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

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

**RESPONSE OF UNITED STATES
IN OPPOSITION TO THE CLAY COUNTY BOARD
OF EDUCATION'S MOTION TO REJECT PROPOSED
CONSENT DECREE AND IN SUPPORT OF JOINT
MOTION FOR APPROVAL OF CONSENT DECREE**

Following several months of negotiation, including reviews of information, interviews, and site visits, the parties entered into a consent decree that would close a 99% white school and have all students attending schools that closely mirror the Clay County School District's overall racial composition. One day after the parties jointly filed the consent decree, the Clay County Board of Education ("Board") voted to rescind its agreement to the decree. There is no legal basis to support the rescission of the agreement subsequent to filing. Because the parties have agreed on a plan that furthers desegregation of the school system, the Board should be held to its

bargain, as more fully explained below.

PROCEDURAL AND FACTUAL BACKGROUND

This action is part of the state-wide school desegregation litigation styled as Lee v. Macon County Board of Education, initiated in 1963. On July 3, 1963, the United States was added as a Plaintiff-Intervenor and as 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), aff'd sub nom., Wallace v. United States, 389 U.S. 215 (1967). On July 11, 1974, this Court entered an Order applicable to seven school systems, including Clay County, from among the defendants in Lee v. Macon County Board of Education. This Order dissolved the detailed regulatory injunction in place at the time, and replaced it with a permanent injunction addressing, 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 Board sought to reactivate this case on June 26, 2000, by filing a petition seeking approval for continued transfers of students into Clay County from Talladega and Randolph Counties. The United States opposed the petition, and the United States and private plaintiffs (collectively, "plaintiff parties") sought additional information. On July 21, 2000, this Court granted the Board's petition for the 2000-01 school year, but denied the petition for future years.

On May 17, 2002, the Board informed the United States that it had recently voted to close Bibb Graves School, a 29% black K-12 school, for budgetary reasons before the 2002-03 school year.[1] During subsequent conversations, the Board informed the plaintiff parties that for

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[1]During the 2002-03 school year, the Board is operating six schools with a total enrollment of 2339 students, 22% of whom are black and 76% of whom are white:

budgetary reasons, the Board needed to close at least one school in the district, and that closing one, or both, of its K-12 schools (Bibb Graves and Mellow Valley) would provide the greatest financial benefit to the district. The plaintiff parties 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, reviews of bus routes, and detailed discussions with the Board's counsel.

On June 7, 2002, a group of Bibb Graves parents moved to intervene in this case to object to the proposed Bibb Graves closing. The United States, the private plaintiffs, and the Board opposed the intervention. This Court denied their motion to intervene on July 17, 2002.

On July 23, 2002, the Board voted unanimously to close both Bibb Graves and Mellow Valley at the end of the 2002-03 school year. After a careful review of the Board's decision and extensive negotiations, the United States, private plaintiffs, the Board and Defendant Alabama State Board of Education drafted a consent decree that provided for the closure of the two schools.[2] At the request of the Board, the parties agreed not to finalize the consent decree until

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	School	Grades	Students	Composition
•	Mellow Valley School	(K-12	399 students	0% black, 99% white)
•	Bibb Graves School	(K-12	341 students	29% black, 71% white)
•	Ashland Elementary School	(K-6	394 students	17% black, 79% white)
•	Clay County High School	(7-12	320 students	21% black, 77% white)
•	Lineville Elementary School	(K-6	480 students	32% black, 65% white)
•	Lineville High School	(7-12	405 students	32% black, 67% white)

[2] The Board projects that after implementing the consent decree, the student enrollment at the district's schools will be:

	School	Grades	Students	Composition
•	Ashland Elementary School	(K-6	569 students	17% black, 81% white)
•	Clay County High School	(7-12	567 students	19% black, 79% white)
•	Lineville Elementary School	(K-6	504 students	26% black, 71% white)
•	Lineville High School	(7-12	516 students	26% black, 71% white)

county residents voted on a November 2, 2002 referendum to increase taxes, which was apparently proposed to help keep Bibb Graves and Mellow Valley open. Although the referendum ultimately failed, the Board by that time had learned that the projected budget deficits, which prompted the Board's original decision to close Bibb Graves, were no longer accurate and the school district was in fact expecting to end the 2002-03 school year with a surplus. See Letter from Sweeney to Rho of 10/14/02 (attached as Exhibit 2).

Notwithstanding this revised forecast, the Board, on January 17, 2003, affirmed its July 23, 2002 decision, again voted to close the schools, and authorized its counsel to sign the proposed consent decree on the Board's behalf before filing it with this Court. The Board, the United States and the private plaintiffs all signed the consent decree. While the parties waited for the consent of the Alabama State Board of Education, a member of the Board who had voted for the consent decree resigned and the Board appointed a replacement. On February 26, 2003, with the consent of all the parties, the Joint Motion for Approval of Consent Decree ("Joint Motion") was filed.

On the next day, despite having given its consent, granted authority to counsel to sign on its behalf, and jointly filed the consent decree, the Board voted 3-2 to rescind its consent. The Board then filed this Motion to Reject Proposed Consent Decree on March 10, 2003 ("Motion").[3]

See Letter from Miller to Rho of 1/17/03 (attached as Exhibit 1).

[3] In addition to the pending motions filed by the parties, two groups of Clay County residents filed pleadings in this case on March 5, 2003. A group of Mellow Valley parents and students moved to intervene for the purpose of opposing the Joint Motion. A group of Bibb Graves parents and students -- many of the same people denied intervention by this Court on July 17, 2002 -- moved to intervene for the purpose of substituting the class representatives and class counsel, or in the alternative, decertifying or creating subclasses in the Lee v. Macon County Board of Education class. Along with their motions to intervene, both groups also filed complaints-in-intervention and objections to the Joint Motion.

ARGUMENT

The Court should deny the Board's Motion for two reasons: a simple change of heart is insufficient to nullify a signed agreement, and, contrary to the Board's assertion, there is no mutual mistake underlying the agreement. Further, this Court should grant the Joint Motion for Approval of Consent Decree because the proposed consent decree furthers the orderly desegregation of the Clay County School District.

I. This Court should deny the Board's Motion to Reject Proposed Consent Decree.

A. *The Board may not withdraw its consent because it changed its mind.*

When presented with an executed consent decree, the Court's proper role is to review the decree to ensure that it is fair, reasonable and legal. The Court, however, is "not free to reject the consent decree solely because the [Defendant] no longer wished to honor its agreement." Stovall v. City of Cocoa, Fla., 117 F.3d 1238, 1242 (11th Cir. 1997); see also Reed ex rel. Reed v. United States, 891 F.2d 878, 882 n.3 (11th Cir. 1990) ("Once an agreement to settle is reached, one party may not unilaterally repudiate it.").[4] Thus, this Court should deny the Board's motion because the Board concedes that it approved the consent decree and authorized its counsel both to sign the decree on the Board's behalf and to file the decree with this Court. (Def.'s Br. Supp. Mot. Reject Proposed Consent Decree ¶ 10 ("Def.'s Br.").) Having done so, the Board may not

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On March 14, 2003, this Court ordered all parties and proposed parties to respond to all pending motions. The Court also ordered defendant Alabama State Board of Education to report on the feasibility of implementing the school closings before the 2003-04 school year.

[4] The consent of the parties is of course not sufficient in and of itself. Stovall, 117 F.3d at 1242 ("[J]ust because the settlement agreement was binding upon the parties does not mean it was binding on the district court."). This Court must engage in an independent review of the proposed consent decree before deciding whether to enter it. See infra Part II. That review is wholly separate from – and should not be effected by – the Board's ineffectual attempt to change its mind.

subsequently change its mind and withdraw from the consent decree.

In two cases indistinguishable from the case at bar, the Eleventh Circuit has held that a party may not withdraw from a consent decree to which the party has already lawfully given its consent. In Allen v. Alabama State Board of Education, 816 F.2d 575 (11th Cir. 1987), a class of black teachers alleged that the state's teacher certification policy was discriminatory. The parties negotiated a proposed consent decree, which the defendant Alabama State Board of Education approved and about which the parties notified the court. After the public reacted negatively to the agreement, the defendant voted one week later to rescind its consent. The district court allowed the defendant to change its mind and denied the plaintiffs' motion to enforce the proposed decree. The Eleventh Circuit reversed, holding that "the fact that the board later changed its mind after unfavorable publicity does not change the fact that it had already approved the settlement and that the Board's attorney, with their consent, had notified the court of the settlement." See 816 F.2d at 577. The Clay County Board of Education likewise cannot change its mind after granting its consent.

Similarly, in Stovall, black residents challenged their city's at-large method of electing council members as a violation of Section 2 of the Voting Rights Act. The parties negotiated a settlement prior to trial. After the defendant city council voted to approve the settlement, the parties jointly moved the district court to enter the proposed consent decree. The district court initially denied the joint motion on the ground that one council member should have abstained from voting because of a conflict of interest. The Eleventh Circuit reversed, finding no conflict, and remanded to the district court for consideration of the joint motion to approve the consent decree. George v. City of Cocoa, Fla., 78 F.3d 494, 499 (11th Cir. 1996). But before the court

could rule on remand, the city council changed its mind and filed a motion to withdraw the proposed decree, which the district court granted. Once again, the Eleventh Circuit reversed. Reaffirming Allen, the court of appeals held that a settlement agreement -- voluntarily and properly agreed to -- is binding on the parties even if the district court has not yet decided whether to approve the agreement and enter it as a consent decree. Stovall, 117 F.3d at 1242.

Allen and Stovall preclude the Board's attempt to withdraw its properly granted consent. Indeed, the Board's argument is indistinguishable from those rejected by the Eleventh Circuit in those cases. Furthermore, granting the Board's motion would undermine the well-established judicial policy favoring negotiated agreement as a means of resolving class action lawsuits, including school desegregation cases. See Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977);[5] see also Lee v. Randolph County Bd. of Educ., 160 F.R.D. 642, 646 (M.D. Ala. 1995) (school desegregation case). Parties engaging in negotiations must be assured that a party's consent, once given, is binding. To allow otherwise would eviscerate the benefits of negotiated settlements and lead to an increase in the amount of litigation in the courts.

This case illustrates the potential dangers of allowing parties to rescind their consent. According to communications from the Board's counsel, the chairman of the Board resigned the week after the March 13 status conference, leaving the Board deadlocked at 2-2 with respect to the plan to close Bibb Graves and Mellow Valley. It is unclear whether the Board still supports its January 17 vote to consent to the proposed consent decree, or its February 27 vote to rescind its consent. The parties, this Court, and the orderly desegregation of the Clay County School

[5]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 rendered prior to the close of business on September 30, 1981.

District cannot be held hostage to this uncertainty. There must be a point at which the Board's decision is taken seriously. That point has wisely been determined by the Eleventh Circuit to be when the Board, after lengthy and considered negotiations, signed the consent decree and filed it with this Court.

B. *The Board may not withdraw its consent because of an alleged mutual mistake.*

In its supporting brief, the Board argues that it should not be bound by the settlement agreement in part because the agreement was the product of a mutual mistake. "In further explanation of the vote to rescind the decision," the Board states that "the initial action in July 2002 was based on a projected financial deficit in excess of $600,000. This premise turned out to be incorrect." (Def.'s Br. ¶ 16.) However, the Board's attempt to invoke mutual mistake in this case fails for two reasons: (1) the factual record does not support the Board's assertion that a mutual mistake existed at the time the Board approved the consent decree, and (2) the type of alleged misunderstanding does not satisfy the legal definition of a mutual mistake.

First, by the Board's own admission, there was no mistake, mutual or otherwise. (Def.'s Br. ¶¶ 9-10.) The approving votes were cast at a meeting on January 17, 2003. But the Board became aware that the deficit projections were inaccurate at least as early as October 14, 2002, when the Board's counsel wrote in a letter to the United States that "it is now predicted that Clay County will end the 2002-2003 school year with a surplus -- not a deficit." Letter from Sweeney to Rho of 10/14/02. Thus, the Board's binding consent was given with full knowledge that there was no impending deficit.

Second, the asserted mistake is based on a prediction of future events, not on then-existing facts. Presented with a similar claim, the district court in Dillard v. Crenshaw County, 748 F. Supp. 819 (M.D. Ala. 1990), held that:

> [u]nder Alabama law, a party may rescind a settlement agreement based on a claim of mutual mistake only if the parties entered into the agreement in reliance on an "erroneous belief . . . relating to the facts as they existed at the time of the making of the contract. . . . A party's prediction or judgment as to events to occur in the future, even if erroneous, is not a 'mistake' as that word is defined here."

Id. at 830 (quoting Boles v. Blackstock, 484 So.2d 1077, 1082 (Ala. 1986)) (citation and alterations omitted). Any inaccuracies about the Board's future budget were not related to "the facts as they existed at the time of the making of the contract" on January 17, 2003; rather, they related to the Board's "prediction or judgment as to events to occur in the future." Id. Thus, "[t]he [defendant's] allegation that this prediction now appears to be erroneous does not, as a matter of law, support a claim for rescission of the consent decree based on mutual mistake." Id. at 830.

II. This Court should grant the Joint Motion for Approval of Consent Decree.

Assuming the Board's attempt to withdraw its consent is denied, this Court should then grant the Joint Motion for Approval of Consent Decree because it furthers desegregation. "District courts should approve consent decrees so long as they are not unconstitutional, unlawful, unreasonable, or contrary to public policy." Stovall, 117 F.3d at 1240; see, e.g., Howard v. McLucas, 871 F.2d 1000, 1008 (11th Cir. 1989); United States v. City of Alexandria, 614 F.2d 1358, 1362 (5th Cir. 1980).

In desegregation cases, proposed school closings must not "perpetuate or re-establish the dual system." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 21 (1971); see Harris v. Crenshaw County Bd. of Educ., 968 F.2d 1090, 1094-95 (11th Cir. 1992). The desegregation order in this case specifies that "all school construction, consolidation, and site selection . . . shall be done in a manner which will prevent the reoccurrence of the dual structure." July 11, 1974

Order. This Court should approve the consent decree because closing Bibb Graves and Mellow Valley does not "perpetuate or re-establish the dual system." Swann, 402 U.S. at 21. To the contrary, closing the virtually all-white Mellow Valley helps fulfill the Board's "affirmative duty to eliminate the effects of its prior unconstitutional conduct." Harris, 968 F.2d at 1094-95 ("[S]chool 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."). Furthermore, the consent decree does not place on black students a disproportionate share of the burden of consolidating the schools. See Arvizu v. Waco Indep. Sch. Dist., 495 F.2d 499, 504-05 (5th Cir. 1974) ("To comply with constitutional mandates, the burden of desegregation must be distributed equitably; the burden may not be placed on one racial group.").

A. ***Mellow Valley School***

The Board's decision to close the virtually all-white Mellow Valley School and consolidate those students into the integrated schools in Ashland and Lineville undeniably furthers desegregation and helps eliminate the vestiges of the former dual system. See Swann, 402 U.S. at 26 ("The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools."). Rather than attending a virtually one-race school that has never graduated a black student, the Mellow Valley students will attend desegregated schools whose racial populations closely mirror the school district's overall racial mix.[6] See, e.g., Harris,

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[6]The district projects that after the closures take place, the Ashland schools will enroll almost 18% black students and the Lineville schools will enroll 26% black students. The district's overall enrollment is 22% black. See Letter from Miller to Rho of 1/17/03.

968 F.2d at 1093 (approving the closure of a predominantly black school in a predominantly white district in part because the students will be relocated to integrated schools that are close to the overall district racial mix).

The suggestion by parent groups at Mellow Valley and Bibb Graves that the consent decree would hinder desegregation cannot be reconciled with the record or any reasonable interpretation of desegregation law. It is true that the overall percentage of black students at the Ashland and Lineville schools will decrease slightly after absorbing students from Mellow Valley and Bibb Graves. But this decrease is solely due to the influx of Mellow Valley's 99% white student body. Indeed, the current percentage of black students at the Board's other schools (including Bibb Graves) is artificially inflated in comparison to the overall district percentage by the fact that the Board currently operates a nearly all-white school at Mellow Valley. The consent decree contemplates consolidating all of the district's students in centrally located, integrated schools in Ashland and Lineville. The Board predicts that black student enrollment in these two areas will be within five percentage points of the district's overall black population. The "decrease" in black students at these schools does not therefore represent a retreat into segregation; rather, the elimination of the nearly all-white Mellow Valley will create schools more closely representative of the district's overall black student population.

B. *Bibb Graves School*

Unlike the Mellow Valley closing, which clearly furthers desegregation, the Bibb Graves closure is more neutral towards the district's desegregation efforts. Bibb Graves students will simply relocate from one integrated school to another, whether in Ashland or Lineville. So long as this Court is satisfied that closing Bibb Graves will not "perpetuate or re-establish the dual

system," Swann, 402 U.S. at 21, this Court should defer to the Board's decision to close the school for financial and/or educational reasons. "The only role that this court has in this matter is a narrow one, focusing on the effect of the proposal on the goal of disestablishing a dual school system." Lee v. Geneva County Bd. of Educ., 892 F. Supp. 1387, 1389-90 (M.D. Ala. 1995). Because the Bibb Graves closure is consistent with the terms of the desegregation order and relevant federal law, this Court should approve the consent decree. See, e.g., id. (approving the consolidation of an integrated school into similarly integrated schools because relocating the students would not negatively impact desegregation).

Contrary to the suggestion of the Bibb Graves parents, closing Bibb Graves will not place an undue burden on black students. See Arvizu v. Waco Indep. Sch. Dist., 495 F.2d 499, 504-05 (5th Cir. 1974) ("To comply with constitutional mandates, the burden of desegregation must be distributed equitably; the burden may not be placed on one racial group."); see also Harris, 968 F.2d at 1097; Lee v. Macon County Bd. of Educ., 448 F.2d 746, 754 (5th Cir. 1971) (en banc). If anything, the burdens of relocating to the new schools will fall more heavily on white students, because the vast majority of the relocating students will be white: 72% at Bibb Graves and 99% at Mellow Valley. Although some students will have to travel further than others, nothing in the record suggests that the most extreme transportation burdens fall disproportionately on black students.[7] Finally, there is no support for the argument that black students will bear any more

[7] Contrary to the suggestion by Bibb Graves parents, there does not appear to be a disproportionate number of black school-age children residing in the furthermost corners of Clay County. See Exhibit 3. The map prepared by the United States is based on the 2000 Census. The shadings of the census blocks represent the percentage of under-17 black residents in each block. The numbers inside each block represent the number of under-17 residents in each block, whether black or white, from which those percentages are figured. It is obvious from the map that the transportation burdens placed on black and white Bibb Graves students, including those residing in the southwest corner of the county, will be shared equitably across races.

burden than white students in the event there is any reduction in extracurricular opportunities following consolidation. See, e.g., Geneva County, 892 F. Supp. at 1392-93. All Bibb Graves students -- black and white -- will be confronted equally by the challenges inevitably arising from the closure of a school.

CONCLUSION

Over a long period of deliberations and negotiations, the Clay County Board of Education considered carefully whether to close Bibb Graves and Mellow Valley. Even after learning that the projected budget deficit was actually a budget surplus, the Board followed its best judgment as to the allocation of its resources and decided to close the two schools. The Board's belated attempt to change its mind cannot obscure this considered judgment. Because the parties have all consented to the proposed decree and because the decree will further the orderly desegregation of the district, this Court should deny the Board's Motion to Reject Proposed Consent Decree and grant the Joint Motion for Approval of Consent Decree.

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Dated: April 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Memorandum of Law has been sent, by first-class mail, postage paid, on this tenth day of April 2003, to the following counsel of record:

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