

2002 WL 237091

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

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

No. Civ.A.70–T–851–E.

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Feb. 14, 2002.

AL, Kenneth Mines, John R. Moore, Pauline A. Miller, Kathryn Woodruff, Kathleen S. Devine, Jeanette Lim, U.S. Department of Justice, Civil Rights Division Educational Opportunities Section, Kenneth D. Johnson, U.S. Department of Justice, Educational Opportunities, Litigation Section, Washington, DC, for Plaintiff–Intervenor.

Arnold W. Umbach, Jr., Walker, Hill, Adams, Umbach, Meadows & Walton, Opelika, AL, Anita L. Kelly, Department of Education Office of General Counsel, Michael R. White, State Department of Education Office of General Counsel, Edward A. Hosp, Office of the Governor, Montgomery, AL, for Defendants.

Jeremiah Glassman, La Vern M. Younger, John R. Moore, U.S. Department of Justice, Civil Rights Division, Educational Opportunities, Washington, DC, for Amicus.

Synopsis

School defendants moved for declaration of unitary status and termination of school desegregation case. The District Court, Myron H. Thompson, J., held that vestiges of the prior *de jure* segregated school system had been eliminated to the extent practicable, and school board and its members and superintendent 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 school system in the first instance, through their compliance with the court's orders over the years, through their good-faith implementation of their contractual obligations under the 1998 consent decree, and through their adoption of specific policies and actions that extended into the future demonstrating their commitment to the operation of a school system in compliance with the Constitution.

Motion granted.

Attorneys and Law Firms

Gloria J. Browne–Marshall, Dennis D. Parker, New York City, Fred Gray Jr., Ernestine S. Sapp, Fred D. Gray, Sr., Gray, Langford, Sapp, McGowan, Gray & Nathanson, Tuskegee, AL, for Plaintiffs.

Kenneth E. Vines, U.S. Attorney's Office, Montgomery,

OPINION

MYRON H. THOMPSON, District Judge.

*1 This case has a long history. Suit was originally filed in 1963 by the plaintiffs, a class of black students, to obtain relief from race discrimination in the operation of a *de jure* segregated school system. The defendants are the Auburn City Board of Education, its members, and the Auburn City Superintendent of Education, as well as the Alabama State Board of Education, the State Superintendent of Education, and the Governor of Alabama. The Auburn City Board of Education and its members and superintendent filed motions for declaration of unitary status and termination of this litigation. Based on the evidence presented, the court concludes that the motions should be granted and this litigation terminated as to the Auburn City Board of Education and its members and superintendent.

I. BACKGROUND

A. Early Litigation

This case began in 1963 when several black students and their parents sued the Macon County Board of Education and its superintendent seeking relief from the continued operation of a racially segregated school system. On July 3, 1963, the United States was added as plaintiff-intervenor and amicus curiae in order that the public interest in the administration of justice would be represented. *Lee v. Macon County Bd. of Educ.*, 267 F.Supp. 458, 460 (M.D.Ala.1967). In a hearing before a single-judge court, the Macon County Board was enjoined to make an immediate start 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).

After actions by the State of Alabama to prevent 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 a *de jure* segregated school system. The court found that it was the policy of the State to promote and encourage a dual school system based on race, and the state officials were made defendants. *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 Auburn’s, 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).

A desegregation plan for the Auburn City School District was ordered on February 12, 1970. The district filed two plans, and the earlier plan was accepted with certain court modifications on April 15, 1970. On June 24, 1970, the three-judge court in *Lee* transferred the jurisdiction over 35 school boards involved in the *Lee* litigation, including the Auburn City Board of Education, to a single district judge of the United States District Court for the Middle District of Alabama, where the school boards were located.

*2 On September 7, 1977, on motion of the United States, the Auburn City litigation was consolidated with parallel desegregation litigation in the Opelika City and Lee County School Systems to address the issue of racial isolation in the Loachapoka (Lee County) area, which had contained the historically black high school for all three school systems. By order of August 15, 1978, the court denied the United States’ motion to modify its prior orders to require Auburn and Opelika to share liability with Lee County for Loachapoka’s isolation; the court’s order was affirmed by the Court of Appeals for the Eleventh Circuit on May 8, 1981.

The court approved a number of modifications to Auburn’s desegregation plan in the 1980’s concerning revision of student attendance zones, school closure, and elementary grade reconfiguration. During September 1997, the parties offered no objections to the district’s plan to construct two new elementary schools, one each in the north and south parts of the district.

B. School District Profile

The Auburn City School System operates nine schools, one kindergarten center, five primary schools (1–5), two middle schools (6–8), and one high school (9–12). At the time of the entry of the 1998 consent decree (described below), the district enrolled approximately 4,130 students, 1,362 (33%) black and 2,768 (67%) white. Currently, the district enrolls 4,418 students, 1,451 (33%) black, 2,720 (67%) white, and 247(6%) other. During 1997–1998 the district employed 336 faculty, 44(13%) black and 292(87%) white. Currently, the district employs 338 faculty, 44(13%) black and 293(87%) white.

C. The 1998 Consent Decree

On February 12, 1997, this court entered an order affecting eleven school systems, stating that the court was “of the opinion that the parties should now move toward ‘unitary status’ ... and for the termination of the litigation [for the school systems] in these cases.” The court ordered the parties to confer to determine:

“(a) Whether, in any of the areas set forth in *Green v. County School Board of New Kent*, 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) [These areas are: student attendance patterns, faculty, staff, transportation, extracurricular activities and facilities (footnote omitted)].

“(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.”

This court thus set in motion a lengthy and deliberative process of reviewing each of the school systems, including Auburn’s. The parties in all eleven cases agreed upon the format and scope of informal discovery. The court designated a magistrate judge to oversee discovery and to mediate any disputes that arose during the course of negotiations. The parties in this case conducted lengthy informal discovery to obtain information about the school system, including touring the district’s facilities. The plaintiff parties identified those issues for which satisfactory compliance had been attained as well as those areas for which the plaintiff parties identified as needing further attention.

*3 On July 22, 1998, the court approved a consent decree identifying areas of operations in which the Auburn City School System was partially unitary and those in which further remedial action was necessary. Courts may allow partial or incremental dismissal of a school desegregation case before full compliance has been achieved in every area of school operations; jurisdiction is retained over the remaining parts of a desegregation case. *Freeman v. Pitts*, 503 U.S. 467, 490–91, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992). The Auburn City School System was found to have achieved unitary status in the areas of student assignment to schools and transportation. Injunctions or portions thereof pertaining to these areas were dissolved, and these functions were appropriately returned to the control of the local governing body, the Auburn City Board of Education.

The parties agreed that in order for the Auburn City School System to attain unitary status in the remaining areas, the school board would develop policies and procedures in the areas of: faculty hiring and assignment; student assignment and instruction within schools,

including participation in special programs; special education; extracurricular activities; student discipline; proposed new facilities; and drop-out intervention. The 1998 decree sets forth in detail the areas to be addressed and the actions to be undertaken. In other words, the decree represented “a roadmap to the end of judicial supervision” of the Auburn City School System. *NAACP v. Duval County Sch.*, 273 F.3d 960, 963 (11th Cir.2001). Many of the areas addressed fall under the *Green* factors, the areas of school operation which are traditionally held as indicators of a desegregated (or not) school system. *Green v. County School Board of New Kent*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968) (the indicator areas of school operation are: student assignment, faculty and staff, transportation, facilities and extracurricular activities.) The parties also addressed what have become known as quality-education issues that more closely relate to a student’s day-to-day experiences within a school. *Freeman v. Pitts*, 503 U.S. 467, 472, 112 S.Ct. 1430, 1437, 118 L.Ed.2d 108 (1992).

The Auburn City School System was required to file a comprehensive report with the court each year, and the plaintiff parties had the opportunity to advise the school system of any concerns about compliance with the terms of the 1998 consent decree. Concerns raised by the plaintiff parties were noted in annual progress reports. These were discussed at status conferences held on April 12, 2000, and April 12 and August 21, 2001. The school board addressed these concerns through continued review and modification of its programs. As noted below, progress was made in many areas. The 1998 consent decree provided that the board could file for dismissal of the case three years after approval of the decree and after filing the third annual report.

D. State-wide Issues

*4 Over the course of years, as litigation affecting the individual school districts was dealt with by the courts as separate matters, the state defendants (that is, the Alabama State Board of Education, the board members, the State Superintendent of Education, and the Governor of Alabama) did not participate in the *Lee* litigation. The question arose as to whether the state defendants were even parties in the local off-shoots of the *Lee* cases. Previous rulings, particularly *Lee v. Macon County Bd. of Educ.*, 267 F.Supp. 458 (M.D.Ala.1967) (three-judge court) (per curiam), *aff’d sub nom. Wallace v. United*

States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422 (1967), held that the state defendants were responsible for the creation and maintenance of segregated public education in the State of Alabama. The court found that state officials had “engaged in a wide range of activities to maintain segregated public education ... [which] controlled virtually every aspect of public education in the state.” *Lee*, 267 F.Supp. at 478. This court subsequently affirmed that, despite cessation of participation by the state defendants when the individual district cases were transferred, the state defendants continue as parties in not only the state-wide litigation, but in all the off-shoot cases. *Lee v. Lee County Bd. of Educ.*, 963 F.Supp. 1122, 1124, 1130 (M.D.Ala.1997).

The parties identified two issues remaining in the state-wide litigation, “special education” and “facilities.” The state-wide issues involving special education were resolved and orders adopting the consent decrees were entered on August 30, 2000, in the eleven *Lee* cases, including this one. See *Lee v. Butler County Bd. of Educ.*, 2000 WL 33680483 (M.D.Ala.2000). Negotiations on the state-wide issues involving facilities are still pending.

E. Motions for Declaration of Unitary Status

During the August 22, 2001, status conference, the parties agreed that the actions taken by the Auburn City School System over the previous three years were in compliance with the 1998 consent decree and justified termination of the case. In particular, during the course of implementing the decree, the district had developed plans of action addressing each of the areas of continued concern raised by the plaintiff parties, and these plans were adopted by the school board as district policies and procedures. On September 11, 2001, the Auburn City Board of Education and its members and superintendent filed a motion for declaration of unitary status and termination of the litigation. On September 28, 2001, they filed a supplemental motion for unitary status. The court set the motions for a fairness hearing and required the school board to give all plaintiff class members appropriate notice of the motions as well as procedures for lodging objections.

After the court approved the notice form, the Auburn City Board of Education published, in the local newspaper over a three-week time period, notice of the proposed termination of this litigation 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 dismissal. Forms for objections and comments were made available in numerous public locations. In addition to the published notice, copies of the termination motions, the future action plans, and the three annual reports were made available at the local school board offices. Notice forms along with forms for objections and comments were sent home with every student enrolled in the Auburn City School System. No objections were filed with the court opposing dismissal of the case. On November 27, 2001, the court held a fairness hearing on the motions for declaration of unitary status.

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

II. DISCUSSION

A. Standards for Termination of a School Desegregation Case

It has long been recognized that 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 leads to the goal of ultimately returning control 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 Education 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 ultimate inquiry concerning whether a school district operating under a school desegregation order to dismantle a *de jure* segregated school system should be declared

unitary is whether the school district has complied in good faith with the desegregation decree, and whether the vestiges of prior *de jure* segregation have been eliminated to the extent practicable. *NAACP, Jacksonville Branch v. Duval County Sch.*, 273 F.3d 960, 966 (11th Cir.2001) (citing *Missouri v. Jenkins*, 515 U.S. 70, 88, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995), and quoting *Freeman v. Pitts*, 503 U.S. 467, 492, 112 S.Ct. 1430, 1446, 118 L.Ed.2d 108 (1992)); see also *Manning v. Sch. Bd. of Hillsborough County*, 244 F.3d 927, 942 (11th Cir.2001), *cert. denied*, 534 U.S. 824, 122 S.Ct. 61, 151 L.Ed.2d 28 (2001); *Lockett v. Bd. of Educ. of Muscogee County*, 111 F.3d 839, 843 (11th Cir.1997).

In addition to these articulated constitutional standards, here the Auburn City Board of Education was also required to comply with the contractual requirements of the 1998 consent decree which set forth the steps the board was to take to attain unitary status. *NAACP, Jacksonville Branch v. Duval County School*, 273 F.3d 960 (11th Cir.2001). The parties agreed that the board would analyze and review programs and practices in each of the areas in which further actions were required, that is, faculty hiring and assignment; student assignment and instruction within schools, including participation in special programs; special education; extracurricular activities; student discipline; drop-out intervention; and proposed new facilities. The board was to formulate and adopt procedures and practices designed specifically to address each of these areas. The board was thus required to take specific actions to address concerns the parties argued were vestiges of the prior dual system, to ensure that the district was being operated on a nondiscriminatory basis.

*6 The legal standards for dismissal of a school desegregation case were set forth in the 1998 consent decree as: (1) whether the district has fully and satisfactorily complied with the court's decrees for a reasonable period of time, (2) whether the vestiges of past discrimination 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. *Missouri v. Jenkins*, 515 U.S. 70, 87–89, 115 S.Ct. 2038, 2049, 132 L.Ed.2d 63 (1995). By emphasizing that the good-faith component has two parts (that is, that a school district must show not only past good-faith compliance, but a good-faith commitment to the future operation of the school system), the parties looked both to past compliance efforts and to 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). Regardless, “[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).

B. Terms of the 1998 Consent Decree and Compliance Efforts

1. *Faculty and Administrator Hiring and Assignment:* The Auburn City Board of Education was required to increase the number of black applicants in the pool from which it selects its teachers and administrators to fill administrative and faculty vacancies, and to develop policies and procedures to ensure that faculty and staff were assigned to schools across the district so that no school would be identified as a white or black school by the race of the school's faculty. *Singleton v. Jackson Municipal Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir.1969).^{*} The district has expended considerable effort to recruit and employ minorities. The Auburn City School System revised its screening procedure for teacher applicants, developed a reminder system for applicants whose files are incomplete, expanded its recruitment strategies to include statewide advertising and advertising in newspapers with predominantly black readership, and developed diversity training activities. The district hired a minority personnel coordinator to assist in attracting and recruiting minority faculty. Although there has been an increase in the number of black faculty employed by the district, the overall percentage of faculty remained the same. Data for the years 1996–1997, 1999, and 2000–2001 are as follows:

2. *Student Assignment and Instruction:* The consent decree required the board to address several areas involving student participation, particularly by black students, in special programs such as college preparatory and advanced placement classes; certain extracurricular activities; student discipline; and special education. To ensure that such special programs were operated on a nondiscriminatory basis, the board was required to formulate and adopt a range of procedures to provide notice to parents and students; recruit black students to

participate in such programs and recruit black faculty members to teach special courses or sponsor extracurricular activities; review discipline procedures; and provide training for teachers and guidance counselors. Previously, few minority students were enrolled in advanced course offerings; consequently, very few minority students graduated with advanced diplomas. The school system has worked with the black community and black churches to recruit black students for high-level

programs and activities. Black student enrollment in advanced placement and in international baccalaureate program classes has increased during the years. Data for years 1999 and 2000 are as follows:

Advanced Placement

Year	Total	Black	White	Asian	% Black	% White	% Asian
1999	134	13	112	9	10%	83%	7%
(10–12)							
2000	422	40	349	33	9%	83%	8%
(9–12)							

International Baccalaureate

Year	Total	Black	White	Asian	% Black	% White	% Asian
1999	35	7	24	4	20%	68%	11%
(11–12)							
2000	278	26	229	23	9%	82%	8%
(9–12)							

*7 3. *Extracurricular Activities:* The board was required to take all reasonable steps to ensure an equal opportunity for all students to participate in extracurricular activities, including providing notice about activities to students and parents, recruiting black faculty members to be sponsors, and monitoring the participation of black students in extracurricular activities. The district developed a plan for encouraging minority participation in special programs and extracurricular activities (golf, tennis, soccer, cheerleading, wrestling and volleyball) including developing a comprehensive extracurricular activities survey at the high school level. Among the district's extracurricular initiatives were diversity and sensitivity training, the establishment of a First Generation College Club, and enrichment activities that encourage black students to take part in school activities.

4. *Student Discipline:* The district has undertaken efforts to address disparities in the area of student discipline. The board developed a data base to track discipline referrals and disciplinary actions. Other measures by the district included a diversity/cultural training of the staff,

workshops on classroom management for new teachers, and a nine-week disciplinary referral review process with teachers at Auburn High School. A consultant recommended by the Southeastern Equity Center provided assistance to the district by conducting focus groups with principals and teachers to ensure that students have equal access to educational opportunities and to reduce disparities that exist in student suspension, drop-out rates, and discipline rates. Moreover, the district implemented a discipline plan for the year 2001–2002 which seeks to reduce the disproportionate number of discipline referrals of black students. Noteworthy is the district's identification of at-risk students and its strategies to prevent students from dropping out of school. Some of the strategies include providing counseling and graduation exam preparation classes, ACT/SAT preparation classes, and implementation of ACCEPT, a program which provides support to pregnant teens. Data for suspensions from the years 1999 through 2001 are as follows:

Suspensions

Year	Total	Black	White	% Black	% White
1999	89	77	9	87%	10%
2000–2001	287	95	166	33%	58%

5. *Special Education and Facilities:* As stated, the state-wide issues involving special education were resolved by a consent decree entered on August 30, 2000. *See Lee v. Butler County Bd. of Ed.*, 2000 WL 33680483 (M.D.Ala.2000). According to the terms of this state-wide decree, any claims in the area of special education would be raised with the state defendants. Even if any such claim involving the Auburn City 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 2000 state-wide decree.

*8 6. *Monitoring:* The board was required to file annual reports describing its efforts to implement the provisions of the 1998 consent decree. The Auburn City Board of Education filed three annual reports. Each report detailed the school district's accomplishments during the preceding school year. These reports were reviewed and monitored by the parties. The plaintiff parties were given the opportunity to advise the board of any continued concerns about these efforts. A progress report was filed by the United States outlining the positions of the parties for discussion at the annual status conference.

7. *Future Action:* The Auburn City Board of Education understands that the declaration of unitary status does not relieve it of its responsibility to its faculty, its staff, its students, and the community which it serves. To this end, the board plans to adopt a resolution committing to the continuation of the district's compliance with the obligations necessary to maintain a unitary system of public education.

C. November 27, 2001, Fairness Hearing

After the Auburn City Board of Education and its members and superintendent filed their motions for declaration of unitary status and termination of this litigation, the court required publication and notice of the proposed dismissal, scheduled a fairness hearing, and established procedures for filing comments and objections. No objections were filed with the court.

The court conducted a fairness hearing on November 27, 2001, and heard testimony and received evidence offered by the Auburn City Board of Education in support of the motions for unitary status and termination. Dr. Terry Jenkins, Superintendent of Education for the Auburn City School System, testified concerning the school board's affirmative efforts to comply with the consent decree. Such efforts include enhanced recruitment strategies implemented to recruit and hire African-American faculty, increased African-American student participation in extracurricular activities and academic courses, and coordinating with a consultant from the Southeastern Equity Center to provide assistance in eliminating the disparities in discipline referrals and suspension rates. Rev. Clifford Jones, President of the Auburn City Board of Education, testified that the board is committed to continuing the strategies currently operational and that each year the board will pass a resolution committing the district to its good-faith efforts for unitary status.

III. CONCLUSION

On the basis of the record evidence, witness testimony, and averment of counsel, the court finds that the Auburn City Board of Education and its members and superintendent have met the standards entitling the school district to a declaration of unitary status and termination of this litigation. They have fully and satisfactorily complied with the orders of this court. The vestiges of the prior *de jure* segregated school system have been eliminated to the extent practicable. The court also finds that the school 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, through their compliance with the court's orders over the years, through their good-faith implementation of their contractual obligations under the 1998 consent decree, 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.

*9 The plaintiff parties have succeeded in the task they began decades ago to seek the end of the seemingly immovable *de jure* system of segregation in the Auburn City School System. This lawsuit sought to bring the school district into compliance with the constitutional requirement of equal protection under the law, and the court states today that they have succeeded. *NAACP, Jacksonville Branch v. Duval County School*, 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 School*, that “[t]he Board, and the people of [Auburn] 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 will enter today, control over the Auburn City School System is properly returned to the Auburn City Board of Education and its members and superintendent. The motions for declaration of unitary status and termination of this litigation filed by the board and its members and superintendent will be granted, all outstanding orders and injunctions will be

dissolved, and this litigation dismissed as to the board and its members and superintendent. However, the state defendants are not dismissed, and the orders dealing with the state-wide “special education” and “facilities” issues are not dissolved.

JUDGMENT

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 unitary status and termination of this litigation and the supplemental motion for declaration of unitary status, filed by defendants Auburn City Board of Education, its members, and the Superintendent of Education on September 11 and 28, 2001 (doc. nos. 123 and 125), are granted.
- (2) The Auburn City School System is DECLARED to be unitary.
- (3) All outstanding orders and injunctions are dissolved as to defendants Auburn City Board of Education, its members, and the Superintendent of Education.
- (4) This litigation is dismissed as to defendants Auburn City 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.

All Citations

Not Reported in F.Supp.2d, 2002 WL 237091

Footnotes

- * In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the circuit splitting on September 30, 1981.

Faculty Summary

Year	Total	Black	White	Other	% Black	% White
1996-97	336	44	292		13 %	87 %
1999	299	38	260		13 %	87 %
2000-01	293	44	248	1	13 %	87 %
