

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	C.A. No. 1:68-cv-00698-MBS
v.	)	
	)	
ALLENDALE COUNTY SCHOOL	)	
DISTRICT, et al.,	)	
Defendants.	)	
	)	
	)	

**RESPONSE OF THE UNITED STATES TO ALLENDALE
COUNTY SCHOOL DISTRICT'S MOTION FOR WITHDRAWAL
OF JOINT MOTION FOR APPROVAL OF AGREED ORDER
OF UNITARY STATUS AND DISMISSAL**

On September 11, 2006, the parties to this action filed a joint motion seeking an order declaring the Allendale County School District (District) unitary and terminating this action. The District now seeks to withdraw that motion. As more fully explained below, the United States requests that the court hold both motions in abeyance to allow the parties to obtain information regarding the new issues raised by the District. The United States believes that further review will assist the parties and the court in determining which motion should be granted.

The motion seeking dismissal of this longstanding school desegregation case was filed after a review of the school system showing that the District had fulfilled its affirmative obligations under the orders of this court and existing federal law. The parties agreed it was appropriate to seek a declaration of unitary status and dismissal and moved this court to approve such action through a proposed agreed order.

A hearing on the motion was held on October 24, 2006. Following the hearing, this Court asked for letter briefs addressing why dismissal should be granted even though the district is now predominately African-American. Before these briefs were due, the defendant District moved to

withdraw the joint motion for approval of the agreed order of dismissal stating it had failed to meet all of the factors enumerated in *Green v. County Sch. Bd. of New Kent, Va.*, 391 U.S. 430, 435 (1968). The District further stated that historic under-funding since entry of the desegregation order prevented the offering of all needed educational services to its students who are predominately African-American and was thus a failure to remove all vestiges of the prior dual system.

Background

The District's initial efforts at desegregation consisted of offering students the freedom to choose the school they attended. Through the 1969-70 school year, a handful of black students attended three formerly white schools with enrollments ranging from seven to 11 percent black. No white students attended any of the three *de jure* black schools in which most of the black students were enrolled.¹ Following the mandates of Supreme Court and Fourth Circuit Court of Appeals precedent (citations omitted), on March 30, 1970, this Court ordered implementation of a geographically zoned desegregation plan which was implemented beginning in the 1970-71 school year.² For the 2005-06 school year, the school district enrolled approximately 1693 students of whom 1595 were African-

¹ The chart in the parties' Joint Memorandum in Support of Declaration of Unitary Status and Dismissal lists student enrollment for the 1969-70 school year at these schools except for C.V. Bing Elementary, stating that the enrollment number for that school is illegible in the 1970 Order. The United States located a legible copy of the order which shows that 847 black students and 0 white students were enrolled at C.V. Bing Elementary. The total black enrollment for the District should read 2,068. The total enrollment in the District for the 1969-70 school year was 3000 students, 69 percent of whom were black and 31 percent of whom were white.

² School survey data collected by HEW/OCR show that approximately 31 percent of District students in 1967-68 and 1968-69 were white. When the plan was implemented in 1970, both black and white student enrollment numbers declined, and the percentage of white students fell to 23 percent. This pattern continued in the 1972-73 school year. By 1978, there was a small increase in the number of black students and a continuing decline in the number of white students. The overall percentage of white students was at 19 percent with a total enrollment of 2,517 students. The percentage of black students at each school ranged from 72 to 89 percent. Since then, enrollment has declined for both white and black students, but at a faster pace for white student enrollment.

American and 54 were white. The enrollment in the District's four schools for the 2005-06 school year is shown in the following table.

School	No. B	% B	No. W	% W	Total
Allendale ES	553	96%	12	2%	577
Fairfax ES	278	92%	17	5.6%	301
Allendale Fairfax MS	374	93.5%	10	2.5%	400
Allendale Fairfax HS	390	94%	15	3.6%	415
District Total	1595	94%	54	3.1%	1693

Discussion

To respond to the court's question concerning whether a school district with a predominately African-American student enrollment such as Allendale County can be dismissed from court supervision, it might be helpful to set out the relevant legal considerations. The standard established by the Supreme Court for determining whether a school district has achieved unitary status, thus warranting termination of judicial supervision, is: (1) whether the school district has fully and satisfactorily complied with the court's desegregation orders for a reasonable period of time; (2) whether the school district has eliminated the vestiges of past *de jure* discrimination to the extent practicable; and (3) whether the school district has demonstrated a good faith commitment to the whole of the court's order and to those provisions of the law and the Constitution which were the predicate for judicial intervention in the first instance. *See Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Freeman v. Pitts*, 503 U. S. 467, 491-92, 498 (1992); *Board of Educ. of Oklahoma City Pub. Sch. v. Dowell*, 498 U.S. 237, 248-50 (1991). A starting point in the inquiry is "the degree of racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole." *Freeman*

v. Pitts, 503 U.S. 467, 474, 112 S.Ct. 1430, 1437 (1992). In Allendale, all middle and high school students attend the same school, and thus mirror the racial composition of the District. Racial composition does not vary significantly at the elementary schools. In addition, the court must keep in mind that vestiges must only be removed to the extent practicable. Given the racial composition of the District, further student desegregation is not feasible. We do not believe that the school district would quarrel with this assertion.

Moreover, that there are few white students enrolled in the system, does not by itself indicate that the District is in violation of this Court's order or failed to meet the standards of a unitary school system. The existence of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 26, 91 S.Ct. 1267, 1281 (1971). *See, Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1221 (5th Cir. 1969) (In the companion case involving the St. John the Baptist Parish School Board, the court refused to divide the small number of white students among five schools even though all white students attended a single school where they were still in the minority). Here, the white students attend each District school and there is no practicable means to achieve further desegregation.

The Charleston County School District operates eight separate or constituent school districts which existed prior to the creation of the county district. Student assignment continues to be made within the confines of each constituent district. In a challenge to this system, the court determined that a desegregation analysis should be made within each constituent district, not across the county. Even though predominately black schools existed in some of the constituent districts, the court held that the system was unitary since there were no schools reserved or designated for white or black students, but that student assignment reflected enrollment with the constituent district, at least three of which were predominately black. *U.S. v. Charleston County School Dist.*, 738 F. Supp. 1513, 1531-

33 (D.S.C. 1990), *affirmed*, *U.S. v. Charleston County School Dist.*, 960 F.2d 1227 (4th Cir. 1992). The fact that the school district enrollment becomes exceedingly one race does not equate to illegal segregation nor preclude a declaration of unitary status. *Id.*, *citing*, *Richmond v. Baliles*, 829 F.2d 1308 (4th Cir.1987)(86.4 percent black student enrollment with many schools exceeding 90 percent black); *Calhoun v. Cook*, 522 F.2d 717 (5th Cir.1975)(92 of 148 schools in the Atlanta, Georgia system were over 90 percent black); *Goldsboro City Board of Education v. Wayne County Board of Education*, 745 F.2d 324 (4th Cir.1984)(schools were 77 percent black).

Finally, the Allendale school system has no control over the actions of students who reside in the District but do not attend public schools. “[The courts] are not at present charged with a responsibility to remedy problems caused by demography and private racism.” *Charleston*, 738 F.Supp. at 1523, *quoting*, *Goldsboro City Bd. of Educ. v. Wayne County Bd. of Educ.*, 745 F.2d 324, 333 (4th Cir.1984).

Defendants’ Motion

Defendants now move for withdrawal of the Joint Motion for Approval of Agreed Order of Unitary Status and Dismissal. The basis for their motion is the stated failure to meet one of the factors³ enumerated in *Green* as it relates to insufficient funding for the District since entry of the desegregation order, and that this lack of funding prevented the offering of needed educational services for its predominantly African-American students. Defendants do not state precisely where this vestige remains. Without this information, it is impossible to assess whether there are in fact still vestiges of the prior dual system, what practicable steps could be taken to address or eliminate them or whether such steps could be ordered by this Court

³These factors are student assignment, faculty, staff, transportation, extracurricular activities and facilities. *Green* at 436, 88 S.Ct. at 1693.

Issues related to past or present funding did not arise during the review of the District by the United States nor in the determination that the District is unitary. These new questions evidently relate to the December 29, 2005 Order in a funding case in state court, *Abbeville County Sch. Dist. v. State of South Carolina*, brought by several school systems, including the Allendale County School District. This order found for the plaintiffs on the proposition that students in these systems were denied the opportunity to receive an effective and adequately funded early childhood education program to address the impact of poverty on educational achievement. We note that this State case made no claims under Federal law nor were there allegations that funding issues were related to racial discrimination or were vestiges of a dual system. As noted by this Court during the October hearing, the Allendale County School District operates under State control; counsel for defendants advised the United States that full control will not be returned to the local board until May 2007.

The defendants' motion, in our view, does not provide a sufficient factual or legal basis to support withdrawal of the joint motion, at least for the matters contained therein. However, out of an abundance of caution, and to ensure that all vestiges of the prior dual system have been eliminated to the extent practicable, we request that the Court give the United States time to obtain further information regarding the new issue raised by defendants, to determine what particular vestige remains that defendants are referring to, whether it can be practicably eliminated, and if so, whether a court order is necessary to achieve that end, and what relief should be ordered if an order is deemed appropriate. Since the defendants raise new questions, the United States recommends that this Court provide the parties six months to continue the cooperative exchange of information on this new issue.

Following our review, we will advise the court regarding which motion should be granted. In all events, it appears that partial unitary status is appropriate in all areas previously agreed upon by the parties.

Conclusion

For the reasons stated above, the United States requests that both motions be held in abeyance for six months.

Respectfully submitted,

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December 18, 2006