

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY T. LEE, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff-Intervenor)	
and <u>Amicus Curiae</u> ,)	
)	
and)	
)	
NATIONAL EDUCATION ASSOCIATION,)	
Plaintiff-Intervenor,)	Civ. No. 70-251-S
)	
vs.)	CLAY COUNTY BOARD
)	OF EDUCATION
MACON COUNTY BOARD)	
OF EDUCATION, <u>et al.</u> ,)	
)	
Defendants.)	
)	

CONSENT ORDER

Plaintiffs Lee, et al., Plaintiff-Intervenor United States, and Plaintiff-Intervenor National Education Association (collectively, the “parties-plaintiff”) and Defendant Clay County Board of Education (the “Board” or “district”), having engaged in good-faith negotiations, do voluntarily agree to the entry of this Consent Order, subject to the Court’s approval. This Consent Order is intended to establish and memorialize the parties’ agreements with regard to the future closing of the school facilities discussed herein, and the Board’s student assignment practices.

After reviewing the terms of this Consent Order, the Court concludes that the entry of this Consent Order comports with the Fourteenth Amendment to the Constitution of the United States of America and applicable federal law, and, if properly implemented, will further the orderly

desegregation of the Clay County Board of Education's schools.

It is therefore ORDERED, ADJUDGED, AND DECREED as follows:

I. Background

This action is part of the state-wide school desegregation litigation, Lee v. Macon County Bd. of Educ., initiated in 1963. The United States entered the case as a Plaintiff-Intervenor and as amicus curiae on July 3, 1963. On July 11, 1974, this Court entered an Order applicable to seven school systems, including Clay County, from among the defendants in Lee. The Court stated that the Clay County school system had been “operating a unitary school system for the past three years,” and replaced the regulatory injunction in place at the time with a permanent injunction. The permanent injunction addressed, inter alia, student assignment, faculty and staff assignment, transportation, school construction and consolidation, and transfers. The Court also placed this case on its inactive docket, subject to reactivation “on proper application by any party.”

The July 11, 1974 Order was not a grant of unitary status for the purpose of ending federal court oversight. United States v. State of Georgia, Troup County, 171 F.3d 1344, 1350 (11th Cir. 1999) (analyzing the meaning of the term “unitary” in a similar court order, and holding that “the mention of the term ‘unitary’ in the 1973 Order merely meant that [the district] no longer officially sanctioned a dual school structure,” and did not constitute a finding of ‘unitary status’ or end federal court supervision of the case”). Thus, the Board remains subject to the Court’s July 11, 1974 Order, as well as to subsequent Orders issued by the Court.¹

¹ On June 26, 2000, the Board sought to reactivate this case by filing a petition seeking Court approval for continued transfers of students into Clay County from Talladega and Randolph Counties. On July 21, 2000, this Court issued an Order granting the Board’s petition for the 2000-01 school year, but denying the petition for future years.

During the 2001-02 school year, the Board served 2,346 students, of whom 23% were black, 77% white, and 1% either Hispanic or American Indian. The district consists of the following schools:

Ashland Elementary School (K-6, 397 students) (18% black; 78% white);
Clay County High School (7-12, 310 students) (24% black; 74% white);
Lineville Elementary School (K-6, 465 students) (31% black; 67% white);
Lineville High School (7-12, 383 students) (35 % black; 64 % white);
Bibb Graves School (K-12, 381 students) (28% black; 72% white); and
Mellow Valley School (K-12, 410 students) (0% black; 99.5% white).

A map indicating the location of these schools is attached as Exhibit 1. All of the district's schools have desegregated student populations, with the exception of Mellow Valley, which enrolls no black students. It is the parties' understanding that Mellow Valley has never graduated a black student.

Furthermore, the district has a long-standing practice of permitting students who provide their own transportation to attend any school of their choice. Under this "freedom of choice" plan, there were 48 white students from outside the Mellow Valley area who provided their own transportation to Mellow Valley during the 2001-02 school year. During that same school year, the total number of students who provided their own transportation to the district's other schools, combined, was 35, of whom 26 were white and 9 were black.

On May 17, 2002, the Board informed the United States that it had voted to close Bibb Graves, its desegregated K-12 school, for budgetary reasons. During subsequent conversations, the Board informed the parties-plaintiff that it is necessary to close at least one school for budgetary reasons, and that closing one, or both, of its K-12 schools will provide the greatest financial benefit. Pursuant to their obligation to monitor the Board's compliance with its desegregation obligations, the parties-plaintiff engaged in an extensive evaluation of the Board's

closure and consolidation plan, including review of the Board's responses to the United States' information requests, interviews with district staff and select Board members, tours of the relevant school facilities and bus routes, and detailed discussions with the Board's counsel. As a result of concerns raised by the parties-plaintiff and negotiations between the parties, the Board withdrew its original plan to close Bibb Graves before the 2002-03 school year.

On July 23, 2002, the Board voted unanimously to reopen Bibb Graves School for the 2002-03 school year, but to close both Bibb Graves and Mellow Valley at the end of the 2002-03 school year. The United States and private plaintiffs have considered the Board's decision and, having determined that the simultaneous closure of both Bibb Graves and Mellow Valley will not impede the orderly desegregation of the Clay County Board of Education's schools, do not object to the closures.

II. Legal Standards

The Court's July 11, 1974 Order prohibits the Board from taking any action "which tends to segregate or otherwise discriminate against students by or within school[s] on the basis of race, color, or national origin." The Order also specifies that "all school construction, consolidation, and site selection . . . shall be done in a manner which will prevent the reoccurrence of the dual structure." Furthermore, as a school system that has not yet achieved unitary status, the Board has "an affirmative duty to eliminate the effects of its prior unconstitutional conduct." Harris v. Crenshaw County Bd. of Educ., 968 F.2d 1090, 1094-95 (11th Cir. 1992). Thus, "school officials are obligated not only to avoid any official action that has the effect of perpetuating or reestablishing a dual school system, but also to render decisions that further desegregation and help to eliminate the effects of the previous dual system." Id. at

1095. In the context of a school closing and consolidation, “the duty to desegregate is violated if a school board fails to consider or include the objective of desegregation” in its decisions. Id.

III. Agreement Provisions

In light of the foregoing, the parties agree that the Board shall take the following actions.

- 1) Bibb Graves and Mellow Valley shall remain open and fully operational for the 2002-03 school year.
- 2) The Board shall not take any action to facilitate the closure of Bibb Graves prior to Mellow Valley, including any action that would render Bibb Graves a less viable school.
- 3) Before the 2003-04 school year, the Board shall close both Bibb Graves and Mellow Valley simultaneously.
- 4) The Board shall take the following actions with respect to its freedom of choice program:
 - a) Students who were attending a school other than their neighborhood school through the freedom of choice program during the 2001-02 school year can choose to continue to attend that same school for the 2002-03 school year.
 - b) Any additional freedom of choice transfers for the 2002-03 school year, beyond those granted for the 2001-02 school year, may not increase the racial identifiability of any school or otherwise undermine desegregation in the district.
- 5) The Board shall provide the parties-plaintiff with the information specified below by February 21, 2003:
 - a) Student enrollment data for the 2002-03 school year for each school in the district, by race and grade.
 - b) For each school, the name and home address of each student who is providing his

or her own transportation to attend the school through the district's freedom of choice program. For each student, indicate his or her race and neighborhood school.

- c) A description of any notice the Board has provided to parents and students regarding the closure and consolidation. This description should include the text of the notice, when it was provided, and a description of the methods used to provide the notice.
- d) A description of any future notice the Board plans to provide parents and students regarding the closure and consolidation. This description should include a draft of the notice, a schedule for when the notice will be provided, and a description of the methods that will be used to provide the notice.
- e) A description of any new construction needed to facilitate the school closures. This should include, at a minimum, the number of new classrooms needed, where they will be built, the estimated cost, and the schedule for when the construction will begin and when it will be completed.
- f) Proposed bus routes for the 2003-04 school year, including maximum transportation times for each route.
- g) Projected student enrollment for each school for the 2003-04 school year, by grade and race.
- h) The Board's plan for the reassignment, hiring, and firing of administrators, faculty, and staff to accommodate the closure and consolidation.

- 6) By no later than April 1, 2003, the Board shall inform the Court and the parties-plaintiff of the date on which Mellow Valley and Bibb Graves will be closed.

IV. Jurisdiction

The Court shall retain jurisdiction over this case, and all prior Orders not inconsistent with, or otherwise modified by, this Consent Order remain in full force and effect.

SO ORDERED this _____ day of _____, 2003.

UNITED STATES DISTRICT JUDGE

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