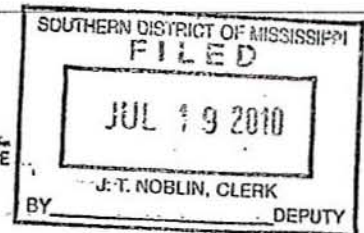


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILADELPHIA MUNICIPAL SEPARATE
SCHOOL DISTRICT,

Defendant.

Civil Action No. 1368(N)

AGREED ORDER OF DISMISSAL

In 2006, Plaintiff United States initiated a review of Defendant Philadelphia Municipal Separate School District (the "District"), which included an information request to the District. Based on a review of the information and data provided by the District, in addition to demographic and census information obtained by the United States, the United States advised the District that, in its view, the District has fulfilled its affirmative desegregation obligations under the Fourteenth Amendment and applicable federal law, entitling the District to a declaration of unitary status. As indicated by the signatures of counsel below, the United States and the District respectfully request that the Court approve this Agreed Order of Dismissal, declaring that the District has achieved unitary status and dismissing this case.

I. PROCEDURAL HISTORY

On November 7, 1969, the Fifth Circuit Court of Appeals ordered that "effective immediately . . . 'the school districts here involved may no longer operate a dual school system based on race or color' and each district is to operate henceforth . . . as a unitary school system within which no person is 'effectively excluded from any school because of race or color.'"

United States v. Hinds County Sch. Bd., 423 F.2d 1264, 1267 (5th Cir. 1969) (quoting Alexander v. Holmes County Bd. of Educ., 396 U.S. 19, 20 (1969)). The Fifth Circuit directed the immediate enforcement of permanent student and faculty assignment plans prepared by the Office of Education, Department of Health, Education, and Welfare ("HEW") in school systems in the Southern District of Mississippi, including the Philadelphia Municipal Separate School District, in order to effectuate the conversion of these school systems to unitary systems. Under the HEW plan, the District was required to, inter alia, immediately implement the amended student assignment plan and to eliminate racial segregation in the areas of faculty and staff assignment, transportation, school construction and site selection, intra- and inter-district transfers, transportation, and extracurricular activities.

In 1972, this Court placed the case on the inactive docket subject to being reopened for good cause shown on application of any party or sua sponte. Order Closing Case (May 24, 1972).

In 2006, to assess the status of the district's desegregation efforts, the United States initiated a review of the case and requested information from the District regarding, inter alia, student assignment, faculty/staff assignment, intra- and inter-district transfers, extracurricular activities, and transportation.

II. LEGAL ANALYSIS

It has long been recognized that the goal of a school desegregation case is to convert promptly a de jure segregated school system to a system without "white" schools or "black" schools, but just schools. Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430, 442 (1968). The standard established by the Supreme Court for determining whether a school district has achieved unitary status, thus warranting termination of judicial supervision, is: (1) whether

the school district has fully and satisfactorily complied with the court's desegregation orders for a reasonable period of time; (2) whether the school district has eliminated the vestiges of past de jure discrimination to the extent practicable; and (3) whether the school district has demonstrated a good faith commitment to the whole of the court's order and to those provisions of the law and the Constitution which were the predicate for judicial intervention in the first instance. See Missouri v. Jenkins, 515 U.S. 70, 87-89 (1995); Freeman v. Pitts, 503 U.S. 467, 491-92, 498 (1992); Bd. of Educ. of Okla. City Pub. Sch. v. Dowell, 498 U.S. 237, 248-50 (1991); Jenkins v. Missouri, 122 F.3d 588, 596 (8th Cir. 1997).

The Supreme Court has identified six areas, commonly known as the "Green factors," which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated vestiges of the prior dual school system to the extent practicable:

(1) student assignment; (2) faculty; (3) staff; (4) transportation; (5) extracurricular activities; and (6) facilities. Green, 391 U.S. at 435; see Dowell, 498 U.S. at 250; Jenkins, 122 F.3d at 591, n.3. But the Green factors are not intended to be a "rigid framework"; the Supreme Court has approved consideration of other indicia, such as "quality of education," as important factors in determining whether a district has fulfilled its desegregation obligations. See Freeman, 503 U.S. at 492-93.

III. STIPULATED FACTS

Student Assignment

During the 1968-69 school year, the District had an enrollment of 1,492 students of whom 35% were black and 64% were white, and operated three schools: Booker T. Washington (grades 1-12), Philadelphia Elementary (1-6), and Philadelphia High School (7-12). HEW/OCR Data (1968). Booker T. Washington was a racially identifiable black school with a 100% black

enrollment. The other schools were racially identifiable white schools with over 95% white student enrollment. Id.

Today, the District enrolls approximately 1,100 students in grades K-12 of whom approximately 73% are black and 24% are white in three schools: Philadelphia Elementary School (K-6), Philadelphia Middle School (7-8), and Philadelphia High School (9-12).

**Student Enrollment (K-12)
2009-10 School Year**

Schools	Black	White	Other	Total
Philadelphia E.S.	486 (76%)	132 (21%)	21 (3%)	639
Philadelphia M.S.	125 (70%)	49 (27%)	5 (3%)	179
Philadelphia H.S.	218 (68%)	89 (28%)	12 (4%)	319
District-Wide	829 (73%)	270 (24%)	38 (3%)	1,137

Student Transfers: During the 2009-10 school year, the District reported that 23 transfers into the school district were granted to K-12 students residing outside of the school district, 2 of whom were black and 21 were white. In addition, the District reported that no students who reside in the school district transferred out of the school district.

As demonstrated above, student assignment is no longer at issue in the school district because there is only one school for each grade level and the interdistrict transfers do not have a negative desegregative impact.

Faculty/Staff Assignment

Prior to the 1969 order, no black teachers were assigned to Philadelphia Elementary and Philadelphia High School, and no white teachers were assigned to Booker T. Washington. HEW/OCR Data (1968). During the 2009-10 school year, approximately 84% of the District's teachers are white and 14% are black, and the District is no longer assigning faculty on the basis of

race.

In addition, there is no evidence that vestiges of segregation remain in any other facet of the District operations, including transportation, extracurricular activities, and facilities.

Based on the information and data provided by the District, and on all the surrounding facts, the District has complied with the desegregation orders for a reasonable period of time and has eliminated the vestiges of past de jure discrimination to the extent practicable. Freeman, 503 U.S. at 491-92, 498; Dowell, 498 U.S. at 250; Jenkins, 515 U.S. at 87-89. Furthermore, the longstanding compliance by the District demonstrates a good faith commitment to the whole of this Court's orders and to those provisions of the law and the Constitution that were predicate for judicial intervention in the first instance. Freeman, 503 U.S. at 491. The Court concludes, therefore, that the Philadelphia Municipal Separate School District has met the legal standards for a declaration of unitary status, and that it is entitled to dismissal of this action.

Accordingly, it is hereby ORDERED that all prior injunctions in this case are DISSOLVED, jurisdiction is TERMINATED, and this case is DISMISSED WITH PREJUDICE.


ENTERED THIS 19th DAY OF July, 2010.


United States District Judge

'APPROVED:

FOR THE UNITED STATES:

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