task Force but got to participate, and most importantly, they got to vote for the rezoning plan, along with the school board members' nominees, to the exclusion of everyone else in the community. Further, the President/CEO of the Chamber of Commerce, Ralph Schulz, was personally present and conferring with board members at the school board meeting that voted 5 to 4 to approve the rezoning plan.

45. Development of the challenged plan. In his first years as Director of Schools, Dr. Garcia was widely viewed by most of the black members of the school board as a captive of the business community and no friend of minorities as reflected in evaluations and comments. As

such Dr. Garcia received majority support from the school board and a contract renewal not long before they forced him out. When Dr. Garcia changed his position on the rezoning plan to oppose it (because of its racial discrimination), within three months he was forced out of office because of this opinion on the rezoning plan. The idea for the current, discriminatory student assignment plan was developed over the objections of the then director of schools, Dr. Pedro Garcia, whose opposition to the nature of the plan led to his forced resignation. When a version of this rezoning plan was being proposed and discussed in 2007, Dr. Garcia visited the Brookemeade Elementary School in the Hillwood cluster, where faculty and staff members told him, in effect, that if the black and minority students could be removed from the school, white students would return to the defendant school system and take the black students' places, so that Brookemeade would not have to be closed. In 2008-09, Brookemeade's student body was 58.4% black and, 37% white, and 4.6% other races or ethnicities, which was fairly representative of the black and white student populations of the district as a whole. As noted above, the school was closed nevertheless as part of the rezoning plan that was ultimately adopted.

46. Dr. Garcia told the school board at its November, 2007 meeting that this plan for rezoning was racially discriminatory and that he was withdrawing it from consideration. He also told his "cabinet" of district officials that he did not want to be the director at a time when a plan that he proposed would be used to re-segregate the public schools. His decision to withdraw the plan was not well received by the defendants.

47. In December, 2007, Dr. Garcia was advised that Marsha Warden, chairperson of the school board at the time, felt she was facing significant pressure from parents of white students

in the white Hillwood cluster to remove the African-American students assigned to schools in that cluster. He had received earlier information to the same effect, that the chairperson was facing pressure to have black students re-assigned to Metro Center, i.e., the overwhelmingly black Pearl-Cohn cluster. Dr. Garcia felt that the chairperson in turn was exerting pressure on him as a result of his opposition to removing African-American students from the white Hillwood schools.

48. By this time, Dr. Garcia had served as director of schools for more than six years and had received generally positive evaluations from the school board during that time—good enough, obviously, for him to be retained in office. His employment status was maintained even though, except for his first year, the school district's scores in annual performance ratings were either flat or declining overall. At a board meeting on or about January 19, 2008, however, Dr. Garcia was forced out of office and a termination agreement for Dr. Garcia was presented to the board, and his contract was bought out with little or no public discussion. Within a few days, he had cleared out his office and was gone.

49. Meanwhile, at the December 2007 meeting of the school board, responsibility for the new student assignment plan and rezoning had effectively been taken away from Dr. Garcia and an entirely new mechanism was created for its development—an entity that came to be known as the Community Task Force on Student Assignment. Though no legal authority appears to support the delegation of a student assignment plan to a private group of persons, the school board apparently did so and did so without seeking or receiving any legal guidance about

the authority or the propriety of the delegation. The school board decided that the composition of the task force would be determined by allowing each school board member, the mayor of Nashville-Davidson County, the Nashville Area Chamber of Commerce, and the Director of Schools to designate one person to serve on the task force and work under the chairmanship of board member Mark North. No particular qualifications were required for appointment, and most or all of those named were laypersons in terms of educational issues. When this Task Force met in January 2008, the majority had turned against Dr. Garcia, so the person he had appointed to the task force was not allowed to participate or serve any role in its proceedings. Attorney George Thompson, who was a school board member during this time, later testified he had never seen such a task force before in his 14 years of service on the Nashville school board.

50. The task force then set out to draft the rezoning plan more or less on its own, with little or no involvement with the school board as a whole or in any formal manner. It apparently relied heavily upon a mid-level school official, Larry Collier, for the planning information it received, and simply disregarded the legal advice from the Metro Government's law department that the proposed rezoning would violate the law. While the task force had some contact with faculty members at Vanderbilt University who had been studying the Nashville public schools, particularly its racial issues, for many years, neither the defendants nor their task force seriously considered the relevance of Vanderbilt's or other researchers' peer-reviewed, published work on such issues as racial isolation in so-called neighborhood public schools in Nashville, the relationship between racial and socioeconomic diversity and successful school experiences in Nashville , and the effects of school re-segregation in general. Such studies and other scientific data had been accumulating for more than 40 years in regard to schools in Nashville-Davidson

County and hundreds of other places and was ignored and disregarded by the defendants' task force.

51. The Task Force only considered three sets of data or factors in making its reassignment/rezoning recommendations for each cluster and each school: race of the students, FARM (free and reduced meal eligibility of students which is almost the same exact demographic as race and ethnicity among Nashville students), and building capacity. The School Board when they voted 5 to 4 to adopt the rezoning plan knew that these were the only three factors used in the rezoning plan for student assignments.

52. The report of the task force, which was adopted by the 5 to 4 vote to become the current student assignment plan, was presented to the Board of Education in May, 2008 and was sent back for changes. The rezoning plan was then presented to the School Board immediately before the 4th of July weekend and was then approved by that 5-to-4 margin at the first July meeting, with all the white members voting for the plan and all the black members but one (Karen Johnson) opposing it. The rezoning plan's one black supporter on the Board was heavily supported by the business political action group described above and Ms. Johnson then left the Board in order to campaign for another office, again with heavy financial support from the same group.

53. The defendants have stated publicly, and have argued in this case, that there was no discriminatory intent involved in the adoption of the challenged rezoning

plan. But to School Board member George Thompson, the motive was clear: "to get the African-American students out of the Hillwood cluster and dump them back in North Nashville."

54. Segregative effects. As noted above, the primary feature of the new student assignment rezoning plan was the elimination of three mandatory non-contiguous attendance zones, which had afforded large numbers of black students with a diverse educational experience away from their home schools or clusters (and afforded the same diversity to the other student demographic groups). When the schools opened under the new rezoning plan for the first time in the fall of 2009, it was clear—as intended and as anticipated by the racial, ethnic, and socioeconomic projections included in the plan—that the racial separation and isolation of students had dramatically increased. Nowhere was this segregative effect more dramatically obvious than in the Pearl-Cohn, Hillwood, and (to some extent) Hillsboro clusters in north Nashville and west Nashville. While plaintiffs believe that defendants numbers are understated, the defendants own Implementation Update of Student Assignment Plan released by the defendants in September 2009 shows the negative and harmful racial changes in student enrollment. The following increase in racial segregation in Nashville Schools between October 2008 and Sept. 2009 have occurred as a direct result of the rezoning plan:

A. The percentage of black children in the total enrollment of the Glendale School(Hillsboro Cluster) declined from 19.1% to 11.3%. The percentage of white children increased from 70.0% to 78.4%.

B. The percentage of black children in the total enrollment of the Julia Green School(Hillsboro Cluster) declined from 27.4% to 22.6%. The percentage of white children increased from 65.8% to 69.7%.

C. The percentage of black children in the total enrollment of the Percy Priest School (Hillsboro Cluster) declined from 21.8% to 6.9%. The percentage of white children increased from 73.6% to 85.1%.

D. The percentage of black children in the total enrollment of Moore Middle School (Hillsboro Cluster) declined from 40.8% to 33.7%. The percentage of white children increased from 52.3% to 61.7%.

E. The percentage of black children in the total enrollment of Charlotte Park School (Hillwood Cluster) declined from 40.1% to 26.3%. The percentage of white children increased from 22.6% to 36.3%.

F. The percentage of black children in the total enrollment of Westmeade School (Hillwood Cluster) declined from 46.3% to 23.8%. The percentage of white children increased from 44.4% to 63.8%.

G. The percentage of black children in the total enrollment of Bellevue Middle School(Hillwood Cluster) declined from 30.8% to 22.3%. The percentage of white children increased from 60.4% to 67.4%.

H. The percentage of black children in the total enrollment of H.G. Hill Middle School(Hillwood Cluster) declined from 49.4% to 33.3%. The percentage of white children increased from 41.2% to 44.6%.

I. The percentage of black children in the total enrollment of Hillwood High School

(Hillwood Cluster) declined from 47.3% to 38.9%. The percentage of white children increased from 41.6% to 46.1%.

J. The percentage of black children in the total enrollment of Dupont School (McGavock Cluster) declined from 32.3% to 17.3%. The percentage of white children increased from 64.0% to 78.9%.

K. The percentage of black children in the total enrollment of Cockrill School(Pearl-Cohn Cluster) decreased from 44.6% to 26.0%. The percentage of white children increased from 39.2% to 46.1%.

L. The number of black children in Buena Vista School(Pearl-Cohn Cluster) Increased from 309 to 435. The school is 97.1% black in enrollment.

M. The number of black children in Park Avenue School(Pearl-Cohn Cluster) increased from 440 to 676. The school is 95.9% black in enrollment.

N. The number of black children in John Early Middle School(Pearl-Cohn Cluster) increased from 238 to 352. The school is 98.3% black in enrollment,

O. The number of black children in Pearl-Cohn High School(Pearl-Cohn Cluster) Increased from 606 to 761. The school is 90.4% black in enrollment.

The rezoning plan has had a significant segregative effect on the Metropolitan Nashville Public Schools and many of the students.

55. Even with whatever exercise of purported choice had occurred, 631 black students had been removed from integrated school settings and assigned to five schools in the Pearl-Cohn cluster whose student bodies were already 89.6% black or more. At the same time, 432 black students had been removed from schools in the Hillwood cluster and the number of white students in those schools had increased by 211. These changes cemented the identity

of Pearl-Cohn schools as intended for black students of low socioeconomic status, and it significantly altered the nature of many Hillwood schools to make them more identifiably white and thus more "comfortable" for white students and their race-conscious parents. As the following numbers demonstrate, these segregative effects continued in the second year (2010-11) of the plan:

Pearl-Cohn Cluster

School	Year	Black%	White%	FARM%
Buena Vista Enh. Opt.	2008-09	99.4%	0%	91.6%
	2009-10	96.0%	3.4%	91.3%
	2010-11	95.3%	3.5%	91.4%
Cockrill Elementary	2008-09	44.6%	39.2%	89.6%
	2009-10	26.9%	44.8%	89.7%
	2010-11	27.9%	45.0%	91.4%
Park Ave. Enh. Option	2008-09	89.6%	5.9%	90.4%
	2009-10	96.1%	1.8%	94.3%
	2010-11	96.2%	2.2%	94.8%

Wharton/Churchwell	2008-09	--	--	--
	2009-10	95.5%	0.7%	96.7%
	2010-11	95.4%	1.9%	97.1%
John Early Middle	2008-09	94.8%	4.4%	77.3%
	2009-10	98.3%	0.9%	96.8%
	2010-11	95.6%	3.2%	94.6%
W.A. Bass Middle	2008-09	62.6%	26.4%	94.5%
	2009-10	63.0%	26.2%	90.7%
	2010-11	60.8%	25.7%	96.2%
Pearl-Cohn High	2008-09	90.9%	7.2%	76.6%
	2009-10	90.7%	5.7%	81.6%
	2010-11	90.2%	6.1%	86.6%

Hillwood Cluster

School	Year	Black%	White%	FARM%
Charlotte Park El.	2008-09	40.1%	22.6%	85.7%
	2009-10	26.1%	35.8%	81.8%
	2010-11	23.1%	36.0%	89.4%
Gower Elem.	2008-09	21.6%	61.9%	40.9%
	2009-10	23.8%	56.4%	42.8%
	2010-11	22.9%	56.6%	46.5%
Harpeth Val. El.	2008-09	12.5%	78.7%	18.4%
	2009-10	11.3%	78.1%	20.8%
	2010-11	11.4%	79.4%	19.2%
Westmeade El.	2008-09	46.3%	44.4%	54.5%
	2009-10	23.6%	64.3%	39.9%
	2010-11	26.0%	58.4%	46.9%
Bellevue Middle	2008-09	30.8%	60.4%	34.8%
	2009-10	22.0%	67.6%	31.2%
	2010-11	23.5%	65.2%	36.9%
H.G. Hill Middle	2008-09	49.4%	41.2%	66.8%

	2009-10	32.9%	45.0%	66.4%
	2010-11	30.5%	47.8%	66.9%
Hillwood High	2008-09	47.3%	41.6%	53.4%
	2009-10	38.4%	46.4%	53.6%
	2010-11	37.6%	46.8%	57.8%

56. In the above charts, it should be noted that 2008-09 was the academic year before the challenged student assignment plan took effect, and thus the following two years were the first and second years under the rezoning plan. The abbreviation "Enh. Opt." or "Enh." refers to enhanced option elementary schools which provide smaller classes, longer hours, and other special services said to benefit low-achieving students but which also present issues about extreme racial and socioeconomic isolation and questionable effectiveness (see paragraphs 54-59 below). Another abbreviation or acronym, "FARM," refers to students of any race or ethnic identity whoare eligible for free or reduced price meals; the number or percentage of such students is often used in studies to indicate the socioeconomic status of a school's population. A few of the above figures may be very slightly inaccurate because of the difficulty in reading copies of certain documents provided by the defendants. More substantively, it should be kept in mind in connection with the above Hillwood data that two relatively integrated schools in that cluster—Brookemeade (58.4% black, 37.0% white, 87.7% FARM) and Martha Vaught (50.3% black, 29.9% white, 82.7% FARM)—were closed after the 2008-09 academic year, with an explanation in the rezoning plan that so many students were being moved out of the cluster that

there was no further need for these facilities while at the same time, the defendants were saying they needed more capacity in Hillwood.

57. The above and other data clearly show the heightened identification of the Pearl-Cohn and Hillwood cluster schools as being primarily intended for black and white students respectively so as to encourage by official government policy the separation of students using their race as the primary factor. Within the Hillwood cluster, the changes wrought by the new rezoning plan caused enormously significant changes in the racial character and identity of the Charlotte Park, Westmeade, and H.G. Hill schools, from plurality black to plurality or majority white student bodies. Slightly smaller swings in population changed Hillwood High School from plurality black to plurality white and gave Belllevue Middle School a different, "whiter" feel as well. In addition, the plan did nothing to dissipate the vast disparities in concentration of low-income students between the Pearl-Cohn and Hillwood clusters, e.g., from 97.1% at the Churchwell schoool to 19.2% at Harpeth Valley by 2010-11.

58. The new plan's effect on the neighboring Hillsboro cluster has been significant as well. Most schools in this cluster remained about the same—majority or plurality white except the Hillsboro high school (56.7% black and 37.3% white in 2010-11) and the Carter-Lawrence school, which is listed as a magnet school in the district's "information updates" on its student assignment plan. Though magnet schools were devised many years ago as a means of encouraging voluntary integration, the Carter-Lawrence school is now by far the most racially isolated and racially identifiable facility in the Hillsboro cluster and has gone from 84.2% black and 12.0% white in 2008-09 to 87.3% black and 7.0% white in 2010-11 (with an 83.0% FARM

component). After being maintained "as is" in the new assignment plan, the school now functionally ensures that the cluster's other elementary schools remain plurality or majority white.

59. The plan's segregative effect can also be seen in the Hillsboro cluster in the cases of Glendale Elementary School, whose enrollment was 19.1% black and 70.0% white in 2008-09, and became 11.1% black and 78.7% black by 2010-11; Julia Green Elementary, which went from 27.4% black/65.8% white to 20.5% black/74.1% white; J.T. Moore Middle School, which went from 40.8% black/52.3% white to 31.1% black/63.4% white; and perhaps most strikingly,Percy Priest Elementary, which went from 21.8% black/73.6% white to 8.6% black/ 82.1% white during the years in question. As may have begun to happen at J.T. Moore, the percentage of black students in Hillsboro's upper schools will begin to shrink, and their character change, as a result of the governmental changes that have occurred in some of the elementary schools.

60. Largely as a result of the above effects of the rezoning plan, the percentage of black students attending racially isolated regular schools (defined here as 80% black enrollment or more) rose from 22.3% to 24.7% in the first year of the plan's operation, and the percentage attending such isolated schools in the entire system (including special schools) rose from 24.9% to 28.2% The latter number was essentially the same in 2009-10 and 2010-11 and represents more than 10,200 black students spending their days in racially isolated educational environments.

61. In addition to the plan's demographic and racial effects on the Pearl-Cohn cluster, it also seems to have been left with an insufficiency of intellectually challenging and academically oriented course offerings, particularly in the upper grades. Despite expressions of interest, Pearl-Cohn has nothing similar to the academic magnets or even an East Literature-type thematic magnet school to call its own. If planned properly, such schools might attract students from other areas, or at least create interest or meet a need for college preparatory experiences. Neither, on information and belief, do the Pearl-Cohn schools offer any of the popular International Baccalaureate classes at any grade level (as do the Hillsboro schools and a few others), and there are few if any Advanced Placement classes at the high school level.

62. The same phenomenon seems to affect even the district's touted and generally innovative "academy" program for its high schools. While Hillsboro High was given five varied global and international academies, and most other high schools have three to five concentrations to choose from, Pearl-Cohn High School was given only two such options, entertainment communication and entertainment management, perhaps reflecting a stereotypical view of what black students aspire to. The only other high schools to house just two academy options, Whites Creek and Stratford, are from the second and third most racially impacted clusters in the system, after Pearl-Cohn of course .

63. Lack of adequate justification. As shown above, the challenged rezoning plan, inter alia, returns hundreds of black students to their so-called neighborhood schools, and indeed this feature of the plan has been presented as one of its major benefits for the students affected. In

addition, a litany of additional educational and social resources, such as lower pupil/student ratios; a 5% pay differential for the teachers involved; greater numbers of social workers, psychologists, and guidance counselors; and an increase in specialized class offerings, technology, and computers, is included for areas of highly concentrated poverty, e.g., the Pearl-Cohn cluster, Napier Enhanced Option School in the McGavock cluster, and Shwab Elementary in the Maplewood cluster. A $5 million to $6 million cost has been mentioned for this array of "extra" services, butregardless of their cost allocation and the extent to which they may have been implemented, the great weight of professional opinion and educational research holds that they will not be enough to overcome the negative effects of extreme racial and socioeconomic isolation that the current plan has created and reinforced. Further, much of the actual expenditure by the defendants of this so-called extra money for Pearl/Cohn reflects money in areas that were already being spent before adoption of the rezoning plan. To the degree there is any new emphasis for schools in the Pearl/Cohn cluster, the defendants have intentionally discriminated against these students by deemphasizing academic programs in favor of commercial education programs instead.

64. Since at least the 1960's, there has been virtually unanimous academic and scientific recognition that racial isolation of students, particularly those from low-income families, in their "neighborhood" schools inevitably produces a negative effect on the students's educational and social progress and on their prospects for college and beyond. Among hundreds of others, the studies conducted in the Nashville-Davidson County schools by scholars from Vanderbilt University specifically conclude that concentration of disadvantaged African-American students in the same schools is a likely formula for failure. Both the Task Force and the School Board

were aware of and familiar with the Nashville studies when they adopted the rezoning plan. Yet the relocation or maintenance of black students in such schools is presented as justification for the racial impact of the defendants' rezoning efforts. The concept of grouping large numbers of such students together for educational purposes also underlies the district's creation and maintenance of its so-called enhanced option schools and, so far, its growing network of charter schools.

65. Expert opinion already in the record of this case, based on years of experience and research by these witnesses and others, bears out the fact that the effects of Metro Nashville's kind of intense racial and socioeconomic isolation cannot be overcome by compensatory measures such as those promised by the defendants, and that transitory instances of success in such circumstances realistically cannot be sustained. As a guidance counselor told researchers in one of the Vanderbilt studies, "We have so much here, and it still isn't enough."

66. Research literature overwhelmingly demonstrates that shifting toward greater racial segregation and concentrated levels of poverty is disproportionately harmful to minority students. One reason is that the students bring their home and neighborhood problems with them when they come to school, where they encounter the same students who make their lives problematic on the outside and there may be no other role models to emulate. As one interviewee told the Vanderbilt experts,

> … [t]hey are boys and girls who know each other,
> who know each other's parents and who do the same
> things, who solve problems in the same way, who bring

> the same kinds of difficulties here to the building. That in itself is challenging because we all know that we grow from diversity and we just don't have diversity here.

One obvious result for students is a focus on survival instead of learning, and so they pay an enormous educational and emotional price for these often romanticized aspects of neighborhood schooling.

67. As shown by the numbers above, in places like the Pearl-Cohn cluster the factors of high minority percentages and high indicators of poverty tend to overlap. So although the color of one's skin per se does not determine academic achievement or future success, it is impossible to discuss one factor without considering the other. Evidence has been mounting for four decades that the socioeconomic level of an academic environment is the most important factor affecting educational benefit. As James Coleman's famous report put it in 1966, "[t]he social composition of the student body is more highly related to achievement, independent of the student's own social background, than is any other school factor." Coleman and others have found that the quality of a school is affected more by the status of the students who attend than by the amounts spent on books, buildings, laboratories, or other traditional indicia (see, e.g., Gerald Grant's study of the schools in Wake County,North Carolina, and Heather Schwarz' study for The Century Foundation). Thus, as educators who work for the Metro Nashville schools must know, the district's strategy of clustering minority and low-income students together in neighborhood schools and providing them with extra measurable is exactly the opposite of what needs to be done.

68. Another justification advanced in support of the challenged rezoning plan is that it gives students and their families a choice as to their educational placement. But it is obviously not the case that the district has gone to all this trouble, and has defended its plan so vigorously, just to give black students assigned to racially isolated schools the chance to go back to the schools they previously attended. Indeed, under this plan students appear to be offered each year a choice of two schools, neither of which is necessarily the one they attended before re-segregation occurred. Choice under this plan is illusory and subject to manipulation, as shown by the experiences of the two named individual plaintiff families in this Complaint.The Spurlock family was presented with two unacceptable choices for 2008-09, and Ms. Lewis effectively was given no choice at all. As indicated above, it is not entirely clear how many students from the former Pearl-Cohn or the other mandatory transfer zones have actually gone back to a diverse school setting in their former district, and what the long-term trend is going to be in this regard. Two points are clear in any event: the hundreds of students who are not going back are being intentionally placed by the defendants in schools that are racially isolated; and the three new thematic magnet schools being planned for the Pearl-Cohn cluster could dissuade additional students and families from opting for integration and diversity outside the immediate area.

69. At another level, the idea that every student should be able to choose the school he or she attends in all circumstances is simply not supportable as government policy. Education is compulsory in this country for students up to a certain age, and is considered necessary so that young people can grow up to be contributing members of society. Most students are assigned to particular schools (with transfers allowed in certain defined situations), on the basis of what

students and families are entitled to assume are sound educational and administrative considerations. Parents should be able to trust that their school board is offering them the best and most suitable education it can, or a choice between substantially equivalent alternatives instead of a choice between a racially isolated school and a broken school. They should not be required to choose between one beneficial academic option and one that the board knows is objectively less appropriate or even harmful for their students. Otherwise, because of inattention, inconvenience, irresolution, or misinformation, a parent may unintentionally or unwillingly consign his or her child to an inadequate educational experience that does not prepare that child for the obligations of citizenship. If providing the child with the opportunity for an integrated and diverse educational experience was appropriate in the first place, that opportunity should not be taken away for insubstantial or non-existent reasons in order to create the appearance of "choice."

70. In addition, allegedly giving a "choice" to recently displaced black and minority families to choose to return to white, middle-class schools-- where they surely feel they are not wanted-- amounts to placing the onus for change on the weakest participants in the transaction. Many parents, moreover, may have had unpleasant experiences in their own lives when they have dealt with school officials, police, and other representatives of white-dominated society, and they may not feel comfortable thrusting themselves into a situation where they and their students will be in the minority, and an unwanted minority at that. Minority group members in such a situation may thus choose a school that they know is not the best, in order to remain in their comfort zone and avoid the risk of negative social consequences.

71. The defendants have also stated that the new student assignment plan was required in order to address capacity, the under- and over-utilization of certain school buildings. If so, it seems almost certain that such adjustments could have been accomplished in a way that caused many fewer, and far less damaging, racial consequences. Assuming that space utilization was really a driving force behind the rezoning plan, it is obvious that greater care should have been taken to avoid re-segregation of students. It does not appear in any event that much was accomplished in the way of proper utilization of facilities. Hillwood is a clear example that capacity was not the true concern and was simply a pretext. If one looks at the district's implementation update for September of 2009, as the plan went into effect, it is also immediately evident that almost every building in the Antioch and Cane Ridge clusters is still over or under capacity—from a low of 46% utilization to a high of 122%-- although a ten-year plan for these two districts has since been adopted.

72. But there are so many other anomalies that one has to wonder what was really intended and accomplished in this regard: Glengarry Elementary was increased to 131% of capacity and Glenview Elementary to 121% in the Glencliff cluster; Sylvan Park Paideia was left at 76% and West End Middle School reduced to 77% in the Hillsboro cluster; Charlotte Park Elementary was reduced to 78% of capacity while 125 black students were removed, and Hillwood High reduced to 65% with the loss of 136 blacks, both in the Hillwood cluster; Dupont Elementary was reduced to 70% with the loss of 61 black students, Hermitage Elementary left at 67%, Tulip Grove left at 68%, Dupont-Tyler left at 116%, and Two Rivers Middle School reduced to 72% with the departure of 120 white students (and arrival of 50 blacks), all in the McGavock cluster; Chadwell Elementary was reduced to 67% and Gra-Mar Middle reduced to 65% in the Maplewood district; Crieve Hall Elementary was left at 126%,

Haywood Elementary increased to 139%, and Norman Binkley increased to 124%, all in the Overton cluster; Dan Mills Elementary was left at 68%, Rosebank Elementary left at 59%, and Ross Elementary left at 62%, all in the Stratford cluster; and Bordeaux Enhanced Option was increased to 117%, Joelton Elementary left at 58% of capacity (a 12.7% black/84.1% white school in a cluster where every other school was majority black and six were racially isolated), and Brick Church Middle reduced to 57%, all in the Whites Creek district.

73. It is not immediately clear what was going on in some of these districts, but it did not appear to have much to do, if anything, with building utilization, which would have a different kind of redistricting with some serious alteration of cluster boundaries. In any event, the assignment of students on the basis of race in Pearl-Cohn, Hillwood, Hillsboro, and other places in the district cannot be justified with reference to building utilization or capacity, which is not a sufficiently compelling interest to justify the racial dislocations which have occurred.

74. Napier and other enhanced option schools. The challenged student assignment plan contains or confirms other discriminatory provisions that do not directly involve the Hillwood/Hillsboro/Pearl-Cohn transfers but affect the options available to black students in Pearl-Cohn as well as other members of the overall [?] plaintiff class. According to the plan, the Napier Enhanced Option elementary school, already by far the most racially and socioeconomically impacted facility in the huge McGavock cluster (95.0% black, 0.9% white, 97.3% FARM) was changed from a choice school to a zoned school for students, presumably mostly black, who were previously assigned to other elementary schools in the district (Ruby Major, Hickman, and McGavock Elementary). Students in certain areas formerly zoned to Ruby Major and Hickman, however, were to be provided transportation if they wished to choose

Hickman (32.1% black, 59.4% white, 54.0% FARM) or Donelson Middle (52.0% black, 37.4% white, 66.5% FARM). In addition, feeder patterns were arranged sothat students progressed from Napier to Two Rivers Middle (25.0% black,59.1% white, 50.4% FARM) while those from Hermitage Elementary (20.5% black, 57.0% white, 66.0% FARM) went on to Donelson Middle. (Figures in parentheses are for 2008-09, the year before the plan took effect.)

75. Clearly, Napier Enhanced Option was confirmed and cemented by the plan as the designated elementary school for black students in the McGavock cluster. Although its student body was majority white in 2008-09, moreover, Twin Rivers was about to become the designated middle school for such students. The racial and socioeconomic projections in the plan for 2009-10, the first year of implementation, showed Napier adding 75 black students, no whites, and three others and staying about the same at 94% black and 2% white, with 96% of the enrollment eligible for subsidized meals. And beyond that, the plan projected that Donelson Middle would lose 127 black students and add 113 whites, while Two Rivers Middle would do the exact opposite, so that Donelson would become 32% black, 56% white, and 52% FARM and Two Rivers would be 45% black, 46% white, and 60% FARM. In actuality, the following changes occurred between 2008 and 2010:

McGavock Cluster Changes

School	Year	Black %	White %	FARM %
Napier EO Elem.	2008-09	95.0%	0.9%	97.3%
	09-10 proj.	94%	2%	96%
	2009-10	92.8%	2.8%	88.9%
	2010-11	94.2%	2.5%	96.5%
Donelson Middle	2008-09	52.0%	37.4%	66.5%
	09-10 proj.	32%	56%	52%
	2009-10	41.8%	46.2%	59.6%
	2010-11	40.3%	45.7%	68.5%
Two Rivers Middle	2008-09	25.0%	59.1%	50.4%
	09-10 proj.	45%	46%	60%
	2009-10	37.8%	47.2%	62.5%
	2010-11	43.1%	43.7%	72.1%

The changes in character of the middle schools have been significant, but are almost certainly not complete. Donelson Middle has changed from majority black to majority white, and Two Rivers has gone from a 12:5 white majority to an almost even split between black and white. With the change in feeder patterns imposed by the plan, these trends can only continue.

76. The more immediate concern, however, is the extreme racial isolation of hundreds of black students to the Napier elementary school and the fanciful justification that it is an enhanced option school that provides them with smaller classes, a longer school day, and other special attention in order to improve their academic performance. According to the 2010 State report card, 387 of the students (95.6%) at Napier, a pre-kindergarten to fourth-grade school, were African-American, as opposed to five white students (1.2%) and 13 others (3.2%). More than 95% were considered economically disadvantaged, most coming to Napier from the housing projects and low-income neighborhoods nearby. In No Child Left Behind testing for 2009-10, the school was found not to be achieving Adequate Yearly Progress toward Federal benchmarks in any of the subject-matter areas tested, and was accorded "School Improvement 2" status, which meant it was headed for sanctions. Its academic achievement scores, a letter-grade means of expressing aggregate student performance, were nothing less than atrocious—all F's in mathematics, reading/language, social studies, and science for both 2009 and 2010. It is difficult to see how students exposed to such terrible failure in their first four or five years of school can survive academically without the basic skills that should have been taught in those years. The cynicism of claiming to provide students with additional or special instruction in conditions which experts agree are inimical to growth or learning strains one's credulity—

especially here, where it appears the school's primary function is to separate blacks from whites. There is just no reason why the rezoning plan, rather than moving toward another isolated school for older students, could not have re-assigned the Napier students to other elementary schools—or re-configured Napier and some of the nearby facilities--in order to provide a measure of racial and socioeconomic diversity and a fair chance for all students in the area.

77. The same indictment can be lodged against all the so-called enhanced option schools operated by the Metro Nashville district, with perhaps one exception (Fall-Hamilton, which is in good standing with NCLB although its achievement scores are somewhat low). It is claimed that these schools are designed to help disadvantaged and low-achieving students, but this effort is being made in racially isolated and economically deprived circumstances where it is virtually guaranteed to fail—a fact that cannot have escaped the officials and professionals who work in the school system. Following is a compendium of information concerning these schools (except Napier, above) which is drawn from the 2010 report card for Metro Nashville schools:

Enhanced Option Schools

School	Black #	Black %	Ec. Dis. %	AYP?	Ac. Achieve(10)
Bordeaux El. EO	310	88.1%	95+%	No	2 D, 2 F

Buena Vista EO	412	96.3%	95+%	No	4 F
Caldwell EO	261	99.6%	95+%	Yes	4 D
Fall-Hamilton EO	182	72.2%	92.6%	Yes	2 C, 2 D
Glenn Elem. EO	250	94.7%	95+%	Yes	1 D, 3F
Kirkpatrick EO	310	92.0%	95+%	No	4 F
Park Ave. El. EO	681	96.1%	95+%	Yes	1 D, 3 F
Warner El. EO	335	85.9%	95+%	No	4 F

78. In the above listing, again, "El." or "Elem." means an elementary school, which is what all the enhanced options are. "Ec. Dis." shows the percentage of students in each school reported by the State to be economically disadvantaged, presumably the same as "FARM" on most other listings; the figure is 95-plus percent at every EO school but one. The "AYP?" column indicates whether the school was considered to be making adequate yearly progress toward the Federal benchmarks in the 2010 report; five of the nine, including Napier, were not. Finally "Ac. Achieve 10" lists the aggregate test grades for the school's grade 3 and 4 students in 2010 in the subjects of mathematics, reading/language, social studies, and science—almost all D's and F's.

79. In all, the 2,946 young black students in these schools (provisionally excepting Fall-Hamilton) have endured some of the most extreme racial isolation and socioeconomic deprivation that can be imagined, in an impossible quest for academic improvement that has plainly failed and has left these students years behind those who enjoyed more diverse and positive learning experiences. Again, the primary function of these schools seems clearly to

isolate large numbers of black students in "special" schools and thereby reduce the black populations in some if not all of the regular schools in their areas. (Fall-Hamilton, one of two lottery schools among the nine, may achieve slightly better results than the rest, but it still has by far the highest percentage of black students in the mostly-white Glencliff cluster. The school board and task force members who accepted and ratified the continued existence of these schools had to know exactly what they were doing.

80. Charter schools. Charter schools are a new and rapidly growing phenomenon in Metro Nashville and elsewhere, but the defendants are using them in part to perpetuate the racial and ethnic isolation they have created in the school system. While charter schools are operated under contract by private entities, they are funded through the school district by the defendants and often occupy buildings formerly utilized by the district. Thus they are public schools, supported with public funds, and are subject to the provisions of the Fourteenth Amendment. On information and belief, 11 charter schools will be operating in Metro Nashville in the coming year, and at least four more, have been selected to open in 2012-13. The most recently approved charter, just approved by the defendants two days ago, will intentionally restrict its students on the basis of gender and as reported in the Nashville newspaper will have "a student body likely to be predominantly Hispanic". Yet another example of the intentional use by the defendants of race or ethnicity to reduce diversity. The student population of the five charter schools that were serving Nashville-Davidson County students in 2010-11 was more than 90% African-American. The specific or projected demographics of the newer charter schools, and those to come in the future under more expansive eligibility standards, are not known to the plaintiffs at this time.

81. Plaintiffs know of no actions on the part of defendants to require diversity plans from current or prospective charter schools, covering such areas as student recruitment and admission policies, in-school assignments and class-room practices, faculty/staff qualifications and hiring procedures, capacity for providing free and reduced priced meals to eligible students, and means of assessing and documenting students' academic and social progress in addition to annual State testing. It appears that several of the charter schools approved by the defendants are racially isolated. Without review, approval, and monitoring of plans in these and related areas, charter school operators may, inter alia, engage in recruitment and admission practices that result in racial isolation and discrimination, which will then be imputed to the school district. The history of charter schools to date around the country has been one of mixed results, including instances of segregation and racial isolation of students, admissions and assignments made on the basis of race, and diminishing academic returns after an initial burst of enthusiasm. Such a result would not be unexpected if the schools were highly segregated by race or socioeconomic status. It would be unfortunate if Metro Nashville's charter schools ultimately function as another dead end for minority students. Already some of the Nashville charter schools have been allowed to operate entire grade levels that they were not approved by the school board and operate with significant lack and disproportionate lack of diversity in both faculty and student assignment or enrollment. On information and belief, the enrollments at most of the charter schools are heavily weighted toward one race, non diverse schools.

82. Magnet schools. As mentioned above, magnet schools were created years ago as an incentive for enhanced diversity, but at least in Metro Nashville they have often produced the

opposite effect and at times have been used in aid of racial segregation and isolation. One of defendants' experts, in a report filed in December, 2010, noted that Metro Nashville in that school year operated 20 schools with either 90% or more black enrollments or 10% or less white enrollment (up from 18 such schools in 2008-09, the last year before defendants' rezoning). Of these 20 intensely isolated schools, the defendants' expert, Dr. Leonard Stevens, found that six were thematic magnet schools (and eight were the enhanced option schools discussed above.

83. It is sometimes unclear from year to year which schools are classified as thematic magnets, but on the school district's website (mnps.org) nine schools were listed as such as of June 14, 2011. (In addition, there are three academic magnets that have excellent reputations, even though in 2010-11 two of them—the Meigs middle school [26.1% black, 63.3% white] and the Hume-Fogg high school [22.6% black, 64.8% white]-- were disproportionately white. The third academic magnet, the Martin Luther King high school, was fairly well integrated at 38.5% black and 43.7% white.) As the following figures for 2010-11 demonstrate, though, the thematic magnets were a decidedly mixed bag:

Thematic Magnet Schools

School	Black #	Black %	White #	White %	FARM %
Carter-Lawrence El.	349	87.3%	28	7.0%	83.0%
Hull-Jackson El.	417	87.1%	30	5.3%	68.9%
Jones Paid. Elem.	357	93.9%	14	3.7%	63.9%
Creswell Middle	465	84.2%	68	12.3%	65.9%
Head Middle	358	59.3%	180	29.8%	41.8%
Rose Park Mid.	270	62.4%	109	25.2%	57.6%
E. Literature M/H	942	75.0%	239	18.2%	62.0%
Pearl-Cohn High	708	90.2%	105	6.1%	86.6%
Nashville Sch. Arts	256	36.0%	424	59.1%	33.6%

Dr. Stevens also counted two other schools as magnets, as follows:

Churchwell Elem.	454	95.4%	8	1.9%	97.1%
John Early Elem.	302	95.6%	10	3.2%	94.6%

And he found two "design centers" to be intensely isolated:

Belleshire DC	417	88.9%	44	9.4%	88.1%
Haynes Design Ctr.	318	92.7%	19	5.5%	80.5%

84. By way of explanation, the abbreviation "Paid." stands for Paideia, a special type of instructional methodology, presumably along the lines of a Montessori school, which is what the above listed Hull-Jackson school is considered. Here again, some of the above numbers may be slightly off because of the difficulty in reading available copies of documents produced, but every effort has been made to ensure that all figures are accurate. The information about design centers, a variant on magnet schools, has been included here because the centers were included in the list of 20 isolated schools. It is striking that nine out of 13 of these schools—most of which were supposed to enhance racial diversity, and several of which actually did so years ago—are now racially isolated by plaintiffs' definition (80% or more black) and eight of those nine are intensely racially isolated by the expert's stated criteria, i.e., more than 90% African-American or less than 10% white. Of the thematic magnet schools, Head and Rose Park are generally considered effective, the district is very proud of the results achieved at East Literature, and the School for the Arts is somewhat sui generis, since it appeals to a limited segment of the overall population and its students are selected by audition rather than by lottery. But the hard truth is that of all these schools, only Head, Rose Park, and possibly the School of the Arts even remotely resemble the racial makeup of the district as a whole. If magnet schools and design

centers make up the entire enrollments in the above listed schools, which may not uniformly be the case, up to 3,787 black students are spending their school day in racially isolated or very racially isolated settings that for the most part were originally intended to combat segregation.

85. Thus if a student in one of the Pearl-Cohn cluster schools wished to move to a more diverse environment elsewhere, many of the magnet and magnet-type schools would be an obstacle rather than an opportunity, because in general no transportation is available to students choosing magnet schools, because in most cases the students would have to fight through a lottery process-- and because so many of the special schools that might attract their interest are as racially isolated, or nearly as isolated, as the schools they already attend. The same false hope confronts the many other students in Metro Nashville who are now assigned to segregated schools.

86. The district's newest "claim" to reduce racial isolation (and provide improved education) has been to apply for and secure a Federal grant that will place six more magnet schools this coming fall in three Pearl-Cohn schools with 90%-plus black student bodies, in Bailey Middle School (72.8% black) and Stratford High (70.2% black) in the Stratford cluster, and in Hattie Cotton Elementary School (67.1% black) in the Maplewood cluster. The enrollment in the Pearl-Cohn cluster as a whole is 81% black, in Stratford 69% black, and in Maplewood 67% black--three of the four most racially impacted clusters in the system (see above). Given the recent experience with magnet schools in Nashville-Davidson County, it is difficult to see how these additional magnets will have a substantial impact on existing patterns of segregation, especially in Pearl-Cohn, regardless of their educational merit. The district's

projections for the three Pearl-Cohn schools involved in the magnet grant are, at most, 19% white students in the entry grade at one school (Churchwell) and 12% for the entire school in two places (Churchwell and Pearl-Cohn High), all by the 2012-13 school year.

87. Professors Claire Smrekar and Ellen Goldring of Vanderbilt University have for some time been observing and analyzing the re-segregation of Nashville's magnet schools since the district was accorded unitary status and relieved of busing and other obligations contained its Court-ordered desegregation plan. In recent articles, they have noted a rise in white and corresponding drop in black student attendance at selective academic magnet schools in a "southeastern district" (on information and belief, Metro Nashville) and a nearly opposite trend in the district's "non-selective," i.e., thematic magnets during the same period (1999 to 2004), leaving them by 2008 in roughly the same proportions they remain today.

88. One article in particular, entitled "Rethinking Magnet School Policies and Practice," explained that parents and students in Nashville, particularly white families, chose to leave the magnets and return to their neighborhood schools once they were freed of the strictures of the Court-ordered plan. (Some mandatory transfer zones for black students remained in effect, which are in large part the subject of the instant litigation.) In any event, the effect of these choices was to "tip"the magnet schools out of any kind of racial representativeness. Some magnet schools in inner-city neighborhoods then became a popular option for the predominantly black families who lived in these areas, because the magnets were close to home and perceived as being both convenient and better in some way than the regular cluster schools. Upwardly mobile black parents have continued to choose the magnet schools, while white parents perceive

them as unattractive because of their location and their popularity with the families who lived around them. As one teacher said in the Vanderbilt article,

> …this year I had one little white girl and her mother moved her. She told me, "it is not you, I don't have anything against you, [my daughter] loves you, likes you." But she said, "I just don't feel comfortable with her being alone."

So building or placing more magnet schools in the heart of predominantly black, or predominantly any-race neighborhoods (it works both ways), is highly likely to produce the same effects it has for years. There are probably few families of either race that would risk much discomfort in order to go to a school that features courses in museum management (the offering in two of the three new Pearl-Cohn magnets). More likely, many, many more black students will stay in their predominantly black neighborhoods, or one close by, to attend these new magnet schools than the number of white students who will cross over the divide in the name of greater diversity. Metro Nashville administrators and the defendants have seen similar occurrences for the last decade or more, or have noted the relevant literature in Vanderbilt's own Peabody Journal of Education if not elsewhere or else have engaged in willful ignorance. There may be strategies that could attract diverse student bodies to the magnet schools, beginning with better identification of interests; accommodation of different lifestyles, workplace issues, and transportation needs; and location of such schools in more neutral areas where all students might feel secure and welcomed. In other words, a strategy for success instead of failure.

89. This class action on behalf of black and minority students enrolled in the Metropolitan Nashville Public Schools system (MNPS) is brought under 42 U.S.C. 1983 and alleges violations of the Equal Protection clause of the Fourteenth Amendment as interpreted and applied by the U.S. Supreme Court in Brown v. Board of Education, 347 U.S. 483 (1954), and its numerous progeny. See, e.g., Freeman v. Pitts, 503 U.S. 467, 494 (1992). The Brown v. Board of Education case, of course, outlawed discriminatory assignments and treatment of black students in school, and the recent decision in Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007) continues to prohibit the assignment of students to schools on the basis of race without any compelling justification or for purposes of intentional (de jure) segregation.

90. The defendants, including MNPS, the Metropolitan Nashville government, and officials thereof , have intentionally developed and implemented a rezoning/student assignment plan using racial identity as one of the major factors and combined with FARM data, as the major factor. That discriminatory rezoning policy, as intended, resulted in the deliberate racial segregation of and discrimination against hundreds of black and minority students, i.e., de jure segregation and discrimination.

91. The defendants admit that racial identity of the students was one of the three major factors and criteria used to design the challenged rezoning plan, under which, inter alia, some 631 black students were moved away from integrated school environments in the mostly white Hillwood and Hillsboro clusters (sub-districts) back into so-called "neighborhood" schools in the

Pearl-Cohn cluster that were already racially isolated with 90% black (and more) student enrollments. (The overall student population of Metro Nashville schools is 47.5% black, 33% white, 16% Hispanic, and 3.5% other races or ethnicities.) At that time, as a result of the challenged rezoning plan, the black student enrollment at schools in the Hillwood cluster was reduced by a total of 432 while the white student enrollment was increased by 211. For example, the percentage of black students enrolled at Charlotte Park elementary school has been reduced from 40.1% before the plan was implemented to 23.1% in the current academic year.

92. Expert testimony demonstrates that the rezoning plan had a clear segregative effect in the Pearl-Cohn, Hillwood, and Hillsboro school clusters, and finds no educational justification for isolating hundreds more minority students in their nearly all-black "neighborhood" schools. This testimony, as well as Vanderbilt University-based research conducted in Metro Nashville schools, shows further that even with the benefit of additional resources, students cannot succeed when concentrated in these high-minority and high-poverty school environments. The defendants were aware of the Vanderbilt research when they acted to consign the minority students to those schools or else engaged in willful ignorance. The defendants were aware of the legal opinion from the Metro Nashville Department of Law that the propoded rezoning plan would violate the law, or else engaged in willful ignorance.

93. In addition, the defendants' other justifications offered for the 2009 rezoning plan--such as enhanced "choices" and improved building utilization-- have not been and cannot be supported by the evidence, leaving racial separation as the most visible result of, and most obvious motivation for, these changes. The defendants have used and relied upon pretexts to

conceal their discriminatory intent; this pretextual nature is illuminated by the opposition of the then MNPS director of schools to the rezoning plan; by that official's telling the school board at its official meeting that the rezoning plan was racially discriminatory, and his subsequent sudden termination from employment; by the unusual manner in which the rezoning plan was drawn and presented; by the availability of the Vanderbilt research to the defendants; by their disinterest in a Metropolitan Department of Law opinion as to the constitutionality of this kind of student assignment plan; by their deliberate decision to focus on trade and occupational learning in the Pearl-Cohn cluster at the expense of college-preparatory and academic subjects; and by the statement of the then school board chairman to the effect that her constituents were pressing her to reduce the number of minorities in their Hillwood schools. These and other factors are proof of the racial intent behind the plan and the de jure nature of the resulting segregation.

94. Many of the magnet and enhanced option schools created or maintained by the defendants as part of or in aid of the rezoning plan are also racially isolated or racially identifiable and contribute heavily to the segregation of black and minority students and the operation of a dual system--even though at least some of these models are alleged, in theory, to further the opposite result. Thousands of black students continue to be assigned to these schools even though even though it is well established in research literature and in actuality that the asserted benefits of diversity or educational improvement cannot be achieved in this manner. The few charter schools operating in 2010-11 reportedly served a 90% black student population, and more are planned for 2011-12 and beyond.

95. Plaintiffs' calculations show that more than 10,000 black students, more than 28% of the total black student enrollment, are being educated across the MNPS school district in racially isolated schools defined as 80% black or more (if a 75% standard is used, the degree of isolation increases accordingly). The defendants' contemplated addition of six more magnet schools in school facilities that already have enrollments of 67% or more black students—including three Pearl-Cohn schools with 90%-plus black student bodies-- is very likely to increase the degree of racial segregation.

96. With respect to the students in racially (and often socioeconomically) impacted situations other than the obvious racial gerrymander involving the Pearl-Cohn, Hillwood, and parts of the Hillsboro districts—e.g., the enhanced option schools (including Napier Elementary), the magnet schools (and some "design centers"), the charter schools, and many if not all of the 10,000 black students assigned to schools with 80% to 90%-plus black student enrollments (including the above groups)—the existence of intentional segregation in a significant portion of the system provides a predicate for an allegation , and ultimately a finding, that the defendants are operating a dual system on the basis of race. At a minimum, the burden is on the school district, regardless of claims of a racially neutral "neighborhood school" philosophy, to prove that their actions respecting racially isolated and identifiable facilities were not likewise motivated by a segregative intent. Keyes v. School District No. 1, Denver, 413 U.S. 189, 198-203, 207-213 (1973). This burden, which the defendants cannot meet, is in addition to the direct evidence of intentional discrimination of district schools set forth in this Complaint and elsewhere in the record.

97. The underlying motivation for the above cited and other student assignment decisions has been to group and concentrate as many black and minority students as possible in racially isolated settings, thus freeing up more space in other schools to make preferred white students and parents feel “comfortable” and to encourage them by this deliberate racial segregation not to leave the school system as others already have. While improvement of the district's overall educational performance might seem a less discriminatory way to attract and retain students of all races, so far the defendants have not taken or seriously considered the measure that would produce the most dramatic gains in achievement-- racial and socioeconomic integration of all schools and programs to the extent possible and devotion of equal attention to the educational needs of all MNPS students of every race or ethnicity and instead are using charter schools, enhanced option schools, so called magnet schools and other programs to reinforce the racial and ethnic isolation in the schools.

98. Plaintiffs seek injunctive and declaratory relief returning MNPS to the school zoning and student assignment policy and school programs as they existed prior to the unlawful governmental actions and decisions of the defendants. Further, plaintiffs seek such permanent relief as may be justified by the evidence and arguments, and in the alternative, believe such relief could begin with true supervision requiring diversity in all schools and equitable student assignment across a "mega-cluster" consisting of the present Pearl-Cohn, Hillwood, and Hillsboro clusters, and should include other measures designed not just to move students around but to create equal opportunities for a quality education and a successful life.

Claims for Relief

99. Count I. As shown in paragraphs 1-98 above, which are incorporated by reference herein, the defendants and school district officials have assigned and continue to assign students to schools in the Metro Nashville public school system on the basis of race, without sufficient or compelling justification therefor, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

100. Count II. As shown in paragraphs 1-98 above, which are incorporated by reference herein, the defendants have assigned and continue to assign students to schools in the Metro Nashville school system on the basis of race, intentionally and for the unlawful purpose of segregating, isolating, and maintaining black and other minority students in certain schools and clusters (sub-districts), in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

101. Count III. As shown in paragraphs 1-98 above, which are incorporated by reference herein, the defendants have knowingly and intentionally assigned or re-assigned hundreds of black students from integrated, diverse educational settings in the Hillwood, Hillsboro, and other clusters to racially and socioeconomically isolated "neighborhood" schools in the predominantly black Pearl-Cohn cluster and elsewhere, including in particular the reassignment of more than 400 black students from the predominantly white Hillwood cluster to schools in Pearl-Cohn, while adding 200-plus white students to the Hillwood schools, for the unlawful purpose of enhancing the black and white identification of the Pearl-Cohn and Hillwood clusters and

schools (along with some Hillsboro cluster schools), all to the educational and social detriment of the black students involved and in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

102. Count IV. As shown in paragraphs 1-98 above, which are incorporated herein by reference, the defendants, through their rezoning plan implemented in the fall of 2009 and related actions, have planned, ratified, and continued the assignment of black students to racially isolated or identifiable schools, not only in the Pearl-Cohn district but also in McGavock and other clusters, while also creating, enhancing, or maintaining as many schools as possible with majority- or plurality-white student enrollments. The removal of black students from Hillwood cluster schools and their return to the Pearl-Cohn cluster, as set forth above, was explicitly premised on white parents' demands for reduction in the black student population of schools in the Hillwood area. In so acting, the defendants have deliberately and intentionally elevated the prejudices of middle-class white families above the educational needs of black students, in violation of such students's and their parents' or families' rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment.

103. Count V. As shown in paragraphs 1-98 above, which are incorporated herein by reference, the rezoning plan implemented by the defendants in the fall of 2009 adopted, ratified, and maintained the Napier Elementary School in the McGavock cluster as a so-called "enhanced option" school, and ensured its continuation as such, with a 90% or more black and 89% or more low-income student body and (as in 2009 and 2010) with all-"F" grades in aggregate student achievement. Enhanced option schools like Napier are said to provide low-achieving

students with smaller class sizes, longer instructional days, and other special services in order to improve student performance, but as widely-known studies from Vanderbilt University and other institutions have consistently demonstrated, such racially isolated schools, often located in poor and sometimes chaotic neighborhoods, are the least likely to be conducive to growth and learning regardless of any "extra" resources they may be given.

104. The same is true of at least seven of the eight other enhanced option schools operated by the defendants under the challenged rezoning plan, which serve student bodies that are overwhelmingly black (85.9% to 99.6%) and poor (more than 95%) with little or no academic benefit (data taken from 2010 State report card). As the defendants well know, the special services offered by these schools do not have to be offered to hundreds of disadvantaged minority students clustered together in neighborhood schools in order to be effective, but rather can and should be provided in more integrated and more diverse educational settings to any child who needs them, i.e., in places where the possibility of improvement exists. The defendants' persistence in maintaining some 3,000 black students (including Napier's) in these dysfunctional schools for no valid educational reason, and in the face of 40 years of research to the contrary, leads to the only possible conclusion: that these students are assigned to enhanced option schools intentionally and on the basis of race primarily or solely to lower the proportion of black students in surrounding regular schools, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

105. Count VI. As shown in paragraphs 1-98 above, which are incorporated herein by reference, in at least three instances under the defendants' rezoning plan, a special school—

one "thematic (as opposed to "academic") magnet and two enhanced option sites—are by far the most racially isolated facilities in their respective, mostly-white clusters. These "outlier" schools include the Carter-Lawrence magnet (400 students, 87.3% black, 7.0% white, and 83.0% "FARM" [eligible for free or reduced-price meals] in a district with 38% black students overall); the Napier enhanced option school in the McGavock cluster (516 students, 94.2% black, 2.5% white, and 96.5% FARM, in a district with 37% black students overall); and the Fall-Hamilton enhanced option school in the Glencliff cluster (319 students, 69.0% black, 16.0% white, and 90.3% FARM in a district with 28% black students overall) (2010-11 statistics).

106. As noted above, there is no credible justification for the concentration of so many black and low-income students at the Napier school. Fall-Hamilton produces somewhat better test scores than the other enhanced option programs, but again, the same effect and more could be achieved with students in dispersed locations where they would not spend their day in relative racial isolation. As for Carter-Lawrence, a magnet school such as it purports to be is supposed to offer special subjects and other features that will attract a variety of students and provide a a diverse educational experience; but Carter-Lawrence, like most of Metro Nashville's thematic magnets does nothing of the kind. Thus the only plausible purpose for continued operation of these "special" schools is not to maximize academic performance or enhance racial and socioeconomic diversity, but intentionally and purposefully to exclude black and minority students from regular, more integrated schools on the basis of race in order to preserve or enhance the majority- or plurality-white status of other schools in their respective clusters. Such a policy or practice violates the Equal Protection and Due Process clauses of the Fourteenth Amendment.

107. Count VII. As shown in paragraphs 1-98, which are incorporated herein by reference, magnet schools were originally conceived of as a means to encourage voluntary integration and greater diversity, and in fact some of defendants' magnets may have done so in the past. The situation now, though, is that all but a few schools classified as "thematic" magnet schools by the defendants or their expert (or magnet-like "design centers") are either racially isolated (80% or more black students) or intensely racially isolated (90% or more black students or 10% or fewer white students). Thus the schools that began for the purpose of enhancing diversity have instead become as segregated as the schools whose isolation they were once intended to relieve. As two Vanderbilt professors have written, most of these schools are located in poor or minority neighborhoods, where some black parents may view them as a step up from the regular schools in the area, whereas many white parents are put off by fear of placing their child in such an environment. These magnets' lack of sufficient appeal or relevance to attract many of these white parents or their students-- and the district's policy of not providing free transportation to magnets in most instances—make achievement of the desired "magnet" effects almost impossible under the circumstances.

108. Magnet school physical plants should not differ significantly from other school buildings, and so it should be possible for the defendants to relocate some of these schools to more "neutral" and accessible locations, eliminate the restrictions on free transportation, and otherwise accommodate the different interests, lifestyles, workplace issues, and comfort factors of the students (and parents) they would like to attract. Unfortunately, at least in recent years,

the school district has mostly done the same things the same way with its magnet schools, in the hope (or perhaps not) that they would get a different result.

109. At this point, one must truly question the defendants' intentions in this regard, as they are now preparing to reduce racial isolation by opening six more thematic magnets at six existing predominantly-black schools, including three at schools in the Pearl-Cohn cluster which now have black student enrollments of more than 90%. As the defendants must know, the likelihood of these schools' attracting a sufficient number of white students to have a sustained effect upon the prevailing racial isolation is far less than the possibility of inducing more black students from the area to enroll, thus serving what objectively appears to be the defendants' real purpose of keeping these students isolated in predominantly black schools and clusters. Such distortion of the magnet school concept can only maintain or exacerbate the level of racial isolation and is in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment, the more so that it is carried out in the name of greater diversity.

110. Count VIII. Paragraphs 1-98 above are incorporated by reference in this Count VIII as if fully set forth herein. Clear proof of intentional de jure segregation in one or more significant portions of the Metro Nashville school system (e.g., removal of hundreds of black students from the Hillwoood and Hillsboro clusters and their return to already isolated schools in the Pearl-Cohn area, or the pointless isolation of thousands of black students in so-called enhanced option schools) gives rise to a presumption that the other instances cited herein of racial isolation, segregation, and assignment on the basis of race (including the presence of 20 schools that are intensely racially isolated and the more than 10,000 black students who attend

racially isolated schools) are similarly purposeful and racially motivated, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment, thus supporting a finding that the defendants are operating a dual school system of the basis of race. Defendants have intentionally discriminated against plaintiffs because of their race.

111. Count IX. Paragraphs 1-98 above are incorporated by reference in this Count IX as if fully set forth herein. The foregoing paragraphs describe the pervasive racial isolation and segregation of black students on the basis of race in enhanced option schools that serve no purpose, in thematic magnet schools that defeat their intended mission, and in racially impacted, economically disadvantaged educational settings in Pearl-Cohn and other areas where proper instruction and learning are all but impossible (remembering that 10,000 black students must attend school every day in such racially isolated conditions).

112. When these factors are combined with the appalling achievement test scores of thousands of students in the mostly-black enhanced option schools, the inferior test scores of black students shown in the school district's 2010 State report card, and the vastly disproportionate rate of suspensions and expulsions of black students (especially black males), the conclusion is unavoidable that the defendant Metro and school district officials are knowingly depriving the black students in their charge of an equal educational opportunity on the basis of race, as compared to white students in the district. Most or all of the unequal treatment of black students is due to the purposeful and intentional actions and decisions of the defendants who, moreover, despite reforms in other areas, have failed or refused to address the causes of black students' inferior legal and educational status. Such actions and failures to act on the part

of defendants constitute an across-the-board violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

Prayer for Relief

WHEREFORE, THE PREMISES CONSIDERED, plaintiffs request this Court to take jurisdiction of this matter and to make the following declarations and orders:

1. Certify this case as a class action under Rules 23 F. R. Civ. P. on behalf of all black and other minority students in the Metropolitan Nashville school system who have been, are being, or may in the future be affected directly or indirectly by the defendants' adoption and implementation of the current student assignment (rezoning) plan that took effect in the fall of 2009, and the official acts and decisions flowing from the adoption and implementation of that plan, including subclasses as appropriate.

2. Direct that appropriate notice of this action be given under Rule 23 F. R. Civ. P., taking account of the fact that it has been pending for nearly two years and has received extensive media attention. Such notice could be accomplished by posting an approved document on the defendants' websites and in all of defendants' schools and office buildings and by making a full copy of this Complaint available for inspection and copying at those locations.

3. In the pending proceeding on plaintiffs' motion for a preliminary

injunction, enter an order against all defendants under Rule 65, F. R. Civ. P., providing inter alia as follows:

(a) The daughter of named plaintiffs FRANCES SPURLOCK and JEFFREY SPURLOCK and granddaughter of named plaintiff CARROLL LEWIS shall be entitled to attend their choice each year of any school in defendants' system for which they may be eligible, with the defendants paying for transportation for same, pending further order of this Court;

(b) The school assignments, attendance zones, and transportation arrangements for students in the Hillwood, Hillsboro, and Pearl-Cohn clusters (sub-districts) shall be restored to the extent possible to what they were at the end of the 2008-09 school year before the current rezoning plan was implemented; or alternatively, that the same three clusters shall be combined into a single "mega-cluster" and all students therein be assigned to schools by means of standard, accepted zoning methods (feeder pattern adjustments, capacity utilization, and necessary transportation, with transfers only for medical, hardship, and other non-racial reasons), with the intent of minimizing and not reinforcing racial or socioeconomic isolation of students;

(c) In any of the alternative plans described in 3(b) above, the overall percentage of racial and socioeconomic groups in the three clusters together shall be taken as a starting point for assigning students to schools, but no specific racial or socioeconomic proportions are required in any particular school.

(d) The plan required by this paragraph 3 shall be implemented in full no later than the beginning of the 2012-13 school year, unless an earlier date is prescribed by the Court, and such plan shall remain in effect pending further ordes.

(e) During the pendency of this preliminary Order, all students in the affected clusters or mega-cluster shall have open and equal access to academic or preparatory courses, International Baccalaureate programs, Advanced Placement classes, and other such academic offerings, along with transportation provided by the students to such programs within the cluster.

(f) During the pendency of this Order, the defendants shall not make any zoning or student assignment change anywhere in the Metro Nashville system that alters the percentage of black or white students in any school by 5 points or more, or that alters the predominantly-black or predominantly-white makeup of any school, without first notifying plaintiffs of their intention to do so at least 60 days before any formal or public notification of such action is issued or any irrevocable action taken and then seeking the approval of the Court.

(g) As a matter of public interest, no bond shall be required as a condition for entry of the foregoing preliminary injunction.

4. Upon final hearing, enter a declaratory judgment under 28 U.S.C. 2201 (a) and Rule 57, F. R. Civ. P., against all defendants providing inter alia as follows:

(a) The defendants, by reason of the rezoning plan implemented in the fall of 2009 and related actions, have assigned and continued to assign students to schools within the Metro Nashville system on the basis of race without any sufficient or compelling justification therefor, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

(b) The defendants, by reason of said rezoning plan and related actions, have assigned and continue to assign students to schools in the system on the basis of race or ethnicity, intentionally and for the purpose of segregating, isolating, and maintaining black students in certain schools and clusters, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

(c) The defendants, by reason of said rezoning plan and related actions, have deliberately and intentionally elevated the real or imagined fears and prejudices of non minority families over the educational and social needs of minority students, and continue to do so, in violation of the rights of such students and their families under the Equal Protection and Due Process clauses of the Fourteenth Amendment.

(d) The defendants, by reason of said rezoning plan and related actions, have engaged and continue to engage in pervasive instances of racial isolation and segregation of black students across the district to the extent that they are operating a dual school system on the basis of race, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

(e) The defendants, by reason of the policies and practices described in 3(a) -(d) above and elsewhere in the record, have deprived the black students in their schools of an equal educational opportunity on the basis of race, in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

(f) The plaintiffs and members of the class are entitled to appropriate injunctive relief from the unconstitutional policies and practices of the defendants.

5. Upon final hearing, enter a permanent injunction against all defendants under Rule 65 (d), F. R. Civ. P., providing inter alia as follows:

(a) The daughter of named plaintiffs FRANCES and JEFFREY SPURLOCK and grand-daughter of named plaintiff CARROLL LEWIS shall be entitled to attend their choice every year of any school in the system for which they may be eligible, with free transportation provided.

(b) The defendants shall adopt and implement an official school district policy emphasizing the primary importance of racial and socioeconomic diversity in the composition and operation of Metro Nashville schools and in the design and delivery of all their programs and services. Planning and programmatic decisions shall be made under this policy with a view to maximizing the inclusion of students of all racial groups and socioeconomic levels. A plan for reducing racial and socioeconomic isolation and achieving diversity, with specific goals, milestones, and timetables, shall be adopted and implemented by the defendants after opportunity for appropriate public input.

(c) The defendants shall establish a position at the assistant director/assistant superintendent level to be responsible for the implementation and internal monitoring of the district's diversity policy and the requirements of this Order. This official shall be appointed in consul-

tation with plaintiffs and relevant community organizations and shall be answerable to the director of schools. Duties of the incumbent shall include reporting semi-annually or as required on progress, barriers to progress, and necessary remedial actions in regard to this Order and related diversity issues; serving as liaison to the board of education, the Metro government, plaintiffs, parents, families, community groups, and other stakeholders; and reviewing current and proposed policies, plans, programs, and funding applications to ensure, inter alia, that the interests of minority and disadvantaged students are properly taken into account.

(d) The defendants shall develop and adopt in an open and transparent manner a new, comprehensive rezoning and student assignment plan that, at a minimum, eradicates and minimizes the unconstitutional and illegal effects of the current, challenged plan and related actions and otherwise is compliant with all provisions of this Order. This plan shall be submitted to the plaintiffs and the Court for review and approval prior to implementation, according to a timetable to be established by the Court.

(e) Students shall be assigned under the plan required by 5(d) above according to a system that ensures maximum integration and diversity of racial identity and socioeconomic status.

(f) If the parties agree that the student assignment system developed and utilized for the Hillwood, Hillsboro, and Pearl-Cohn clusters or mega-cluster pursuant to 3 (b) above is sufficient, as is, to comply with the requirements of this Order, the defendants may incorporate the plan for that area of the district into the final plan required by 5 (d) above.

(g) Elsewhere in the district, the required final plan shall create mega-clusters like that described above for Hillwood, Hillsboro, and Pearl-Cohn, each one reflecting as closely as possible the racial identity and socioeconomic status of students in the district as a whole. Feeder pattern adjusments, location and utilization of facilities, and necessary transportation services shall then be applied within these mega-clusters to reduce or minimize rather than reinforcing racial and socioeconomic isolation. If necessary, cluster lines may have to be re-drawn in order to achieve the best result. The racial and socioeconomic composition of the school district as a whole, and secondarily that of the particular mega-cluster, shall be used as a starting point for student assignment, but no specific racial or socioeconomic proportions are required for any particular school.

(h) The Metro Nashville clusters thus will be realigned to produce three mega-clusters in addition to the agreed-upon arrangement in the Hillwood/Hillsboro/Pearl-Cohn area: (i) the Glencliff, Antioch, Overton, and Cane Ridge clusters; (ii) the Stratford and McGavock clusters; and (iii) the Maplewood, Hunters Lane, and Whites Creek clusters. Two other current clusters of "magnet" and "academy" schools, and possibly other special schools and programs, will have to be merged into the four geographic groupings and dispersed so that unique, intellectually challenging, and college preparatory-level offerings are accessible to all students in the system.

(i) If the defendants wish to use a type of final plan to reduce racial and socioeconomic isolation other than that described in 5 (f)-(h) above, they may do so only if they waive their right to appeal; if they obtain the agreement of plaintiffs within 20 days of the date of this Order

that their proposed alternative is fair and equitable and will achieve an equivalent degree of integration and diversity; and if their alternative plan can be completed and implemented within the timelines established by the Court under 5 (d) above.

(j) In any plan that is adopted, free transportation shall be provided by the defendants in order to allow all students to attend their assigned (and in some cases chosen) school without undue hardship or exposure to dangerous conditions. This requirement specifically includes provision of free transportation to magnet schools.

(k) Site selection and feeder patterns for new schools shall be determined in such a way as to reduce racial and socioeconomicisolation, and shall not be tailored only for discrete non-diverse areas. In particular, new schools being planned for the Antioch-Cane Ridge area shall be located and sized so that they can approximate the racial and socioeconomic makeup of the school district as a whole and accommodate diversification efforts. By the same token, the district shall endeavor not to close under-utilized schools if they are located in neutral or accessible areas and could become venues for greater diversity.

(l) Most or all of the defendants' "enhanced option" schools shall be slated for closure or conversion in the plan required by this paragraph 5, and their students integrated into regular schools in the same or a nearby cluster. Enhanced option schools with more than 90% black student enrollment shall be closed or converted to reasonably diverse regular schools by the beginning of the 2012-13 school year if at all possible. Students from these schools or others in

the affected clusters (or mega-clusters) who require extra instruction shall be provided with same in the schools to which they are assigned.

(m) The relatively new charter schools operated by private entities under contract with the defendants are nonetheless public schools subject to the requirements of the Fourteenth Amendment. The defendants are therefore obligated to ensure that these schools do not become intentionally segregated or isolated on the basis of race, and shall take all necessary steps, including requiring a detailed diversity plan from each school, to protect against such an outcome. Diversity plans shall cover such areas as charter schools' recruitment and admission procedures, teacher recruitment and hiring, classroom practices, free and reduced price meal availability, transportation services, and projected or actual enrollment by race and socioeconomic status, and shall be reviewed in the charter approval process and on a regular basis thereafter.

(n) Thematic magnet schools shall no longer be allowed to function as a device to segregate and isolate students on the basis of race rather than to enhance integration and diversity as intended. As part of the planning effort required by this paragraph 5, the defendants shall review the district's racially isolated magnet, design center, and other such schools in order to determine their specific purpose, whether they are achieving that purpose (including the enhancement of diversity), and whether any minimal benefit they provide outweighs that of raising the interest and achievement level of existing regular schools in the district.

(o) If any of the magnet schools discussed in 5 (n) above are to be retained as such after the new plan is developed, the defendants shall conduct methodologically sound surveys to determine the subject-matter interests of potential students, make provision for the lifestyles, workplace issues, transportation needs, and comfort levels of the black and white students who might be expected to attend, and recruit enthusiastically and equally among all prospective enrollees. Since it is well established in the research, and in recent Nashville history, that large numbers of white students are not likely to attend magnets in predominantly black schools and areas, the defendants shall carefully consider the proper location of current magnet schools and any others that may be contemplated in the future. In particular, unless the new magnets opened in 2011 in Pearl-Cohn and two other predominantly-black clusters demonstrate immediate and unprecedented success in reducing racial isolation, the entire rationale for these schools will have to be reconsidered, as well as their location, as part of or in connection with the required final rezoning plan.

(p) Nothing in this Order shall be construed to require major alterations in the defendants' three academic magnet schools, the Nashville School of the Arts, and the East Literature Head, and Rose Park thematic magnets, all of which appear to be well regarded; provided, however, that they maintain their current character and rate of success and that they seek out and encourage all qualified students to apply.

(q) The defendants shall establish a system-wide committee on diversity, consisting of not more than 15 school district, community, teacher, parent, and student representatives selected jointly

by plaintiffs and defendants with input from each of the aforementioned constituencies. This group, which shall elect its own officers, shall meet regularly, i.e., at least monthly, and shall function as an informal mediator for issues arising from the community and as a two-way conduit for information relating to the implementation of this Order and the overall diversity effort. The community committee shall be provided with a regular flow of information and research relating to Court-order compliance and other diversity matters, including school district monitoring reports and implementation updates along with report cards and other assessments from the State. Committee concerns shall be included on the school board's meeting agenda at least semi-annually and whenever an urgent need arises.

(r) The Court shall retain jurisdiction of this matter for purposes of oversight and enforcement and for resolution of any disputes that may occur over matters of interpretation or compliance. If necessary, the Court retains the discretion to appoint an external monitor or master to report on or oversee the implementation process, or to engage one or more experts or consultants if additional technical assistance is required.

6. Plaintiffs will also seek an award of reasonable attorneys' fees under 42 U.S.C. 1988 and costs at the appropriate time, and they request any other, further, or different relief which the Court may deem appropriate.

Respectfully submitted,

/s/ Larry Woods_____

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was sent electronically by the Middle District Court electronic filing system to James L. Charles, Kevin C. Klein, Keli J. Oliver, James W.J. Farrar, Allison Bussell, John Borkowski and Elizabeth A. Sanders, PO Box 196300, Nashville, Tennessee 37219, on this the 30th day of June 2011.

/s/ Larry Woods_____