

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**CLAUDE BERNARD
ROBINSON, *et al.*,**

Plaintiff,

vs.

Case No.: 63-4916

**SHELBY COUNTY BOARD
OF EDUCATION,**

Defendant.

**MOTION FOR APPROVAL OF CHANGES TO
MIDDLE SCHOOL BOUNDARIES**

COMES NOW DEFENDANT, Shelby County Board of Education (hereinafter “SCS”), and moves this Court to approve changes to the Board’s middle school attendance boundaries for the reasons stated herein.

On July 31, 2008 this Court approved the construction of a New Middle School near the intersection of Memphis Arlington Road in Northeast Bartlett, Tennessee. Occupancy of the school is scheduled for August, 2008.

In that T.C.A. §49-5-409 provides that notice must be given to teachers currently employed by April 15 of their school district’s intention to re-employ them, a chain of events is set in motion to make employment decisions concerning existing employees even before the aforementioned date. If positions are not filled by April 15 the School District must attempt to locate persons to fill vacant positions from the limited applicant pool that is available; thus recruiting in as far in advance as possible gives the School District the best possibilities of

locating qualified teachers to fill vacant positions. However, in order to fill the teaching positions for the upcoming school year SCS needs to know the number of students that will be attending the New Middle School. In this case, in order to determine the number of students that will be attending the New Middle School the attendance boundary zone pertaining to the New Middle School must be approved by this Court. Based upon the aforementioned needs SCS presents the following background and attendance boundary proposal pertaining to the new northeast, Bartlett area middle school.

Background

A map of the 2007-2008 SCS middle school attendance zone boundaries is attached hereto as Exhibit 1.¹

The current middle school enrollments and African-American populations, by school, and the capacities of each school are reflected on Chart “A” below.

CHART A			
School	2007-08 Enrollment	Capacity	Percentage African-American
Appling Middle	881	926	16.46%
Arlington Middle	1364	1037	18.11%
Collierville Middle	928	1000	9.27%
Dexter Middle	688	960	47.97%
Elmore Park Middle	640	630	14.38%
Germantown Middle	783	850	66.28%
Houston Middle	787	907	4.32%
Millington Middle	551	660	37.93%
Mt. Pisgah Middle	1246	1200	54.17%
Schilling Farms Middle	952	930	24.68%
Shadowlawn Middle	976	926	66.50%
Southwind Middle	1200	1200	90.25%
Woodstock Middle	568	800	66.90%

¹ Exhibit 1 is the same map that was attached to SCS’s January 4, 2008 Motion for Approval of Construction of Two New Schools.

Beginning in or about November, 2007, SCS began reviewing different scenarios for the attendance zones that would incorporate the new northeast, Bartlett area middle school (hereinafter “the New Middle School”). As the Court will recall, in the District’s July 30, 2007 Response to the Court’s Order to Produce Statistical Data, SCS indicated that the reason for building the middle school in the northeast, Bartlett area was due to the need to relieve overcrowding at Appling, Shadowlawn and Arlington Middle Schools.²

As the Court can see from Chart “A” during the 2007-2008 school year Appling Middle is within 45 students of being at capacity, Arlington Middle is 327 students over capacity and Shadowlawn Middle is 50 students over capacity. The question now is how to populate the New Middle School in a manner that considers the Court’s July 26, 2007 Order, makes the best use of space at each of the middle schools and causes the least disruption to students and parents. Because the area in which the New Middle School is located is predominantly Caucasian, the challenge is to find a pool of African-American students to offset that high concentration of Caucasian students.

SCS began analyzing the aforementioned query by looking first to the population of every middle school in the County system. Schilling Farms Middle, Southwind Middle, Germantown Middle, Riverdale Elementary³, Collierville Middle and Houston Middle attendance zones were ruled out as being pools from which the New Middle School could draw its population primarily because of the distance of these schools from the New Middle School. Needless to say, the transportation costs involved in transporting students from those schools to the New Middle School and the increase in time students would have to be on buses on a daily

² The statistics produced in the Response to the Court’s Order were estimates of 2007-2008 and 2008-2009 student populations.

³ Riverdale educates students in grades Kindergarten through 8th grade.

and school year basis also heavily weighed against using those schools as a pool for populating the New Middle School.

Chart “B” sets forth the additional time, per day and per school year students would have to spend on the school bus if they were to be transported to the New Middle School.

CHART B		
School	<u>Additional minutes on the bus per day</u>	<u>Additional hours on the bus per school year</u>
Schilling Farms Middle	93.6	280.8
Southwind Middle	85.4	256.2
Germantown Middle	65.4	196.2
Riverdale Elementary	61	183
Collierville Middle	91	273
Houston Middle	65.6	196.8

Chart “C” set forth the annual (school year) incremental costs to transport students to the New Middle School.

CHART C	
School	Annual (school year) <u>incremental</u> costs to transport students to the New Middle School
Schilling Farms Middle	\$18,899.24
Southwind Middle	\$14,879.59
Germantown Middle	\$11,567.50
Riverdale Elementary	\$ 9,662.40
Collierville Middle	\$20,068.77
Houston Middle	\$14,358.70

In addition to the incremental costs listed in Chart “C” above, due to the distance between Schilling Farms Middle, Southwind Middle, Germantown Middle, Riverdale Elementary, Collierville Middle and Houston Middle school zones and the New Middle School, it is also likely that the School District would have to purchase at least 2 additional buses: one 78 passenger bus, the cost of which is \$80,865.00 and a bus which would accommodate disabled students, the cost of which is \$91,340.00. The personnel cost of employing 1 entry level bus

driver is \$21,000 per school year. Thus, an example of the total costs associated with transporting a student from one of the aforementioned schools to the New Middle School would be as follows:

Ex.: Schilling Farms Middle School

Incremental transportation costs per school year	\$ 18,899.24
Cost of 2 new school buses (one 78 passenger; one to accommodate disabled students)	\$172,205.00
Personnel costs of 2 entry level bus drivers per school year	\$ 42,000.00
Total Cost	\$233,104.24

Other considerations that weighed against using those schools as pools for populating the New Middle School were issues pertaining to elementary feeder patterns, the increased burdens that would be caused to families that transport both elementary and middle school students from the same households, and the fact that the aforementioned schools are already at or near capacity.

Working its way north, SCS next reviewed the feasibility of using Mt. Pisgah and Dexter Middle Schools as pools for populating the New Middle School. As the Court is aware, the City of Memphis has targeted the areas surrounding Dexter and Mt. Pisgah Middle Schools for annexation. As a matter of fact approximately 800 of the existing Mt. Pisgah Middle School students will be annexed out of the Shelby County System effective August, 2009.⁴ The balance of the existing Mt. Pisgah students will remain Shelby County School students until such time that the balance of the area is annexed. The District considered transferring a number of African-American students from Mt. Pisgah Middle School to the New Middle School, however, after the 2009 annexation occurs, Mt. Pisgah's African-American population will drop from 54.17% to 45% and the capacity of the school would be substantially underutilized if more

⁴ Mt. Pisgah students that will become City School students in 2009 reside in the northernmost section of the Mt. Pisgah zone.

students were transferred. Additionally, the lengthy travel from the Mt. Pisgah area that will remain in the County limits after the 2009 annexation, the burden caused to students in spending more time on the bus or traveling to school, and the transportation related costs to the School District were also factors which weighed against the scenario in which Mt. Pisgah students would be transferred to the New Middle School.

Likewise, a scenario was considered in which a number of African-American students from Dexter Middle School would be transferred to the New Middle School until such time that the Dexter area annexation occurs. However doing so would cause further underutilization of space at that school and if for example the annexation was to occur in 2009, students would be disrupted for 1 school year only to be disrupted again the following year. Furthermore, when calculating the burden caused to students in spending more time on the bus or traveling to school, and the transportation costs involved with increasing the travel time, the scenario is not administratively or financially feasible.

Chart “D” reflects the additional time per day and per school year students would have to spend on the school bus if they were to be transported to the New Middle School.

CHART D		
School	<u>Additional minutes on the bus per day</u>	<u>Additional hours on the bus per school year</u>
Dexter Middle	40.8	122.4
Mt. Pisgah Middle	48	144

Chart “E” sets forth the annual (school year) incremental costs to transport students from the schools listed to the New Middle School.

CHART E	
School	<u>Annual (school year) incremental costs to transport students to the New Middle School</u>
Dexter Middle	\$ 6,663.60
Mt. Pisgah Middle	\$ 8,520.87

Due to the distance between Mt. Pisgah and Dexter Middle Schools and the New Middle School and due to the incremental time it would take to transport students from those schools to the New Middle School it is likely that 2 new buses would have to be purchased and 2 new bus drivers would have to be hired. Thus, as an example, the costs associated with transporting students from Mt. Pisgah Middle to the New Middle School would be as follows:

Ex.: Mt. Pisgah Middle

Incremental transportation costs per school year	\$ 8,520.87
Cost of 2 school buses (one 78 passenger; one to accommodate disabled students)	\$172,205.00
Personnel costs of 2 entry level bus drivers per school year	\$ 42,000.00
Total Cost	\$222,725.87

As stated in its July 30, 2007 Response to the Court's Order to Produce Statistical Data, due to overcrowding issues in the northeast area of the County, the District appropriately chose to use Arlington and Appling Middle Schools as pools from which to populate the New Middle School. However, since the African-American populations of those schools are only 18.11% and 16.46% respectively, the pools do little if anything to offset the large Caucasian populations that surround the New Middle School. Further, if the School District depleted Arlington and Appling of their African-American populations to increase the African-American population at the New Middle School, Arlington's and Appling's African-American to Caucasian ratios would be more skewed.

The District looked at Elmore Park Middle as a possible pool for populating the New Middle School but Elmore Park's African-American population is currently only 14.38%, and further transfers of African-American students from Elmore Park to the New Middle School would only make Elmore Park's Caucasian population higher.

Transferring Millington and Woodstock Middle School students to the New Middle School was also considered, however the following issues weighed against using those schools as pools for populating the New Middle School:

- (1) lengthy travel times from those schools to the New Middle School;
- (2) the transportation costs associated with transporting students a greater distance;
- (3) the fact that the zones would not be contiguous with the New Middle School;
- (4) the disruption of elementary feeder patterns;
- (5) the burdens that would be caused to families transporting elementary and middle school students in the same households to non-contiguous areas of the County; and
- (6) the fact that the capacities of those schools would be underutilized if students were transferred.

Chart “F” reflects the additional time per day and per school year students would have to spend on the school bus if they were to be transported to the New Middle School.

CHART F		
School	<u>Additional minutes on the bus per day</u>	<u>Additional hours on the bus per school year</u>
Woodstock Middle	88.8	266.4
Millington Middle	80.6	241.8

Chart “G” sets forth the annual (school year) incremental costs associated with the transportation of students from the schools listed to the New Middle School.

CHART G	
School	Annual (school year) <u>incremental costs to transport students to the New Middle School</u>
Woodstock Middle	\$ 20,334.13
Millington Middle	\$ 17,513.49

Due to the proximity of Woodstock and Millington Middle Schools to the New Middle School and due to the incremental time it would take to transport students from those schools to the New Middle School it is likely that 2 new buses would have to be purchased and 2 new bus drivers would have to be hired. Thus, an example of the costs associated with transporting students from Woodstock Middle to the New Middle School would be as follows:

Ex.: Woodstock Middle School

<u>Incremental</u> transportation costs per school year	\$ 20,334.13
Cost of 2 school buses (one 78 passenger; one to accommodate disabled students)	\$172,205.00
Personnel costs of 2 entry level bus drivers per school year	\$ 42,000.00
Total Cost	\$234,539.13

The next potential pool was Shadowlawn Middle. The African-American student populations at Shadowlawn Middle for the past six (6) school years are reflected on Chart B below:

School Year	% African-American
2002-2003	28.72%
2003-2004	32.36%
2004-2005	40.20%
2005-2006	50.74%
2006-2007	61.72%
2007-2008	66.50%

As the Court can see, during the past six (6) school years, the African-American population at Shadowlawn Middle has more than doubled. The only adjustment to the Shadowlawn attendance zone that was made to the zone was made in August 2004 for the 2004-2005 school year. That change was made due to the overcrowded conditions at Shadowlawn Middle and due to the City of Memphis annexation of the Hillshire area. As a result of that Court approved modification Shadowlawn Middle's student population was reduced by only 143 of the 1314

students attending during the 2003-2004 school year. Thus, clearly the demographic changes at Shadowlawn Middle are due solely to the voluntary housing choices of area residents, not to any actions by SCS.

Nonetheless, the School District has reviewed 4 scenarios pertaining to the transfers of Shadowlawn Middle School students to the New Middle School. The first scenario is to transfer Shadowlawn students residing closest to the New Middle School. The problem with that scenario is that the students residing closest to the New Middle School are also the students residing closest to Shadowlawn Middle. The race of the students residing closest to Shadowlawn is predominantly white, and moving more white students from Shadowlawn only makes the student population of Shadowlawn to be even more skewed.

The second Shadowlawn-related scenario the School District reviewed was to follow Old Brownsville Road as a natural boundary and extending it to another boundary: Austin Peay Highway. Under that scenario the African-American student population at Shadowlawn would increase from 66.5% to 73%; therefore that scenario was rejected.

Under a third scenario, the School District again bisected the Shadowlawn zone using the Old Brownsville Road natural boundary and extending the zone to Raleigh-Millington Road, taking into account a loop south of Old Brownsville Road to extend to Egypt-Central Road. By including that area, the African-American population at Shadowlawn was only decreased by approximately 2%. Although such transfers would increase the New Middle School's African-American population by approximately 13.8% from that which is being proposed, such transfers would cause the New Middle School to be within 164 students of being at capacity upon opening. With Arlington Middle adding approximately 100 students per school year and Elmore Park Middle being already over capacity moving the aforementioned group of Shadowlawn

students for probably only 1 school year until such time that the New Middle School reaches or exceeds capacity would not be administratively or educationally sound. Also, the added transportation costs and added time on the bus relative to transporting students from the westernmost portion of the Shadowlawn zone to the New Middle School, also weighed against making such a zone change. SCS determined that transporting students from the westernmost portion of the Shadowlawn zone to the New Middle School would involve those students passing Shadowlawn Middle on their way to the new school and adding 30 minutes per day, or 91.8 hours per school year to those students' bus rides.

Additionally, SCS considered the incremental transportation costs of transporting the students under scenario 3 and the likelihood that at least 1 bus would have to be purchased and 1 bus driver would have to be hired. Thus the total cost of transporting students under scenario 3 would be as follows:

Ex.: Shadowlawn Scenario 3

<u>Incremental</u> transportation costs per school year	\$ 3,341.52
Cost of 1 school bus (one 78 passenger bus)	\$ 80,865.00
Personnel costs of 1 entry level bus driver per school year	\$ 21,000.00
Total Cost	\$105,206.52

Because the Shadowlawn zone contains mostly “racially mixed” neighborhoods it is virtually impossible to effectuate a change in the racial composition of that zone without cherry-picking neighborhoods.

The last scenario pertaining to Shadowlawn considered by the District is reflected in its final proposal below.

Proposed Changes to Middle School Attendance Boundaries

In the final analysis, the District focused on the following issues: 1) consideration of the Court's July 26, 2007 Order; 2) the need to alleviate present overcrowding issues at Arlington and Shadowlawn middle schools and the near overcrowding issue at Appling Middle school; 3) the best use of space and resources and 4) the need to disrupt as few students as possible.

Based on all the aforementioned considerations, the District proposes the following:

- A. As was presented in the District's July 30, 2007 Response to the Court's Order to Produce Statistical Data, the schools that would be affected by the attendance zone changes are Appling, Arlington and Shadowlawn Middle Schools. All three schools would educate students in grades 6-8.
- B. The transfers would be effectuated as follows:

Present School	No. of African-American students to be transferred to New Middle School	No. of Caucasian students to be transferred to New Middle School	No. of students of other races to be transferred to New Middle School
Appling Middle	46	111	4
Arlington Middle	34	283	27
Shadowlawn Middle	59	33	6

The map of the proposed zone lines which is attached as Exhibit 2 defines the areas from which the students from Appling, Arlington, and Shadowlawn would be transferred.

- C. The proposed student populations at the affected schools for the 2008-2009 school year would be as follows:

School	Total Students
Appling Middle	720
Arlington Middle	1020
Shadowlawn Middle	878
New Middle	603

As the Court can see, under this scenario, overcrowding issues at Arlington, Appling, and Shadowlawn would be addressed and space would remain available at the New Middle School for the projected growth at the rate of 100 students per year from Arlington Middle.

D. The proposed African-American populations at the affected schools for the 2008-2009 school year would be as follows:

Appling Middle	-	14%
Arlington Middle	-	21%
Shadowlawn Middle	-	67%
New Middle	-	25%

If SCS were to meet the Court's July, 2007 target, SCS's African-American student populations at its middle schools would be between 19.7% and 49.7%. Under the District's proposal, pre-annexation of the entire District, the New Middle School and Arlington Middle school would meet the Court's target and Appling Middle would be within 5.7% of the Court's target. Shadowlawn would remain outside the Court's target although it would not significantly vary from the Court's target than where it currently stands.

Conclusion

Unless the Court approves changes to the middle school attendance boundaries, the New Middle School in the northeast, Bartlett area will sit empty. Unless the New Middle School is opened Arlington Middle School's overcrowding issue will worsen in that the school is presently overcrowded by 327 students and the student population at Arlington Middle School is expected to grow by approximately 100 students per year. This matter requires the School District's and the Court's urgent attention because in order to determine the staffing needs of the affected schools the numbers of students that will attend each of the affected schools must first be determined. In that Tennessee law requires that teachers presently employed by the District must be notified by April 15 of the District's intent to retain the teachers, SCS urgently needs the Court's assistance in determining the student populations of the affected middle schools, including but not limited to the New Middle School.

After exploring various methodologies for populating the New Middle School, SCS chose the methodology which considers the Court's July 26, 2007 Order to the extent practicable, addresses overcrowding issues, utilizes resources and space as efficiently as possible, and causes the least amount of burden to students and families as is possible.

Based on the foregoing, SCS respectfully requests the Court to grant SCS's Motion and approve the change to attendance boundaries as are reflected on attached Exhibit 2.

Respectfully submitted,

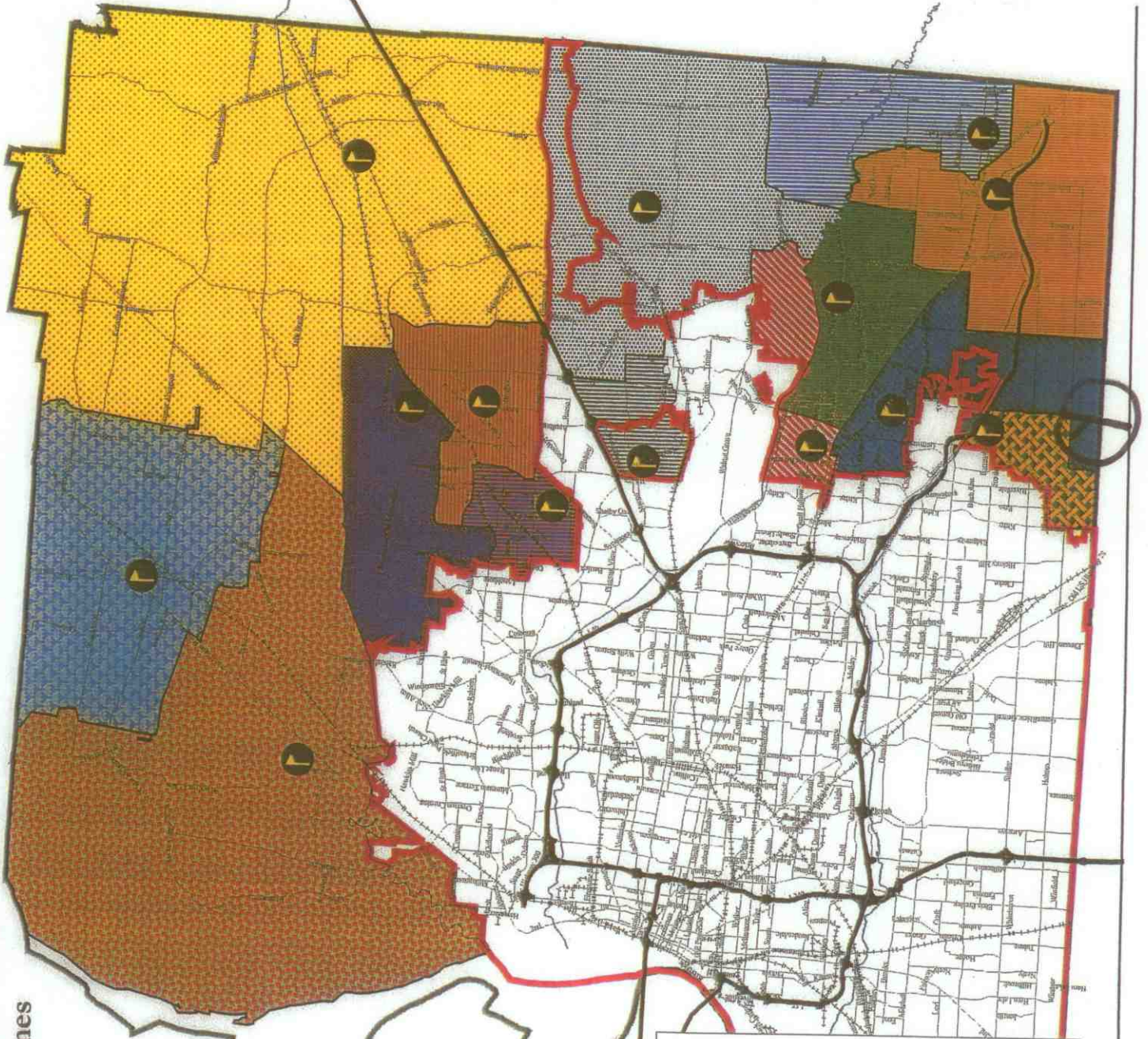
/s/Valerie B. Speakman
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Counsel for Defendant,
SHELBY COUNTY BOARD OF EDUCATION

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2008, a true and correct copy of the foregoing **MOTION FOR APPROVAL OF CHANGES TO MIDDLE SCHOOL BOUNDARIES** was filed with the Clerk of the U.S. District Court using the CM/ECF system; and by electronic means through the Court's ECF System to: Richard B. Fields, Esquire (Attorney for Plaintiffs), at fieldsrb@bellsouth.net, Law Office of Richard B. Fields, 688 Jefferson Avenue, Memphis, Tennessee 38105-1936; and to John R. Moore, Esquire (Attorney for the U. S. Department of Justice) at john.moore2@usdoj.gov, Educational Opportunities Section, U.S. Department of Justice, Civil Rights Division, Post Office Box 65958, Washington, D.C. 20035.

/s/ Valerie B. Speakman
Valerie B. Speakman

Shelby County Middle School
Attendance Zones
2007-2008

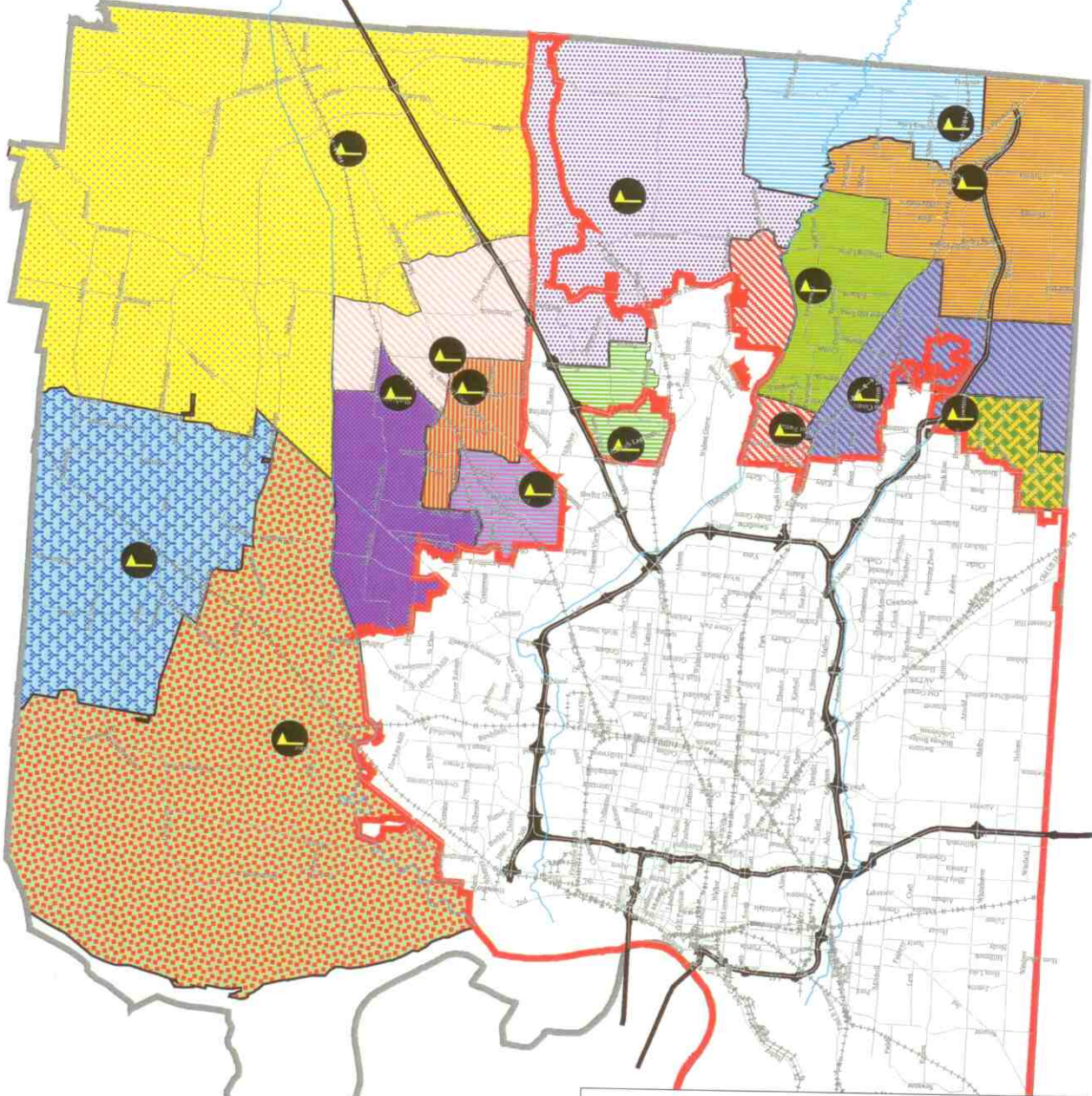


	Applying Middle School
	Arlington Middle School
	Collierville Middle School
	Dexter Middle School
	Elmore Park Middle School
	Germentown Middle School
	Houston Middle School
	Millington Middle School
	Mt. Pisgah Middle School
	Rivendale Middle School
	Schilling Farms Middle School
	Shadowlawn Middle School
	Southwind Middle School
	Woodstock Middle School
	Applying/Cordova Middle School

EXHIBIT 2

Revised February 20, 2008

**Shelby County Middle School
Proposed
Attendance Zones
2008-2009**



	Applying Middle School
	Arlington Middle School
	BonLin Middle School
	Collierville Middle School
	Dexter Middle School
	Elmore Park Middle School
	Germantown Middle School
	Houston Middle School
	Millington Middle School
	Mt. Pisgah Middle School
	Riverdale Middle School
	Schilling Farms Middle School
	Shadowlawn Middle School
	Southwind Middle School
	Woodstock Middle School

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**CLAUDE BERNARD
ROBINSON, *et al.*,**

Plaintiff,

vs.

Case No.: 63-4916

**SHELBY COUNTY BOARD
OF EDUCATION,**

Defendant.

CERTIFICATE OF CONSULTATION

Pursuant to LR7.2 (a) (B) of the Rules of the United States District Court for The Western District of Tennessee the parties have consulted about Defendant's Motion for Approval of Changes to Middle School Boundaries. The names of the participating counsel and the dates and manner of consultation were as follows:

On March 7, 2008 Valerie B. Speakman, attorney for Shelby County Schools, by telephone, received confirmation from Richard Fields, attorney for the Plaintiffs, that the Plaintiffs have no objection to the Motion for Approval of Changes to Middle School Boundaries.

On March 7, 2008 Valerie B. Speakman, attorney for Shelby County Schools, by telephone, received confirmation from John Moore, attorney for the United States, that based on consultation with counsel for the private Plaintiffs and the School District, the United States has no objection to the Motion for Approval of Changes to Middle School Boundaries, because the

bases of Defendant's request appear to be consistent with applicable provisions of this Court's Order of July 26, 2007.

Respectfully Submitted,

/s/ Valerie B. Speakman
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2008, a true and correct copy of the foregoing **CERTIFICATE OF CONSULTATION** was filed with the Clerk of the U.S. District Court using the CM/ECF system; and by electronic means through the Court's ECF System and U. S. Mail delivery to: Richard B. Fields, Esquire (Attorney for Plaintiffs), at fieldsrb@bellsouth.net, Law Office of Richard B. Fields, 688 Jefferson Avenue, Memphis, Tennessee 38105-1936; and to John R. Moore, Esquire (Attorney for the U. S. Department of Justice) at john.moore2@usdoj.gov, Educational Opportunities Section, U.S. Department of Justice, Civil Rights Division, Post Office Box 65958, Washington, D.C. 20035.

/s/ Valerie B. Speakman
Valerie B. Speakman