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

BENJAMIN FRANKLIN, by Elijah Franklin, his father and next friend, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

NATIONAL EDUCATION ASSOC., INC.,

Plaintiff-Intervenor,

vs.

BARBOUR COUNTY BOARD OF EDUCATION, et al.,

Defendants.

CIVIL ACTION NO. 66-CV-2458

MEMORANDUM OPINION AND ORDER

I. FACTS AND PROCEDURAL HISTORY

This cause is before the court on a Motion for Approval of Collateral Effect on Attendance Zones filed by the Barbour County Board of Education on August 4, 2000 (Doc. #165), and on a Motion to Substitute an Affidavit filed by the Barbour County Board of Education on August 10, 2000 (Doc. #173).

This case was originally filed in 1966, and resulted in an Order setting forth steps to be taken in order to racially desegregate the Barbour County school system. In 1997, a Consent Decree was entered by this court, declaring that the facilities in the Barbour County school system were unitary, and outlining actions to be taken to make the school system unitary in all

other aspects. At the time of the Consent Decree, there were two high schools in the Barbour County school system: Louisville High School and Clayton High School. The Consent Decree indicates that at that time the racial composition of Louisville High School was 83% black, and that the racial composition of Clayton High School was 99% black.

On June 26, 2000, with the agreement of the private Plaintiffs in this case and the United States, the Barbour County Board of Education ("the Board") voted to close Louisville High School. Closure of Louisville High School means that the students who would have attended that school must attend school at a consolidated facility at the site of the former Clayton High School, which has been renamed "Barbour County High School."

On August 10, 2000, this court conducted a hearing during which it listened to extensive argument on a Motion to Intervene to oppose consolidation of the schools. Although the court denied the Motion to Intervene, the court stated at the hearing on the Motion to Intervene that it would consider all of the evidence submitted by the applicants for intervention in deciding the merits of the Motion for Approval of the Collateral Effect on Attendance Zones ("the Board's motion"), and gave the applicants for intervention permission to state their position on the Board's motion in an amicus curiae brief. The court also ordered that the United States, the private Plaintiffs, and the Board submit briefs discussing their positions on the Board's motion.

Based on all of the arguments and evidence submitted to the court, the court concludes that the Board's motion is due to be GRANTED.

II. DISCUSSION

The closure of Louisville High School and consolidation with the former Clayton High School at the new Barbour County High School requires a modification of the consent decree

governing the Barbour County school system. In Rufo v. Inmatus of Suffolk County Jail, 502 U.S. 367 (1992), the Supreme Court articulated a two-pronged approach to determining when courts may approve a modification of a consent decree in an institutional-reform case. The first prong requires that the party seeking modification of the consent decree "establish that a significant change in facts or law warrants revision of the decree." Id. at 760; see also Ensley Branch, NAACP v. Seibels, 31 F.3d 1548, 1563 (11th Cir.1994). If the moving party satisfies the changed-circumstances requirement, the second prong requires that the modifications be "suitably tailored" to address the new factual or legal environment. Rufo, 502 U.S. at 393.[1] The Rufo court enumerated three situations in which modification of a consent decree for a change in facts may be warranted: (1) when changed factual conditions make compliance with the decree substantially more onerous, (2) when a decree proves to be unworkable because of unforeseen obstacles, or (3) when enforcement of the decree without modification would be detrimental to the public interest. Id. at 384-85.

During the hearing on the Motion to Intervene, attorneys for the United States, the private plaintiffs, and the Alabama State Department of Education, which is not a party in this case, all represented to the court that they did not object to the consolidation of Louisville and Clayton High Schools. In response to this court's Order, the United States has filed a brief in which it states that in June of 2000, counsel for the Board consulted with the United States and the private Plaintiffs regarding the possibility of consolidating Louisville and Clayton High Schools. The United States represents in its brief that it agreed at that time that consolidation would likely

[1] This standard has been relied upon in the submissions made to the court. Assuming that this is the correct standard to be applied, even though all of the parties in this lawsuit have agreed to the change in the consent decree at issue, as will be discussed, the court finds that this standard has been met in this case.

further the orderly desegregation of the Barbour County school system. United States' Brief, page 2. The private Plaintiffs have also filed a brief in which they state that they do not object to the consolidation of the high schools. The private Plaintiffs express some concern about what they characterize as "emotional issues" regarding the closure of Louisville High School, but agree that consolidation is a move toward desegregation. Plaintiff's brief, page 6. For that reason, the private Plaintiffs do not object to consolidation.

In reviewing the submissions made to this court, the court first notes that the so-called "emotional issues" of, for example, the length of time children will spend on a bus to get to the new consolidated high school, are real issues to all of those involved. The role of this federal court, however, is limited to determining whether modification of the consent decree in the manner requested by the local school board is needed to foster a unitary school system. In so determining, the court bears in mind the non-exclusive factors for evaluating unitary status which have been identified by the Supreme Court: facilities, student assignments, faculty assignments, staff assignments, transportation, and extracurricular activities, as well as quality of education. See Green v. New Kent County School Board, 391 U.S. 430 (1968); Freeman v. Pitts, 503 U.S. 467, 492 (1992).

The Board has stated to the court that the total high school enrollment in Barbour County has been decreasing over time, resulting in two schools which are uneconomically small. The Board states that replacing those schools with a single school serves the purpose of promoting desegregation and allows the one school to operate economically and to provide a higher quality of education.

The amicus curiae brief which has been filed expresses the concern that the consolidation of the schools will not foster desegregation, but will in fact promote segregation and will result in

a single high school which is 100% African American. The amicus curiae brief predicts that all of the twenty white students who were formerly enrolled at Louisville High School will seek education in places outside of the public school system in Barbour County. According to the submissions of the Board, however, this prediction has not been borne out. According to the Board's representations, which is not contradicted by any evidence of which the court is aware, the current enrollment at the consolidated Barbour County High School consists of 408 black students and seventeen white students.[2] According to these representations, therefore, the consolidated high school population continues to consist of both black and white students. While the white students are in the minority, they were in the minority at both of the high schools before the consolidation as well.

The court determines that the proposed consolidation is warranted because enforcement of the decree without modification would be detrimental to the public interest in a unitary school system. Continuation of a system of two schools would not allow for the same steps toward unitary status on the Green factors to be taken because such steps would not have been feasible in the two uneconomically small schools. In the consolidated school, however, as expressed in the briefs of the Board and the United States, consolidation will promote quality of education by allowing, for example, access to extracurricular activities. The court further finds that consolidation of the two schools into one high school is sufficiently tailored to meet the public interest. Consolidation of the two schools promotes, and does not impede, desegregation and helps to ensure that there is not a return to segregated schools. Further, as the United States

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[2] According to the Board, at the end of the 1999-2000 school year, there were 20 white students enrolled at Louisville High School and 5 white students enrolled at Clayton High School.

points out, the burden of desegregation, in the form of transportation to the new consolidated school, is not inequitably distributed since the racial compositions of both of the previous two high schools was majority African American.

Federal courts have long-recognized that the closing of a school is an important and complex function of a local school board. See United States v. Hendry County School District, 504 F.2d 550, 553 (5th Cir. 1974).[3] "It is doubtful if any board anywhere has ever devised a plan that closed some schools, expanded others, and changed boundary lines, that did not cause dissension and complaints." Adams v. Board of Public Education, 770 F.2d 1562 (11th Cir. 1985). In this case, the Board has made a difficult decision to close a school and, in doing so, has satisfied its affirmative duty to not only avoid any official action that has the effect of perpetuating or reestablishing a dual school system, but also to render decisions that further desegregation and help to eliminate the effects of the previous dual school system. See Harris v. Crenshaw Co. Bd. of Educ., 968 F.2d 1090, 1095 (11th Cir. 1992). The Board is to be commended for making a difficult decision which serves as a substantial step toward achieving the public interest in a completely unitary school system.

III. CONCLUSION

For the reasons discussed, it is hereby ORDERED as follows:

1. The Motion to Substitute (Doc. #173) is GRANTED.

2. The Motion for Approval of Collateral Effect on Attendance Zones (Doc. #165) is

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[3] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

GRANTED.

Done this 8th day of September, 2000.

W. HAROLD ALBRITTON
CHIEF UNITED STATES DISTRICT JUDGE