

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

| | | |
|---------------------------------|---|--------------------------|
| WILL GRAY, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. 1:02CV256-M-D |
| v. |) | |
| |) | |
| LOWNDES COUNTY SCHOOLS, et al., |) | <u>CONSOLIDATED WITH</u> |
| |) | |
| Defendants. |) | |
| WALTER SHINN, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. 1:03CV623-M-D |
| v. |) | |
| |) | |
| CHARLES JOHNSON, et al., |) | <u>CONSOLIDATED WITH</u> |
| |) | |
| Defendants. |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. EC70-55 |
| v. |) | |
| |) | |
| COLUMBUS MUNICIPAL SEPARATE |) | |
| SCHOOL DISTRICT, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

CONSENT ORDER

Plaintiff United States of America (“United States”), private plaintiffs, and Defendants Lowndes County School District, et al. (the “District”), having engaged in good-faith negotiations, do voluntarily agree to the entry of this Consent Order by the Court. After reviewing the terms of this Consent Order, the Court concludes that the entry of this Consent

Order comports with the objectives of the Fourteenth Amendment to the Constitution of the United States of America and applicable federal law, and will further the orderly desegregation of the Lowndes County School District.

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

I. Procedural Background

On September 5, 1970, the Court ordered that the Lowndes County School District be permanently enjoined from discriminating on the basis of race in the operation of the school district. The 1970 Order contained provisions governing, inter alia, student assignment, classroom operations, extracurricular activities, and construction. Since the 1970 Order, the Court has entered numerous orders requiring the desegregation of the Lowndes County School District, including the February 15, 1989 Consent Decree (“1989 Decree”) and the June 23, 2001 Consent Order (“2001 Order”). The 1989 Decree provided for, among other things, construction in West Lowndes to promote desegregation and educational enhancements to the programs offered at the West Lowndes schools. The 2001 Order detailed renovations and construction to certain athletic facilities in the District and required that the District replace the above-ground sewage lagoon at the West Lowndes Middle School with an underground system. The anticipated completion date was July 1, 2002.

Private plaintiffs filed Gray, et al. v. Lowndes County Schools, et al. and Shinn, et al. v. Charles Johnson, et al. in 2002 and 2003, respectively. Both suits sought, inter alia, the District’s compliance with its desegregation obligations. On May 26, 2004, the Court consolidated these two actions with the original desegregation case.

The parties proceeded with discovery. The District responded to information requests

and produced responsive documents. On June 6, 2005, the United States served the parties with the expert report of J. Frank Brewer, a report detailing facilities issues in the District. After reviewing these materials, the parties entered into good faith negotiations. This Consent Order is a result of those negotiations and sets forth the specific steps which, if implemented, will make all schools comparable in facilities and resources.

II. Facilities

The District agrees to complete all projects stated below by December 1, 2006, except where otherwise noted. The District agrees to comport with the requirements of this Order and the specifications outlined in attached documents, including the “Scope of Work and Schedule,” prepared by Johnson Bailey Henderson McNeel Architects, PA, dated December 7, 2005, with modifications made by the parties (attached hereto as Appendix A) and the schematics drafted by Johnson Bailey Henderson McNeel Architects, PA, dated December 7, 2005 (attached hereto as Appendix B).

A. West Lowndes High School

1. Baseball Facilities

In the 2001 Order, the District recognized “that the baseball field for West Lowndes High School is inferior to the athletic facilities at the other campuses in the District.” 2001 Order at 4. As noted in the Order, “the baseball field is not adjacent to any school campus and does not have adequate parking, restroom, or bleacher facilities. The District commits to remedy this situation within a reasonable period of time. After the current round of construction and renovation of athletic facilities, upgrading the West Lowndes baseball facility will be completed before the District undertakes any new renovation or construction projects other than routine maintenance.”

Id. Consequently, the District agrees to construct a West Lowndes baseball facility before undertaking any other new renovation or construction projects at either the Caledonia or New Hope campus, see infra Section IV.

The District will purchase approximately 11 acres adjacent to the east-side of the West Lowndes High school, buttressing the football field (the "Purchase Land"). The District will complete the purchase of the Purchase Land by January 30, 2006. The Purchase Land will be used to build a baseball complex comparable in design and quality to the complexes on the Caledonia and New Hope campuses. The West Lowndes complex will include a baseball field, an equipped field house (including locker rooms, restrooms and showers, a team room, general storage, training/laundry space, a workout room, batting cages, batting machines and a pitcher's mound), bleachers, dugouts, a pressbox, a coach's viewing area, concessions, and restrooms. The baseball field, and the above-mentioned complex items, will be of similar quality to those at Caledonia and New Hope, including the warning track, fencing, scoreboard and lighting. None of the components of the West Lowndes High School baseball facility will be left incomplete; the facilities will be totally finished by the District (i.e., plumbing, electrical, installation will all be completed by the District).

The Purchase Land will also be master planned for a future women's softball field and field house. The baseball field and master planned softball field shall include all details mentioned herein and comport with the written description found in Appendix A and the plans attached as Appendix B. All details found in this Decree and its attachments shall be included in the development of the baseball field. Before the start of construction, but no later than March 15, 2006, the District shall provide the parties with updated plans for construction and the master

plan for the softball facilities as Appendix B is based on aerial mappings. The construction of the West Lowndes baseball complex shall be completed by December 1, 2006.

On January 31, 2006, if the District has not finalized purchase of the Purchase Land adjacent to the east side of the West Lowndes High School, the District must submit a written proposal to the Court, the United States and private plaintiffs detailing its plans for construction of a high school baseball field for West Lowndes. This alternative plan must include either: (1) a firm closing date, supported by documentation, for the Purchase Land prior to February 15, 2006; or (2) provide for the start of eminent domain proceedings for the Purchase Land.

2. Practice Fields

Unlike the Caledonia and New Hope campuses, the West Lowndes High School has no practice fields for any of its sports or band. In the 2001 Order, the District agreed that “a practice field will be created to the west of the high school building.” 2001 Order at 3. To date, no such practice field has been created.

The District owns land to the west of the West Lowndes High School. The District agrees to develop this land to accommodate both football and band practice areas. Such development includes the removal of utility poles, grading to accommodate the activities, access over drainage, and a walk path.

The practice fields will comport with the specifications stated in Appendix A and the plans attached as Appendix B. The practice fields shall be completed by August 1, 2006.

3. Parking

The District committed in the 2001 Order to add 65 paved parking spaces at the West Lowndes High School. 2001 Order at 3. The District has not paved any of the contemplated

parking spaces; instead this area is simply a graveled field.

The District will pave the graveled area and tie it to the existing paved parking lot at the West Lowndes High School to maximize parking availability. This will create approximately 65 new paved parking spots. The District will also create approximately 75 parking spots on existing paved areas surrounding the high school. This will comport with the specifications stated in Appendix A and B. These renovations shall be completed by August 1, 2006.

4. Athletic Facilities Walkways

The sidewalk and stairs leading from the West Lowndes High School locker room to the football field were found to be unsafe by facilities expert, J. Frank Brewer. Consequently, the District agrees to remove and rework this sidewalk in accordance with applicable building codes and Americans with Disabilities Act standards so that the overall facility is comparable to the District's athletic facilities at New Hope and Caledonia. Additionally, the District agrees to correct the poor drainage conditions surrounding the home football concessions and restroom buildings. The District will do this in a manner consist with the specifications stated in Appendix A. These renovations shall be completed by August 1, 2006.

5. High School Building

The District agrees to make the following changes to the West Lowndes High School to remedy some of the disparities that exist between West Lowndes and the campuses at Caledonia and New Hope: (a) the original vocational building, which now serves high school classrooms, will be reroofed; (b) the front entry way will be extended to better identify the main entrance; (c) a skylight and transom lights will be added to the front entry way; (d) the front entry way will be designed to screen the kitchen area; (e) the secondary entry way, which connects the former

Voc-Tech building to the addition will be changed to conform with the new front entry way features; and (f) the garbage location will be better screened and garbage will be picked up in a manner that is least offensive to the aesthetics of the building. These renovations will comport with the plans stated in Appendix A and B and will be completed by December 1, 2006.

B. West Lowndes Middle School

1. Waste Water Treatment Facility

_____The District committed to remove the above-ground sewage lagoon on the campus of the West Lowndes Middle School as part of the 2001 Order. 2001 Order at 4-5. At that time, the District expected to complete the project by July 1, 2002. To date, the sewage lagoon has not been removed. The District agrees to remove the sewage lagoon by carrying the waste to the Industrial Park's wastewater treatment system. The District will fill in the sewage lagoon and make the area aesthetically pleasing, including placing at the site one or more of the following: (1) athletic field; (2) playground; and/or (3) landscaping. The District agrees to commence construction by February 13, 2006 and complete construction by December 1, 2006.

On February 13, 2006, if the District has not commenced this project, the District must submit to the Court and the parties for approval an alternative plan that will remove the above-ground sewage lagoon. Any alternative plan must include: (1) the removal of the lagoon; and (2) provide for a completion date on or before December 1, 2006.

2. Gymnasium

The District agrees to undertake the following renovations to the West Lowndes Middle School gymnasium: (a) replacement of exterior and interior doors, door frames, and hardware; (b) new floor covering system; (c) new bleacher system; (d) locker room renovation;

(e) replacement of deteriorated exterior wall panels; and (f) addition of air conditioning system.

The renovations will comport with the specifications stated in Appendix A. The District agrees to complete these renovations by December 1, 2006.

C. West Lowndes Elementary School

1. Elementary Building

The District agrees to renovate the West Lowndes Elementary School's lighting levels to comport with the school classroom standards set by the Illuminating Engineers Society of America ("IES"), and so as to be comparable to other District school facilities. The IES has established that school classrooms should be illuminated at between 50 and 75 foot candles at desk top, with 50 foot candles being the minimum lighting level recommended for these spaces. Currently, the average classroom lighting level is 35 foot candles. The District will renovate the classrooms to comply with at least the 50 foot candles minimum.

In the common area of the elementary school a skylight exists. The District agrees to keep the skylight, as it is an important source of light for the common area, and repair it in such a manner as to eliminate the leaks occurring at the skylight.

The District will add two classrooms and an approximately 2,000 square foot addition to the library.

The District will complete these renovations and construction as described here and in Appendix A by August 1, 2006.

2. Gymnasium

The elementary school gymnasium houses two classrooms. The carpeting in these classrooms is very worn, water-damaged, and odorous. The District agrees to conduct an

analysis of the water problem in this location and based on this analysis will attempt to fix the problem and choose appropriate flooring (e.g. tiles, carpeting, rugs). The District will complete the analysis by March 1, 2006 and remedy the problem by August 1, 2006.

3. Playground Equipment

The District agrees to add playground equipment to the elementary playground to make it comparable to the equipment located at the New Hope and Caledonia elementary playgrounds. The District will add such equipment by August 1, 2006.

4. Sanitary Sewage Aeration Lagoon

The West Lowndes Elementary School utilizes a sewage lagoon adjacent to the gymnasium and behind the school. To reduce noxious odors and comply with the Mississippi Department of Environmental Quality regulations, the District shall take all steps outlined by Neel-Schaffer, Inc. in their letter dated August 22, 2005 (attached hereto as Appendix C) including (1) increasing the shrub coverage outside the lagoon fence; (2) closing and locking the gate of the lagoon; (3) removing shrubs and grass inside the lagoon area; (4) refilling the chlorine contact chamber and assuring that the dispenser is operable; (5) removing rust from the control panel to allow access; and (6) using two hp aerators and making available the operation and equipment schedules of such aerators. The District shall also maintain an annual maintenance program.

The District shall complete this work by August 1, 2006. After the completion of this work, the District will evaluate the results and determine if additional maintenance is necessary. By December 15, 2006, the District will provide the parties with the results of this additional evaluation and a copy of the District's annual maintenance program.

III. Academic Instruction

For the 2003-04 school year, no advanced placement, honors, or accelerated classes were taught at the West Lowndes High School. Additionally, no language courses above the second level were taught.

During the same school year, at Caledonia, students received instruction in four advanced placement courses, three accelerated classes, and a third level language course. At New Hope, teachers taught three advanced placement courses, three accelerated classes, four honors classes, three third level language courses (in two different languages), and three pre-calculus classes.

The District agrees to remedy the lack of advanced placement, honors, accelerated, and upper level language courses taught at West Lowndes High School. To accomplish this, the District agrees to develop policies and procedures and implement teacher and guidance counselor training programs to identify students, prior to high school, that should receive advanced instruction. These policies and procedures will include guidelines for recognizing students who should receive advanced classes in middle school so that they will be positioned to take advanced placement, honors, accelerated, and upper level language classes in high school. Additionally, these policies and procedures will include guidelines for teachers to report such students to guidance counselors and principals, parent and student notifications and meetings, and the District's promotion of enrollment in such classes to teachers, students and parents. The District shall provide to the parties within ninety (90) days of the filing of this Decree the policies and procedures established by the District and a schedule of teacher and guidance counselor trainings.

The District agrees to provide on-site teacher instruction at the West Lowndes Middle School for any West Lowndes Middle School student who requests and is eligible to take any

advanced or accelerated class, including instruction in high school level classes that will position such students to be eligible for advanced and accelerated classes in high school. The District agrees to provide on-site teacher instruction at the West Lowndes High School for any West Lowndes High School student who requests and is eligible to take any advanced placement, honors, accelerated, and upper level language courses. The District will provide such instruction to as many or as few students who request and are eligible for such instruction and will place no minimums on the number of students that must enroll in such a class.

IV. Construction and Renovations at the New Hope and Caledonia Campuses

The District plans to build additional classrooms on the Caledonia and New Hope campuses. The United States and private plaintiffs agree to the following additions: (1) four kindergarten rooms at Caledonia Elementary; (2) four classrooms and restrooms at Caledonia Middle; (3) four classrooms, one science lab and restrooms at Caledonia High; (4) four classrooms, renovation of the administrative area, and enlargement of the cafeteria at New Hope Middle; and (5) four classrooms at New Hope High.

While the District may begin construction of these additions and renovations at New Hope and Caledonia at any time, the classrooms, restrooms and enlarged section of the cafeteria cannot be utilized or occupied by any students or faculty until all renovations and constructions described above in Section II are completed and the parties have submitted a joint statement to the Court confirming completion.

V. Extracurricular Activities

The District shall cease immediately any practices utilizing a student's race, color or national origin in the selection or eligibility for recognition in a school yearbook (such as class superlatives) and selection of homecoming courts.

The District shall develop written racially non-discriminatory procedures for the selection of class superlatives, homecoming courts and any other extracurricular activities that may have utilized race-conscious policies or procedures in their selection criteria and shall provide the United States with copies with sixty (60) days of the entry of this Consent Decree.

Before the close of the 2005-2006 school year, the District shall provide information to the United States sufficient to demonstrate that its new race-neutral policies have been implemented by the Lowndes County schools. Such information shall include a copy of the 2005-2006 Caledonia and Hew Hope Yearbooks.

VI. Reporting

In addition to the above-mentioned dates concerning the West Lowndes High School baseball field and the West Lowndes Middle School sewage lagoon, the District shall provide reports to the Court and the parties on March 15, 2006, August 15, 2006, and December 15, 2006, outlining the progress that has been made toward completing the proposed construction and renovation stated above in Sections II. and IV. For any item not completed by the date indicated in this Decree, the District must indicate the reason for failure to complete and the expected completion date. If any of the renovation and construction projects are not completed by December 15, 2006, the District shall provide continuing reports, every three months, to the Court and the parties (i.e. March 15, 2007, June 15, 2007). No later than the March 15, 2006

report, the District shall provide the parties with updated plans for construction of the West Lowndes baseball facilities and master plan for the softball facilities. The December 15, 2006 report will also include the information stated in Section II.C.4. concerning the West Lowndes Elementary School sewage lagoon.

As stated in Section III., the District shall provide to the parties within ninety (90) days of the filing of this Decree the policies and procedures established by the District to identify students who should be encouraged to take advanced placement classes, including (1) guidelines for recognizing students who should receive advanced classes in middle school so that they will be positioned to take advanced placement, honors, accelerated, and upper level language classes in high school; (2) teachers to report such students to guidance counselors and principals; (3) parent and student notifications and meetings; and (4) the District's promotion of enrollment in such classes to teachers, students and parents. Additionally, the District shall provide a schedule of teacher and guidance counselor trainings concerning these policies and procedures.

As stated in Section V., the District shall provide the United States and private plaintiffs with policies and procedures concerning the selection of extra-curriculars within sixty (60) days of the filing of this Decree and with documentation of the implementation of race-neutral policies before the end of the 2005-06 school year.

The Lowndes County School District shall continue to file the reports required by the 1970 Order on November 1 and April 15 of each school year. The District shall include with this reporting the following information: (1) for each high school, each class taught by title and the number and race of the students; and (2) for each school, the date(s), time(s) and names of teachers and guidance counselors in attendance for each training concerning the identification of

students that need to be encouraged to participate in advanced classes.

VII. Expenses and Costs

_____The District agrees to pay the private plaintiffs \$35,000 in expenses and costs for legal work. Such payment will be made to private plaintiffs' counsel of record, Michael Adelman, within ten business days of the filing of this Order.

VIII. Jurisdiction

The Court shall retain jurisdiction of this action to monitor the implementation of the provisions of this Consent Decree, to ensure that the District is complying with the Constitution and federal laws governing it, and to consider any appropriate pleadings in this case. The Court retains jurisdiction over this case, and all prior Orders not inconsistent with this Consent Order remain in full force and effect.

IX. Dismissal of Lawsuit

Upon entry of this Consent Order, the District shall be declared partially unitary with regard to student assignment, faculty/staff assignment, and transportation. The Court shall retain jurisdiction to ensure compliance with this Order and when the District has complied it shall file its motion for a declaration of unitariness and dismissal of this lawsuit with prejudice.

So ORDERED this _____ day of _____, 2005.

UNITED STATES DISTRICT JUDGE

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