

2002 WL 31757973

Only the Westlaw citation is currently available.
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.

TALLAPOOSA COUNTY BOARD OF
EDUCATION, et al., Defendants.

No. Civ.A. 70–T–849–E.

|

Nov. 22, 2002.

OPINION

THOMPSON, J.

*1 This longstanding school desegregation case began in 1963 when the plaintiffs, a class of black students, sought relief from race discrimination in the operation of a *de jure* segregated school system. The defendants are the Tallapoosa County Board of Education, its members, and the Tallapoosa County Superintendent of Education, as well as the Alabama State Board of Education, the State Superintendent of Education, and the Governor of Alabama. The Tallapoosa County Board of Education, its members and its superintendent have moved for declaration of unitary status and termination of this litigation. Based on the evidence presented, the court concludes that the motion should be granted in part and denied in part.

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 16, 1963, the United States was added as plaintiff-intervenor and amicus curiae in order to represent the public interest in the administration of justice. *Lee v. Macon County Bd. of Educ.*, 267 F.Supp. 458, 460 (M.D.Ala.1967) (three-judge court) (per curiam). 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 on the basis of 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, therefore, added the state officials as 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 Tallapoosa County, to desegregate their schools. *Lee v. Macon County Bd. of Educ.*, 292 F.Supp. 363 (M.D.Ala.1968) (three-judge court) (per curiam); *Lee v. Macon County Bd. of Educ.*, 267 F.Supp. 458 (M.D.Ala.1967) (three-judge court) (per curiam). On February 27, 1969, the Tallapoosa County School District Board moved to modify the 1968 order, and the court denied this request on March 19, 1969.

On August 25, 1969, the court ordered the Tallapoosa Board to show cause why it should not be required to file a desegregation plan to disestablish effectively and

completely its dual school system. On October 23, 1969, the court ordered the school board to file a desegregation plan, with assistance from the United States. The board's plan, submitted January 12, 1970, was approved as supplemented by the court on March 12, 1970. Minor amendments, including a requirement that the district file verbal descriptions and maps of the attendance zones, were approved on March 26, 1970.

*2 On June 16, 1970, the court conditionally approved the attendance zones proposed by the Tallapoosa Board, contingent on the board's enforcement of the attendance zone boundaries. On June 24, 1970, the three-judge court in *Lee* transferred the jurisdiction over 35 school districts involved in the *Lee* litigation, including the Tallapoosa County School District, to a single district judge of the United States District Court for the Middle District of Alabama, where the school districts were located.

On August 19, 1975, the court found that the Tallapoosa Board had failed to enforce its attendance zone boundaries, both within the district and between two neighboring districts (Coosa County and Alexander City). The court entered an injunction forbidding the Tallapoosa Board from accepting students from outside the district and/or outside the appropriate attendance zone within the district.

In 1987, following an investigation conducted by the United States in response to a community complaint, the court addressed the Tallapoosa Board's failure to enforce provisions of the original March 1970 order relating to inter-district transfers, extracurricular activities, faculty and administrator assignment, and recruitment of black professionals. On October 8, 1987, a detailed consent decree was entered designed to remedy the violations and to bring the Tallapoosa Board into compliance with the March 1970 order. The 1987 decree required the Tallapoosa Board to enforce its student attendance zones and ensure nondiscriminatory access to extracurricular activities. The decree contained a provision requiring the district to recruit black professionals for its teaching and administrative staff. The decree also required the Tallapoosa Board to assign teaching staff such that the ratio of black to white teachers in each school was substantially the same in the entire system. The consent decree carried a three-year reporting requirement.

B. School District Profile

For the 2001–2002 school year, the Tallapoosa County School System educated 3,276 students, approximately 40% of whom were black, in four attendance zones. All but one attendance area contains a single K–12 school. Approximately 268 students, all of whom were black, were enrolled in the Edward Bell School which is located in the Camp Hill community. Approximately 711 students attended school at the Reeltown facility, 44% of whom were black. The Horseshoe Bend school enrolled approximately 811 students, 9% of whom were black. The Dadeville attendance zone includes an elementary and a secondary school in which approximately 1,486 students were enrolled, 40% of whom were black.

The Tallapoosa County School System employed 235 faculty and administrators in the 2001–2002 school year, 19% of whom were black. The faculty ratios varied at each school: 48% of the faculty at Edward Bell is black, 20% at Reeltown, 14% at Dadeville, and 9% at Horseshoe Bend. Hires for the upcoming 2002–2003 school year raised the percentage of black faculty to 16% at Horseshoe Bend, 19% at Dadeville and 21% district-wide. The percentage of black faculty at Edward Bell remained at 48%.

C. The 1998 Consent Decree

*3 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 (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 (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 under the court's jurisdiction, including the Tallapoosa County School System. 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 Tallapoosa County School System, including touring the district's facilities, and meeting with class and community members. The plaintiff parties identified those issues for which satisfactory compliance had been attained as well as those areas needing further attention.

On July 22, 1998, the court approved a consent decree detailing the areas of district operation in which further remedial action was necessary. Seven areas were identified for further remediation: (1) faculty hiring and assignment, including recruitment, hiring and promotions, and faculty and administrator assignment; (2) student assignment and instruction, including student assignment between and within schools and participation in special programs such as college preparatory classes; (3) extracurricular activities; (4) student discipline; (5) student dropout intervention; (6) facilities; and (7) special education. The parties agreed that, in order for the district to attain unitary status in these remaining areas, the Tallapoosa Board would undertake certain actions including developing policies and procedures to eliminate the remaining vestiges of the dual system in the identified areas. The consent decree set 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 Tallapoosa County school system. *NAACP, Jacksonville Branch v. Duval County Sch.*, 273 F.3d 960, 963 (11th Cir.2001). Many of the areas addressed by the consent decree 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 Sch. Bd.*, 391 U.S. 430, 435, 88 S.Ct. 1689, 1693 (1968) (the indicator areas of school operation are: student assignment, faculty and staff, transportation, facilities and extracurricular activities). The consent decree also addressed what have become known as quality-of-education issues that more closely relate to a student's day-to-day experiences within a school. *Freeman v. Pitts*, 503 U.S. 467, 473, 112 S. Ct 1430, 1437 (1992).

*4 Under the consent decree, the Tallapoosa County School District 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 they had 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 February 1, 1999, August 9, 1999, May 16, 2000, April 13, 2001, and April 11, 2002. The Tallapoosa Board addressed these concerns through continued review and modification of its programs. As noted below, progress was made in many areas. The 1998 decree provided that the Tallapoosa Board could file for dismissal of the case three years after approval of the consent decree, following its filing of the third annual report. However, by agreement of the parties, the court ordered the district to file a fourth annual report in January 2002.

D. State-wide Issues

Over the course of years, as litigation affecting the Tallapoosa School District was dealt with by the court as a separate matter, the state defendants (the Alabama State Board of Education, the board members, the State Superintendent of Education, and the Governor of Alabama) did not participate in the *Tallapoosa* 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 Board of Education*, 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 (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 in each individual school district case, the state defendants continue as parties in not only the state-wide litigation, but in all of the off-shoot cases as well. *Lee v. Lee County Bd. of Educ.*, 963 F.Supp. 1122, 1124, 1130 (M.D. Ala.1997). The parties identified two remaining issues 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.*, 183 F.Supp.2d 1359, 1363 (M.D.Ala.2002). Negotiations on the state-wide issues involving facilities are still pending.

E. Motion for Declaration of Unitary Status

During the April 11, 2002, status conference, the parties agreed that, over the previous three years, the Tallapoosa County School System had complied with the 1998 decree and that termination of the case was justified. In particular, during the course of implementing the decree, the district had developed plans of action addressing the areas of continued concern raised by the plaintiff parties, and these plans were adopted by the Tallapoosa Board as district policies and procedures. On May 24, 2002, the Tallapoosa County Board of Education and its members and superintendent filed a motion for declaration of unitary status and termination of the litigation. The court set the motion for a fairness hearing and required the Tallapoosa Board to give all plaintiff class members appropriate notice of the motion as well as procedures for lodging objections.

*5 After the court approved the notice form, the Tallapoosa County 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 motion for unitary status, each of the annual reports, and the progress reports filed prior to each of the status conferences were made available at the local school board offices. Copies of the motion for unitary status and notice were posted at each of the county schools and board offices for several weeks, and actual notice was provided to each student enrolled in the Tallapoosa County School District and mailed to each parent or guardian of students enrolled in the system. The address for submission of the comment and objection forms provided by the school district was incorrect, which resulted in the forms being returned to the objectors rather than being filed with the court. The court granted the plaintiff class two weeks to collect all comments and objections that had been timely filed, but mailed to the

wrong address.

On July 23, 2002, the court held a fairness hearing on the motion for declaration of unitary status and termination.

The court concludes that, with the additional time provided to submit comments, the Tallapoosa County 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 promptly convert 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 (1968). The ultimate goal is 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 (1992) (quoting *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 410, 97 S.Ct. 2766, 2770 (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 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. Bd.*, 273 F.3d 960, 966 (11th Cir.2001) (citing *Missouri v. Jenkins*, 515 U.S. 70, 88, 115 S.Ct. 2038, 2049 (1995), and quoting *Freeman v. Pitts*, 503 U.S. 467, 492, 112 S.Ct. 1430, 1445 (1992)); *see also Manning v. School Board*, 244 F.3d 927, 942 (11th Cir.2001), *cert. denied*, ___ U.S. ___, 122 S.Ct. 61 (2001); *Lockett v. Bd. of Educ.*, 111 F.3d 839, 842 (11th Cir.1997).

*6 In addition to these articulated constitutional standards, the Tallapoosa County Board of Education was also required to comply with the contractual requirements of the 1998 consent decree which set forth specific steps the Tallapoosa Board was to take to attain unitary status. *NAACP, Jacksonville Branch v. Duval County Sch.*, 273 F.3d 960 (11th Cir.2001) (“For enforcement purposes, consent agreements are interpreted under the principles of contract law.”) (citations omitted). The parties agreed that the Tallapoosa Board would analyze and review programs and practices in each of the areas in which further actions were required, that is, (1) faculty hiring and assignment, including recruitment, hiring and promotions, and faculty and administrator assignment; (2) student assignment and instruction, including student assignment between and within schools and participation in special programs such as college preparatory classes; (3) extracurricular activities; (4) student discipline; (5) student dropout intervention; (6) facilities; and (7) special education. The Tallapoosa Board was to formulate and adopt procedures and practices designed specifically to address each of these areas. The Tallapoosa Board was thus required to take specific actions to address concerns the parties had that vestiges of the prior dual system remained, and to ensure that the district was operated on a nondiscriminatory basis.

The legal standard for dismissal of a school desegregation case was 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 (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 with the consent decree, but also 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.*, 8 F.3d 1501, 1513 (10th Cir.1993) (citations omitted). Regardless, “[t]he measure of any desegregation plan is its effectiveness.” *Davis v. Bd. of Sch. Comm’rs*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292 (1971).

B. Terms of the 1998 Consent Decree and Compliance Efforts

1. a. *Faculty Recruitment*: The 1998 consent decree required the Tallapoosa Board to make every effort to increase the number of black applicants in the pool from which it selects its teachers and administrators. As evidenced by the four annual reports previously submitted, the Tallapoosa Board has expended effort to recruit and employ minorities by sending recruiters to visit undergraduate institutions, and increasing advertising of vacancies and employment opportunities within the school system. The Tallapoosa Board also adopted manuals and plans to increase its employment of minority faculty and staff. In 2001–2002, the percentage of minority teachers in Tallapoosa County was 19%; at the time of the hearing, it had increased to just over 20% for the 2002–2003 school year which approximates the statewide percentage of black teachers.

*7 b. *Faculty Assignment*: The Tallapoosa County Board of Education was also required to make every reasonable effort to ensure that no school in the system could be perceived as a white school or a minority school based on the racial make-up of its faculty or administrators. Under the terms of both the 1987 and the 1998 consent decrees, the Tallapoosa Board was required to take steps necessary and appropriate to achieve a ratio of white to black staff at each school comparable to the district-wide ratio.

Under the *de jure* system, when the district maintained separate schools based on race, the Edward Bell School was the designated school for black students and teachers in the Camp Hill community. Under the March 12, 1970, desegregation order, Bell was paired with the Camp Hill school, the school designated for white children and teachers in the Camp Hill community. The Camp Hill school was subsequently closed and Edward Bell served the entire community. The Edward Bell School continues to be racially isolated with a student enrollment which is 100% black, while the remaining Tallapoosa schools have a student enrollment of black students ranging from 9 to 44%. At the time of the 1998 consent decree, 46% of the faculty at Edward Bell School were black, as compared to the district-wide average of 18% black faculty. During the 2001–2002 school year, 48% of the faculty at Edward Bell School were black compared to the district-wide percentage of 19% black faculty.

2. *Student Assignment and Instruction*: The consent decree required the school board to ensure that students were assigned to schools on a nondiscriminatory basis and

to strictly enforce established zone lines. *Cf. Singleton*, 419 F.2d at 1211. The board complied with this provision and continues to require verification of residency to ensure that student assignment conforms to the district's boundary lines.

The 1998 consent decree also addressed several areas involving student participation, particularly by black students, in special programs such as college preparatory classes, certain extracurricular activities and student discipline. 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, and black faculty members to teach or sponsor special courses and extracurricular activities; review discipline procedures; and provide training for teachers and guidance counselors.

In addressing the areas of student assignment as well as certain quality of education issues such as instruction, student discipline, and drop-out rates, the district has instituted measures including creating an Action Plan Committee, adopting an early intervention strategy, implementing the Alabama Reading Initiative, and developing a uniform plan to increase student and parent involvement with respect to student achievement, career choices, and higher education.

8 3. *Extracurricular Activities: The Tallapoosa 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 participation in extracurricular activities. Since the entry of the consent decree, the Tallapoosa County School System has made a substantial effort in this area by working to inform and recruit all students to participate in extracurricular activities. The Tallapoosa schools have experienced an increase in minority participation in extracurricular activities, including the Auburn University National Youth Sports Program.

4. *Student Discipline:* The Tallapoosa Board was required to ensure that student discipline was meted out on a non-discriminatory basis, which entailed tracking discipline referrals, appointing a discipline coordinator, and conducting training. The Tallapoosa Board enacted an Action Plan to Ensure Race Neutral Practices in Discipline Policies and Procedures. The Tallapoosa Board also applied for the Alabama State Improvement Grant

(SIG) Program and initiated a team-based behavioral modification program.

5. *Facilities:* The Tallapoosa Board has spent considerable sums of money to improve its facilities. Several facility enhancements are planned, currently underway, or have already been completed at Edward Bell, including science laboratories, a new roof and technology wiring. A permanent study group, with racially diverse members from throughout the district, has been appointed to continue monitoring school facilities.

6. *Special Education:* 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 Educ.*, 183 F.Supp.2d 1359, 1366 (M.D.Ala.2002). According to the terms of the state-wide decree, the state defendants will address any special education claims. Therefore, any special education claims involving the Tallapoosa County School System are properly addressed by the state defendants and such claims will not bear on the unitary status of the Tallapoosa County School System.

7. *Monitoring:* The Tallapoosa County Board of Education has filed three annual reports, as required by the 1998 consent decree, as well as a fourth annual report submitted by agreement of the parties. Each report detailed the school district's efforts and accomplishments in implementing the provisions of the decree during the preceding school year. These reports were reviewed by the plaintiff parties who advised the Tallapoosa Board of any continued concerns these efforts may have failed to address. Progress reports were filed outlining the positions of the parties for discussion at the annual status conferences.

8. *Future Action:* The Tallapoosa County Board of Education has evidenced an understanding that the declaration of unitary status does not relieve it of its responsibility to its faculty, staff, students, and the community which it serves. To this end, the Tallapoosa County School Board has demonstrated a commitment to continued adherence to nondiscriminatory policies and procedures through the development and adoption of a number of action plans and policy and procedure manuals addressing faculty recruitment and hiring, students at-risk, special programs, extracurricular activities, and special education.

C. July 23, 2002, Fairness Hearing

*9 After the Tallapoosa County Board of Education, its members, and its superintendent filed their motion 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. Approximately twenty-two comments were filed with the court. Two comments voiced support for unitary status. The remaining comments objected to declaring the Tallapoosa School System unitary. Three community members, one of whom has children enrolled at Edward Bell, testified and were cross-examined at the fairness hearing on July 23, 2002.

The objections focused primarily on the alleged inferiority of Edward Bell School which had operated as the segregated school for black students under the *de jure* system. Parents, students, and community members claimed that the quality of education, facilities, and extracurricular opportunities at Edward Bell are unequal and inferior to those of other schools in the system. Tallapoosa County residents also alleged that in or around 1983, the boundary lines for Edward Bell School were changed for discriminatory reasons, resulting in a decrease in student enrollment at Edward Bell and a corresponding increase in enrollment at the adjacent Dadeville schools, which are approximately seven miles from Camp Hill community. Another objection alleged that the district maintains dual bus routes in one area of the county, operating two buses for the same route, one mainly serving black students and overcrowded, while the second carries white children and is not overcrowded.

The district's personnel director, who was also in charge of compliance with the 1998 consent decree, testified at the fairness hearing about the district's efforts and progress in complying with the consent decree. She explained that the Tallapoosa Board had made great efforts to recruit and assign black faculty in compliance with the consent decree by assigning faculty to schools in a manner that would achieve a better racial balance of faculty. Their efforts were significantly hindered by the fact that most faculty view Edward Bell as a "black school," causing some faculty to resign rather than teach at their assigned school. These resignations also lowered teacher morale.

The district's director of curriculum instruction also testified and addressed the quality of education at Edward Bell, noting that 50% of Edward Bell graduates received

advanced diplomas. At the same time, Edward Bell is on academic caution due to the fact that an unacceptable number of its students performed inadequately on state standardized tests. The director of curriculum detailed many of the efforts the Tallapoosa Board was taking to provide more advanced classes and extracurricular opportunities at Edward Bell School, but stated that the small number of students at Bell (65 students enrolled in grades 9 through 12) made it difficult to offer a large number of courses and extracurricular activities. Students at Bell may, however, take courses at any other Tallapoosa School and the Tallapoosa Board is working to obtain funding for a distance-learning initiative. He also detailed some of the facility improvements that had taken place at Edward Bell.

*10 The final witness at the fairness hearing was the principal of Edward Bell School who has served in the position for three years, after having taught in the school for several years. She disputed many of the allegations, stating that Bell had made great improvements in its faculty as well as made numerous upgrades in its facilities. She also testified about initiatives and future plans for the school.

Counsel for the plaintiff parties cross-examined these witnesses and addressed the issues raised in the comments filed with the court as well as the faculty assignment pattern at the Tallapoosa schools. The Tallapoosa County defendants had no immediate plans to effectively redress the disparities in faculty assignment.

At the conclusion of the hearing, it was determined that the Tallapoosa Board should investigate the following issues and allegations: (1) faculty assignment at Edward Bell; (2) whether there are overlapping and racially segregated bus routes; (3) the availability of extracurricular activities at Edward Bell; (4) whether the boundary lines between the Dadeville and Camp Hill (Edward Bell) attendance areas were changed, resulting in a decrease in enrollment at Bell and a corresponding increase at the Dadeville schools; and (5) the adequacy of education at the Edward Bell School. In an order dated July 24, 2002, the defendant school board was ordered to investigate these issues and report the results to the court.

A status conference was held on August 28, 2002, to discuss the remaining issues. The school board conceded that it was not in compliance with regard to faculty assignment at the Bell school, and proposed steps to come into compliance by the beginning of the 2003-2004 school year. The parties agreed that this issue should

remain under the court's jurisdiction.

The parties also agreed that three of the other issues had been resolved. There was no evidence that the boundary lines between the Dadeville and Camp Hill schools had been modified, nor did enrollment records indicate any increase in student enrollment at Dadeville while enrollment, particularly white student enrollment, declined at the schools in the Camp Hill community. In fact, no more than four white students have attended the Camp Hill schools in any year since 1970.

The district offered a satisfactory explanation to community members' perceptions that the district was running overlapping, segregated bus routes. Two buses travel the same road for part of their routes. One bus picks up students in a predominantly black neighborhood and then proceeds to the Dadeville schools. The district disputes that this bus is overcrowded. The second bus picks up students from a predominantly white neighborhood, then travels to pick up black students on the way to the Dadeville schools. The plaintiff parties provided no evidence to dispute this explanation.

The district provided more detailed information about the extracurricular activities at the Edward Bell School. While there may be fewer options than those offered at the larger schools in the county, it appears that students at Bell are provided an adequate number of extracurricular activities, particularly given the size of the school.

*11 The parties recommended that the adequacy of education at Edward Bell be assessed through a curriculum audit conducted by the Alabama State Department of Education (SDE). The audit, which was filed with the court, included a review of the courses offered at Dadeville, Edward Bell, Horseshoe Bend, and Reeltown High Schools. The purpose of the audit was to develop a demographic profile of students at each school, catalog the courses available at each school, compare the number and types of courses offered by each school, and ascertain if students at each school had equal access to all courses offered by the school system. Furthermore, the audit was meant to establish whether there were course offerings and certified teachers at each school sufficient for students to satisfy requirements for all diploma options for graduation from a public high school in Alabama. The SDE auditors interviewed administrators, counselors and teachers and reviewed various documents. The work of the SDE was invaluable to the parties and to the court in reviewing this issue.

An additional status conference was held on October 10, 2002, to discuss this final issue. Based on the SDE report, it appears that while Edward Bell has a very small student enrollment, the Tallapoosa Board is able to ensure that an adequate educational program at the school. The SDE report also concluded that while the district has a policy allowing students to transfer to another school to enroll in a course not offered at the home school, the procedures for making this policy known are inadequate. This option is particularly important for students at Edward Bell due to the size of the high school.

III. CONCLUSION

On the basis of the record evidence, witness testimony, and averment of counsel, the court finds that the Tallapoosa County 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 in all areas, except assignment of faculty to Edward Bell School. The court will also monitor the revisions and implementation of the student course transfer policy allowing students to transfer from Edward Bell to other schools in the district.

The former Fifth Circuit held that "principals, teachers, teacher-aides and other staff who work directly with children at school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1217-18 (5th Cir.1969). School systems have a continued legal responsibility to assign minority faculty and staff to schools proportionately throughout the district. *Pitts v. Freeman*, 887 F.2d 1438, 1447 (11th Cir.1989) (holding that a 15% variance from the district average does not constitute error), *rev'd on other grounds*, 503 U.S. 467; 112 S.Ct. 1430 (1992); *see also*, *Stell v. Bd. of Pub. Educ.*, 860 F.Supp. 1563, 1583-84 (S.D.Ga.1994).

*12 Under the *de jure* system, the Edward Bell School was designated for black children and teachers in Camp Hill, Tallapoosa County. Because of geography and demographics, the Edward Bell School continues to have a racially isolated black student population as compared with other schools in the Tallapoosa County School District. The faculty assigned to the Edward Bell School

also continues to be racially identifiable as compared to the faculty assigned to the remaining schools in the system. The Tallapoosa Board has failed to demonstrate that it complied with the terms of either the 1987 or the 1998 consent decree requiring it to make every reasonable effort to ensure that no school in the system could be perceived as a white school or a minority school based on the racial make-up of its faculty, and to take steps to achieve a percentage of black staff at each school that approximates the district-wide average. The court concludes that this is a vestige of the prior dual system and that practicable means within the control of the Tallapoosa Board exist to further eliminate this vestige. *Freeman v. Pitts*, 503 U.S. 467, 491–92, 112 S. Ct 1430, 1446 (1992).

The school board is currently in the process of revising its policies allowing students at Edward Bell to enroll in a course at another school if that course is not offered at Bell. By agreement of the parties, the court will monitor the revision and implementation of the course transfer policy for students at the Edward Bell School.

The Tallapoosa County School Board has otherwise fully and satisfactorily complied with the orders of this court. Except for faculty assignment to the Edward Bell School, the vestiges of the prior *de jure* segregated school system have been eliminated to the extent practicable. The court also finds that the Tallapoosa Board, its members and its 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. Their compliance with the court's orders over the years, their good-faith implementation of their contractual obligations under the 1998 consent decree, and their adoption of specific policies and actions that extend into the future demonstrate their commitment to the operation of a school system in compliance with the Constitution. "Partial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the district court's duty to return the operations and control of schools to local authorities." *Freeman* at 489, 112 S.Ct. at 1445.

The plaintiff parties have nearly succeeded in the task they began decades ago to seek the end of the seemingly immovable *de jure* system of school segregation in Tallapoosa 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 except for one area, they have succeeded. 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 *NAACP, Jacksonville Branch v. Duval County Schools*, 273 F.3d 960, 976 (11th Cir.2001), that "[t]he Board, and the people of [Tallapoosa 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.

*13 Therefore, with the judgment the court will enter today, except for the assignment of faculty to the Edward Bell School, control over the Tallapoosa County School System is properly returned to the Tallapoosa County Board of Education, its members and its superintendent. The motion for declaration of unitary status and termination of this litigation will be partially granted, all outstanding orders and injunctions will be dissolved except for those pertaining to the assignment of faculty to the Edward Bell School, and this litigation partially dismissed as to the Tallapoosa Board, its members and its superintendent. 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, filed by defendants Tallapoosa County Board of Education, its members, and the Superintendent of Education on May 24, 2002 (Doc. No. 121), is granted in all respects except for assignment of faculty to the Edward Bell School.
- (2) The Tallapoosa County School System is DECLARED to be unitary in all respects except for faculty assignment to the Edward Bell School.
- (3) The court will monitor the revision and implementation of the course transfer policy for students

at the Edward Bell School.

(4) All outstanding orders and injunctions, except as they pertain to the assignment of faculty to the Edward Bell School, are dissolved as to defendants Tallapoosa 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.

All Citations

Not Reported in F.Supp.2d, 2002 WL 31757973