UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIE EUGENE PITTS, et al.)
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vs.)
)
JIM CHERRY, et al.)

CIVIL ACTION

NO. 11946

O R D E R

This school desegregation action came before the court on May 15, 1978 for a hearing on four issues: (1) the closing of Heritage Elementary School, (2) the construction of eight additional classrooms at Flat Shoals Elementary School, (3) the continuing conflict between DeKalb County school officials and the Biracial Committee, and (4) intervenor Johnson's motion to cite defendants with contempt for failing to provide transportation pursuant to the M-to-M program.

1. Heritage is an eighteen-room elementary school, located in the northern section of DeKalb County. It has a capacity of 468 students[1/] but for the past few years has had a declining student enrollment. This school year (1977-78) Heritage has a population of 269 students, not including kindergarten and special education students. Projected enrollment for the 1978-79 school year is 247.

The controversy before the court has resulted from defendants' plan to close this school as a regular elementary school and convert it to a special education center for elementary-age students residing in the northern part of the county. The county currently operates Scottdale Center as a special education high school.

1/ The school system determines elementary school capacity, absent any special programs, on the basis of twenty-six students per classroom.

This facility is old and unsatisfactory, and defendants plan to transfer the Scottdale program to Margaret Harris Center, which is now serving as a special education center for elementary-age children in the northern portion of the county. Heritage has been chosen as the recipient school for the existing Margaret Harris program.

Plaintiffs and the Biracial Committee[2/] oppose the decision to close Heritage, alleging that it will adversely affect a successful majority-to-minority (M-to-M) transfer program currently in operation there.[3/] Nineteen students are presently enrolled in that program, and Heritage is the only school in the northern part of the county with substantial M-to-M participation. A spokesperson for the parents of the M-to-M students indicated that she had made an extensive effort to recruit black students, that black parents had visited a number of schools before selecting Heritage, that Heritage was selected primarily for its size and special reading, math and tutoring programs, and that the Heritage community had been receptive to the M-to-M students. She also expressed concern that if Heritage is closed, these M-to-M students will again have to adapt to a new school and that for this reason some might not continue to participate in the program. Plaintiffs and the Biracial Committee assert that other elementary schools in the northern portion of the county, which do not have M-to-M programs, are operating significantly below capacity and would be appropriate choices as the recipient school for the

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[2/] Pursuant to the court's November 3, 1976 order, defendants presented the proposed zone changes, which would result from the conversion of Heritage, to the Biracial Committee on April 3, 1978. The Committee rejected the changes stating that Heritage's current use should not be altered.

[3/] Plaintiffs and the Biracial Committee oppose only the choice of Heritage as the recipient school for the special education program. They do not oppose, and in fact support, the decision to close the Scottdale Center.

special education center. They therefore contend that closing Heritage, which might otherwise be permissible, has an impermissible effect upon the M-to-M program.

Defendants contend that the conversion of Heritage will not have a racial impact. They note that the M-to-M students will be able to attend either Oakgrove or Hawthorne, the schools to which the Heritage students will be transferred, or any other schools they choose under the M-to-M program. They also note that the reading and math facilities are the same at all the elementary schools and that although tutoring services provided by the community may not already exist at Oakgrove or Hawthorne, such assistance is always encouraged.

Defendants also explain that although certain other elementary schools in that portion of the county are severely under capacity, after examination of all factors, Heritage remains the only sensible choice for conversion to a special education facility. Heritage has eighteen classrooms and defendants have determined that approximately that number will be required in the new center. All of the other under-capacity schools which were considered have at least twenty-three rooms. Defendants contend that to convert any of these larger schools would be an uneconomic use of taxpayer money. Defendants also note that some of the other schools which appear to be underutilized actually are housing special programs which require more space per child than the county usually allots. Further, at least two of the schools which are currently under capacity appear to be destined for major changes in enrollment due to their proximity to the MARTA line and expected new housing developments or in the event of a transition from "singles" apartments to family units. Finally, defendants argue that Heritage is in an ideal location for a special education center, which relies upon volunteer services, since it is near other elementary schools and a high school and

is located in the midst of a single-family dwelling residential community.

On the basis of the foregoing testimony, the court concludes that closing Heritage Elementary School to regular students will not have an impermissible effect on the M-to-M program, and, thus, on the process of desegregation of the county school system. The choice of Heritage over other under-capacity schools as the recipient school for the special education center, in the opinion of the court, is justified by its size and location and by the fact that to close any of the other schools would not be economical in terms of room usage or wise in view of possible future increases in student enrollment. Since the M-to-M students now attending Heritage will be able to transfer to Oak Grove or Hawthorne, along with their white classmates, and will have available to them essentially the same learning tools as they had at Heritage, the court concludes that the disruption in the program is not of legal significance. Accordingly, defendants' motion to change attendance zones is hereby GRANTED.

2. Also before the court are plaintiffs' and the Biracial Committee's contentions that the proposed construction of eight additional classrooms at the predominantly black (96%) Flat Shoals Elementary School will violate the court's June 12, 1969 order. That order states, "To the extent consistent with the proper operation of the system, the county board will, in locating and designating new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation." Plaintiffs argue that the Flat Shoals expansion is designed to contain the growing population of black students residing in the Flat Shoals district within that school zone and that such containment is contrary to the instructions of this court. Plaintiffs also allege that additional rooms are unnecessary at Flat Shoals inasmuch as three predominantly white schools located nearby have additional space.

Flat Shoals, which is located in the southern portion of DeKalb County, currently has twenty-seven regular classrooms and two mobile unit classrooms. Its enrollment is approximately 710 children, not including those enrolled in the special education and kindergarten programs.[4/] Defendants have testified that the eight-room addition, which will be in the form of two pods containing four classrooms each, is not intended to confine black students to a predominantly black school but, rather, is to provide the existing student body with a better environment for learning.[5/] Assistant Superintendent Joseph Renfroe testified for defendants as to the intended uses of the additional rooms. Two of the classrooms will replace the two mobile units presently operating at Flat Shoals. Another of the new rooms will be used for the kindergarten program which is being greatly expanded as the result of an increase in state funding. Three of the rooms will be used in connection with the county's special education program, another will be used as a reading and math lab and the final one will serve as a "multi-purpose" room. Defendants also note that the rooms will be fully air-conditioned and will have modern equipment and furnishings.

While the court recognizes the concerns expressed by plaintiffs and the Biracial Committee on this matter, it cannot conclude, on this set of facts, that defendants' plan to construct these additional classrooms at Flat Shoals violates the June 12, 1969 order. However, to insure that this expansion never serves to contain the black student population in the Flat Shoals school, the court DIRECTS that the additional rooms be used only for those

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[4/] Defendants were before this court in September, 1977, as a result of a drastic and unexpected increase in the student enrollment of Flat Shoals which created severe overcrowding at that facility. At that time the court approved the installation of two portable classrooms and a change of attendance zones which zoned approximately 130 students out of the Flat Shoals district.

[5/] Defendants also make much of the fact that these eight classrooms will not be used to bring any new students into Flat Shoals who do not now reside in that school zone. Clearly the court would not permit such a change.

purposes that were stated to the court. Since the court is aware of the difficulties in determining at this point the precise number of special education classrooms which will be needed at Flat Shoals, it will allow defendants a certain amount of leeway in the allocation of the use of rooms as between special education classes and special learning laboratories. In no instance, however, are any of the new rooms to be used to house, or to permit the housing of, additional sections of any grade level.[6/] The court will not condone additions to Flat Shoals which are designed, or will serve, to keep the growing black school population within the existing attendance zones. In the event the Flat Shoals enrollment continues to climb, and all indications are that it will, the court recommends that defendants seriously consider alternatives to further construction, such as alterations in attendance zones, and, possibly, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools. In considering additions to other predominantly black schools in the county, defendants are advised to keep this admonition in mind.

3. The next issue to be addressed is the Biracial Committee's request that the court establish certain guidelines delineating the authority of the Committee. Elaine Davis, testifying on behalf of the Committee, cited as points of contention between the parties the fact that defendants have failed to request the Committee's approval of their actions, failed to follow its (the Committee's) recommendations, and continued to refuse to provide it with pertinent information.

As the court explained at the hearing on this matter, the Biracial Committee has no authority to order defendants to take or to forbid them from pursuing any specific course of action.

6/ The three rooms being built to replace the mobile units and to house the kindergarten classes are, of course, excepted from this restriction.

Further, the court has no power to grant the Committee such authority. On the other hand, the Biracial Committee has complete authority to inquire into all matters involving the DeKalb County school system in which there are racial overtones. The Committee should investigate any problems it pinpoints, make recommendations to defendants, and seek relief in the court if it is not satisfied with defendants' response. The court INSTRUCTS defendants to furnish the Committee with whatever information it requests in connection with matters having racial overtones,[7/] and, to the extent that defendants assert that the order creating the Biracial Committee gave it authority to oversee only certain race-related matters, defendants are to consider that order modified. Finally, the parties are cautioned that the court does not want to be plagued with this problem any further.

4. The final issue before the court is intervenor's motion to cite defendants with contempt for their failure to provide transportation for her child pursuant to the M-to-M program. On November 3, 1976, this court entered an order which provided:

> (1) The M-to-M program [is to] be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools for transferees who shall be given priority for space over other new students .... (5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. (6) These changes in the M-to-M program shall be implemented for transfers beginning in the 1977-78 school term. Students wishing to participate in the program for the remainder of the '76-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Intervenor is a white resident and citizen of DeKalb County and the parent of a minor child presently enrolled as an M-to-M stu-

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[7/] Defendants are advised that the court will frown upon standard refusals to provide information on the ground that the question has no racial overtones.

dent at Meadowview Elementary School, a predominantly black school in the county school system. Because she lives more than one mile from Meadowview, intervenor has requested that defendants provide her child with transportation to school in accordance with the court's order.

Defendants refuse to provide such transportation, however, and contend that the issue before the court does not relate to their refusal to provide transportation under the M-to-M program but "to the question of whether Intervenor can use the M-to-M program as a guise for obtaining transportation not otherwise available ... under the special education program of the DeKalb County School System." Defendants assert that the child in question is a student in the General Learning Disability-Educable Program ("GLD-E") operated by DeKalb County, that she was enrolled in the GLD-E class at Flat Shoals Elementary School, and that when that class was transferred to Meadowview, she chose to remain with it, although transportation to Meadowview was not available for her under the special education program. After intervenor submitted applications to defendants for transportation to Meadowview under the special education and M-to-M programs, defendants advised her that transportation was not available to Meadowview but offered to transport the child to any of three other schools in the system. Two of these schools were predominantly black, which was one of the main reasons advanced by intervenor for enrolling her child at Meadowview under the M-to-M program. Intervenor has rejected this offer and continues to enroll her child in the Meadowview program. Defendants, therefore, argue that they have not violated the court's November 3, 1976 order regarding mandatory transportation for M-to-M students.

The court disagrees. The language of the order is quite clear--"Transportation shall be provided at the expense of the

school system to any M-to-M student who so requests and who lives more than one mile from the receiving school." Intervenor's child is an M-to-M student, enrolled at predominantly black Meadowview. She lives more than one mile from the school and she has requested that defendants provide her with transportation. Although this child may not have been one of the intended beneficiaries of that provision, she is clearly within the letter of the law, and, until such time as the order is modified,[8/] defendants must comply with its terms. In view of the particular facts before it, however, the court DIRECTS only that defendants compensate intervenor for the costs of her child's transportation after May 15, 1978. Intervenor's requests, presented at the hearing on this subject, for compensation for her past transportation charges and for actual transportation for her child are DENIED at this time. The court INSTRUCTS the parties to discuss this situation further to see if some agreement can be reached and to return to the court with this problem only if they are unable to resolve it after reasonable negotiations.

In sum, plaintiff's motion for supplemental relief is DENIED, and defendant's motion to allow a change of attendance zones is GRANTED. Intervenor's motion to hold defendants in contempt is DENIED, but defendants are DIRECTED to compensate intervenor for the costs of transporting her child to Meadowview after May 15, 1978.

So ORDERED, this 23rd day of May, 1978.

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NEWELL EDENFIELD
United States District Judge

[8/] The court's November 3, 1976 order provided: "Defendants may seek modification of [the provision requiring that they provide transportation] if, based on the number of students electing to exercise M-to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible." Defendants have not sought any modification of the transportation provision, however, and the court declines to alter or amend that order on its own motion.