IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

MEMORANDUM OPINION

[Filed Sep. 8, 1983]

In this motion for a preliminary injunction, plaintiffs seek to enjoin the defendants' implementation of administrative decisions in three schools in the DeKalb County School System. Specifically, plaintiffs challenge decisions made by defendants concerning Lakeside High School, Redan High School and Knollwood Elementary School. Since the factual circumstances and the requested relief at each school are separate and distinct, the court has trifurcated these proceedings. On August 25, 1983 the court commenced hearing evidence on the Lakeside issues. At the conclusion of the testimony and oral argument, the court orally announced its ruling. The purpose of this memorandum opinion is to provide written findings of fact and conclusions of law on the Lakeside controversy.

Alleging denial of equal protection of the laws, plaintiffs initiated this suit to absolve the vestiges of discrimination allegedly present in the DeKalb County School System.[1] Since a federal question is presented, the court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

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[1] This action initially was brought to desegregate the DeKalb County School System. Another member of this court created the minority-to-majority transfer system which is currently functioning in this county.

To state a constitutional violation based on the fourteenth amendment equal protection clause, plaintiffs must show not only racial imbalance in the schools, but also "a current condition of segregation resulting from intentional state action." *Washington v. Davis*, 426 U.S. 229, 240 (1976). To rebut this prima case, educational authorities must demonstrate that the current racial composition does not result from their past or present intentionally segregative action. *Price v. Denison Independent School District*, 694 F.2d 334, 350-51 (5th Cir. 1982). In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) the Supreme Court of the United States recognized that "virtually one-race schools within a district is not in and of itself the mark of a system that still practices segregation by law." *Id.* at 26. Yet, in school systems having a history of segregation, there is a presumption against schools that are substantially disproportionate in their racial composition. *Id.* Furthermore, when a proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all predominantly of one race, school authorities have the burden of demonstrating that the school assignments are nondiscriminatory. *Id.*

The primary issues presented for the court's consideration are 1) whether defendants purposefully conspired to discriminate against black students by obstructing the minority-to-majority (hereinafter M-to-M) transfers to Lakeside High School and 2) whether the application of the school's capacity limitation figures in implementing the M-to-M program at Lakeside was reasonable.

To support the position that defendants conspired to deny M-to-M transfer students the right to transfer to Lakeside High School, plaintiffs presented evidence of various school officials' statements and actions. For example, Norma Travis, Vice Chairman of the DeKalb County School Board, averred that the superintendent,

Dr. Robert Freeman, had declared "blacks should be kept in their place" during a "get acquainted" luncheon. She opined that Freeman made the statement because he thought she, a member of an ultra-conservative community, would like to hear such a statement.

The scene of the second incident bearing on defendants' intent occurred during a meeting held in the home of Edna Jennings on January 24, 1983. The purpose of this meeting was to discuss the responses to questionnaires sent to parents in various schools. In particular, a majority of the responses to the questionnaires voiced support for the creation of middle schools in the Lakeside area. As a result of comments by Paul Womack, the chairman of the DeKalb County Board of Education, about the M-to-M students' impact on middle schools, however, Travis stated most of the participants at the meeting changed their views on the need for middle schools.

Plaintiffs attempted to demonstrate purposeful discriminatory intent in the manipulation of the M-to-M program by presenting evidence of a conversation between Womack and Philip McGregor, a black member of the school board and the Bi-Racial Committee. McGregor testified that Womack had approached him about endorsing a proposed limitation on the number of M-to-M students in any given school. Specifically, Womack asked him to support a limit that would reflect the county's racial composition. Responding that he did not support such a limit, McGregor reminded Womack such a plan had been presented to and rejected by the judge formerly presiding over this case. Womack then argued that this court might react differently to such a proposal, but McGregor remained steadfast in his views.

Fourth, William Adams, assistant superintendent in charge of projecting enrollments in the various schools, testified about a meeting in Freeman's office on February

15, 1983 in which he and Freeman were discussing the possibilities of closing certain schools. Womack interrupted the meeting to receive information about the M-to-M program at Lakeside. Adams averred that Womack expressed the concern of residents in the Lakeside district about the increased number of black students opting to transfer to Lakeside High School. During this discussion Adams also declared that Freeman, referring to the number of M-to-M transferees, ordered, "Damn it, Bill, cut it off." In response, Adams said he told Freeman that he could not alter the projected number of students. Then Adams alleged that Edward Bouie, assistant superintendent in charge of the M-to-M program, offered to deal with the situation. According to Adams, Bouie stated "I've got the Bi-Racial Committee in my pocket and I can handle Roger Mills." [2]

Subsequently, Bouie testified he received Adams' projection for the 83-84 school year. Seeing a projected enrollment of 1485 an an overall capacity of 1560, Bouie testified that he determined that a limit of 110, rather than 75, should be placed on the number of students permitted to attend Lakeside via the M-to-M program. When this decision was later questioned, Bouie informed Freeman that he was removing the limit because some mistake had occurred. Based on these facts, plaintiffs contend that defendants conspired to deprive them of their equal protection rights.

On the other hand, Freeman testified that he did not make the statement "blacks should be kept in their place." He avvered that her testimony on this point greatly upset him and caused him to lose sleep. In addition, defendants presented testimony of three parents who attended the meeting at the Jennings' home on January 25, 1983. All three witnesses testified that before the

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[2] Mr. Mills, a member of the Bi-Racial Committee, has been a strong advocate for the protection of minority students' rights.

meeting was formally called to order various conversations in small groups occurred. None of these witnesses heard any remarks that the middle schools would increase the number of M-to-M transfer students at Lakeside. Furthermore, at the conclusion of the meeting, two of the parents were avid proponents of the middle schools and felt like the implementation of middle schools in DeKalb County was a distinct possibility. The other parent did not favor middle schools because she was afraid their creation would increase taxes and not benefit her children who currently are in high school.

In addition, defendants presented testimony by Freeman, Bouie and Womack about the February 15, 1983 meeting. Generally, these defendants testified that Freeman and Adams were in conference about the middle school projction figures when Womack entered the office and expressed his constituency's concerns about the increasing number of students at Lakeside. After Womack asked for the projected figures concerning enrollment at Lakeside, Freeman testified that he called Bouie in from the hall to furnish Womack with the most recent projections. Upon supplying the information, Bouie testified that he left Freeman's office. Although Freeman did not remember making the statement, "Damn it Bill, cut it off," to Adams, he unequivocally testified that he did not make the statement with respect to the M-to-M students. Bouie also denied the statements Adams attributed to him.

Reminding the court that as a student and administrator he had witnessed the transaction from a segregated to a non-segregated school system, Bouie emphasized that he would never do anything to inhibit the education of a member of his race. He further explained that he did not understand that Adams' projected enrollment figures included the number of M-to-M students projected to attend the eighth grade. Therefore, Bouie testified that he felt that Lakeside High School

could accommodate at least 110 new M-to-M students. After receiving calls from concerned persons and re-examining the projected enrollment figures, Bouie realized that a mistake had occurred and told Freeman that the limit on the number of students permitted to participate in the M-to-M program would be abolished.

In addition, many witnesses testified about the accomplishments Dr. Freeman had made during the past two years with the DeKalb County School System. During Freeman's tenure as superintendent, the number of students participating in the M-to-M program has doubled. Inter alia, Freeman created the Fernbank Science Center and a writing center in which students from the entire county participate in groups whose racial composition is reflective of the general county school-age population. Freeman also instigated a summer reading program to encourage students to read when school was not in session. In the opinion of Elizabeth Andrews, a member of the DeKalb County Board of Education and various civic groups, including the National Association for the Advancement of Colored People, these activities pulled students from each region together to teach them how to cooperate and interact with each other. The programs, according to Andrews, improved the racial relations between black and white students.

After receiving information that minority students were not well represented in extra-curricular activities because of the lack of available transportation, Dr. Freeman approved the financing of an activities bus that would return students to their respective homes after an extra-curricular event. He also approved the revising of the athletic schedules to promote more interaction of predominantly white schools with predominantly black schools. As superintendent, Freeman has nominated and the Board of Education appointed four blacks and two women as assistant superintendents. Currently, 18 percent of high level administrators in the school system are

black in a county where 36 percent of the school-age children in the county are black. In addition, Freeman instigated an early retirement plan in which top administrators could opt to receive a bonus for retiring before they were so required. This plan not only has been cost effective, but also has presented the opportunity to appoint additional minorities under an affirmative action plan.

Several of the minority administrators testified about their working relationship with Freeman. For example, Dr. Eugene Walker, an administrator with the DeKalb County Community Center Unit of the DeKalb County School System, averred that he was hired by Freeman to operate programs with affirmative action. An assistant superintendent for the southern area of the county, Melvin Johnson explained that he had worked under three superintendents. He opined that the attitudes of principals and teachers had improved since Freeman had assumed office because there were no racial overtones in his administration. In accordance with those views, Eugene Thompson, assistant superintendent in charge of affirmative action, stated that he had been hired by Freeman, who was sensitive to the needs of blacks. He explained that Freeman did not send representatives to speak to predominantly black groups—he attended the meetings to determine their concerns and to answer their questions. Bouie, the assistant superintendent in charge of the M-to-M program, concurred in these opinions. He emphasized that Freeman did not impose any restrictions on his management of the program. Bouie also reiterated that he made the decision to place the 110 limit on the number of possible transferees to Lakeside.

As the fact-finder, this court was required to make credibility determinations based on the presented evidence with a view of not imputing perjury to any individual. This task was relatively simple, however, because most of the testimony could be reconciled. For

example, during the meeting at the Jennings' home all the witnesses testified that there were several small group discussions before the official meeting began. Although one witness testified an incriminating statement was made by Womack at the meeting, three other witnesses averred that the statement was not made in their presence. Therefore, assuming arguendo the statement was made, the impact of the statement was not disseminated to the group at large.

Yet, with respect to two circumstances in which directly contradictory evidence was presented, the court had to find one version of the facts more credible than the other version. Based on the tstimony as a whole, this court cannot give credence to perhaps the two most damaging statements imputed to Freeman during the course of this trial. The court finds that Dr. Freeman has conscientiously contributed to the improvement of interaction between the races in the DeKalb County area. He has promoted programs that are color-blind and are for the benefit of all children within the community. The court was particularly impressed with testimony by black community leaders not connected with the school system who testified that Freeman has promoted equality for black individuals when that course of conduct was not socially popular. In light of the many programs and activities that Freeman has inspired and approved, this court commends rather than condemns him for his work in promoting the educational needs of all children in the DeKalb County School System.

Likewise, this court cannot impute any purposeful discriminatory intent to Bouie. The court does not believe that Bouie would intentionally prohibit a member of this race from obtaining the educational background he or she desired because he was prejudiced against that child's color. Rather, the court finds that there were serious breakdowns in communication between Adams and Bouie. This lack of communication resulted in the morass of

complications in effectuating the school system's programs.

Although plaintiffs introduced Womack's conversation with McGregor to show the specific intent to discriminate against blacks, this court interprets this action as an attempt to approach this court through the Bi-Racial Committee. Accordingly, no unlawful motive can be imputed to Womack for attempting to litigate an issue.

Therefore, the court finds that plaintiffs have failed to show any invidious discriminatory intent on the part of any defendant in this case. Injunctive relief will not be granted on this ground.

The second issue presented for the court's consideration is whether the application of the school system's 26 students per one teaching station ratio was reasonably applied to limit the capacity of Lakeside to 1560 students. As a preliminary matter, this court will endeavor to give deference to proper educational policies established by a board of education except when those policies are not administered fairly to all individuals without regard to race, creed or color. To show that the number of 1560 was unreasonable, plaintiffs presented expert testimony which argued that the true capacity of Lakeside was 1638. According to defendants' expert, however, the actual optimum capacity of Lakeside is 1430. Yet, neither expert testified that the 26/1 ratio was unreasonable. Since this ratio has been used historically and is rationally related to the legitimate state purpose of promoting education, this court finds that use of the 26/1 ratio is reasonable.

Nevertheless, the court also finds that the 26/1 ratio was not fairly and accurately applied in this instance. As stated previously, the court finds that the confusion in this case arose from a breakdown in communications between the assistant superintendent in charge of the planning of enrollment projections and the assistant su-

perintendent in charge of the M-to-M program. The court is absolutely convinced that Adams was including projections for the new M-to-M transfers in his statistics and thought that everyone else knew it. To the contrary, however, the court is equally convinced that the other administrators did not understand this fact.

The administrator in charge of implementing the M-to-M program initially placed no limitation on the number of M-to-M students Lakeside could accept. After reviewing statistics from the planning office, he noticed a space available for 75 students and arbitrarily established a limit of 110 students. According to his testimony, Bouie would have established a maximum enrollment of 1595. When questioned about the 110 limit, Bouie removed the limit. Thereafter an unexpected large number of M-to-M applicants sought admission into Lakeside, but were refused admittance because their presence would place Lakeside over its computed capacity of 1560.[3] The transition from no limit to a maximum enrollment of 1595 then to no limit and finally to a maximum enrollment of 1560 demonstrates that school officials did not fairly, uniformly and accurately apply the 26/1 ratio in administering the M-to-M program at Lakeside High School.

Therefore, for the foregoing reasons, the court is compelled to grant relief to the plaintiffs. The court therefore confirms its oral order of August 31, 1983 directing the defendant, DeKalb County School System, to accept

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[3] The capacity of the high school was computed by the following formula:

> Total number of teaching stations minus the number of special education rooms multiplied by the figure of 26 students per station equals the capacity of the school. Applying this formula reveals that the capacity of Lakeside is [63 (total stations)—3 (special education)] x 26 (students per station) = 1560 (total capacity).

students on the M-to-M waiting list for attendance at Lakeside up to a maximum enrollment of 1595.

IT IS SO ORDERED this 8th day of September, 1983.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge