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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.
ALEXANDER CITY BOARD OF EDUCATION, et al. Defendants.

No. CIV.A. 70-T-850-E.
|
Sept. 12, 2002.

OPINION

THOMPSON, District 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 Alexander City Board of Education, its members, and the Alexander City Superintendent of Education, as well as the Alabama State Board of Education, the State Superintendent of Education and the Governor of Alabama. The Alexander City Board of Education and its members and 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 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)(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. *Lee v. Macon County Bd. of Educ.,* 231 F.Supp. 743, 745 (M.D.Ala.1964) (three-judge court) (per curiam). 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. *Id.* at 753-55. In subsequent orders, the *Lee* Court ordered the State Superintendent of Education to require school districts throughout the State, including Alexander City, 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).

A desegregation plan for the Alexander City School System was filed on December 4, 1969, and the plan was accepted as modified by the court on January 22, 1970. On February 4, 1970, the court denied a motion by the

school board to set aside the portion of the order relating to faculty assignment. On June 24, 1970, the three-judge court in *Lee* transferred the jurisdiction over 35 school boards involved in the *Lee* litigation, including the Alexander City Board of Education, to a single district judge of the United States District Court for the Middle District of Alabama, where the school districts were located.

***2** On August 19, 1975, the court found that the Alexander City Board of Education had failed to enforce the attendance boundaries between its school district and neighboring Coosa and Tallapoosa Counties, and enjoined the school board from accepting further interdistrict transfers. On August 18, 1976, the court entered a consent order forbidding the district from accepting transfers from Coosa County and requiring the filing of semi-annual reports regarding the enrollment in Alexander City of students formerly enrolled in Coosa County Schools. With the exception of 1985, the district has filed such reports since 1976.

B. School District Profile

The Alexander City School System currently educates approximately 3,490 students in five schools. Jim Pearson Elementary School (grades K-2) serves 882 students; Stephens Elementary School (grades 3-4) serves 579 students; Radney Elementary School (grades 5-6) serves 549 students; Alexander City Middle School (grades 7-8) serves 581 students; and Benjamin Russell High School (grades 9-12) serves 899 students. The black enrollment at each school varies from 38 to 42 %.

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 (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, including the Alexander City 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 school system, including touring the district's facilities, and met with class and community members. The plaintiff parties identified those issues for which satisfactory compliance had been attained as well as areas the plaintiff parties identified as needing further attention.

***3** On May 20, 1998, the court approved a consent decree detailing the areas of operations in the Alexander City School System in which the district 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 (1992). The district was found to have achieved unitary status in the areas of transportation and facilities. Injunctions or portions thereof pertaining to this area were dissolved, and these functions were appropriately returned to the control of the local governing body, the Alexander City Board of Education. The areas identified for further remediation were: student assignment within schools and instruction; faculty hiring, assignment and promotion; administrative hiring, assignment and promotion; student discipline; extracurricular activities; dropout and graduation rates; and special education. The parties agreed that in order for

the district to attain unitary status in these remaining areas, the board would undertake certain actions, including developing policies and procedures in the identified areas to eliminate the remaining vestiges of the dual system. The consent decree sets forth in detail the areas to be addressed and the actions to be undertaken. In other words, the consent decree represented "a roadmap to the end of judicial supervision" of the Alexander City School System. *NAACP, Jacksonville Branch 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 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 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, 473, 112 S.Ct 1430, 1437 (1992).

The Alexander City 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 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, August 21, 2001, and April 10, 2002. The 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 consent 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 (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, at *1 (M.D.Ala.2000). Negotiations on the state-wide issues involving facilities are still pending.

E. Motion for Declaration of Unitary Status

During the April 10, 2002, status conference, the plaintiff parties stated that there were continued concerns about hiring, but that the district had made many improvements in the operation of the school system through implementation of the decree. They agreed that the district should proceed with seeking termination of the case, but requested that community members have the opportunity to file any comments or objections. On April 23, 2002, the board passed a resolution of adoption of nondiscrimination policies and procedures as well as a "Plan for the Future" to ensure a continued commitment to issues covered in the consent decree.

On May 1, 2002, the Alexander City 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 city school board to give all plaintiff class members appropriate notice of the motion as well as

procedures for lodging objections.

After the court approved the notice form, the Alexander 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 motion for unitary status, each of the annual reports, the progress reports filed prior to each of the status conferences and the May 19, 1998, consent decree were made available at the local school board offices. Copies of the notice were posted at each of the district schools and central offices from May 1 to May 31, 2002. Actual notice was also given to each parent or guardian of a student enrolled in the Alexander City School District via first class mail and by hand delivery to all students.

***5** Numerous objections were filed objecting to dismissal of the case. On June 14, 2002, the court held a fairness hearing on the motion for declaration of unitary status and termination. Five community members testified at the hearing. One requested and was given additional time to submit information regarding his objections. A status conference was then held on July 18, 2002, to discuss the remaining issues.

The court concludes that the Alexander 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 Sch. Bd.,* 391 U.S. 430, 442, 88 S.Ct. 1689, 1696 (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,* 503 U.S. at 490, 112 S.Ct. at 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.,* 273 F.3d at 966 (citations omitted); *see also Manning v. Sch. Bd.,* 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, 843 (11th Cir.1997).

In addition to these articulated constitutional standards, here the Alexander City Board of Education was also required to comply with the contractual requirements of the 1998 consent decree which set forth specific steps the board was to take to attain unitary status. *See also NAACP, Jacksonville Branch v. Duval County Schools,* 273 F.3d 960 (11th Cir.2001) (holding that consent decrees should be interpreted under the principles of contract law). The parties agreed that the board would analyze and review programs and practices in each of the areas in which further actions were required. These areas were: student assignment within schools and instruction; faculty and administrative hiring, promotion and assignment; student discipline; extracurricular activities; dropout and graduation rates; and special education. 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, and 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. *See Missouri v. Jenkins,* 515 U.S. 70, 87-89, 115 S.Ct. 2038, 2049 (1995) (discussing similar considerations). 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.,* 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 and Administrator Hiring, Assignment and Promotion:* The Alexander City Board of Education was required to make every effort 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 ensure that teachers and administrators would be hired and promoted without regard to race, color, or national origin. *See also Singleton v. Jackson Municipal Separate Sch. Dist.,* 419 F.2d 1211, 1218 (5th Cir.1969)(requiring similar measures).[1] As evidenced by the three annual reports previously submitted, the district has expended considerable effort to recruit and employ minorities. The district revised its employment procedures to ensure nondiscrimination in the hiring of faculty, and developed and implemented a plan to increase the recruitment of minority faculty, staff, and administrators. The district's faculty recruitment strategies include increased on-site recruiting at historically black universities and all colleges and universities in the immediate area as well as the three surrounding States. The district hired consultants to assist in the development of a recruitment plan, and actively sought the assistance of the Southeastern Equity Center, a federally funded desegregation assistance center. Over the course of implementation of the consent decree, the portion of faculty who are black has remained at approximately 14 %, lower than the statewide average of 20 %. However, the effectiveness of the recruitment programs is demonstrated in the hiring rates of black teachers. Between the 1998-99 and 2002-03 school years, the percentage of teachers hired who are black has been 29 % (1998-99 school year), 14 % (1999-2000 school year), 29 % (2000-01 school year), 15 % (2001-02) school year, and 21 % (2002-03 school year).

***7** b. *Hiring and Promotion of Administrators:* One of the areas of concern raised by the objectors was the lack of black administrators, and the failure of the district to promote black faculty to administrative positions. Over the course of implementation of the decree, five administrative positions (none as principal) were filled, three by black applicants. Nonetheless, since the orders requiring desegregation of the Alexander City School System were entered in 1968 and 1969, and the comprehensive order approving the plan for desegregating the system was approved on January 22, 1970, no African-American has served as principal at any of the district's schools, and there has never been more than one African-American in a certified staff position in the central office.

2. *Student Assignment Within Schools and Instruction:* The consent decree required the board to make every reasonable effort to ensure that all existing programs, including college preparatory, honors, and advanced placement courses, were conducted on a non-discriminatory 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 special courses or sponsor, extracurricular activities; review discipline procedures; and provide training for teachers and guidance counselors. A curriculum guide that provides course descriptions and requirements, as well as requirements for an advanced diploma, was developed and distributed to parents and students. Informational parenting meetings were held at Parent Teacher Organization meetings to encourage participation, especially of African-American parents. Guidance registration orientation sessions for classes and individuals were held prior to registration to explain and guide students and parents in making course selections. A video that shows course offerings and students enrolled in some of the courses was presented to students to encourage enrollment in honors courses.

The school board has met with substantial success in increasing the number of minority participants in special programs. The number of minority students in honors or advanced classes increased through a number of initiatives, such as professional development provided to help teachers recognize students' potential and provide strategies to increase student success. The percentage of African-American students receiving the advanced diploma in 2000-2001 was 11 %. With board approval, the 1999-2000 freshman class and all future classes were placed in the advanced-diploma track.

3. *Extracurricular Activities:* The school board was required to take all reasonable steps to ensure an equal opportunity for all students to participate in extracurricular activities. The board undertook many steps in this area. All sponsors and coaches of extracurricular activities were instructed to take affirmative steps to encourage student participation in extracurricular activities, and teachers were also encouraged to become sponsors. There has been an increase in the number of African-American sponsors of extracurricular activities.

***8** An extracurricular booklet is compiled and published each year to inform students of clubs and organizations, sponsors, activities, purposes, expenses, and eligibility requirements. For those clubs or organizations requiring monetary expenses, notice is given that financial help is available through fund raising opportunities. A survey is administered during the fall, and the results are studied to make changes that encourage diverse participation. When names are listed on the surveys, sponsors make contact with interested students. Requirements and try-outs for clubs and athletic activities have been widely publicized through announcements and an activity guide. Minority participation in extracurricular programs increased from 21 % in 1998-1999 to 31 % in 2001-2002.

4. *Student Discipline:* The Alexander City School System has a uniform discipline policy in the form of a "Code of Conduct." Each principal presents a written report, based on the computer database for disciplinary referrals, annually to the Alexander City Board of Education. To ensure equal treatment for all students, cultural diversity training was provided to all teachers, counselors, administrators, bus drivers, and other staff who come into contact with students.

The district obtained guidance, technical assistance, and training from Alabama State Department of Education personnel to work on strategies for improving school climate and working with students with severe problem behaviors. The district is implementing a new positive discipline program for the 2002-2003 school year.

5. *Student Dropout and Graduation Rates:* Through implementation of the consent decree, the school board has reduced the disparity in the dropout rates between African-American and white students. With enactment of various initiatives, the board has also seen an increase in participation by minority students in advanced classes which should result in an increase in the number of students, including minority students, graduating with advanced diplomas.

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 Ed.,* 2000 WL 33680483, at *1 (M.D.Ala.2002). According to the terms of the 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 Alexander 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 state-wide decree.

7. *Monitoring:* The Alexander City Board of Education, as required by the 1998 consent decree, filed three annual reports. 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 and monitored by the plaintiff parties. The plaintiff parties were given the opportunity to advise the board of any continued concerns about these efforts. Progress reports were filed outlining the positions of the parties for discussion at the annual status conferences.

***9** 8. *Future Action:* The Alexander City 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 it serves. To this end, the 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. On April 23, 2002, the school board adopted a resolution stating its commitment to treating faculty and staff fairly and to ensuring that all students have equitable access to all educational programs and activities.

C. Objections to Termination of the Litigation

After the Alexander City Board of Education and its members and 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 20 objections were filed opposing termination of the case. Most objections pertained to the district's perceived failure to hire and promote black faculty and staff, including the failure to promote black faculty members to administrative positions. Other objections pertained to special education, racial disparities in student discipline, instances of different treatment of black students as compared to white students, and the prohibitively high cost of some extracurricular activities. Five community members made objections at the fairness hearing on June 14, 2002. These objections were essentially the same as those lodged in the written comments, with the additional allegation that plaintiffs were ineffectually represented by counsel.

The school board president and several district administrators, including the personnel director, the director of instruction, the special education coordinator and four of the school principals, testified at the hearing and were cross-examined by counsel for private plaintiffs and the United States. This testimony addressed the issues and accusations raised in the objections. The superintendent was unable to attend the hearing because of illness.

Many objections were made in the area of faculty. Objectors alleged that the district failed to hire and retain black faculty members, that black faculty members were assigned to classes with disciplinary problems and that the schools provided a poor work environment for its black faculty. One objector was concerned that the district had failed to comply with the consent decree requirement that the district work with the community.

The district has put forth extensive efforts to recruit and hire minority faculty, described in detail above. While it is possible that the district might have sought more community assistance in recruiting teachers, the district has in fact been very successful in its recruitment efforts.[2] The hiring rates of black faculty has varied from 15 to 29 % over the past five years.

***10** Other objections were based on the low participation rates of black students in special programs and special education. The district has had significant success in increasing minority participation in advanced classes, though, through various mechanisms. It has implemented a new reading initiative and a student discipline/rewards program system-wide. After reviewing the advanced classes program at the middle school, the district eliminated prerequisites. This resulted in increased participation in these classes by all students, including minority students. Additional success has been achieved by automatically placing students into an advanced class when they received an "A" or "B" in a regular-level class. Similarly, the district encourages high school students to take advanced classes and all students can continue on the advanced diploma track upon finishing ninth grade.[3] Finally, conferences are held with parents at the end of each school year to discuss course offerings for the following school year. The district anticipates that as a result of these efforts, the number and percentage of minority students receiving advanced diplomas will increase greatly, beginning with the class of 2003. While only eight minority students received advanced diplomas this past graduation, 54 minority students will be seeking advanced diplomas over the next two school years.

The special education coordinator testified and credibly disputed the allegation that the district refused to provide full-time aides for two wheel-chair bound minority students while providing such services for a white student.

Another objection related to the prohibitively high cost of some extracurricular activities. Objectors argued that these costs precluded participation by some students. At the time of the hearing, the district had no formal policy or procedure providing for reduction or waiver of costs for students who could not afford such expenses. Counsel were ordered to attempt to resolve the issue. In a status conference held on July 18, 2002, the parties advised the court that it had agreed upon and adopted a formal policy addressing costs of extracurricular activities, including standards for identifying students eligible for financial assistance.

One objector criticized the adequacy of plaintiffs'

counsel. The objector, an elected official, complained that counsel for private plaintiffs had failed to initiate contact with him, that counsel had based their recommendation regarding the district's motion solely on data submitted by the district, and that counsel had not provided him with copies of the annual reports. The objector also questioned the role of counsel for the United States.

The court has had extensive involvement in this case and concludes that the allegation of ineffective assistance of counsel is without merit. Since 1997, in responding to this court's order that the parties should move toward unitary status and the termination of the litigation, counsel for all parties have expended tremendous effort in obtaining information about the operation of the school district, in defining the issues for which further action was needed, in negotiating an agreement to resolve this matter, and in monitoring the district's efforts in complying with the 1998 consent decree. Based on the annual reports filed by the school system, the statements of progress and concern in reports filed by the parties and as discussed in the status conferences, and the evidence submitted at the fairness hearing, the court is convinced that counsel for private plaintiffs have been diligent in their representation in this action.

***11** The objection to the representation by counsel for the United States reflects a fundamental misunderstanding of the role of the United States in school desegregation litigation and in the *Lee* litigation in particular. The role of the United States as plaintiff-intervenor and *amicus curiae* is to ensure 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 fact, but for the efforts of counsel for private plaintiffs and the United States, the objectors would never have had the opportunity to voice their concerns to this court.

Finally, many objectors were concerned with the district's poor record in hiring black administrators and principals. They noted that there never has been more than one black administrator in the central office and that some vacancies had been filled without being advertised. One objector, an assistant principal, discussed her own difficulties in obtaining an administrative position. This court shares their concerns and the district has failed to demonstrate that this area has been adequately addressed.

III. CONCLUSION

On the basis of the record evidence, witness testimony, and averment of counsel, the court finds that the Alexander 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 in all areas except for the hiring and promotion of higher level administrators. Since the desegregation of the Alexander City School System was ordered in 1970, there has never been a black principal at any district school, nor has more than one black administrator ever been employed at one time in the central office. The court concludes that the board has failed to demonstrate that it has removed this vestige of the prior dual system or that there were not practicable means within its control to eliminate it. *Freeman v. Pitts,* 503 U.S. 467, 492, 112 S.Ct 1430, 1445 (1991).

The Alexander School Board has otherwise fully and satisfactorily complied with the orders of this court. Except for the hiring and promotion of higher level administrators, the vestiges of the prior *de jure* segregated school system 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. They have demonstrated their good faith 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. These efforts 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,* 503 U.S. at 489, 112 S.Ct. at 1445.

***12** The plaintiff parties have nearly succeeded in the task they began decades ago to end the seemingly immovable *de jure* system of school segregation in Alexander City. This lawsuit sought to bring the district into compliance with the constitutional requirement of equal protection under the law. 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 *Duval County Schools,* that "[t]he Board, and the people of [Alexander City] 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." *NAACP, Jacksonville Branch v. Duval Cty. Sch.,* 273 F.3d at 976-77.

Therefore, with the judgment the court will enter today, except for hiring and promotion of higher-level administrators, control over the Alexander City School System is properly returned to the Alexander City Board of Education and its members and superintendent. The motion for declaration of unitary status and termination of this litigation filed by the board and its members and superintendent will be partially granted, all outstanding orders and injunctions will be dissolved except for those pertaining to the hiring and promotion of higher-level administrators, and this litigation partially 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.

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 Alexander City Board of Education, its members, and the Superintendent of Education on May 1, 2002 (Doc. no. 142), is granted in all respects except for hiring and promotion of higher-level administrators.

(2) The Alexander City School System is DECLARED to be unitary in all respects except for hiring and promotion of higher-level administrators.

(3) All outstanding orders and injunctions, except as they pertain to the hiring and promotion of higher-level administrators, are dissolved as to defendants Alexander 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 31102679

JUDGMENT

Footnotes

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

2 The objector indicated that the provision requiring the district to work with the community applied to all issues covered by the consent decree. This provision, however, applied only to seeking input on strategies for faculty recruitment.

3 One objector criticized this component of the district's efforts. He noted that it provided no mechanisms to ensure that students succeeded and remained in the advanced diploma track.