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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–Intervenor,
v.
RUSSELL COUNTY BOARD OF EDUCATION, et
al. Defendants.

No. CIV.A. 70–T–848–E.

|
Feb. 25, 2002.

Attorneys and Law Firms

Gloria J. Browne–Marshall, NAACP Legal Defense
Fund, New York, NY, Fred (Jr.) Gray, Fred (Sr.) D. Gray,
Gray, Langford, Sapp, McGowan, Gray & Nathanson,
Tuskegee, for Anthony T. Lee, plaintiffs.

Sydney S. Smith, Smith & Smith, Phenix City, Anita L.
Kelly, Department of Education, Office of General
Counsel, Michael R. White, State Department of
Education, Office of General Counsel, Edward A. Hosp,
Office of the Governor, Alabama State Capitol,
Montgomery, for Russell County Board of Education, the
individual members thereof and the Superintendent of
Education, State of Alabama Board of Education, and
Individual Members of the State Board, H. Lee
Henderson, Superintendent of Education, Don Seigleman,
Governor, as President ex officio of the State Board of
Ed, Ed Richardson, Superintendent of the State Board of
Education, defendants.

OPINION

THOMPSON, District J.

*1 In this longstanding school desegregation case, the plaintiffs, a class of black students, obtained relief from race discrimination in the operation of a *de jure* segregated school system. The defendants are the Russell County Board of Education, its members, and the County Superintendent of Education, as well as the Alabama State Board of Education, its members, the State Superintendent of Education, and the Governor of Alabama. The Russell County School Board 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 and this litigation terminated as to the Russell County Board of Education and its members and superintendent.

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 the Russell County district, 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 Russell County Schools was ordered on March 12, 1970. The plan included provisions relating to inter-district transfers, school construction and site selection, services, facilities, activities and programs, and the requirement that faculty and staff not be assigned so as to indicate that any school is intended for one race or another. On June 24, 1970, the three-judge court in *Lee* transferred the jurisdiction over 35 school districts involved in the *Lee* litigation, including the Russell County School District, to a single district judge of the United States District Court for the Middle District of Alabama, where the school districts were located. In 1992, the Russell County School Board petitioned for and was granted approval to alter the attendance boundaries for Oliver Elementary School and Mt. Olivet Elementary School.

B. The 1998 Consent Decree

*2 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, (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 (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.”

The court thus set in motion a lengthy and deliberative process of reviewing each of the school systems, including Russell County’s. 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 meeting 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 June 15, 1998, the court approved a consent decree detailing the areas of operations in which the school 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 (1992). The Russell County School System was found to have achieved unitary status in the areas of faculty and transportation. Injunctions or portions thereof pertaining to these areas were dissolved, and these functions were appropriately returned to the control of the local governing body, the Russell County Board of Education.

The parties agreed that in order for the Russell County School District to attain unitary status in the remaining areas, the school board would develop policies and procedures in the areas of within-school-student assignment; facilities; inter-district transfers; special education; and student discipline. The 1998 decree sets forth in detail the areas to be addressed and the actions to be undertaken. In other words, the decree represented “a roadmap to the end of judicial supervision” of the Russell County School system. *NAACP v. Duval County Sch. Bd.*, 273 F.3d 960, 963 (11th Cir.2001). Two 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 (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 (1992).

*3 The Russell County School System 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 or about April 12, 2000, April 12, 2001, and August 22, 2001. The school 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 decree and after filing the third annual report.

C. 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 (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.*, 2000 WL 33680483 (M.D.Ala.2000). Negotiations on the state-wide issues involving facilities are still pending.

D. Motion for Declaration of Unitary Status

During the August 22, 2001, status conference, the parties agreed that the actions taken by the Russell 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 each of 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 October 22, 2001, the Russell County School Board and its members and superintendent filed their motion for declaration of unitary status and termination of the litigation. The court required the Russell County School Board to give all plaintiff class members appropriate notice of the motion and procedures for lodging objections.

*4 After the court approved the notice form, the Russell County School Board published, in two local newspapers 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 termination motion, the future action plans, and the three annual reports were made available at the local school board offices. Notice forms along with forms for objections and comments were sent home with every student enrolled in the Russell County School System. No objections were filed with the court opposing dismissal of the case. On December 20, 2001, the court conducted a fairness hearing on the motion for declaration of unitary status.

The court concludes that the Russell County School Board 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 County, Va.*, 391 U.S. 430, 442, 88 S.Ct. 1689, 1696 (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 (1992) (quoting *Dayton Bd. of Education v. Brinkman*, 433 U.S. 406, 410, 97 S.Ct. 2766, 2770 (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 (1995), and quoting *Freeman v. Pitts*, 503 U.S. 467, 492, 112 S.Ct. 1430, 1466 (1992)); see also *Manning v. Sch. Bd. of Hillsborough County*, 244 F.3d 927, 942 (11th Cir.), cert. denied, ___ U.S. ___, 122 S.Ct. 61 (2001); *Lockett v. Bd. of Educ. of Muscogee County*, 111 F.3d 839, 843 (11th Cir.1997).

*5 In addition to these articulated constitutional standards, the Russell County School Board was also required to comply with the contractual requirements of the 1998 consent decree which set forth the 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, within-school student assignment; facilities; inter-district transfers; special education; and student discipline. 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, to ensure that the school district was being operated on a nondiscriminatory basis.

The legal standards for dismissal of a school desegregation case were set forth in the 1998 consent decree as: (1) whether the school 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 (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 (1971).

B. Terms of the 1998 Consent Decree and Compliance Efforts

1. *Within-School Student Assignments* The Russell County School Board was required to undertake a study to determine the reasons for the disproportionate enrollment of black students in basic skills classes and to address the underlying causes of the disproportionate enrollment patterns. The school board successfully complied with this provision of the 1998 decree. The

progress reports reflect the district has eliminated the use of basic skills classes as part of remediation in favor of an after-school tutoring program and “parallel block” classes in reading and mathematics; reviewed and modified the curriculum to ensure coverage of SAT-9 and Alabama High School Graduation Exam (AHSGE) skills by classroom teachers; and, created a database which allows teachers to identify students in their classes who are in need of academic assistance.

**6 2. Facilities:* The school board was required to take all reasonable steps to ensure that comparable facilities and necessary classroom space are provided at each school. The board also agreed to ensure that Pittsview Elementary and Russell Elementary schools have facilities and equipment comparable to those in place at other elementary schools. The record reveals compliance with these requirements: the district completed construction and program enhancements at Pittsview and Russell Elementary Schools; and, in July 2001, the district completed the construction of a new consolidated middle school which serves all students in grades 6–8.

3. Inter-district Transfers: The school board was required to provide information in its annual reports regarding the number of students who left the district, broken down by identity, race, and grade, and when available, the resident school and receiving school and/or school district. To its credit, the reports filed by the board with the court do not disclose any cumulative adverse impact resulting from implementation of the district’s transfers policy.

4. Discipline: The school board was required to develop and distribute a revised code of student conduct; ensure that in-service training was conducted at all schools for all teachers, counselors, administrators, bus drivers, and other staff who come in contact with students; develop a uniform discipline reporting form; and maintain a database to track discipline referrals and disciplinary actions. The detailed discipline reports filed with the court disclose that all schools currently fall within the 15 % benchmark set by the 1998 consent decree.

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.*, 2000 WL 33680483 (M.D.Ala.2000). According to the terms of this state-wide decree, any claims in the area of special education would be raised with the state defendants, that is, the Alabama State Board of Education, its members, the State Superintendent of Education, and the Governor of Alabama. Even if any

such claim involving the Russell 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 2000 state-wide decree.

5. Monitoring: The Russell County School Board was required to file annual reports describing its efforts in implementing the provisions of the 1998 consent decree. 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.

6. Future Actions: In an effort to provide continued attention to the areas of concern raised by the plaintiff parties, particularly those discussed above, the Russell County School Board passed a resolution on November 13, 2001, affirming the policies and procedures set forth in each of its three annual reports, to ensure fair and equal treatment of faculty and other employees and equitable access to all educational programs and activities by students. The resolution demonstrates a long-range commitment for continued attention to these issues.

C. December 20, 2001, Fairness Hearing

**7* After the Russell County School Board 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. No objections were filed with the court.

The court conducted a fairness hearing on December 20, 2001, and heard testimony and received evidence offered by the Russell County Board of Education in support of the motion for unitary status and termination. Mrs. Lillian Baker, acting School Superintendent of Russell County Schools, testified concerning the school board’s affirmative efforts to comply with the consent decree. Mr. John K. Mitchell, President of the Russell County Board of Education, testified that the board is committed to continuing its good-faith compliance strategies, as evidenced by the board’s November 13, 2001, resolution. An area representative of the Alabama Education Association also testified regarding concerns the

organization had with proposals for redistricting the school board, a matter not material to the issues before the court.

III. CONCLUSION

On the basis of the record evidence, witness testimony, and averments of counsel, the court finds that the Russell 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. They have fully and satisfactorily complied with the orders of this court. The vestiges of the prior *de jure* segregated school system have been eliminated to the extent practicable. The court also finds that the school 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.

The plaintiff parties have succeeded in the task they began decades ago to seek the end of the seemingly immovable *de jure* system of school segregation in Russell County. This lawsuit sought to bring the school district into compliance with the constitutional requirement of equal protection under the law, and the court states today that 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, however, the court notes, as the Eleventh Circuit Court of Appeals stated in *Duval County Schools*, that "[t]he Board, and the people of [Russell 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.

*8 Therefore, with the judgment the court will enter today, control over the Russell County School System will be properly returned to the Russell County School Board 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 granted, and all outstanding orders and injunctions will be dissolved and this litigation dismissed as to the board and its members and superintendent. However, 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 Russell County School Board, its members, and County Superintendent of Education on October 22, 2001 (doc. no. 132), is granted.
- (2) The Russell County School System is DECLARED to be unitary.
- (3) All outstanding orders and injunctions are dissolved as to defendants Russell County School Board, its members, and County Superintendent of Education.
- (4) This litigation is dismissed as to defendants Russell County School Board, its members, and County Superintendent of Education;
- (5) Defendants Russell County School Board, its members, and County Superintendent of Education are dismissed.

It 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.

Not Reported in F.Supp.2d, 2002 WL 360000

All Citations
