2002 WL 1268395
Only the Westlaw citation is currently available.
United States District Court, M.D. Alabama, Eastern Division.

Anthony T. LEE, et al., Plaintiffs,
UNITED STATES of America, Plaintiff–Intervenor and Amicus Curiae,
NATIONAL EDUCATION ASSOCIATION, INC., Plaintiff–Intervanor,
v.
LEE COUNTY BOARD OF EDUCATION, et al.
Defendants.

No. CIV.A. 70–T–845–E.
|
May 29, 2002.

OPINION

THOMPSON, District J.

***1** This longstanding school desegregation case began in 1963 when the plaintiffs, a class of black students, sought relief from race discrimination in the operation of a *de jure* segregated school system. The defendants are the Lee County Board of Education, its members, and the Lee County Superintendent of Education, as well as the Alabama State Board of Education, the State Superintendent of Education and the Governor of Alabama. The Lee County Board of Education and its members and superintendent have moved for declaration of unitary status and termination of this litigation. Based on the evidence presented, the court concludes that the motion should be granted in part and denied in part.

I. BACKGROUND

A. Early Litigation

This case began in 1963 when several black students and their parents sued the Macon County Board of Education and its superintendent seeking relief from the continued operation of a racially segregated school system. On July 3, 1963, the United States was added as plaintiff-intervenor and amicus curiae in order that the public interest in the administration of justice would be represented. *Lee v. Macon County Bd. of Educ.,* 267 F.Supp. 458, 460 (M.D.Ala.1967). In a hearing before a single-judge court, the Macon County Board was enjoined to make an immediate start to desegregate its schools "without discrimination based on race or color." *Lee v. Macon County Bd. of Educ.,* 221 F.Supp. 297, 300 (M.D.Ala.1963).

After actions by the State of Alabama to prevent implementation of this order, the Macon County plaintiffs filed an amended and supplemental complaint in February 1964 alleging that the Alabama State Board of Education, its members, the State Superintendent, and the Governor as president of the state board, had asserted general control and supervision over all public schools in the State in order to maintain a *de jure* segregated school system. The court found that it was the policy of the State to promote and encourage a dual school system based on race, and the state officials were made defendants. *Lee v. Macon County Bd. of Educ.,* 231 F.Supp. 743 (M.D.Ala.1964) (three-judge court) (per curiam). In subsequent orders, the *Lee* court ordered the State Superintendent of Education to require school districts throughout the State, including Lee County, to desegregate their schools. *Lee v. Macon County Bd. of Educ.,* 292 F.Supp. 363 (M.D.Ala.1968); *Lee v. Macon County Bd. of Educ.,* 267 F.Supp. 458 (M.D.Ala.1967) (three-judge court) (per curiam).

A desegregation plan for the Lee County School System was filed on January 14, 1970, and the plan was accepted as modified by the court on February 4, 1970. On June 24, 1970, the three-judge court in *Lee* transferred the jurisdiction over 35 school boards involved in the *Lee* litigation, including the Lee County Board of Education, to a single district judge of the United States District Court for the Middle District of Alabama, where the school districts were located.

***2** On September 7, 1977, on motion of the United States,

the Lee County litigation was consolidated with parallel desegregation litigation in the Auburn City and Opelika City School Systems to address the issue of racial isolation in the Loachapoka (Lee County) area, which had contained the historically black high school for all three school systems. By order of August 15, 1978, the court denied the United States of America's motion to modify its prior orders to require Auburn and Opelika to share liability with Lee County for Loachapoka's isolation; the court's order was affirmed by the Court of Appeals for the Eleventh Circuit on May 8, 1981.

B. School District Profile

The Lee County school system currently educates approximately 9,150 students in 12 schools spread over four attendance zones. The Loachapoka attendance zone (approximately 591 students, 95 % black) and the Beulah attendance zone (approximately 1,171 students, 11 % black) each contain one elementary school serving grades K–6 and a middle/high school serving grades 7–12. The Beauregard attendance zone (approximately 1,981 students, 24 % black) contains one elementary school serving grades K–4 (Beauregard Elementary), one middle school serving grades 5–8 (Sanford Middle), and one high school serving grades 9–12 (Beauregard High). The largest attendance area, the Smiths Station attendance zone, (approximately 5,407 students, 19 % black) contains one primary school serving grades K–1 (Smiths Station Primary), one elementary school serving grades 2–3 (Smiths Station Elementary), one intermediate school serving grades 4–6 (Smiths Station Intermediate), one junior high serving grades 7–8 (Wacoochee Jr. High), and one high school serving grades 9–12 (Smiths Station High). At the time of the entry of the 1998 consent decree (discussed below), the district enrolled approximately 7,835 students (21 % black).

C. The 1998 Consent Decree

On February 12, 1997, this court entered an order affecting eleven school systems, stating that the court was "of the opinion that the parties should now move toward 'unitary status' ... and for the termination of the litigation [for the school systems] in these cases." The court ordered the parties to confer to determine:

> "(a) Whether, in any of the areas set forth in *Green v. County School Board of New Kent,* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), the defendants have achieved unitary status and, if so, whether the court may relinquish jurisdiction as to these areas. *Freeman v. Pitts,* 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) [These areas are: student attendance patterns, faculty, staff, transportation, extracurricular activities and facilities (footnote omitted)].
>
> "(b) Whether there are *Green* or other areas as to which the plaintiff parties claim that the defendants have not eliminated the vestiges of prior de jure segregation.
>
> "(c) Whether the parties can amicably develop a procedure through which the school system can achieve unitary status."

***3** This court thus set in motion a lengthy and deliberative process of reviewing each of the school systems, including the Lee County System. The parties in all eleven cases agreed upon the format and scope of informal discovery. The court designated a magistrate judge to oversee discovery and to mediate any disputes that arose during the course of negotiations. The parties in this case conducted lengthy informal discovery to obtain information about the school system, including touring the district's facilities, and met with class and community members. The plaintiff parties identified those issues for which satisfactory compliance had been attained as well as those areas for which the plaintiff parties identified as needing further attention.

On August 14, 1998, the court approved a consent decree detailing the areas of district operations in which the district was partially unitary and those in which further remedial action was necessary. Courts may allow partial or incremental dismissal of a school desegregation case before full compliance has been achieved in every area of school operations; jurisdiction is retained over the remaining parts of a desegregation case. *Freeman v. Pitts,* 503 U.S. 467, 490–91, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992). The district was found to have achieved unitary status in the areas of transportation. Injunctions or portions thereof pertaining to this area were dissolved, and this function was appropriately returned to the control of the local governing body, the Lee County Board of Education. Seven areas were identified for further remediation: faculty hiring and assignment; student assignment and instruction within schools, including student transfer issues, graduation rates, and participation in special programs; special education; extracurricular

activities; student discipline; facilities; and dropout intervention. The parties agreed that in order for the district to attain unitary status in these remaining areas, the board would undertake certain actions including developing policies and procedures in the identified areas to eliminate the remaining vestiges of the dual system. The consent decree sets forth in detail the areas to be addressed and the actions to be undertaken. In other words, the consent decree represented "a roadmap to the end of judicial supervision" of the Lee County school system. *NAACP v. Duval County Sch. Bd.,* 273 F.3d 960, 963 (11th Cir.2001). Many of the areas addressed fall under the *Green* factors, the areas of school operation which are traditionally held as indicators of a desegregated (or not) school system. *Green v. County School Board of New Kent,* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968) (the indicator areas of school operation are: student assignment, faculty and staff, transportation, facilities and extracurricular activities). The parties also addressed what have become known as quality-education issues that more closely relate to a student's day-to-day experiences within a school. *Freeman v. Pitts,* 503 U.S. 467, 472, 112 S.Ct. 1430, 1437, 118 L.Ed.2d 108 (1992).

***4** The Lee County School District was required to file a comprehensive report with the court each year, and the plaintiff parties had the opportunity to advise the school system of any concerns about compliance with the terms of the 1998 consent decree. Concerns raised by the plaintiff parties were noted in annual progress reports. These were discussed at status conferences held on April 13, 2000, May 16, 2001, August 23, 2001, and February 13, 2002. The board addressed these concerns through continued review and modification of its programs. As noted below, progress was made in many areas. The 1998 consent decree provided that the board could file for dismissal of the case three years after approval of the consent decree and after filing the third annual report.

D. State-wide Issues

Over the course of years, as litigation affecting the individual school districts was dealt with by the courts as separate matters, the state defendants (that is, the Alabama State Board of Education, the board members, the State Superintendent of Education, and the Governor of Alabama) did not participate in the *Lee* litigation. The question arose as to whether the state defendants were even parties in the local off-shoots of the *Lee* cases. Previous rulings, particularly *Lee v. Macon County Bd. of Educ.,* 267 F.Supp. 458 (M.D.Ala.1967) (three-judge court) (per curiam), *aff'd sub nom. Wallace v. United States,* 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422 (1967), held that the state defendants were responsible for the creation and maintenance of segregated public education in the State of Alabama. The court found that state officials had "engaged in a wide range of activities to maintain segregated public education ... [which] controlled virtually every aspect of public education in the state." *Lee,* 267 F.Supp. at 478. This court subsequently affirmed that despite cessation of participation by the state defendants when the individual district cases were transferred, the state defendants continue as parties in not only the state-wide litigation, but in all the off-shoot cases. *Lee v. Lee County Bd. of Educ.,* 963 F.Supp. 1122, 1124, 1130 (M.D.Ala.1997).

The parties identified two issues remaining in the state-wide litigation, "special education" and "facilities." The state-wide issues involving special education were resolved, and orders adopting the consent decrees were entered on August 30, 2000, in the eleven *Lee* cases, including this one. *See Lee v. Butler County Bd. of Educ.,* 183 F.Supp. 1359, 1363 (M.D.Ala.2000). Negotiations on the state-wide issues involving facilities are still pending.

E. Interdistrict Transfer Issue

The cross-enrollment of students in the Lee County and Phenix City School Systems has been an ongoing issue for several years. Phenix City is located in Russell County which adjoins Lee County. The Phenix City School System also operates under a terminal desegregation order, and was one of the eleven school systems designated in the February 12, 1997, order, and thus participated in the same review process as Lee County. On September 16, 1998, the court approved a consent decree detailing the areas of district operations in which the Phenix City School System was partially unitary and those in which further remedial action was necessary. Following entry of both the Phenix City and Lee County consent decrees, litigation occurred regarding boundary disputes and student enrollment in the two systems.

***5** In the 1980s, Phenix City began annexing areas of Lee County. Some, but not all, of the students living in the annexed areas continued to attend school in the Lee

County School System rather than enroll in the Phenix City Schools. Subsequent litigation in state court and in this court resulted in a June 14, 1999, order that "the attendance zone boundaries of the Phenix City School System are coterminous with the existing corporate limits of Phenix City." While this has been an ongoing issue, there does not appear to ever have been a finding that any student "transfers"—that is, that continued attendance in Lee County Schools of students residing in the areas annexed by Phenix City—impeded desegregation or enhanced the racial identifiability of schools in either Lee County or Phenix City. *See* Recommendation of the Magistrate Judge entered on May 13, 1999, vacated as moot on other grounds by order entered June 14, 1999.

F. Motion for Declaration of Unitary Status

During the February 13, 2002, status conference, the parties agreed that the actions taken by the Lee County School System over the previous three years were in compliance with the 1998 consent decree and justified termination of the case. In particular, during the course of implementing the decree, the district had developed plans of action addressing the areas of continued concern raised by the plaintiff parties, and these plans were adopted by the school board as district policies and procedures. On February 12, 2002, the board passed a resolution of adoption of nondiscrimination policies. On February 27, 2002, the Lee County Board of Education and its members and superintendent filed a motion for declaration of unitary status and termination of the litigation. The court set the motion for a fairness hearing and required the county school board to give all plaintiff class members appropriate notice of the motion as well as procedures for lodging objections.

After the court approved the notice form, the Lee County Board of Education published, in the local newspaper over a three-week time period, notice of the proposed termination of this litigation and the date of the fairness hearing; the notice also provided procedures for class members and interested persons to file comments and objections with the court regarding the proposed dismissal. Forms for objections and comments were made available in numerous public locations. In addition to the published notice, copies of the motion for unitary status, each of the annual reports, and the progress reports filed prior to each of the status conferences were made available at the local school board offices. Copies of the motion for unitary status and notice were posted at each of the 12 county schools and board offices for several weeks, and actual notice was provided to each student enrolled in the Lee County School System and mailed to each parent or guardian of students enrolled in the system. Two comments were filed with the court, one supporting dismissal of the case, and the other stating that the schools had "integrated nicely" but opposing dismissal of court oversight. On April 29, 2002, the court held a fairness hearing on the motion for declaration of unitary status and termination.

***6** The court concludes that the Lee County Board of Education complied with the directives of the court in providing adequate notice of the proposed dismissal to class members as well as to the community. Fed.R.Civ.P. 23(e).

II. DISCUSSION

A. Standards for Termination of a School Desegregation Case

It has long been recognized that the goal of a school desegregation case is to convert promptly from a *de jure* segregated school system to a system without "white" schools or "black" schools, but just schools. *Green v. County School Bd. Of New Kent,* 391 U.S. 430, 442, 88 S.Ct. 1689, 1696, 20 L.Ed.2d 716 (1968). The success of this effort leads to the goal of ultimately returning control to the local school board since "local autonomy of school districts is a vital national tradition." *Freeman v. Pitts,* 503 U.S. 467, 490, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992) (quoting *Dayton Bd. of Education v. Brinkman,* 433 U.S. 406, 410, 97 S.Ct. 2766, 2770, 53 L.Ed.2d 851 (1977)). Returning schools to the control of local authorities "at the earliest practicable date is essential to restore their true accountability in our governmental system." *Id.*

The ultimate inquiry concerning whether a school district operating under a school desegregation order to dismantle a *de jure* segregated school system should be declared unitary is whether the school district has complied in good faith with the desegregation decree, and whether the vestiges of prior *de jure* segregation have been eliminated

to the extent practicable. *NAACP, Jacksonville Branch v. Duval County Sch. Bd.,* 273 F.3d 960, 966 (11th Cir.2001) (citing *Missouri v. Jenkins,* 515 U.S. 70, 88, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995), and quoting *Freeman v. Pitts,* 503 U.S. 467, 492, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992)); *see also Manning v. Sch. Bd. of Hillsborough County,* 244 F.3d 927, 942 (11th Cir.2001), *cert. denied,* 534 U.S. 824, 122 S.Ct. 61, 151 L.Ed.2d 28 (2001); (*Lockett v. Bd. of Educ. of Muscogee County*), 111 F.3d 839, 843 (11th Cir.1997).

In addition to these articulated constitutional standards, here the Lee County Board of Education was also required to comply with the contractual requirements of the 1998 consent decree which set forth specific steps the board was to take to attain unitary status. *NAACP, Jacksonville Branch v. Duval County Schools,* 273 F.3d 960 (11th Cir.2001). The parties agreed that the board would analyze and review programs and practices in each of the areas in which further actions were required, that is, faculty hiring and assignment; student assignment and instruction both to and within schools, including student transfer issues, graduation rates, and participation in special programs such as Gifted and Talented programs; special education; extracurricular activities; student discipline; facilities; and dropout intervention. The board was to formulate and adopt procedures and practices designed specifically to address each of these areas. The board was thus required to take specific actions to address concerns the parties argued were vestiges of the prior dual system, and to ensure that the district was being operated on a nondiscriminatory basis.

***7** The legal standards for dismissal of a school desegregation case were set forth in the 1998 consent decree as (1) whether the district has fully and satisfactorily complied with the court's decrees for a reasonable period of time, (2) whether the vestiges of past discrimination have been eliminated to the extent practicable, and (3) whether the district has demonstrated a good-faith commitment to the whole of the court's decrees and to those provisions of the law and the Constitution that were the predicate for judicial intervention. *Missouri v. Jenkins,* 515 U.S. 70, 87–89, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995). By emphasizing that the good-faith component has two parts (that is, that a school district must show not only past good-faith compliance, but a good-faith commitment to the future operation of the school system), the parties looked both to past compliance efforts and to a good-faith commitment to the future operation of the school system through "specific policies, decisions, and courses of action that extend into the future." *Dowell v. Bd. of Educ. of the Oklahoma City Public Schools,* 8 F.3d 1501,1513 (10th Cir.1993) (citations omitted). Regardless, "[t]he measure of a desegregation plan is its effectiveness." *Davis v. Bd. of Sch. Comm'rs,* 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971).

B. Terms of the 1998 Consent Decree and Compliance Efforts

1. a. *Faculty and Administrator Hiring:* The Lee County Board Of Education was required to make every effort to increase the number of black applicants in the pool from which it selects its teachers and administrators to fill administrative and faculty vacancies, and to ensure that teachers and administrators would be hired and promoted without regard to race, color or national origin. *Singleton v. Jackson Municipal Separate Sch. Dist.,* 419 F.2d 1211, 1218 (5th Cir.1969).[*] As evidenced by the three annual reports previously submitted, the district has expended considerable effort to recruit and employ minorities. The district revised its employment procedures to ensure nondiscrimination in the hiring of faculty and developed and implemented a plan to increase the recruitment of minority faculty, staff, and administrators. The district's faculty recruitment strategies include increased advertising for vacancies and expanded on-site recruiting at historically black universities and all colleges and universities in the immediate area. The district developed and adopted manuals and plans to increase its employment of minority faculty and staff and developed annual recruiting plans. While the district has increased its faculty by approximately 125 teachers over the past five years, it has maintained a black faculty at 24 % which is higher than the state average of teachers who are black.

b. *Faculty Assignment:* The Lee County Board of Education was also required to make every reasonable effort to ensure that no school in the system could be perceived as a white school or a minority school because of the racial make-up of its faculty or administrators. *Id.* Under the terms of the 1998 consent decree, the district was required to take steps necessary and appropriate to achieve a percentage black staff at each school that approximates the district-wide average of black staff.

***8** Under the *de jure* system when the district maintained separate schools based on race, the Loachapoka schools were designated for black students and teachers for the

Lee County as well as Alexander City and Opelika City School Systems. Because of its geographic location as well as the demographic configuration of Lee County, the Loachapoka schools continue to be racially isolated with a student enrollment which is over 90 % black while the black student enrollment at the remaining district schools ranges from 10 to 27 % black. At the time of the 1998 consent decree, 44 % of the faculty at Loachapoka Elementary School and 68 % of the faculty at Loachapoka High School were black as compared to a 24 % district-wide ratio of black faculty. While the district has made some progress in addressing this issue, and there are approximately ten new teachers at the Loachapoka schools, the percentage of faculty who are black is now 42 % at the elementary school and 57 % at the high school compared to the district-wide ratio of 24 % black. Both student enrollment and faculty assignment are racially identifiable at the Loachapoka schools as compared to other schools in the system.

2. *Student Assignment and Instruction:* The consent decree required the school board to ensure that student assignment to schools was made on a nondiscriminatory basis with strict enforcement of established zone lines. The board complied with this provision and continues to require verification of residency to ensure student assignment conforms to the district's boundary lines.

The consent decree also addressed several areas involving student participation, particularly by black students, in special programs such as college preparatory and advanced placement classes, certain extracurricular activities, student discipline, and special education. To ensure that such special programs were operated on a nondiscriminatory basis, the board was required to formulate and adopt a range of procedures to provide notice to parents and students; recruit black students to participate in and black faculty members to teach special courses or sponsor extracurricular activities; review discipline procedures; and provide training for teachers and guidance counselors.

In addressing the areas of student assignment as well as certain quality of education issues such as instruction, student discipline and drop-out rates, the district engaged in detailed analysis to assist in determining causes for disparities in participation rates in various programs. The school board consulted with the Southeastern Equity Center and has also hired a consultant to assist it in this process. The results of this analysis should assist the district in continuing to address these issues. The district has used a variety of procedures to inform, attract, and recruit all students to advanced programs and has expanded its notice to parents of such programs. The board implemented professional development programs for its staff to provide training in increasing student success. The board developed a distance learning program in its schools which is of particular benefit to small high schools such as Loachapoka. The board also adopted action plans and manuals for special programs and language arts. As a result of these efforts, black student participation has increase in advanced programs at all four of the district high schools.

***9** 3. *Extracurricular Activities:* The board was required to take all reasonable steps to ensure an equal opportunity for all students to participate in extracurricular activities, including providing notice about activities to students and parents, recruiting black faculty members to be sponsors, and monitoring participation in extracurricular activities. Since the entry of the consent decree, the Lee County School System made a substantial effort in this area by working with counselors and school administrators to survey students to determine interest in and monitor participation in activities, developing strategies to encourage participation by all students in extracurricular activities, and by incorporating practices and methods into a common, district-wide policy manual. The school-wide percentage of black-student involvement in extracurricular activities is approximately equal to or greater than the black-student enrollment for each school in the system.

4. *Student Discipline:* The district has undertaken substantial efforts to address disparities in the area of student discipline, including extensive work with a consultant from the Southeastern Equity Center. The district conducted a detailed study and analysis of discipline data which revealed a lack of consistent application of rules and consequences. This analysis enabled the system to identify areas of concern and focus efforts on consistent application of the district's discipline data and provision of classroom management, diversity, and bus driver training programs. The school board developed a database to track discipline referrals and disciplinary actions, and it enacted a uniform discipline policy.

5. *Special Education:* As stated, the state-wide issues involving special education were resolved by a consent decree entered on August 30, 2000. *See Lee v. Butler County Bd. of Ed.,* 183 F.Supp.2d 1359, 1366 (M.D.Ala.2002). According to the terms of the state-wide decree, any claims in the area of special education would

be raised with the state defendants. Even if any such claim involving the Lee County School System were pending, it could not prevent a declaration of unitary status since the matter would be addressed with the state defendants as part of the commitments made under the state-wide decree.

6. *Student–Dropout Intervention:* The district implemented a student at-risk plan, providing various supportive services to assist in keeping students in school, such as a mentoring, work study, a career-vocational-technical program and an alternative-school program. The district has been successful in reducing the overall number of student dropouts and narrowing the disparity between black student and white student dropouts in the district.

7. *Facilities:* The board has undertaken an assessment of all of the district facilities which included a programmatic and architectural evaluation. Of particular note are improvements at the Loachapoka schools, including renovation of the science and vocational laboratories at Lochapoaka High School which is now accredited by the Southern Association of Colleges and Schools.

***10** 8. *Monitoring:* The Lee County Board of Education, as required by the 1998 consent decree, filed three annual reports. Each report detailed the school district's efforts and accomplishments in implementing the provisions of the decree during the preceding school year. These reports were reviewed and monitored by the plaintiff parties. The plaintiff parties were given the opportunity to advise the board of any continued concerns about these efforts. A progress report was filed by the United States outlining the positions of the parties for discussion at the annual status conference.

9. *Future Action:* The Lee County Board of Education has evidenced an understanding that the declaration of unitary status does not relieve it of its responsibility to its faculty, staff, students, and the community which it serves. To this end, the Lee County School Board has demonstrated a commitment to continued adherence to nondiscriminatory policies and procedures through the development and adoption of a number of action plans and policy and procedure manuals addressing faculty recruitment and hiring, students at-risk, special programs, extracurricular activities, language arts, student discipline and special education.

C. April 29, 2002, Fairness Hearing

After the Lee County Board of Education and its members and superintendent filed their motion for declaration of unitary status and termination of this litigation, the court required publication and notice of the proposed dismissal, scheduled a fairness hearing, and established procedures for filing comments and objections.

Two comments were filed with the court. The first supported termination of this litigation based on the district's proven ability to enforce standards, policies and operating procedures. The second comment stated that while "the school systems have integrated nicely," there was continued concern that there would be step back in integration without court supervision.

The court conducted a fairness hearing on April 29, 2002, and heard testimony and received evidence offered by the Lee County Board of Education in support of the motion for unitary status. Dr. Jerry Graniero of the Southeastern Equity Center testified about his work with the school system over three years and the affirmative efforts to implement the 1998 consent decree, particularly through its plans of action to address areas in the decree. Dr. Graniero stated that there has been a dramatic reduction in the number of student referrals for disciplinary action. The district is in the process of implementing its Plan for Academic Excellence to improve student achievement. The Superintendent of Education for the Lee County School System, Mr. John Painter, also testified concerning the school board's implementation efforts, including the development and expansion of a distance learning program which offered several advanced level courses this past school year, and which is particularly beneficial for small schools such as Loachapoka which have difficulty enrolling sufficient numbers of students to make offering such courses feasible.

***11** Counsel for the plaintiff parties cross examined both witnesses and addressed the issues raised in the comments filed with the court as well as the faculty assignment pattern at the Loachapoka schools. It does not appear that there are any immediate plans to effectively redress the disparities in faculty assignment.

III. CONCLUSION

On the basis of the record evidence, witness testimony, and averment of counsel, the court finds that the Lee County Board of Education and its members and superintendent have met the standards entitling the school district to a declaration of unitary status and termination of this litigation in all areas except assignment of faculty to Lochapoaka Elementary and Lochapoaka High Schools. The former Fifth Circuit held that "principals, teachers, teacher-aides and other staff who work directly with children at school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Singleton v. Jackson Municipal Separate Sch. Dist.,* 419 F.2d 1211, 1217–18 (5th Cir.1969). School systems have a continued legal responsibility for the allocation of minority faculty and staff. *Pitts v. Freeman,* 887 F.2d 1438, 1447 (11th Cir.1989) (holding that a 15 % variance does not constitute error), *rev'd on other grounds, Freeman v. Pitts,* 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992); *see also Stell v. Bd. of Public Educ. for the City of Savannah,* 860 F.Supp. 1563, 1583–84 (S.D.Ga.1994).

Under the *de jure* system, the Lochapoaka schools were designated for black children and teachers for the Lee County as well the Alexander and Opelika City school systems. Because of geography and demographics, the Lochapoaka schools continue to have a racially isolated black student population as compared with other schools in the Lee County School District. However, the faculty assigned to the Loachapoka schools also continues to be racially identifiable as compared to the faculty assigned to the remaining schools in the system. The board has failed to demonstrate that it complied with the terms of the 1998 consent decree requiring it to make every reasonable effort to ensure that no school in the system could be perceived as white school or a minority school because of the racial make-up of its faculty, and to take steps to achieve a percentage of black staff at each school that approximates the district-wide average. The court concludes that this is a vestige of the prior dual system and that practicable means within the control of the board exist to further eliminate this vestige. *Freeman v. Pitts,* 503 U.S. 467, 492, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1991).

The Lee County School Board has otherwise fully and satisfactorily complied with the orders of this court. Except for faculty assignment to the Lochapoaka schools, the vestiges of the prior *de jure* segregated school system have been eliminated to the extent practicable. The court also finds that the board and its members and superintendent have demonstrated a good-faith commitment to the whole of the court's decrees and to those provisions of the law and the Constitution, that were the predicate for judicial intervention in this school system in the first instance, through their compliance with the court's orders over the years, through their good-faith implementation of their contractual obligations under the 1998 consent decree, and through their adoption of specific policies and actions that extend into the future demonstrating their commitment to the operation of a school system in compliance with the Constitution. "Partial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the district court's duty to return the operations and control of schools to local authorities." *Freeman,* 503 U.S. at 489, 112 S.Ct. at 1445.

***12** The plaintiff parties have nearly succeeded in the task they began decades ago to seek the end of the seemingly immovable *de jure* system of school segregation in Lee County. This lawsuit sought to bring the district into compliance with the constitutional requirement of equal protection under the law, and the court states today that, except for one area, they have succeeded. *NAACP, Jacksonville Branch v. Duval County Schools,* 273 F.3d 960, 976 (11th Cir.2001). By its actions today, the court recognizes and congratulates the sustained efforts of the parties. In so doing, the court notes, as the Eleventh Circuit stated in *Duval County Schools,* that "[t]he Board, and the people of [Lee County] who, in the end, govern their school system, must be aware that the door through which they leave the courthouse is not locked behind them. They will undoubtedly find that this is so if they fail to maintain the unitary system [the court] conclude[s] exists today." *Id.* at 976–77.

Therefore, with the judgment the court will enter today, except for the assignment of faculty to the Loachapoka schools, control over the Lee County School System is properly returned to the Lee County Board of Education and its members and superintendent. The motion for declaration of unitary status and termination of this litigation filed by the board and its members and superintendent will be partially granted, all outstanding orders and injunctions will be dissolved except for those pertaining to the assignment of faculty to the Lochapoaka schools, and this litigation partially dismissed as to the board and its members and superintendent. In addition, the state defendants are not dismissed, and the orders dealing with the state-wide "special education" and

"facilities" issues are not dissolved.

JUDGMENT

In accordance with the memorandum opinion entered this day, it is the ORDER, JUDGMENT, and DECREE of the court as follows:

(1) The motion for declaration of unitary status and termination of this litigation, filed by defendants Lee County Board of Education, its members, and the Superintendent of Education on February 27, 2002 (doc. no. 146), is granted in all respects except for assignment of faculty to the Lochapoaka schools.

(2) The Lee County School System is DECLARED to be unitary in all respects except for faculty assignment to the Loachapoka schools.

(3) All outstanding orders and injunctions, except as they pertain to the assignment of faculty to the Loachapoka schools, are dissolved as to defendants Lee County Board of Education, its members, and the Superintendent of Education.

It is further ORDERED that the state defendants (the Alabama State Board of Education, its members, the State Superintendent of Education, and the Governor of Alabama) are not dismissed and that the orders dealing with the state-wide "special education" and "facilities" issues are not dissolved.

All Citations

Not Reported in F.Supp.2d, 2002 WL 1268395

Footnotes

[*] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the circuit splitting on September 30, 1981.