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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

CATHERINE ANN MILLER, ET AL.,	*	
PLAINTIFFS	*	
VS.	*	**CIVIL ACTION NO.CV-63-CO-574-M**
UNITED STATES OF AMERICA, PLAINTIFF - INTERVENOR,	*	
NATIONAL EDUCATION ASSOCIATION,	*	
PLAINTIFF - INTERVENOR,	*	
VS.	*	
THE BOARD OF EDUCATION OF GADSDEN, ALABAMA, ET AL.,	*	
DEFENDANTS	*	

MOTION FOR DECLARATION OF UNITARY STATUS AND ORDER OF DISMISSAL

The Board of Education of Gadsden, Alabama, respectfully moves that this Honorable Court declare the Gadsden City School System (hereinafter referred to as the "System"), unitary, release the System from Court supervision and jurisdiction, and dismiss this case. In support of this Motion, the Board of Education of Gadsden, Alabama (hereinafter referred to as the "Board"), which operates the Gadsden City School System (hereinafter referred to as the "System") shows unto the Court as follows:

BRIEF SUMMARY OF PROCEDURAL HISTORY FROM INCEPTION

1. In 1963, this Honorable Court restrained and enjoined the Board from discriminating

against the Plaintiffs and ordered that the Board be required to submit a plan under which it proposed to make an immediate start in the desegregation of the System to begin not later than the beginning of the school year 1964 through 1965.

2. In 1964, this Court approved a plan submitted by the Board to immediately desegregate the System.

3. On July 25, 1969, this Honorable Court entered a decree "pursuant to several recent decisions of the Fifth Circuit Court of Appeals dealing with the disestablishment of dual school systems" which required the Board to "prepare plans to disestablish the dual school systems presently maintained in the City of Gadsden, Alabama." Said decree further provided that "such plans shall be directed to (a) student and faculty assignment, (b) all facilities, (c) all athletic and other school activities, and (d) all school location and construction activities" and that the Defendants "make available to the Office of Education, or its designees, all requested information leading to the operation of such school system"

4. Between July 25, 1969, and April 1975, this Court approved various amendments and additions to the Board's desegregation plans, over the objections of the Plaintiff and the Plaintiff-Intervenor.

5. On April 3, 1975, the Board submitted a comprehensive desegregation plan that was agreed to by the parties and was approved by this Court. Said plan was based on a Comprehensive Study of the System conducted in 1973 by the University of Tennessee. Said plan sought to implement the University of Tennessee study which endeavored to maximize desegregation without resorting to busing of children to achieve this objective. The plan sought to achieve this objective through shifting zone boundaries and strictly enforcing zone attendance centers. To implement said plan, the Board shifted its zone boundaries in accordance with the study. These zone boundaries are still in effect today.

6. On October 23, 1987, this Court entered an Order requiring that all parties show cause why the above-styled action should not be dismissed in the manner prescribed by the Eleventh Circuit, to which the parties responded.

7. On October 11, 1988, this Court stayed all action on the desegregation cases before it, pending the outcome of the unitary status issue on several cases on appeal to the Eleventh Circuit.

8. In April 1994, this Honorable Court once again entered an Order requiring that the Plaintiff show cause why the System operated by the Board should not be declared unitary by default and said System be relieved of the effects of the outstanding injunctive relief established in Lee vs. Macon County Board of Educ. In its Order the Court noted that no discovery had been done, nor had any pleading been filed with the Court since June 15, 1992.

9. In response to the Court's April 1994 Order to show cause and the subsequent discovery thereto, the parties jointly agreed to enter into a Consent Order, subject to the Court's approval. This Honorable Court approved the parties' Consent Order on May 24, 1995. This Court subsequently amended the Consent Order in July 1995, requiring the Board to implement a voluntary majority-to-minority student transfer policy (hereinafter referred to as the "M-M policy"). During the four-year period of the May 1995 Consent Order, the Board submitted the requisite annual reports that outlined its compliance therewith. These annual reports included boxes of documents, charts, reports, spreadsheets, and the like and were produced to the Court and the parties to this action.

10. On May 19, 1999, the Board petitioned the Court for unitary status. After discovery and an ore tenus hearing, on March 20, 2000, the Court declared the System to be unitary.

11. The Plaintiff and Plaintiff-Intervenor appealed the Court's decision. The Eleventh Circuit

Court of appeals remanded the case because it was unable determine whether the district court applied the factors set forth in Green v. School Bd. of New Kent County, 391 U.S. 430 (1968) in rendering its decision.

12. The Court then ordered that the Board file a supplemental Petition for Unitary Status and that this matter be set for another hearing. However, the parties were able to enter into settlement negotiations the result of which was an agreed-upon Consent Order that was entered by the Court on July 14, 2003.

13. The July 2003 Consent Order states as follows with regard to the Board's obligations in this case:

> "A. The parties' expectation is that this Consent Order will lead to the termination of judicial supervision at the end of the 2004-05 school year. This Consent Order sets forth the totality of the Board's obligations in this desegregation case. In consideration for the Board's agreement to this Consent Order, the plaintiff-parties hereby stipulate that the school district has achieved partial unitary status in the areas of student assignment (except for the student assignment provisions set forth in Sections II and V, below); faculty and staff assignments (except for the faculty and staff assignment provisions set forth in Section III, below); transportation (except for the transportation provisions set forth in Section II, below); facilities (except for the facilities provisions set forth in Section VII, below); extra-curricular activities; and quality of education and curriculum (except for the quality of education and curriculum provisions set forth in Sections VI and X, below). Therefore, this Court no longer retains jurisdiction over the areas not specifically set forth in this Consent Order.
> B. Upon good-faith implementation by the Board of the specific provisions set forth herein, the plaintiff-parties agree to waive any claims that the school district is not unitary with regard to the remaining respects set forth in this Consent Order.
> C. Within thirty (30) days of the end of the 2004-05 school year, the Board may file a motion and supporting documentation with the Court to be declared unitary in all respects and to have this case dismissed. Within thirty (30) days after receiving the Board's motion and supporting information and data, if any, the plaintiff-parties shall file responses. If any party objects to dismissal, it shall have the burden of demonstrating that the Board has not complied in good faith with any provision of this agreement." (July 2003 Consent Decree, p. 2).

15. As is contemplated and agreed to by the parties, the Board has complied with the July 2003

Consent Decree, and is now seeking a declaration by the Court that the System has eliminated the vestiges of past discrimination to the extent practicable; that the System has achieved unitary status in all respects; that judicial supervision and jurisdiction be terminated; and that the case be dismissed.

16. In April 2004, the parties and the Court entered into an agreed-upon Amendment to the July 2003 Consent Order providing for the consolidation of the System's high schools and the closing of Jessie Dean Smith elementary school. The new consolidated high school is under construction and scheduled to open by the beginning of the 2006-2007 school year. Jessie Dean Smith elementary school was subsequently closed prior to the beginning of the 2004-2005 school year.

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17. In determining whether a school system has complied with a Consent Order and is therefore unitary, the district court must decide "(1) whether the local authorities have eliminated the vestiges of past discrimination to the extent practicable and (2) whether the local authorities have in good faith fully satisfactorily complied with, and shown a commitment to, the desegregation plan." Lockett v. Bd. of Educ. of Muscogee County, 111 F.3d 839, 841-42 (11th Cir. 1997) and Freeman v. Pitts, 503 U.S. 467, 485-86 (1992). The determination of whether the local authorities have eliminated vestiges of prior desegregation to the extent practicable involves the review of six factors: student assignment, faculty assignments, staff assignments, transportation, extracurricular activities and facilities. Green v. School Bd. of New Kent County, 391 U.S. 430, 435, 88 S. Ct. 1689, 1693 (1971).

18. As per the July 2003 Consent Order, the System has achieved unitary status and this Court has relinquished jurisdiction with regard to:

> "student assignment (except for the student assignment provisions set forth in Sections II and V, below); faculty and staff assignments (except for the faculty and staff assignment provisions set forth

in Section III, below); transportation (except for the transportation provisions set forth in Section II, below); facilities (except for the facilities provisions set forth in Section VII, below); extra-curricular activities; and quality of education and curriculum (except for the quality of education and curriculum provisions set forth in Sections VI and X, below)." (July 2003 Consent Decree, p. 2).

Therefore, the only remaining issues subject to the judicial purview of this Court (as set forth in Lockett, Freeman and Green, supra) relate to those items specifically mentioned in the July 2003 Consent Decree.

19. The Board avers unto this Court that the System is in full compliance with each and every provision of the July 2003, Consent Order of this Court. Further, because the Board has eliminated the vestiges of past segregation in the System to the extent practical; has shown by its good faith conduct that it will not return to discriminatory ways if released from Court oversight, and has demonstrated its good faith commitment to the laws and the Constitution of the United States, it should be declared unitary and completely released from judicial supervision and jurisdiction. See, Lockett, Freeman and Green, supra).

20. The purpose of the July 2003 Consent Order was to serve as an agreed-upon guide or "map" for the Board to rely upon and utilize to reach the end of judicial supervision and jurisdiction. The bi-annual reports were agreed to by the parties and were an integral part of the procedure by which the Board could petition the Court for unitary status:

"A. By September 15 and February 15 of each year, the Board shall file with the Court and the parties a report that includes student enrollment data, by race, at each school; the number and percentage, by race, of administrators (listed by position, to include central office staff, principals, assistant principals, counselors, librarians/media center staff, etc.), certified and non-certified staff; the number of students in the District, by school and by race, enrolled in each honors, advanced placement, and independent study class, including a description of any independent study class(es); the reason(s) for denial(s) of any request(s) or proposal(s) for independent study class(es) at Litchfield High School; narrative descriptions, data and supporting documents on the implementation of each provision of this Consent Order; syllabi for all advanced placement/honors and independent study classes at each high school.

B. Within sixty (60) days after receiving any report as required under this Consent Order, the

> plaintiff-parties shall inform counsel for the Board in writing of any provisions of the agreement with which they believe the Board has not fully complied."

21. The Board 's full and complete compliance with the July 2003 Consent Order is illustrated by the bi-annual reports filed with the Court and the parties. The voluminous bi-annual reports filed by the Board included the data specifically required to be submitted, but also included documents supporting the Board's position that it had complied with the July 2003 Consent Order. Moreover, each report included a narrative summarizing the Board's actions and stating the Board's position that it was fully in compliance with the July 2003 Consent Order. As was intended by the 2003 Consent Order, these voluminous and extensive bi-annual reports serve as the supporting documentation and basis for the Board's Petition for Unitary Status. Therefore, the Board incorporates in this Motion the representations, documentation and descriptions set forth in those reports.

22. The NAACP Legal Defense and Education Fund, Inc., has submitted no objections or responses to the Board's bi-annual reports. The Alabama Department of Education has submitted no objections or responses to the Board's bi-annual reports. The United States Department of Justice has submitted one response to the Board's September 2003 report (addressing issues regarding personnel assignment) and one response to the Board's September 2004 report (addressing issues regarding African American student enrollment in advanced and honors courses). The Board replied to both responses clarifying the Board's compliance and providing the United States with requested information and documentation which illustrated the Board's compliance. The United States requested no additional information or action on the part of the Board after it submitted its reply.

23. As set forth above, the Board has fully and with good faith complied with the July 2003 Consent Order; has filed extensive and detailed bi-annual reports outlining its compliance; and has fully and

completely responded to the United States' responses and requests for information. Now, as contemplated specifically by the July 2003 Consent Order, the Board is filing this motion to be declared unitary in all respects and have this case dismissed.

WHEREFORE, PREMISES CONSIDERED, the Board prays that this honorable Court enter an order declaring that the System has eliminated the vestiges of past discrimination to the extent practicable; that the System has achieved unitary status in all respects; that judicial supervision and jurisdiction is terminated; and that this case is dismissed with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2005, I have served a copy of the foregoing upon all parties electronically with the Clerk of the Court using CM/ECF systems which will send notification to the following:

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s/Christie D. Knowles
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I, Christie D. Knowles, do hereby certify that I have served a copy of the foregoing upon each attorney listed below, by placing a copy of the same in a correctly addressed envelope(s) in the United States mail, this the 10th day of June, 2005.

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