IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA — PLAINTIFF

V.

CIVIL ACTION NO. 3:71cv4856-WHB-LRA
CIVIL ACTION NO. 3:71CV4706-WHB-LRA

THE STATE OF MISSISSIPPI ET AL. — DEFENDANTS

MCCOMB MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL. — DEFENDANTS-INTERVENORS

AGREED ORDER OF DECLARATION OF FULL UNITARY STATUS

THIS DAY came before the Court the joint motion of Plaintiff United States of America ("United States") and Defendant Intervenor McComb Municipal Separate School District, now known as the McComb School District (the "District") (collectively, the "parties"), to declare the District fully unitary, dissolve all injunctions entered in this case, and dismiss this case with prejudice, and the Court, being advised in the premises, grants the motion and finds as follows:

1. As reflected in the history of the litigation described below, the District has already been declared unitary in all areas except with respect to the following: (a) within the area of student assignment, student classroom assignment at Otken Elementary School and Kennedy Elementary School and (b) within the area of extracurricular activities, selection of the homecoming queen and court at McComb High School and selection of superlatives by the high school yearbook.

2. The United States initiated this action against the State of Mississippi on July 9, 1970, alleging the unlawful operation of a racially dual system of public education in violation of the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1964.

The District intervened as a party defendant.

3. By Order dated April 5, 1971, the United States District Court for the Southern District of Mississippi entered a Consent Decree enjoining the District "from failing or refusing to take such steps as are necessary to terminate the operation of a racially dual school system and to operate, now and hereafter, a non-racial, unitary system of public schools." The agreed-upon plan of student assignment, set out in Appendix I to the Consent Decree, was to be implemented in the 1971-1972 school year, and Appendix II to the Consent Decree contained provisions concerning the operations of other aspects of the school system. The Court retained jurisdiction over the case "to insure full compliance with this order and to modify or amend the same as may be deemed necessary or desirable for the operation of a unitary school system."

4. By Order dated September 2, 1971, pursuant to a motion by the District, the Court amended the Consent Decree by approving a modified plan of student assignment, and thus a new Appendix I, to be implemented for the 1971-72 school year. The provisions concerning the operation of other aspects of the District, found in Appendix II, remained in effect.

5. Appendix I to the September 2, 1971 Consent Decree assigned students and faculty to each school in the District on a racially integrated basis for the 1971-72 school year. Subsequently, the District abolished all student attendance zones so that all students in a particular grade in the District attend the same school as all other students of the same grade. This pattern of all students in each grade attending the same school facility continues to date.

6. On February 12, 2001, this Court's order placed this case and a number of other desegregation cases on its inactive docket.

7. On November 17, 2003, this Court granted the United States' motion to reinstate

the case to the active docket and for discovery as to student classroom assignment policies at Kennedy Elementary and Otken Elementary.

8. On March 29, 2004, the District moved for a declaration of full unitary status. The United States had no objection to a declaration of partial unitary status with respect to faculty and staff hiring and assignment, transportation, facilities, and resource allocation.

9. The United States, however, objected to a declaration of unitary status as to specific practices within the areas of student assignment and extracurricular activities. On August 10, 2004, the United States moved to enforce the provisions of the April 5, 1971 Consent Decree and to enjoin the District from assigning students on the basis of race to classrooms at Otken Elementary and Kennedy Elementary in a manner that resulted in the racial segregation of students, and further objected to race-conscious extracurricular activity policies and procedures with respect to the selection of the homecoming queen and court and class superlatives at McComb High School.

10. At the District's request, the Court consolidated the two motions and entered an order scheduling discovery and set a hearing for July 13, 2006. Following the hearing and additional briefing, on April 18, 2008, the Court issued its Memorandum Opinion and Order ("April 18, 2008 Order"). The Court denied the United States' motion for permanent injunction. The Court granted the District's motion for unitary status in part and denied it in part. The Court denied the District's motion as to student classroom assignment at Otken and Kennedy Elementary Schools, ordering the District to "devise an assignment policy that results in meaningful racial interaction for all its students." As to extracurricular activities, the Court found the District did not maintain any extracurricular activity on a segregated basis or exclude any student from participation in such activities on the basis of race except as to the selection of

the high school homecoming court. The Court held "there was no need for continued oversight as to any of these other aspects of the 'extracurricular activities' category." Id. at 37. The Court found the proof showed the District partially unitary and granted partial unitary status to the District in all other respects, including the areas of faculty and staff hiring and assignment, transportation, and facilities and resource allocation. Id. at 4, fn.1, and 37-38.

11. In response to the Court's April 18, 2008 Order, the parties agreed to a Consent Order approved by the Court on September 18, 2008 ("2008 Consent Order"). The 2008 Consent Order established a policy of random assignment of students to homerooms at Otken Elementary and Kennedy Elementary, the use of academic criteria for assignments of students to reading and math groups at the two elementary schools, selection procedures for the homecoming court agreed upon by the parties, and elimination of the use of race in the selection of class superlatives for the McComb High School yearbook.

12. The 2008 Consent Order modified the District's reporting requirements so that the District was to provide to the United States only the following: (1) actual student enrollment data and class rosters for each homeroom and reading or math group at Otken and Kennedy, with the name, race and gender of each teacher and student at the elementary schools, to be submitted on October 15 and April 15 of each school year; (2) a copy of the McComb High School yearbook, and (3) tally sheets reflecting the student and faculty votes for the McComb High School homecoming queen and court to be reported with the April 15 report. This limited reporting requirement was to end with the October 15, 2010 report.

13. The 2008 Consent Order provided that sixty days after the October 15, 2010, report, in the absence of a pending motion by the United States for further relief or a ruling that the District failed to comply with the terms of the Order, the United States agreed to join the

District in submitting a motion for full unitary status to the Court.

14. Although the District complied with all other requirements of the 2008 Consent Order, it did not comply with its procedures for selection of the homecoming queen and court in the fall of 2009. As a result, the parties agreed to continue the portion of their agreement memorialized in the 2008 Consent Order intended to remedy the deficiencies related to selection of the high school homecoming court and to extend the effective termination date of the 2008 Consent Order only for the selection of the high school homecoming queen and court. The District was to report to the United States by November 15, 2011, with respect to the homecoming elections for 2011 as previously agreed. This agreement was formalized in a Consent Order entered by the Court on November 5, 2009 ("2009 Consent Order"). A copy of the 2009 Consent Order is attached as Exhibit 5 to the joint motion.

15. The 2009 Consent Order also provides that "sixty (60) days after the United States receives the District's November 15, 2011 report, in the absence of a pending motion by the United States for further relief or a ruling by this Court that the District failed to comply with the terms of this Consent Order, the United States agrees to join the District in submitting a motion for full unitary status to the Court."

16. The District has complied with the reporting requirements to the United States as set out under the 2008 Consent Order and the 2009 Consent Order, most recently providing a copy of the McComb High School yearbook for 2010-11 and the homecoming court election data for fall, 2011.

17. The United States has made no motion for further relief and joins the District in this motion.

18. The District has fully and satisfactorily complied with the governing

desegregation orders in this case for a reasonable period of time.

19. The District has eliminated the vestiges of de jure segregation as far as practicable with regard to student assignment and extracurricular activities.

20. The District has demonstrated a good faith commitment to the whole of the Court's orders and to those provisions of the law and the Constitution that formed the predicate for judicial intervention in the first instance.

21. The United States and the District ask the Court to grant this joint motion and declare the District fully unitary, dissolve all injunctions entered in this case, and dismiss this case with prejudice.

22. "[U]nitariness represents a finding 'that the school district has eliminated all aspects of de jure segregation . . .'" Price v. Austin Indep. Sch. Dist., 945 F.2d 1307, 1314 (5th Cir. 1991) (quoting Ross v. Houston Indep. Sch. Dist., 699 F.2d 218, 219 (5th Cir. 1983)). "[T]he appropriate measure of unitariness [is] 'whether the past has been eradicated so far as it remains in the power of school officials and courts to do so . . .'" Id. at 1314. (quoting Ross v. Houston Indep. Sch. Dist., 699 F.2d 218, 227 (5th Cir. 1983)). The District has worked continuously under the Consent Orders to implement the desegregation plan and to remove, to the extent practicable, all vestiges of de jure discrimination. The District has timely submitted its annual reports to this Court and to the United States describing its progress in complying with the desegregation plan.

23. The parties agree, and this Court so holds, that in light of the unitary status hearing previously held in this matter on July 13, 2006, and the narrow scope of the remaining issues, an additional fairness hearing is not required.

IT IS, THEREFORE, ORDERED AND ADJUDGED THAT:

Defendant Intervenor McComb Municipal Separate School District, now known as the McComb School District, (the "District") is hereby declared fully unitary in every respect, all injunctions entered in this case against the District are dissolved, and the case against the District is dismissed with prejudice.

SO ORDERED this the 3rd day of January, 2012.

UNITED STATES DISTRICT JUDGE

AGREED BY THE PARTIES:

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