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

(Caption Omitted in Printing)

MEMORANDUM OPINION

[Filed Feb. 22, 1984]

In this motion for a preliminary injunction, plaintiffs seek to enjoin defendants from building an addition to Redan High School.[1] After a trial on the merits, 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 Redan controversy.

Alleging denial of equal protection of the law, plaintiffs have invoked the jurisdiction of this court pursuant to 28 U.S.C. § 1331. At issue is whether defendants' actions in proposing an addition to Redan were discriminatory or designed to promote segregation and to hinder desegregation in the DeKalb County School System.

In 1969 the DeKalb County School System was converted from a dual to a unitary school system. *See* Order of November 3, 1976 (requiring defendants to "take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system"). As a result, the freedom-of-choice plan in the DeKalb

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[1] Originally the motion for a temporary restraining order dealt with issues at three schools: Lakeside High School, Redan High School and Knollwood Elementary School. The court bifurcated the issues and decided the Lakeside controversy in September 1983. Plaintiffs orally abandoned the Knollwood issues prior to trial. Accordingly, the sole issues remaining relate to Redan High School.

County Schools was abolished; all students were required to attend school in the district of their residence. Subsequently, the court created a majority-to-minority (hereinafter M-to-M) transfer system, in which a student attending a school in which his or her race was in the majority could transfer to a school in which his or her race was in the minority. Implementation of the M-to-M program was in accordance with the court's "objective of eradicating segregation and perpetuating desegregation." Order of November 3, 1969. Recognizing that new school site purchases and attendance zone changes would be inevitable, the court declared that those actions should further this objective, but also should be considered "in the context of the circumstances existing at the time and the feasibility and practicality of available alternatives." *Id.*

When a racially discriminatory school system has been found to exist, the Supreme Court has required local school boards to "effectuate a transition to a racially nondiscriminatory school system." *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) (Brown II). School boards operating dual systems have been "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 437-38 (1968). Each instance of a failure or refusal to fulfill this affirmative duty continues the fourteenth amendment violation. *Columbus School Board v. Penick*, 443 U.S. 449, 459 (1979).

Once a school system has been fully converted from a dual to a unitary system, the Supreme Court has declared: "absent a constitutional violation, there . . . [is] no basis for judicially ordering assignment of students on a racial basis." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 (1971).[2] To recover for a

[2] In *Swann*, Chief Justice Burger emphasized the limited involvement by the judiciary in the affairs of the school system as follows:

violation of the 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 facie 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).

Examining the question of discriminatory intent, the Supreme Court has ruled that actions having foreseeable and anticipated disparate impact are relevant to demonstrate a forbidden purpose. *Columbus Board of Education v. Penick*, 443 U.S. 449, 464 (1979). "Adherence to a particular policy of practice 'with full knowledge of the predictable effects of such adherence upon racial imbalance is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn." *Id.*, at 465.

To satisfy the burden of establishing a prima facie case, plaintiffs introduced evidence that Redan High School had been operating in excess of capacity since the 1978-79 school year. Rather than redistrict students to relieve this problem school officials added portable classrooms to Redan on three occasions. Testimony by Assist-

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Neither school authorities nor district courts are constitutionally required to make year/by/year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the school, further intervention by a district court should not be necessary.

Swann v. Charlotte-Mechlenburg Board of Education, 402 U.S. 1, 31-32 (1971).

ant Superintendent William Stewart Adams indicated that the school board had never considered transferring students from a predominantly white school district into predominantly black schools.

The school board's proposed solution to the overcrowding problem at Redan was to build an addition to the school. This edifice would be located on property near Miller Road and Covington Highway and would provide classrooms for eighth and ninth grade students attending Redan High School.

It is undisputed that the school board has consistently rejected the concept of middle schools. Currently there are no junior high schools in the DeKalb County School System. Plaintiffs contended that the school board's unusual solution to the overcrowding problem, when considered with the school board's refusal to rezone Redan students and their placing of temporary structures on the Redan campus in the past, demonstrated defendants' desire to maintain Redan High School as a predominantly white school. This maintaining of the status quo, according to plaintiffs, infringed upon the rights of black students at South West DeKalb and Avondale high schools because they were denied the opportunity of attending a more racially mixed school. Therefore, plaintiffs have requested that the court enjoin the building of the Redan addition.

In rebuttal defendants argued that their actions were not discriminatory because (1) plaintiffs' proposed changes of attendance lines were not feasible; (2) except as a last resort, educational reasons precluded the transferring of students to noncontiguous school districts; (3) after considering other alternatives, the school board decided that the building of the addition was a unique solution to a unique problem; and (4) rather than promoting segregation, the new addition to Redan would increase

desegregation because the school could then accommodate M-to-M transfer students.[3]

In reviewing this matter, the court must examine whether defendants' actions were unlawfully motivated and were designed to deprive class members of equal protection of the law. Unless plaintiffs have shown the deprivation of a constitutional right, this court cannot interfere with the internal management of the school system. Therefore, this court is not required to comment upon the quality of education students operating under the school board's plan may receive; such determination is confined to the sound discretion of the administrators. In deciding whether defendants' actions are unlawful the court will examine each defense raised by defendants.

Defendants first showed that plaintiffs' proposal for changing the Redan attendance zone had not been feasible. The enrollment at Redan began to exceed its reasonable capacity in the 1978-79 school year. At that time both Avondale and Southwest DeKalb were operating with more students than the respective structures were designed to accommodate. This practice continued at Southwest DeKalb until the 1982-83 school year when there were 60 vacancies. In comparison, Avondale began to have seats available in the 1980-81 school year. Currently Southwest DeKalb has 166 spaces available and Avondale has approximately 123. The combined number of 289 seats, however, is not sufficient to accommodate the 746 students currently exceeding the capacity of 1560 at Redan.

The evidence further shows that these two schools have not been able to fully satisfy the overcrowding problem at Redan in the past. For example, in the 1978-79 and 1979-80 school years neither Avondale nor Southwest DeKalb

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[3] Since 1979 students wishing to participate in the M-to-M program have not had the opportunity to request attendance at Redan because the school was overcrowded.

could accept additional students because they were both over capacity. In the fall of 1980, Redan was overpopulated by 522 students. Even though Avondale had 53 spaces available, Southwest DeKalb was not able to receive any additional students. Although the number of seats available at Avondale increased during the following years, the student population within the Redan district also increased. For example, in the 1982-83 school year, Redan had an excess of 542 students; the combined number of seats available to Southwest DeKalb and Avondale totaled only 170. Similarly in the current school year, Redan has approximately 746 students more than the reasonable capacity of 1560. The other two schools have space available for a total of 289 students. Therefore, rezoning students from the Redan district into these two schools was not feasible at any time because this solution would be only partially remedial in nature.

Even if sufficient space were available to Southwest DeKalb and Avondale, the court finds that meritorious reasons exist for not changing the attendance zones. First, the evidence showed that the majority of the indigenous black student population in the Redan district reside in the southern portion of the school district. Since the Southwest DeKalb school district is south of the Redan district, a reasonable rezoning of students currently residing in the Redan district would have the effect of removing virtually all the indigenous black population from Redan and increasing the number of black students at the predominately black Southwest DeKalb High School. Clearly, this change would promote segregation in both high schools.

The rezoning of students currently residing in the Redan district into the Avondale district would be equally unacceptable. Unlike the Southwest DeKalb district, which is contiguous to the southern boundary of Redan, the Avondale district only intersects with the Redan district at one point. If the court changed the attendance

lines and required students residing in the northwestern corner of the Redan district to attend Avondale High School, those students would have to travel through the Towers High School district before they entered the Avondale district. Since noncontiguous rezoning has generally been condemned except in the most extreme circumstances, this court finds that the transferring of Redan students to Avondale would not be feasible or practicable because a less strident solution to the problem exists.

The school board further defended the reasonableness of its proposed erection of the Redan addition by presenting the following evidence. Testimony by school officials revealed that defendants had attempted on three occasions to secure permission from the Bi-Racial Committe to construct a new high school on property located near Stephenson Road. In each instance the Bi-Racial Committee refused to permit the school board to purchase the property. In addition, defendants considered building additional classrooms on the existing Redan campus, but discovered that the construction would violate state building code regulations.

The building of an addition to Redan on a separate campus was a unique solution to a unique problem. In the history of the DeKalb school system there had never been overcrowding at any school to the extent of the current situation at Redan. The building of the new edifice not only would eradicate the over-capacity problem at Redan High, but also would provide M-to-M students with the opportunity to transfer to Redan, which has not received M-to-M students since 1979.

The above reasons by the school board persuade this court to find that the school board's decision to build the addition to Redan was not motivated by unlawful racial considerations. Having found that the school board's decision was not unconstitutional, this court is not required to evaluate the educational benefits that may arise from

the construction of the Redan addition. Furthermore, the court will decline to examine whether plaintiffs' proposals to the overcrowding problem would provide for better educational growth or more integration in the school system because "absent a constitutional violation there . . . [is] no basis for judicially ordering assignment of students on a racial basis." *Swann v. Charlotte-Mechlenberg Board of Education*, 402 U.S. at 28. Since plaintiffs have failed to demonstrate that defendants contravened their rights under the equal protection clause, the court denies plaintiffs' motion for a preliminary injunction.

In summary, the clerk is directed to enter judgment in favor of defendants and against plaintiffs. The motion for a preliminary injunction on the Redan issue is denied. Prior to trial counsel for plaintiffs abandoned the portion of the motion dealing with Knollwood Elementary School. Accordingly, no ruling on this portion of the motion is required.

IT IS SO ORDERED this 22nd day of February, 1984.

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