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

BENJAMIN D. FRANKLIN, et al., Plaintiffs, NATIONAL EDUCATIONAL ASSOCIATION, INC., Plaintiff-Intervenor, UNITED STATES OF AMERICA, Amicus Curiae, v. BARBOUR COUNTY BOARD OF EDUCATION, et al., Defendants.	)	CIVIL NO. 2:66-CV-2458-WHA-CSC

AGREED ORDER OF UNITARY STATUS AND DISMISSAL

In June 2011, *Amicus Curiae* United States of America requested information from the Barbour County Board of Education ("Board" or "District") to assess the Board's compliance with its federal desegregation obligations. The Board provided the requested information and has also provided information in response to the United States' subsequent requests for information. Upon analysis of the information and data provided by Board, the United States informed the Board and private Plaintiffs that, in its view, the Board has fulfilled its affirmative desegregation obligations under the Fourteenth Amendment and applicable federal law, entitling it to a declaration of unitary status. As indicated by the signatures of *Amicus Curiae* United

States, private Plaintiffs, and Defendant Barbour County Board of Education below, the parties respectfully request that the Court approve this Agreed Order of Unitary Status and Dismissal and terminate jurisdiction over this case.

PROCEDURAL HISTORY

On July 10, 1970, the Court approved a desegregation plan for the Barbour County School District and ordered the Board to implement said plan. In the mid-1990s, with aid of the Court, the parties reviewed the Board's progress in desegregating the District and negotiated a consent decree which the Court approved on September 8, 1997. In the 1997 Consent Decree, the Court concluded that the Board had achieved unitary status in the area of facilities but found that the Board had not yet achieved unitary status in the areas of student assignment, transportation, faculty and support staff assignment, extracurricular activities, quality of education, special education, and student discipline. The 1997 Consent Decree included a plan that directed the Board to take action in these remaining areas to address non-compliance.

In 2000, the Court approved consolidation of the high schools in the District. Order, Sept. 8, 2000, ECF No. 181. In 2004, the Court approved the consolidation and reconfiguration of K–8 schools in the District. Order, Jan. 27, 2004, ECF No. 200. The combined result of the 2000 and 2004 orders is a single-grade configuration school system where every child enrolled in a particular grade in the District is assigned to the same school.

In 2007, the parties negotiated and the Court approved another consent decree in the case. That consent decree placed limits on inter-district transfers between the District and Dale County School District. Order, May 10, 2007, ECF No. 223. The Dale County Board of Education was joined as a party to this matter for the limited purpose of enforcing the 2007 Consent Decree.

The 2007 Consent Decree expired October 1, 2011, and none of the parties moved for extension.

STIPULATED FACTS

A. Student Assignment

WHA For the 2012-13 school year, the District had approximately ~~1,000~~ 1039 students enrolled in the following schools:

School	Black	White	Other	Total
Barbour County Primary School	216	27	39	262
Barbour County Intermediate School	239	28	32	240
WHA Barbour County ~~Middle School~~ Junior High	200	13	4	220
Barbour County High School	223	15	3	320
Total	**878 (85%)**	**83 (8%)**	**78 (7%)**	**1039**

As discussed, *supra*, the Board operates a single-grade configuration school system. Every student in grades K–2 attends Barbour County Primary School, every student in grades 3–6 attends Barbour County Intermediate School, every student in grades 7–9 attends Barbour County Junior High, and every student in grades 10–12 attends Barbour County High School.[1] Additionally, from 2007 to 2011, the Board complied in good faith with the 2007 Consent Decree to limit inter-district transfers that were impeding desegregation in the District.

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[1] This is a new grade configuration for the 2012–13 school year. Previously, the District used a slightly different configuration: Barbour County Primary School (K–2); Barbour County Intermediate School (3–5); Barbour County Middle School (6-8); and Barbour County High School (9-12).

B. Faculty and Staff Assignment

For the 2012-13 school year, the Board employs 84 teachers of whom 50 (60%) are black and 34 (40%) are white. Half of the administrators in the District are white and half are black. The Board employs 47 staff members of whom 33 (70%) are black and 13 (28%) are white and one is Hispanic. No school is racially identifiable on the basis of faculty or staff assignment.

C. Transportation

There is no evidence indicating that the Board fails to equitably provide bus transportation to all students in the District.

D. Extracurricular Activities

There is no evidence indicating that the Board offers its extracurricular activities on a discriminatory basis.

E. Quality of Education, Special Education, and Student Discipline

There is no evidence indicating that the Board places students in special education or advanced programs in a discriminatory manner. Rather, enrollment in these programs reflects the overall enrollment in the District. According to 2012-13 data, the gifted and talented program enrolled 15 students of whom all are black. Similarly, for the 29 honors and Advanced Placement courses offered, class enrollment is above 80% black. Likewise, 133 black, 16 white, and 1 Hispanic student were identified for special education services. Finally, there is no evidence that the Board discriminates in its administration of discipline.

DISCUSSION

"The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system." *Freeman v.*

Pitts, 503 U.S. 467, 485 (1992). When evaluating whether a school district has eliminated the vestiges of the dual system, a court considers "whether the Board ha[s] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 249–50 (1991); *see also Missouri v. Jenkins*, 515 U.S. 70, 89 (1995); *Freeman*, 503 U.S. at 491–92.

When assessing whether a school district has achieved such compliance, a court evaluates all facets of a school district's operations. *See Green v. Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430, 442 (1968). These are commonly referred to as the "*Green* factors" which include student assignment, faculty, staff, transportation, extracurricular activities, and facilities. *Jenkins*, 515 U.S. at 88; *Dowell*, 498 U.S. at 250. However, these factors are not meant to impose a "rigid framework," and a court may consider additional issues such as quality of education in the district. *Freeman*, 503 U.S. at 492–93.

Based on the information and data provided by the Board, and on all the surrounding facts, the Board has complied with the Court's desegregation orders for a reasonable period of time and has eliminated the vestiges of past *de jure* discrimination to the extent practicable in the areas of student assignment, faculty, staff, transportation, extracurricular activities, special education, student discipline, and quality of education.

CONCLUSION

The Court concludes that the Barbour County School Board has met the legal standards for a declaration of unitary status, and that it is entitled to dismissal of this action. In addition, all claims and parties, including the Dale County Board of Education and the claims against it, are dismissed.

Accordingly, it is hereby ORDERED that all prior injunctions in this case are DISSOLVED, jurisdiction is TERMINATED, and this case is DISMISSED WITH PREJUDICE.

ENTERED THIS 18th DAY OF April, 2013.

UNITED STATES DISTRICT JUDGE

A copy of this checklist is available at the website for the USCA, 11th Circuit at www.ca11.uscourts.gov
Effective on April 9, 2006, the new fee to file an appeal will increase from $255.00 to $455.00.

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

(a) **Appeals from final orders pursuant to 28 U.S.C. § 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C.§ 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1 365, 1 368 (11th Ci r. 1 983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. § 636(c).

(b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b). Williams v. Bishop, 732 F.2d 885, 885- 86 (11th Cir. 1984). A judg ment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S.196, 201, 108 S.Ct. 1717, 1721-22, 100 L .Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

(c) **Appeals pursuant to 28 U.S.C. § 1292(a):** Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions . . ." and from "[i]nterlocutory decrees . . . determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

(d) **Appeals pursuant to 28 U.S.C. § 1292(b) and Fed.R.App.P. 5**: The certification specified in 28 U.S.C. § 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

(e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S.Ct. 308, 312, 13 L.Ed.2d 199 (1964).

Rev.: 4/04

2. **Time for Filing**: The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P. 4(a) and (c) set the following time limits:

(a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD – no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

(b) **Fed.R.App.P. 4(a)(3):** "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

(c) **Fed.R.App.P. 4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

(d) **Fed.R.App.P. 4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

(e) **Fed.R.App.P. 4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).