

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

EVELYN R. ELLIS, et al.,

Plaintiffs,

-vs-

Case No. 6:62-cv-1215-Orl-22GJK

**BOARD OF PUBLIC INSTRUCTION OF
ORANGE COUNTY, FLORIDA,**

Defendant.

ORDER

This cause comes before the Court for consideration of the Joint Motion to Enter First Order Preliminarily Approving Compromise and Settlement, Requiring Notice to the Class, and Scheduling a Hearing (Doc. 84). Following a hearing on the motion, the Court determines that the parties' joint request is due to be granted in part and denied in part.

Since 1962, this Court has been charged with supervising the Orange County School Board's plans to remedy the Constitutional violation occasioned by its prior segregated school system. Such supervision, however, "was intended to be a temporary measure." *Manning, et al. v. Sch. Bd. of Hillsborough County, Fla.*, 244 F.3d 927, 941 (11th Cir. 2001). Indeed, "a complete return to local control of school systems is the ultimate goal of all judicial supervision . . ." *NAACP, Jacksonville Branch v. Duval County Sch.*, 273 F.3d 960, 967 (11th Cir. 2001).

Following the school board's implementation of a plan for desegregation, restoration of local control is appropriate when the school system has satisfactorily achieved unitary status, i.e., "complied in good faith with the desegregation decree and . . . eliminated the vestiges of prior *de jure*

segregation to the extent practicable.” *NAACP*, 273 F.3d at 966. Assessing whether the vestiges of prior *de jure* segregation have been eliminated to the extent practicable requires a look at six key areas of school operation, commonly known as the *Green* factors: (1) student assignments; (2) facilities; (3) faculty; (4) staff; (5) transportation; and (6) extracurricular activities. *Id.* (citing *Green v. County Sch. Bd. of New Kent County, Va., et al.*, 391 U.S. 430, 435 (1968)). In short, courts should retain jurisdiction long enough “to ensure proper implementation of the [desegregation] plan, to guard against the possibility of recurring constitutional violations, and to ensure the achievement of the ultimate goal—a unitary public school system in which the state does not discriminate between children on the basis of race.” *Lee v. Etowah County Bd. of Educ., et al.*, 963 F.2d 1416, 1422 (11th Cir. 1992). In this circuit, jurisdiction must be maintained for a period of at least three years. *Id.*

Prior to terminating federal supervision, a district court should hold a hearing to determine if the school system has in fact achieved unitary status. *Id.* The plaintiffs in the case should be given notice of the hearing and should be allowed to demonstrate why the court should continue to exercise jurisdiction. *Id.*

An assessment of whether the Orange County school system has achieved unitary status is long overdue. After entertaining one of several appeals of court-approved desegregation plans in this case, the former Fifth Circuit concluded in February 1970 that “five of the six elements which go to make up a unitary system have been accomplished in the Orange County system: faculty, staff, transportation, extracurricular activities, and facilities.” *Ellis v. Bd. of Pub. Instruction of Orange County, Fla.*, 423 F.2d 203, 208 (5th Cir. 1970). The court further concluded that the sixth element, student desegregation, would be accomplished once this Court “require[d] and ascertain[ed] as a fact” the implementation of the school board’s proposed neighborhood student assignment system. *Id.*

Though the litigation was fairly active with regard to student desegregation throughout the 1970s, the following two decades were relatively quiet, with the Court only occasionally approving modifications to school attendance zones. Indeed, until a few months ago, there had been no activity in this matter since the Court approved a modification of student transfer provisions in September 2000. Given this history, the Court determines that a sufficient, if not inordinate, amount of time has passed to prompt an inquiry into whether the desegregation plan approved by the Court 40 years ago has served to remedy past Constitutional violations.

With their joint motion, the parties have essentially asked the Court to do three things: (1) preliminarily approve their settlement agreement, provide notice and conduct a fairness hearing pursuant to Fed. R. Civ. P. 23; (2) find that unitary status has been achieved in the Orange County school system; and (3) terminate federal court supervision by dismissing the case. The Court declines to preliminarily approve the parties' settlement agreement at this time. The parties have not provided the Court with a factual basis for finding that approval of the agreement is necessary to the achievement of unitary status in the Orange County school system. Instead, the Court will hold a hearing on unitary status and dismissal of the case. By separate order, the Court will require notice of this hearing in similar form to the proposed notice attached to the parties' joint motion.¹

Accordingly, it is **ORDERED** as follows:


¹ Though there has been no formal certification of a Plaintiff class in this litigation, the Court deems it appropriate to require notice to the group delineated in the parties' proposed Rule 23 notice, i.e., to all school-aged African-American children enrolled in or eligible to attend the public schools of Orange County, Florida, their parents or legal guardians, and all citizens of Orange County, Florida having an interest in the desegregation of the public schools of Orange County, Florida.

1. The Joint Motion to Enter First Order Prelim inarily Approving Com promise and Settlement, Requiring Notice to the Classand Scheduling a Hearing (Doc. 84) is**GRANTED** in part and **DENIED** in part as m ore fully explained herein. Notice of the hearing on unitary status and dismissal of the case will be issued by separate order.

DONE and **ORDERED** in Chambers, in Orlando, Florida on March 5, 2010.

Copies furnished to:

Counsel of Record


ANNE C. CONWAY
United States District Judge