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United States District Court,
M.D. Alabama,
Northern Division.

Anthony T. LEE, et al., Plaintiffs,
United States of America, Plaintiff–Intervenor and Amicus Curiae,
National Education Association, Inc., Plaintiff–Intervenor,
v.
AUTAUGA COUNTY BOARD OF EDUCATION, et al., Defendants.

Civil Action No. 2:70CV3098–T.
|
July 30, 2004.

Attorneys and Law Firms

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OPINION

MYRON H. THOMPSON, District Judge.

***1** The plaintiffs in this longstanding school desegregation case are a class of black students and their parents who, beginning in 1963, sought relief from race discrimination in the operation of a *de jure* segregated school system. The defendants are the Autauga County Board of Education, its members, the Autauga County School Superintendent, the Alabama State Board of Education, its members, the State Superintendent of Education, and the Governor of Alabama. The Autauga County Board of Education and its members and superintendent have moved for a declaration of partial unitary status on the outstanding issues of special programs, extracurricular activities, dropout intervention, majority-to-minority transfers, and student assignments. Based on the evidence presented, the court concludes that, with the exception of student assignments, the motion should be granted and federal oversight should be partially terminated. The student-assignment issue will be heard later, and the defendants have not moved for unitary status on the issues of faculty and staff and parity in curriculum.

I. BACKGROUND

A. Early Litigation

This case began in 1963 as part of a statewide action challenging the State of Alabama's operation of a racially segregated school system. The United States was added as plaintiff-intervenor and amicus curiae on July 3, 1963. *Lee v. Macon County Bd. of Educ.,* 267 F.Supp. 458, 460 (M.D.Ala.1967). In a hearing before a single judge, the Macon County Board was directed to begin immediately to desegregate its schools "without discrimination based

on race or color." *Lee v. Macon County Bd. of Educ.,* 221 F.Supp. 297, 300 (M.D.Ala.1963).

When actions by the State of Alabama prevented implementation of this order, the Macon County plaintiffs filed an amended and supplemental complaint in February 1964 alleging that the Alabama State Board of Education, its members, the State Superintendent, and the Governor as president of the state board, had asserted general control and supervision over all public schools in the State in order to maintain *de jure* segregated school systems. In joining the state officials as defendants, the court found that it was the policy of the State to promote and encourage a dual school system based on race. *Lee v. Macon County Bd. of Educ.,* 231 F.Supp. 743 (M.D.Ala.1964) (three-judge court) (per curiam). In subsequent orders, the *Lee* Court ordered the State Superintendent of Education to require school districts throughout the State, including Autauga County, to desegregate their schools. *Lee v. Macon County Bd. of Educ.,* 292 F.Supp. 363 (M.D.Ala.1968); *Lee v. Macon County Bd. of Educ.,* 267 F.Supp. 458 (M.D.Ala.1967) (three-judge court) (per curiam). On June 24, 1970, the three-judge court in *Lee* transferred jurisdiction over 35 school boards involved in the *Lee* litigation, including the Autauga County Board of Education, to the individual United States District Courts where the school district was located.

***2** On July 16, 1970, the court approved a desegregation plan for the Autauga County public school system. In addition to establishing four attendance zones for the County (discussed below), the plan contained the following components: faculty/staff desegregation, majority-to-minority student transfers, transportation, school construction and site selection, attendance outside system of residence, the implementation of services, facilities, activities and programs as set forth in the school board's plan, and periodic reporting.

In 1974, the school district sought approval for the construction of a new high school in the Prattville zone. The history of the Prattville High School construction issue is recorded in *Lee v. Autauga County Board of Education,* 514 F.2d 646 (5th Cir.1975). On October 23, 1975, a consent decree was entered that authorized construction of Prattville High School, directed the board to enhance desegregation by encouraging Autaugaville students to exercise their majority-to-minority transfer rights, required implementation of aggressive measures to encourage majority-to-minority transfers, required the establishment of procedures for Autaugaville students to select elective courses, and outlined procedures for construction of a vocational school.

B. The 1997 Consent Order

Little significant activity occurred in this case again until October 27, 1995, when the Autauga County Board of Education petitioned for a declaration of unitary status. An extended period of mediation and negotiations followed. This effort at negotiation resulted in the court's approval of a consent order on June 18, 1997.

In its June 1997 consent order, the court detailed those areas of operation in which the school district was unitary and those in which further remedial action was required. It has been long accepted that courts may grant partial or incremental dismissal of a school desegregation case before full compliance has been achieved in every area of school operations. *Lee v. Butler County Bd. of Educ.,* 183 F.Supp.2d 1359, 1362 (M.D.Ala.2002) (*citing Freeman v.. Pitts,* 503 U.S. 467, 490–91, —— S.Ct. ——, ——, 118 L.Ed.2d 108 (1992)). Under such circumstances, jurisdiction is retained over the remaining parts of a desegregation case. *Id.*

The 1997 consent order decreed that the Autauga County School System had achieved unitary status in the areas of transportation, physical facilities, discipline, and equity in salary supplements. Injunctions or portions thereof pertaining to these areas were dissolved, and these functions were appropriately returned to the control of the Autauga County Board of Education.

In addition, the consent order provided a roadmap for the school district's attainment of unitary status in the areas of faculty and staff (assignment, recruitment, hiring, and promotion), curriculum, extracurricular activities, student assignment, special programs, special education, drop-out intervention, advanced programs, majority-to-minority transfers, and student achievement. *See NAACP v. Duval County Sch. Bd.,* 273 F.3d 960, 963 (11th Cir.2001). Many of these areas fall under the so-called "*Green* factors," those areas of school operations traditionally considered indicia of a desegregated (or not) school system. *Green v. County Sch. Bd. of New Kent County, Virginia,* 391 U.S. 430, 435, 88 S.Ct. 1689, 20 L.Ed.2d

716 (1968). The consent order also addressed several issues that fall under the broader ambit of "quality of education" issues recognized in *Freeman.* 503 U.S. at 472.

***3** The Autauga County School System was required to file comprehensive annual reports with the court on its progress with respect to these outstanding areas, and the plaintiff parties were given the opportunity to advise the school board of any concerns about compliance with the terms of the consent order. The consent order further provided that the board may move for dismissal three years after approval of the order.

C. School District Profile

The 1970 desegregation order created four attendance zones: Autaugaville in the southwest quadrant of the county, Billingsley in the northwest quadrant, Marbury in the northeast quadrant, and Prattville in the southeast quadrant. The Autaugaville, Billingsley, and Marbury quadrants were, and generally remain, rural areas, while the Prattville zone contains the City of Prattville, a growing suburb of the City of Montgomery, Alabama. Among the four attendance zones, Autaugaville is and has been the only predominantly African–American zone. The other zones are predominantly white.

At the time of the 1997 consent order, the school district comprised ten schools: Six in the Prattville zone, two in the Autaugaville zone, and one each in the Billingsley and Marbury zones. The system enrolled approximately 8,050 students, 26% of whom were African–American. However, 99% of the students enrolled in the two Autaugaville schools were African–American.

Currently, the school system operates eleven schools (and a small alternative school): Seven schools in the Prattville zone, a K–12 school in the Autaugaville zone, a K–12 school in the Billingsley zone, and an elementary school and high school in the Marbury zone. The system enrolls approximately 8,800 students, 23% of whom are African–American. Ninety-eight percent of the student population enrolled at the Autaugaville School is African–American.

On April 12, 1999, the school board filed a petition for approval to transfer all Autaugaville students in grades nine through twelve to Prattville and Billingsley high schools and to maintain a K–8 school in Autaugaville. The United States did not object to the plan based on its conclusion that the change would further desegregation. Private plaintiffs did object on the basis that the change would force African–American students to bear a substantially heavier burden than other students in the school system's desegregation effort. On June 29, 1999, this court ruled for the private plaintiffs and denied the board's petition to transfer students in the high school grades out of the Autaugaville zone. *Lee v. Autauga County Bd. of Educ.,* 59 F.Supp.2d 1199, 1209–10 (M.D.Ala.1999).

D. State-wide Issues

For many years, the cases that were once consolidated as *Lee* were litigated separately by school district and without participation by the state defendants, namely the Alabama State Board of Education, the board members, the State Superintendent of Education, and the Governor of Alabama. Eventually, the issue arose as to whether the state defendants were even parties in the separate offshoots of the *Lee* case. Following previous rulings, this court affirmed that, despite the lack of participation by the state defendants since the individual district cases were transferred, the state defendants continued as parties in the state-wide litigation as well as in each of the derivative cases. *Lee v. Lee County Bd. of Educ.,* 963 F.Supp. 1122, 1124, 1130 (M.D.Ala.1997).

***4** The parties ultimately identified two issues remaining in the state-wide litigation: "Special education" and "facilities." Importantly for this decision, the state-wide issues involving special education were resolved and, on August 30, 2000, orders adopting the consent decrees were entered in the eleven *Lee* cases, including this one. Negotiations on the state-wide issues involving facilities are still pending, although the Autauga County School System was specifically determined to be unitary in this factor in the 1997 consent order.

E. 2002 Motion for a Declaration of Unitary Status

On September 30, 2002, the Autauga County Board of

Education filed a motion for a declaration of unitary status. Following a status conference with the parties, the court denied the board's motion on October 30, 2002. The court ordered the parties to exchange information and thereafter confer on a schedule to determine:

> "(a) Whether, in any of the areas set forth in *Green v. School Board of New Kent County,* 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), the defendants have achieved unitary status and, if so, whether the court may relinquish jurisdiction as to these areas. *Freeman v. Pitts,* 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992)....
>
> "(b) Whether there are *Green* or other areas as to which the plaintiff parties claim that the defendants have not eliminated the vestiges of prior de jure segregation.
>
> "(c) Whether the parties can amicably develop a procedure through which the school system can achieve unitary status."

As a result of this process, the parties identified several areas, including dropout intervention, and majority-to-minority transfers, in which they agreed that the actions taken by the Autauga County School Board were in compliance with the 1997 consent decree and justified termination of federal supervision over those factors. After review of additional information, the plaintiff parties later agreed that the school board had also satisfied the requirements of the consent order with respect to special programs, and withdrew their opposition to a declaration of unitary status on this issue.

This court then ordered the parties to engage in mediation before a magistrate judge on the remaining issues. As a result of mediation, the school board agreed to conduct a student survey regarding extracurricular activities. Following review of the survey results, the plaintiff parties withdrew their opposition to a declaration of unitary status on extracurricular activities.

Subsequently, the Autauga County School Board, its members, and superintendent filed a motion for declaration of partial unitary status and termination of the litigation on the issues of special programs, extracurricular activities, dropout intervention, majority-to-minority transfers, and student assignments. The issues on which the board does not move, and which will remain in this case, are faculty and staff and parity in curriculum. The court set the motion for a fairness hearing on all issues to which all sides agreed (that is, all issues except student assignments), and the court required the school board to give all plaintiff class members appropriate notice of the motion as well as procedures for lodging objections. Because the student-assignment issue is contested, it will be heard later.

***5** After the court approved the notice form, the Autauga County Board of Education arranged to have published, in the local newspaper over a three-week time period, notice of the proposed termination of judicial oversight over these issues and the date of the fairness hearing; the notice also provided procedures for class members and interested persons to file comments and objections with the court regarding the proposed declaration of unitary status on the relevant issues. Forms for objections and comments were made available in numerous public locations. In addition to the published notice, copies of the school board's motion for partial unitary status and the board's annual reports were made available at the school board office. Notice forms along with forms for objections and comments were sent home with every student enrolled in the Autauga County School System. One objection was filed concerning the majority-to-minority transfer program. On July 14, 2004, the court held a fairness hearing on the motion for declaration of partial unitary status.

The court concludes that the Autauga County Board of Education complied with the directives of the court in providing adequate notice of the proposed partial dismissal to class members as well as to the community. Fed.R.Civ.P. 23(e).

II. DISCUSSION

A. Legal Standard

The goal of a school desegregation case is to convert promptly from a *de jure* segregated school system to a system without "white" schools or "black" schools, but just schools. *Green v. County School Bd. Of New Kent,* 391 U.S. 430, 442, 88 S.Ct. 1689, 1696, 20 L.Ed.2d 716 (1968). The success of this effort results in the ultimate

goal of returning control of the school system to the local school board since "local autonomy of school districts is a vital national tradition." *Freeman v. Pitts,* 503 U.S. 467, 490, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992) (quoting *Dayton Bd. of Educ. v. Brinkman,* 433 U.S. 406, 410, 97 S.Ct. 2766, 2770, 53 L.Ed.2d 851 (1977)). Returning schools to the control of local authorities "at the earliest practicable date is essential to restore their true accountability in our governmental system." *Id.*

The question of whether a school district operating under an order to dismantle a *de jure* segregated school system should be declared unitary must be answered by determining (1) whether the school district has fully and satisfactorily complied with the court's decrees for a reasonable period of time, (2) whether the vestiges of the prior *de jure* segregation have been eliminated to the extent practicable, and (3) whether the district has demonstrated a good-faith commitment to the whole of the court's decrees and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first place. *Missouri v. Jenkins,* 515 U.S. 70, 87–89, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995). The good-faith component has two parts. A school district must show not only past good-faith compliance, but also a good-faith commitment to the future operation of the school system through "specific policies, decisions, and courses of action that extend into the future." *Dowell v. Bd. of Educ. of the Oklahoma City Public Schools,* 8 F.3d 1501, 1513 (10th Cir.1993) (citations omitted). Importantly, "[t]he measure of a desegregation plan is its effectiveness." *Davis v. Bd. of Sch. Comm'rs,* 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971). Furthermore, "[a] federal court in a school desegregation case has the discretion to order an incremental or partial withdrawal of its supervision and control," while retaining jurisdiction over those factors in which the school system is not unitary. *Freeman v. Pitts,* 503 U.S. 467, 488, 112 S.Ct. 1430, 1444–45, 118 L.Ed.2d 108 (1992).

***6** In addition, the Autauga County Board of Education was required to comply with the contractual obligations of the 1997 consent order, which articulated detailed and specific steps the board was to take to achieve unitary status. *NAACP, Jacksonville Branch v. Duval County Schools,* 273 F.3d 960 (11th Cir.2001). In the 1997 consent order, the parties agreed that the board would analyze and review programs and practices in a number of areas which required further actions. The board was to formulate and adopt procedures and practices designed specifically to address ongoing concerns with, among other things, special programs, extracurricular activities, dropout intervention, special education, and majority-to-minority transfers. The board was thus required to take specific actions to address concerns the parties contended were vestiges of the prior dual system, to ensure that the district was being operated in a nondiscriminatory manner.

B. Terms of the 1997 Consent Order and Compliance Efforts

1. *Special Programs:* The Autauga County Board of Education was required to make every reasonable effort to ensure that any existing special programs, such as gifted and talented, college preparatory, and advanced placement programs, were conducted on a non-discriminatory basis. Since implementation of the consent order, the district has utilized an array of approaches to ensure that students and parents of all races, especially African–American students and parents, were made aware of the special programs offered by the school district. Teachers and guidance counselors attended workshops on identifying and recruiting students, particularly minority students, for special programs, and the board annually notified community organizations, such as local churches, of the availability and benefits of special programs. Enrollment of minority students in advanced courses and other special programmatic offerings has steadily increased as a result.

2. *Extracurricular Activities:* The board was required to take all reasonable steps to ensure an equal opportunity for students of all races to participate in extracurricular activities. These steps were to include increased advertisement of extracurricular opportunities, recruitment of black faculty members to serve as activity sponsors, and a survey to identify any existing systemic barriers to the participation of minority students in extracurricular activities. The school board has instructed all sponsors and coaches of extracurricular activities to encourage participation by all students in extracurricular activities; activity advertisement has improved; sponsorship by black faculty members of clubs and activities has increased; and the board has taken steps to provide financial support to students who might otherwise be unable to participate in extracurricular activities. The

various schools conducted an annual survey of club sponsors to assess systemic barriers to participation by minority students, and the school board recently conducted a survey of all high school students in the district in an effort to identify any barriers to minority participation. The survey did not reveal any systemic barriers to minority participation, and participation in virtually all extracurricular activities by minority students has been strong. System-wide, nearly 25% of the students participating in extracurricular activities are African–American.

***7** 3. *Dropout intervention:* The consent order required the school board to take a number of steps aimed at reducing to the absolute minimum the number of student dropouts, regardless of race. The board was ordered to identify at-risk students, provide counseling and follow-up for at-risk students, and monitor its results. The board has instituted a number of programs for identifying at-risk students, utilizes its alternative school for, among other purposes, intervening with the at-risk population, counsels at-risk students, advises parents of at-risk students, and monitors student dropout rates. As a result of these efforts, dropout rates among students of all races have been lowered to less than 4% of the student population.

4. *Special Education:* As noted above, the state-wide issues involving special education were resolved by an August 2000 consent decree. *See Lee v. Butler County Bd. of Ed.,* 2000 WL 33680483 (M.D.Ala.2000). According to the terms of that decree, any claims in the area of special education would be raised with the state defendants. The decree provided that the issue of special education should not prevent an individual school system from attaining unitary status. Even if any such claim involving the Autauga County School System were pending, it could not prevent a declaration of unitary status since the matter would be addressed with the state defendants as part of the commitments made under the state-wide decree.

5. *Majority-to-minority transfers:* The school board was ordered to revise its majority-to-minority transfer program to improve advertisement of the program and provide transportation for interested students. The number of students exercising their "m-to-m" transfer rights has steadily increased since the consent order was issued. During the 2003–04 school year, 92 African–American students zoned for the Autaugaville school opted to exercise their m-to-m transfer rights to attend school in the Prattville or Billingsley zones, up from approximately 75 students the previous year.

C. July 14, 2004, Fairness Hearing

Following the Autauga County Board of Education's motion for a declaration of partial unitary status, the court required publication and notice of the proposed order, scheduled a fairness hearing, and established procedures for filing comments and objections. One objection was filed with the court, in which a white parent living in the Autaugaville zone voiced her displeasure with the majority-to-minority transfer program.

The court conducted a fairness hearing on July 14, 2004, and heard testimony and received evidence offered by the Autauga County Board of Education in support of the motion for partial unitary status. The Superintendent of Education for the Autauga County School System testified concerning the school board's affirmative efforts to comply with those parts of the consent order at issue, and the board's resolution to remain in compliance with the directives of the consent order in the future.

III. CONCLUSION

***8** On the basis of the record evidence, witness testimony, and averments of counsel, the court finds that the Autauga County Board of Education and its members and superintendent have met the standards entitling the school district to a declaration of unitary status on the outstanding issues of special programs, extracurricular activities, dropout intervention, and majority-to-minority transfers. The board has fully and satisfactorily complied with the orders of this court addressing special programs, extracurricular activities, dropout intervention, and majority-to-minority transfers. Those vestiges of the prior *de jure* segregated school system relating to those issues have been eliminated to the extent practicable. The court also finds that the board and its members and superintendent have demonstrated a good-faith commitment to the whole of the court's decrees and to

those provisions of the law and the Constitution that were the predicate for judicial intervention in this school system in the first instance. The court finds that the board and its members and superintendent have demonstrated their good-faith commitment through their compliance with the court's orders over the years, through their good-faith implementation of their contractual obligations under the 1997 consent order, and through their adoption of specific policies and actions that extend into the future demonstrating their commitment to the operation of a school system in compliance with the Constitution.

With respect to those factors at issue today, the plaintiff parties have succeeded in the task they began decades ago to seek the end of the seemingly immovable *de jure* system of school segregation in Autauga County. This lawsuit sought to bring the district into compliance with the constitutional requirement of equal protection under the law, and the court states today that, in the areas of special programs, extracurricular activities, dropout intervention, and majority-to-minority transfers, they have succeeded. *NAACP, Jacksonville Branch v. Duval County Schools,* 273 F.3d 960, 976 (11th Cir.2001). By its actions today, the court recognizes and congratulates the sustained efforts of the parties. In so doing, the court notes, as the Eleventh Circuit stated in *Duval County Schools,* that "[t]he Board, and the people of [Autauga County] who, in the end, govern their school system, must be aware that the door through which they leave the courthouse is not locked behind them. They will undoubtedly find that this is so if they fail to maintain the unitary system [the court] conclude[s] exists today." *Id.* at 976–77.

Therefore, with the judgment the court enters today, control over the Autauga County School System in the areas of special programs, extracurricular activities, dropout intervention, and majority-to-minority transfers is properly returned to the Autauga County Board of Education and its members and superintendent. The motion for declaration of partial unitary status and termination of this litigation filed by the board and its members and superintendent will be granted as to these areas; all outstanding orders and injunctions with respect to these areas will be dissolved; and this litigation dismissed as to the board and its members and superintendent as to these areas. However, this litigation is not terminated and control is not returned to the Autauga County Board of Education as to faculty and staff, parity in curriculum, and student assignments. In addition, the state defendants are not dismissed, and the orders dealing with the state-wide "special education" and "facilities" issues are not dissolved.

JUDGMENT

***9** In accordance with the memorandum opinion entered this day, it is the ORDER, JUDGMENT, and DECREE of the court as follows:

(1) The motion for declaration of partial unitary status and termination of this litigation, filed by defendants Autauga County Board of Education, its members, and the Superintendent of Education on May 18, 2004 (doc. no. 230), is granted as to all remaining local issues except faculty and staff, parity in curriculum, and student assignments.

(2) The Autauga County School System is DECLARED to be unitary in the areas of special programs, extracurricular activities, dropout intervention, and majority-to-minority transfers.

(3) All outstanding orders and injunctions with respect to these issues are dissolved as to defendants Autauga County Board of Education, its members, and the Superintendent of Education.

It is further ORDERED that the state defendants (the Alabama State Board of Education, its members, the State Superintendent of Education, and the Governor of Alabama) are not dismissed and that the orders dealing with the state-wide "special education" and "facilities" issues are not dissolved.

The clerk of the court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

All Citations

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