

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LINDA STOUT, et al.,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA,)	Case No.: 2:65-cv-00396-MHH
)	
Plaintiff-Intervenor,)	
)	
v.)	For filing in
)	Case No.: 2:16-mc-00199-MHH¹
JEFFERSON COUNTY BOARD OF)	
EDUCATION, et al.,)	
)	
Defendants.)	

ORDER

On December 14, 2017, the Court entered an order giving final approval to the Hoover City Board of Education’s rezoning plan. (Doc. 91). In that order, the Court instructed the Board to work with the plaintiff parties to develop and propose a revised transfer policy that includes racial desegregation transfers. (Doc. 91, p. 5). The parties have conferred and presented to the Court a proposed transfer policy.

¹ On February 3, 2016, for administrative purposes, the Court directed the Clerk of Court to create a miscellaneous case number to allow the parties, the public, and the Court easier access to docket entries relating to the Hoover school district in *Stout v. Jefferson County Bd. of Educ.*, Case No. 2:65-cv-396-MHH. The miscellaneous case number is 2:16-mc-199-MHH. The Court did not sever the Hoover system from the original Jefferson County school desegregation action. Unless otherwise noted, in this opinion, the Court cites to documents contained in miscellaneous case number, 2:16-mc-199-MHH.

The Board has asked the Court to approve the amended policy. (Doc. 101).

The transfer policy that the parties proposed has a spring deadline for transfer applications. To enable eligible families to apply for transfers for the 2018-19 school year, the transfer provisions in this order shall govern transfers for the 2018-19 school year. The substantive provisions of this order will become the district's official transfer policy for future academic years.

For the 2018-19 school year:

Students may apply to transfer to a school other than the school for which they are zoned. Transfers are limited to the following categories and are subject to the following requirements:

a. Racial Desegregation Transfers. A racial desegregation transfer will be permitted between eligible schools within the Hoover district if there is space available and if the transfer will have the effect of moving the racial composition of both the sending and receiving schools closer to the district-wide racial composition. For purposes of racial desegregation transfers, eligible schools are (i) those schools for which the racial composition of zoned African American students in the school is outside a range of 5 percentage points higher or 5 percentage points lower than the district-wide racial composition for African American students, (ii) Simmons Middle School, and (iii) Bumpus Middle School. By **May 30, 2018**, the Board must identify and publicize the names of the "eligible schools" for the 2018-19 school year.

Racial desegregation transfer applications that are approved for the 2018-19 school year shall also be approved for each succeeding school year until the student moves up to a different school serving grade levels different from the school to which the transfer was first granted.

b. Substantial Hardship Transfers. The district may approve a substantial hardship transfer for the 2018-19 school year if a student or a student's family demonstrates a substantial, extraordinary, and compelling hardship; the hardship is unique to the student or his/her family; and the

hardship necessitates the assignment to a school other than the school to which the student is zoned. Each hardship transfer application must be supported by detailed documentation, and the district must use that documentation to evaluate the transfer request. When evaluating a substantial hardship transfer application, the district must consider (i) the validity of the stated hardship; (ii) whether the receiving school is best able to address or alleviate the stated hardship; (iii) whether other students with similar hardships have been granted hardship transfers; and (iv) whether transferring similarly situated students to such receiving schools proved beneficial. Hardship transfers are valid only for the school year for which they are approved. Transfer students who wish to remain at the school to which they transfer for the 2018-19 school year must re-apply for a hardship transfer each year and submit to the Board current information documenting the stated hardship and the necessity of the transfer.

The following are examples of the types of situations that may warrant the granting of a hardship transfer: incarceration of a parent; terminal illness of a parent; natural disaster; and medical or health problems suffered by the student that make it necessary for the student to attend a specific school.

A hardship transfer must be based on unique circumstances, and the Board's designee must evaluate each application independently to determine if the application identifies a legitimate and unique hardship. The Board will provide an appeals procedure to prevent an abuse of discretion in the application process.

With respect to documentation, parents must provide a detailed description of the stated hardship and attach to the student's transfer application supporting documents such as letters of support from doctors or authorities who can (i) confirm the hardship, (ii) describe the condition that causes the hardship; (iii) explain why the stated hardship requires transfer of the student to another school, and (iv) state how the condition will be accommodated by the new school.

c. Employee Transfers. The district may approve an employee transfer for a student if (i) the Board employs the student's parent or guardian on a full-time basis, (ii) the student resides with the employee parent or guardian, (iii) the employee parent or guardian has custody of the student, (iv) space is available at the school to which the transfer is sought, (v) the school to which the transfer is sought is within the high school feeder pattern to which the

employee is assigned, and (vi) the student meets established attendance, academic, and behavioral criteria. If an employee is not assigned within a feeder pattern, then the district may approve a transfer to a school in either high school feeder pattern, but any such transfer must also meet the criteria for Racial Desegregation Transfers.

d. Transportation. The Board will provide transportation for racial desegregation transfer students from the student's zoned school to and from the eligible school to which a transfer is approved. The Board may elect to provide transportation from a student's home to the school to which the transfer is approved or from such school to the student's home, or both, if in the Board's discretion, it would be more efficient and in the best interest of the school district and the student to do so.

The availability of transportation under this provision will be determined by application of the customary guidelines and procedures applicable to other students assigned to the student's zoned school. If a student would not be eligible for transportation to his or her zoned school – as a result of the two mile rule, for example – then the student still is not eligible for transportation to the zoned school under this provision, but the student would be eligible for transportation from the student's zoned school to the transfer school. In that scenario, the parents/guardians are responsible for transportation to the zoned school where the student may meet the bus to ride to the transfer school.

e. Capacity. If, because of school capacity, space is available in a particular school to accommodate some but not all of the students who apply to transfer to that school, then the Board shall allocate available spaces based on the following priority system:

1. Substantial hardship transfers;
2. Employee transfers and new racial desegregation transfers. The Board must provide an equal number of spaces for racial desegregation transfers and employee transfers.

If space is not available to accommodate all applicants within the transfer categories using the priority system, then the Board must use a lottery system to identify students who may transfer.

If the number of transfer applications for a particular school exceeds the

number of slots available at that school, then the Board shall create a waiting list. If a student who receives a transfer elects not to use the transfer, then the Board shall offer the slot to the first student on the waiting list. The Board shall fill available slots for transfer in this manner until all eligible transfer applicants receive a transfer or all available slots at the subject school are filled.

For purposes of this policy, a school will be deemed to have capacity to accommodate transfers if the school does not exceed 95% utilization, based on the Board's building capacity formula. To calculate capacity, the average current class size will be multiplied by 85% to calculate the typical number of students per instructional space. The 85% factor allows for small groups that meet in instructional spaces during the day for special education, enrichment, second language, speech language, and intervention. The total number of instructional spaces will then be multiplied by 16 (for elementary schools) or 21 (for middle or high schools) to get the building's student capacity. A capacity of 95% or above indicates that a building may be close to being over-utilized.

f. Behavior, Attendance and Academic Criteria. Substantial hardship and employee transfers shall be subject to the following criteria and may be revoked or denied if all criteria are not met:

1. Regular attendance – Student must not be enrolled in the District Truancy Program.
2. Satisfactory grades - Student must not receive a “D” or an “F” for the school year in any class.
3. Satisfactory behavior - Student must not be determined to have committed a “Class III” offense (See Code of Student Conduct).

g. Administrative Assignments. The following categories of students may attend a school other than the school to which they are assigned without requesting a transfer:

1. Students receiving exceptional education services or accommodations under 504 or IDEA may be assigned to a school outside of their attendance zone, if necessary, to meet the Board's obligations under state and federal law.
2. Students attending the IB program, a curriculum offering

available only at a specific school, or other curricular programs or options unique to a particular school.

3. Students who are administratively assigned to a different school by the superintendent as a result of safety concerns, for disciplinary reasons or other reasons determined to be necessary for the health, safety, and well-being of the individual student, other students, or the school system.

h. Change of Residence. A student who moves to another address within the district during the school year may continue to attend the school he or she started in that school year until the end of the school year, provided that the student moved after the completion of the first four weeks of school, the parents or guardians complete the appropriate form updating their address and submit it to the school where the student attends within 7 days of establishing the new residence, and the student meets attendance, academic and behavior criteria. Students who move during their 11th grade year to another address within the district shall be permitted to attend the school attended in the 11th grade during their 12th grade year as well.

When a student moves to another address within the district during the school year, a parent/guardian must complete an appropriate form updating the student's address within 7 days of establishing the new residence. The form will include a statement acknowledging that the student no longer is zoned for the school the student attends and that he/she must attend the zoned school the following academic year. This provision applies to students who move at least four weeks into the school year; it does not apply to families who move during the summer.

i. Application Deadlines.

For the 2018-19 school year, on or before **June 1, 2018**, through its website, social media accounts, and Rapid Notification System, the Board must begin advertising the availability of transfer applications and the deadline for submission of those applications. On or before **June 1, 2018**, the Board shall post a copy of this order on its website and on its social media accounts, and the Board shall publish in those places the language in this order that describes the categories of transfer applicants: racial desegregation transfers, substantial hardship transfers, and employee transfers.

On or before **June 1, 2018**, the Board must make an electronic transfer application form available on the school website and must make paper forms available at all schools in the district. A parent/guardian must submit a transfer application so that the district's Department of Student Services receives the application on or before **June 18, 2018**.

The Board may consider untimely applications only in the following situations:

1. Substantial hardship which arises after the deadline for submission.
 2. Employees hired after the application deadline; however, a transfer application for an employee's child must be submitted and received by the district's Department of Student Services within two weeks of the effective date of hire.
 3. Students who move into the district from outside of the district after the application deadline, provided that a transfer application is received by the district's Department of Student Services within two weeks of the date that the new residence is established.
- j. Appeals. Denied applications may be appealed in writing to the superintendent or designee for review. The written appeal shall state all grounds upon which the appeal is based. The decision of the superintendent or designee is non-appealable and shall be final.

DONE and ORDERED this May 22, 2018.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Stout v. Jefferson County Board of Education (Hoover Case)
Civil Action # 2:65-CV-396-MHH
Filed In Case # 2:16-MC-00199-MHH
Motion for Approval of Hoover City Schools' Amended Transfer Plan

6.2 Transfers.

Students may be permitted to transfer to a school other than the one to which they are assigned under the provisions of this policy but shall otherwise attend their zoned or assigned schools. Transfers shall be limited to the following categories and shall be subject to the following:

a. **Racial Desegregation Transfers.** A racial desegregation transfer will be permitted between eligible schools within the school system if there is space available and if the transfer will have the effect of moving the racial composition of both the sending and receiving schools closer to the district-wide racial composition. For purposes of such transfers, eligible schools are (i) those schools for which the racial composition of African American students in the school is outside a range of 5 percentage points higher or 5 percentage points lower than the district-wide racial composition for African American students, (ii) Simmons Middle School, and (iii) Bumpus Middle School.

Racial desegregation transfers that have been approved for one school year shall also be approved for the succeeding school years until the student moves up to a different school serving a different grade level than the school to which the transfer was previously granted.

b. **Substantial Hardship Transfers.** A substantial hardship transfer may be approved if the student or student's family demonstrates a substantial, extraordinary and compelling hardship, the hardship is unique to the student or his/her family, and the hardship necessitates the assignment to a school other than the school to which the student is zoned. Each such hardship must be supported by detailed documentation from which the Board will evaluate the request by determining (a) the validity of the claim; (b) whether the receiving school is best able to address or alleviate the hardship; (c) whether other students with similar hardships have been granted hardship transfers; and (d) whether transferring similarly situated students to such schools proved beneficial. Hardship transfers are valid only for the school year for which they are approved and transfer students wishing to remain on hardship transfer must re-apply for a hardship transfer each year and submit to the Board current information documenting their hardship and the necessity of the transfer.

c. **Employee Transfers.** An employee transfer may be approved if the student's parent or guardian is employed by the Board on a full time basis,

the student resides with the employee parent or guardian, the employee parent or guardian has custody of the student, space is available at the school to which the transfer is sought, the school to which the transfer is sought is within the same high school feeder pattern where the employee is assigned, and the student meets established attendance, academic, and behavioral criteria. In the event that the employee is not assigned within a feeder pattern, the transfer may be approved to a school in either high school feeder pattern but any such transfers to eligible schools must also meet the criteria for Racial Desegregation Transfers in Section 6.2a or they shall not be approved.

d. Transportation. Transportation will be available for racial desegregation transfer students from the student's zoned school to and from the eligible school to which the transfer is approved. The Board may elect to provide transportation from a student's home to the school to which the transfer is approved or from such school to the student's home, or both, if in the Board's sole discretion, it would be more efficient and in the best interest of the school district and the student to do so. The availability of transportation under this provision will be determined by application of the customary guidelines and procedures applicable to other students assigned to the student's zoned school.

e. Capacity. In the event that space is available to accommodate some but not all of the students who apply for transfer, the Board will allocate available spaces based on the following priority system:

1. Substantial hardship transfers.
2. Employee Transfers and new racial desegregation transfers, such that the Board will afford an equal number of spaces for racial desegregation transfers and employee transfers.

If space is not available to accommodate all applicants within any of the categories above using the priority system, a lottery system will be used within such category to determine the applications to be granted.

For purposes of this policy, a school will be deemed to have capacity to accommodate transfers if it does not exceed 95% utilization, based on the Board's building capacity formula.

f. Behavior, Attendance and Academic Criteria. Substantial hardship and employee transfers shall be subject to the following and may be

revoked or denied if all are not met:

1. Regular attendance – Student must not be enrolled in the District Truancy Program.
2. Satisfactory grades - Student must not receive a "D" or an "F" for the school year in any class.
3. Satisfactory behavior - Student must not be determined to have committed a "Class III" offense (See Code of Student Conduct).

g. Administrative Assignments. The following categories of students may attend a school other than that to which they are assigned without requesting a transfer:

1. Students receiving exceptional education services or accommodations under 504 or IDEA may be assigned to a school outside of their attendance zone, if necessary to meet the Board's obligations under state and federal law.
2. Students attending the IB program, a curriculum offering only available at a specific school, or other curricular programs or options unique to a particular school.
3. Students who are administratively assigned to a different school by the superintendent as a result of safety concerns, for disciplinary reasons or other reasons determined to be necessary for the health, safety, and well-being of the individual student, other students, or the school system.

h. Change of Residence. A student who moves to another address within the district during the school year may continue to attend the school he or she started in that school year until the end of the school year, provided that the student moved after the completion of the first four weeks of school, the parents or guardians complete the appropriate form updating their address and submit it to the school where the student attends within 7 days of establishing the new residence and the student meets attendance, academic and behavior criteria. Students who move during their 11th grade year to another address within the district shall be permitted to attend the school attended in the 11th grade during their 12th grade year as well.

i. Application Deadlines. Transfer applications must be received by

the Department of Student Services on or before April 15th of each year. It will be the parents' sole responsibility to ensure that the applications are submitted to the Department of Student Services or to the School Registrar by that date. Established deadlines will be strictly enforced and untimely applications will not be considered except in the following cases:

1. Substantial hardship which arises after the deadline for submission.
2. Employees hired after the application deadline; however, any transfer application for their children must be submitted and received by the Department of Student Services within two weeks of the effective date of hire.
3. Students who move into the district from outside the district after the application deadline, provided that a transfer application is received by the Department of Student Services within two weeks of the date that the new residence is established.

j. Appeals. Denied applications may be appealed in writing to the superintendent or designee for review. The written appeal shall state all grounds upon which the appeal is based. The decision of the superintendent or designee is non-appealable and shall be final.

k. Other Procedures. The Superintendent shall be further authorized to develop transfer application forms and other procedures to implement this policy.

EXHIBIT B

**Stout v. Jefferson County Board of Education (Hoover Case)
Civil Action # 2:65-CV-396-MHH
Filed In Case # 2:16-MC-00199-MHH
Motion for Approval of Hoover City Schools' Amended Transfer Plan**

**Hoover City Schools 2018 Rezoning Plan
2018-19 Grandfather Provisions**

The following "grandfather" provisions shall apply with respect to the rezoning plan to be implemented for the 2018-19 school year.

1. Provisions for Students who are being rezoned are as follows:

- Grandfathering will only apply to students enrolled in Hoover City Schools for the 2017-18 school year. Students new to the district will not have the option to be grandfathered.

- Students going into the 2nd grade in the 2018-19 school year who are being rezoned to South Shades Crest from other elementary schools will be allowed to stay at their current elementary schools rather than move to South Shades Crest Elementary for one year before moving to 3rd-5th grades at Brock's Gap.

- Students going into the 5th grade in the 2018-19 school year will be allowed to stay at their current elementary schools rather than moving to the elementary school to which they have been rezoned for one year before moving to 6th grade at the middle school in the feeder pattern for their rezoned elementary school

- Students going into the 8th grade in the 2018-19 school year will be allowed to stay at their current middle schools rather than moving to the middle school to which they have been rezoned for only one year before moving to the high school in the feeder pattern of their rezoned middle school.

- Students going into the 9th-12th grades in the 2018-19 school year will be allowed to stay at their current high schools through graduation rather than move to the high school to which they have been rezoned.

- There is no exception for siblings of grandfathered students; instead, siblings of grandfathered students must attend the school to which they are zoned unless they themselves are eligible to be grandfathered pursuant to these provisions.

2. Provisions for Students on Internal Transfer during the 2017-18 school year are as follows:

- Internal Transfers shall refer to those transfers granted during the 2017-18 school year prior to the adoption of the Transfer Plan containing these provisions.

- Only students enrolled in Hoover City Schools for the 2017-18 school year will be eligible to be grandfathered.
- Students going into the 2nd grade in the 2018-19 school year and who are being rezoned to South Shades Crest from other elementary schools will be allowed to stay at the school attended pursuant to the Internal Transfer rather than move to South Shades Crest Elementary for one year before moving to 3rd-5th grades at Brock's Gap.
- Students going into the 5th grade in the 2018-19 school year will be allowed to stay at the elementary schools attended pursuant to the Internal Transfer rather than moving to the elementary school to which they are zoned for one year before moving to 6th grade at the middle school in the feeder pattern for their zoned elementary school.
- Students going into the 8th grade in the 2018-19 school year will be allowed to stay at the middle school attended pursuant to the Internal Transfer rather than moving to the middle school to which they are zoned for only one year before moving to the high school in the feeder pattern of their zoned middle school.
- Students going into the 9th-12th grades during the 2018-19 school year will be allowed to stay at the high school attended pursuant to the Internal Transfer rather than move to the high school to which they are zoned.
- There is no exception for siblings of grandfathered Internal Transfer students; instead, siblings of grandfathered students must attend the school to which they are zoned unless they themselves are eligible to be grandfathered pursuant to these provisions.

Parents of students eligible to be grandfathered at their current schools must indicate their election to claim grandfathered status for their children by completing and submitting a "Grandfather Election" form by a specific date to be determined by Hoover City Schools.