IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BRENDA K. MONROE, et al.,	)	
	)	
And	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**C.A. No. 72-1327**
	)	
JACKSON-MADISON COUNTY SCHOOL SYSTEM BOARD OF EDUCATION, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING MOTION FOR DECLARATION OF FULL UNITARY STATUS AND DISMISSAL

Before the Court is the Joint Motion of Plaintiffs Brenda K. Monroe, et al. ("Private Plaintiffs"), Litigating Amicus Curiae the United States of America ("United States"), Defendant Jackson-Madison County School System Board of Education (the "Board"), and Defendant-Intervenor Madison County, Tennessee ("Madison County") for a Declaration that Jackson-Madison County School System Has Achieved Full Unitary Status and Dismissal. (ECF No. 720.)

The Court has found that the Jackson-Madison County School System ("JMCSS") has achieved unitary status in the areas of facilities, faculty, staff, transportation, and extracurricular

activities. (Order Granting Mot. for Decl. of Partial Unitary Status 13, ECF No. 514.) ("Order Declaring Partial Unitary Status") The only issues remaining in the case are whether JMCSS has achieved unitary status in the area of student assignment and whether it is entitled to a declaration of full unitary status. After consideration of the record before the Court and community members' statements at a public hearing on August 23, 2010, the Court declares that JMCSS has achieved full unitary status to the extent practicable. Therefore, the Court GRANTS the Joint Motion and DISMISSES this case as to all parties and claims.

I. Factual Background

This case began in January 1963 when the parents of African-American schoolchildren sued the Jackson, Tennessee, and Madison County, Tennessee, school districts and their superintendents in federal court seeking an injunction ordering the Defendants to cease operating racially segregated public schools. (Compl. 17-18, ECF No. 431.) At that time, despite Brown v. Board of Education, Tennessee law required pupils to attend the racially segregated schools mandated before Brown. Monroe v. Bd. of Comm'rs of City of Jackson, Tenn., 391 U.S. 450, 453 (1968). The sole accommodation of Brown was the authority granted school boards to approve assignment and transfer requests. See id. No white children were enrolled in

African-American schools, and Jackson's school board had granted the applications of only seven African-American children to enroll in white schools during 1961 and 1962. Id. On June 19, 1963, this Court granted Plaintiffs' Motion for Summary Judgment and ordered the Defendants to file plans to desegregate and eliminate racial discrimination in the Jackson and Madison County school districts. (Order, ECF No. 450.)

Since then, this Court has retained jurisdiction over the case and issued numerous orders. In 1989, this Court approved the consolidation and unification of the school systems in Jackson and Madison County into one school system: the Jackson-Madison County School System. (Consent Order 1-2, ECF No. 238.) In 1990, the parties reached an agreement memorialized in a Consent Judgment entered by this Court. (Consent J., ECF No. 257.) The Consent Judgment required the Board to develop a plan to recruit minority applicants for certificated positions; encourage minority students to participate in all academic programs; follow a "majority-to-minority transfer policy" permitting students attending schools in which their race was in the majority to choose to attend schools in which their race was in the minority if space were available; establish voluntary magnet schools designed to attract substantial numbers of minority and non-minority students, with advertisements to make parents aware of

JMCSS's magnet programs; adjust school zone lines beginning with the 1992-1993 school year; make capital improvements to existing schools; and construct new schools. (Id. at 2, 5, 7, 8, 9, 12.)

After the Consent Judgment, the number of racially identifiable schools declined. Although 13 of 16 elementary schools in JMCSS were racially identifiable[1] during the 1989-1990 school year, with enrollments in 11 schools consisting of 80% or more of students of one race (Pls.' Objections to Defs.' Plan for School Consolidation and Unification 2, ECF No. 245), only 3 of 14 elementary schools were racially identifiable during the 1992-1993 school year (Aff. of Thomas B. White ¶ 3, ECF No. 720-2.) ("White Aff."). From the 1992-1993 to the 2002-2003 school year, none of JMCSS's high schools was racially identifiable. (Id. ¶ 8(a).) Between the 1992-1993 and 1998-1999 school years, none of JMCSS's middle schools was racially identifiable. (Mem. in Supp. of Joint Mot. 7, ECF No. 720-1.) ("Mem.")

In 2000, the parties entered into an Agreement approved by this Court to update the 1990 Consent Judgment and adopt a Long-Range Plan to identify steps for promoting the desegregation of JMCSS that would ultimately lead to a declaration of unitary status. (Order, ECF No. 327; Agreement

[1] The 1990 Consent Judgment defined a school as "non-racially identifiable" if the ratio of minority students to the school's enrollment was within plus or minus 15% of the ratio of minority students to district-wide enrollment. (Consent J. 7.)

1, ECF No. 327-1.) JMCSS agreed to construct new schools; hire facilities consultants to make recommendations for improving schools; advise parents and the public of the Long-Range Plan's educational components and pupil assignment options to encourage desegregated schools by voluntary means; develop a plan to encourage minority students to participate in all programs and activities; submit annual reports to parties' counsel detailing its efforts to comply with the Agreement; create a Bi -Racial Committee with annual alternating racial majorities to act as an advisory committee concerning the desegregation process; and devise a dispute resolution process outside of the Court to mediate disputes. (Agreement ¶¶ 7(d), 7(e), 11, 14, 21, 22, 29.) The parties agreed that, if JMCSS fully implemented these steps, it would be positioned to obtain unitary status in all areas. (Id. ¶ 27.)

The parties agree that JCMCSS has complied in good faith with the 1990 Consent Judgment and the 2000 Agreement. (Mem. 17.) Nevertheless, the number of non-racially identifiable schools[2] has decreased since the 2000 Agreement. During the 2001-2002 school year, 8 of 14 elementary schools were non-racially identifiable, but only 3 of 14 were in 2009-2010. (White Aff. ¶ 4.) During the same period, the number of non-

[2] The 2000 Agreement defined a "non-racially identifiable" school as a school in which "the percentage of black students is ±15% of the district-wide black student enrollment percentage at that grade level (i.e. ____, elementary, intermediate, middle, high)." (Agreement ¶ 23(b).)

racially identifiable high schools decreased from 3 of 3 to 2 of 5. (Id. ¶¶ 8, 10.) The opposite trend occurred in middle schools: during the 2001-2002 school year, two middle schools were racially identifiable, but only one was in 2009-2010. (Id. ¶ 7.)

Since the Court assumed jurisdiction in 1963, the racial composition of JMCSS has changed. For instance, during the 1968-1969 school year, the Jackson City School District was 57.13% white and the Madison County School District was 61.29% white, but the merged JMCSS now has 13,716 students and is 59.49% African-American. (Mem. 4-5, 11.) The tentative racial composition of schools during the 2010-2011 school year shows that, of the 27 schools[3] in JMCSS, 3 have student enrollments of over 90% from one race, and 6 have student enrollments of over 80% from one race. (August 23, 2010 Hr'g Ex. 1.) ("Ex. 1") On July 9, 2009, the Board voted to pursue a declaration of unitary status. At the time, the Board had five African-American members, including the Chairman, and four white members. (Mem. 19.)

On August 23, 2010, the Court held a hearing in Jackson, Tennessee, to give the public an opportunity to address the parties' proposed settlement, which would declare that JMCSS has achieved unitary status. Six people spoke at the hearing,

[3] This number includes the West Jackson Learning Center.

including two of the case's original plaintiffs. Several speakers said that problems remain in JMCSS. Problems identified include excessive busing of students, discrimination in hiring disabled people as faculty and staff, lack of trust between community members of different races, underperforming schools, lack of commitment to children, and tension in the community. Frank Walker, one of the original plaintiffs, spoke in opposition to the proposed settlement. He stated that class counsel has not adequately consulted with the plaintiffs, JMCSS lacks an adequate number of minority teachers, and some schools have severe condition problems. Brenda K. Monroe-Moses, the named plaintiff, also spoke in opposition to the proposed settlement. She stated that class counsel has not adequately represented her interests, JMCSS's teacher hiring practices have led to a return of segregation, and JMCSS needs a new performing arts high school in downtown Jackson. At the hearing, the Court announced that it would consider any additional information submitted by counsel no later than August 30, 2010. No information has been filed since the hearing.

II. Analysis

To hold that a unitary, nonracial school system exists and allow resumption of local control, the Court must find that six features of the school system have been freed from racial discrimination: (1) student assignment, (2) faculty assignment,

(3) staff assignment, (4) facilities and resources, (5) transportation, and (6) extracurricular activities. Robinson v. Shelby County Bd. of Educ. , 566 F.3d 642, 650 (6th Cir. 2009) (citing Green v. County Sch. Bd. of New Kent County, Va. , 391 U.S. 430, 435 (1968)). On August 5, 2009, the Court declared that all areas except student assignment had achieved unitary status. (Order Declaring Partial Unitary Status 12.) The only issues remaining are whether JMCSS has achieved unitary status in the area of student assignment and whether it is entitled to a declaration of unitary status.

Although "the term 'unitary' is not a precise concept," Freeman v. Pitts , 503 U.S. 467, 487 (1992), a "unitary" school system is essentially one that has been brought into compliance with the Constitution, see Bd. of Educ. of Okla. City Pub. Sch. v. Dowell , 498 U.S. 237, 246 (1991). To be brought into compliance, a school district once segregated by law must "take all steps necessary to eliminate the vestiges of the unconstitutional de jure system." Freeman , 503 U.S. at 485. "This is required in order to ensure that the principal wrong of the de jure system, the injuries and stigma inflicted upon the race disfavored by the violation, is no longer present. This was the rationale and the objective of Brown I and Brown II ." Id.

The goal of federal courts' involvement in school desegregation cases is to ensure the "transition to a unitary, nonracial system of public education" to remedy the constitutional wrong. Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430, 436 (1968). School desegregation cases are not unique. As the Supreme Court has stated, "[A] school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15-16 (1971).

Once a school district has achieved that task, federal courts' supervision of school systems must end "at the earliest practicable date." Freeman, 503 U.S. at 490. The Supreme Court has emphasized that federal courts' supervision is a temporary exception to the general rule of local authorities' control of school districts. See id. at 489 (noting that, although federal judicial supervision of local school systems may last decades, the end remains returning school districts to local authorities' control once they comply with the Constitution); Dowell, 498 U.S. at 247 ("From the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination."). Local control promotes accountability

to citizens, the political process, and the courts in the ordinary course. See Freeman, 503 U.S. at 490. It enables citizens to participate in decision-making and facilitates innovation in educational programs to fit local needs. Dowell, 498 U.S. at 248. Thus, desegregation decrees are "not intended to operate in perpetuity." Id.

The "ultimate inquiry" in determining whether a school district is entitled to a declaration of unitary status is "[1] whether the [constitutional violator] ha[s] complied in good faith with the desegregation decree since it was entered, and [2] whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." Robinson, 566 F.3d at 650 (quoting Missouri v. Jenkins, 515 U.S. 70, 89 (1995) (alterations in original)). "A vestige of de jure segregation is a current or latent racial imbalance that is 'traceable, in a proximate way, to the prior violation' of the Fourteenth Amendment." Hampton v. Jefferson County Bd. of Educ., 102 F. Supp. 2d 358, 361 (W.D. Ky. 2000) (citations omitted). The more time has passed since the de jure violation, the more demographic changes intervene and the less likely it is that a school district's current racial imbalance is a vestige of past discrimination. Freeman, 503 U.S. at 496. In deciding whether to declare unitary status, courts must consider three factors:

> [1] whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; [2] whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system; and [3] whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

Robinson, 566 F.3d at 651 (quoting Freeman , 503 U.S. at 491). When considering these factors, a court "should give particular attention to the school system's record of compliance." Freeman, 503 U.S. at 491.

In this case, JMCSS has complied in good faith with the desegregation decree and eliminated the vestiges of past discrimination to the extent practicable. The Court has already found that JMCSS has complied with the desegregation decree, demonstrated a good faith effort to desegregate, and eliminated the vestiges of past de jure discrimination in all areas other than student assignment to the extent practicable. (Order Declaring Partial Unitary Status 12.) A careful examination of the record demonstrates that JMCSS has similarly proven its good faith and eliminated vestiges of past discrimination in the area of student assignment.

The Court finds that "there has been full and satisfactory compliance with the decree in those aspects of the system where

supervision is to be withdrawn." Robinson , 566 F.3d at 651. Although the number of racially identifiable schools has increased in recent years, the parties agree that JMCSS has complied in good faith with two agreements designed to promote desegregation: the 1990 Consent Judgment and the 2000 Agreement. (Mem. 17.)

To promote desegregation, JMCSS took numerous steps to encourage integrated schools. Between the Consent Judgment in 1990 and the Agreement in 2000, JMCSS in good faith attempted to establish voluntary magnet schools, develop a plan to recruit minority applicants for certificated positions, change school zone lines, make capital improvements to existing schools, and construct new schools. (Mem. 17; Consent J. 2, 5, 7, 8, 9, 12.) Although proving causation is difficult, the Court notes that, after the 1990 Consent Judgment, the number of racially identifiable schools remained low. (Mem. 7; White Aff. ¶¶ 3, 4.) At the very least, this demonstrate JMCSS's good faith attempt to eliminate the legacy of dual school systems, one for African-Americans and one for whites.

Pursuant to the 2000 Agreement, JMCSS made significant efforts to construct new schools; hire facilities consultants to make recommendations for improving schools; advise parents and the public of the Long-Range Plan's educational components and pupil assignment options to e ncourage desegregated schools by

voluntary means; develop a plan to encourage minority students to participate in all programs and activities; submit annual reports to parties' counsel detailing its efforts to comply with the Agreement; create a Bi -Racial Committee with annual alternating racial majorities to act as an advisory committee concerning the desegregation process; and devise a dispute resolution process outside of the Court to mediate disputes. (Agreement ¶¶ 7(d), 7(e), 11, 14, 21, 22, 29.) The parties agree that JMCSS has complied in good faith with its obligations under the 2000 Agreement. (Mem. 17.)

Despite JMCSS's good faith efforts, the number of non-racially identifiable schools has decreased. The number of non-racially identifiable elementary schools declined from 8 of 14 in the 2001-2002 school year to 3 of 14 in 2009-2010, and the number of non-racially identifiable high schools declined from 3 of 3 to 2 of 5. (White Aff. ¶¶ 4, 8, 10.) Nevertheless, not all facts suggest increasing segregation. During the same period, the number of racially identifiable middle schools fell from two to one. (Id. ¶ 7.)

The most important factor in deciding whether JMCSS has fulfilled its constitutional obligations is the absence of any evidence that the current racial imbalance is due to racial discrimination. That matters because "the Constitution is not violated by racial imbalance in the schools, without more."

Milliken v. Bradley , 433 U.S. 267, 281 n.14 (1977) (citations omitted). As evidenced by JMCSS's efforts to integrate its schools, the something "more" is missing here. Thus, the racial imbalance does not have constitutional implications:

> That there was racial imbalance in student attendance zones was not tantamount to a showing that the school district was in noncompliance with the decree or with its duties under the law. Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors.

Freeman, 503 U.S. at 494 (citing Swann, 402 U.S. at 31-32).

Forty-seven years have passed since this Court assumed jurisdiction in this case. During that time, much has changed. The racial composition of JMCSS has gone from roughly 60% white to 59.49% African-American. (See Mem. 4-5, 11.) The city and county school systems have merged, and the Board voting to pursue a declaration of unitary status was majority African-American. (Consent Order 1-2, ECF No. 238; Mem. 19.) In the course of these changes, the segregation justifying the Court's involvement in this case has become more and more remote, decreasing the likelihood that any racial imbalance today is a vestige of past discrimination. See Freeman , 503 U.S. at 496.

Although the recent increase in racially identifiable schools is disappointing, JMCSS is comparatively more integrated by many measures than other school systems entitled to a declaration of unitary status. For example, the United States Court of Appeals for the Fifth Circuit has affirmed a district court's declaration of unitary status where 57 of 226 schools had enrollments in which 90% or more of the students were from one race. Ross v. Houston Indep. Sch. Dist. , 699 F.2d 218, 226 (5th Cir. 1983). By contrast, only 3 of JMCSS's 27 schools have enrollments in which 90% or more of the students are from one race. (Ex. 1.)

In Freeman, the Supreme Court affirmed a finding of unitary status in a school district where 47% of the students were African-American, 50% of African-American students attended schools that were over 90% African-American, 27% of white students attended schools that were over 90% white, 5 of 22 high schools were over 90% African-American, 5 of 22 high schools were over 80% white, 18 of 74 elementary schools were over 90% African-American, and 10 of 74 elementary schools were over 90% white. Freeman , 503 U.S. at 476-77. In comparison, JMCSS has far more racial balance. Of J MCSS's 27 schools, only 3 have student bodies over 90% African-American, no school is over 90% white, and only 6 schools have over 80% of students from one race. (Ex. 1.)

This is not to suggest that numbers tell the whole story. The Supreme Court has emphasized that they do not. See Freeman, 503 U.S. at 494; see also Swann, 402 U.S. at 26 ("[T]he existence of some small number 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.") Numbers matter only to the extent they reflect segregation's legacy. See Freeman, 503 U.S. at 494; see also Ross, 699 F.2d at 227-28 ("Constructing a unitary school system does not require a racial balance in all of the schools. What is required is that every reasonable effort be made to eradicate segregation and its insidious residue.") (citations omitted). If "school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race," the objective of federal courts in school desegregation cases is satisfied. Swann, 402 U.S. at 23.

The current racial imbalance in JMCSS is the product of demographic changes and private schooling choices that the school district has no duty to remedy and that fall outside the Court's equitable powers to address. See Freeman, 503 U.S. at 494; Robinson, 566 F.3d at 652; Reed v. Rhodes, 179 F.3d 453, 466-67 (6th Cir. 1999). JMCSS has made significant efforts to overcome past discrimination. Those efforts convince the Court that JMCSS has complied in good faith with the original

desegregation decree and eliminated the vestiges of past discrimination to the extent practicable in the area of student assignment. Further judicial supervision is unnecessary.

Retention of judicial control is not necessary or practicable to achieve compliance with the desegregation decree in any other facet of the school system. See Robinson, 566 F.3d at 651. Aside from JMCSS's good faith compliance with the 1990 Consent Judgment and the 2000 Agreement, a majority African-American Board voted to pursue a declaration of unitary status. (Mem. 17, 19.) "[M]inority presence in the power structure is a factor that might be expected to help prevent any regression to a dual system once the court's presence is withdrawn." Stell v. Bd. of Pub. Educ. for City of Savannah , 860 F. Supp. 1563, 1583 (S.D. Ga. 1994) (citations omitted). Therefore, the Court finds that the leadership of JMCSS is unlikely to return the school district to its former ways. See Goodwine v. Taft , No. C-3-75-304, 2002 WL 1284228, at *3 (S.D. Ohio Apr. 15, 2002) (giving weight to the fact that a majority or near majority of Dayton, Ohio's Board of Education is African-American in granting the joint motion for unitary status).

JMCSS "has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the

predicate for judicial intervention in the first instance." See Robinson, 566 F.3d at 651. The parties agree that JMCSS has complied in good faith with the 1990 Consent Judgment and the 2000 Agreement, both of which the Court approved and made enforceable as court orders. (Mem. 17.) The joint nature of the Motion to Declare Unitary Status must receive "considerable weight" given the public policy favoring settlement of desegregation cases where, as here, the motion "is reasonable, filed in good faith, and demonstrates that the constitutional mandate requiring desegregation has been satisfied." Robinson, 566 F.3d at 650.

Several members of the community have objected to ending court supervision. If the concerns stated at the August 23, 2010 hearing are correct, substantial work remains to be done in improving JMCSS and building ties to strengthen the community. Nevertheless, most of the concerns expressed, such as underperforming schools, condition problems in school facilities, and tension in the community, cannot provide legal justification for further judicial supervision in this case. See Dowell, 498 U.S. at 248 ("The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities."). The Court has addressed the issues raised that could provide legal justification for further court

supervision, such as the inadequate number of minority teachers, in its prior Order declaring unitary status in the areas of faculty and staff. (Order Declaring Partial Unitary Status 12.) Because no additional evidence before the Court addresses discrimination in faculty hiring, the Court need not revisit its prior Order.

Community perceptions are relevant to whether JMCSS has demonstrated its good faith commitment to ending discrimination. See Robinson, 566 F.3d at 651. Here, those perceptions favor declaring unitary status and dismissing the case. The concerns stated at the August 23, 2010 hearing, such as underperforming schools, lack of commitment to children, condition problems at schools, and the need for a new performing arts high school in downtown Jackson, are precisely the kinds of concerns best addressed through local control and political accountability. The need to promote accountability is an additional reason to end judicial supervision in this case. See id.

Because each of the three factors this Court must consider favors declaring unitary status, see Freeman, 503 U.S. at 491, the Court finds that JMCSS is entitled to a declaration of unitary status. All evidence before the Court indicates that JMCSS has "complied in good faith with the desegregation decree since it was entered" and "the vestiges of past discrimination

ha[ve] been eliminated to the extent practicable." See Jenkins, 515 U.S. at 89 (alteration in original) (citation omitted).

After two generations, it is time to return control of the Jackson-Madison County School System to the people of Madison County and their elected representatives.

III. Conclusion

For the foregoing reasons, the Court declares that the Jackson-Madison County School System has achieved full unitary status. Therefore, the Court GRANTS the Joint Motion and DISMISSES this case WITH PREJUDICE as to all parties and claims.

So ordered this 24th day of September, 2010.

s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE