

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

ANTHONY T. LEE, ET AL., )

PLAINTIFFS, )

UNITED STATES OF AMERICA, )

PLAINTIFF-INTERVENOR )  
AND AMICUS CURIAE, )

NATIONAL EDUCATION )  
ASSOCIATION, INC., )

PLAINTIFF-INTERVENOR, )

VS. )

MACON COUNTY BOARD OF )  
EDUCATION, ET AL., )

DEFENDANTS. )

Civil Action No. 70-S-251-S

Clay County Board of Education  
(Judge C. Lynwood Smith, Jr.)

ENTERED  
MAY 13 2003

ORDER

This action is before the court on the Motion to Intervene by Parents and Taxpayers Whose Students Attend Mellow Valley Public School filed on March 5, 2003 (*hereinafter "Mellow Valley Plaintiffs"*), and the Motion to Intervene for the Purpose of Substituting Class Representative and Class Counsel in the Lee Class, or in the Alternative, Motion to Intervene for the Purpose of Decertifying the Lee Class, or Creating subclasses of African-American Students, and Parents and Taxpayers who Either Attend or Whose Students Attend Bibb Graves K-12 Public School also filed on March 5, 2003 (*hereinafter "Bibb Graves Plaintiffs"*). The court previously denied the motion

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to intervene filed by the Bibb Graves Plaintiffs on July 17, 2002. The Bibb Graves Plaintiffs have recast their motion to intervene and request that a substitute class and class counsel be appointed or that the original class be decertified. The motion is denied. Upon consideration of the motions to intervene filed by both the Mellow Valley Plaintiffs and the Bibb Graves Plaintiffs and the responses of the United States, the Lee Plaintiffs, and the Clay County Board of Education, the motions to intervene are DENIED.<sup>1</sup>

This action also is before the court on the Joint Motion to Approve Consent Order filed on February 26, 2003, by all parties to the action. Also pending is the Motion to Reject Proposed Consent Decree filed on March 10, 2003, by the Clay County Board of Education. The following facts are relevant to the court's disposition of that matter. The Clay County Board of Education voted on July 23, 2002, to close both Mellow Valley and Bibb Graves schools.<sup>2</sup> After the July 23, 2002 vote, the parties agreed to a consent decree closing both Mellow Valley and Bibb Graves school. Before the consent decree was submitted to the court for approval, however, citizens from Mellow Valley and Bibb Graves asked the Board to defer submission until after November 5, 2002, at which time the citizens of Clay County would vote on a proposal to increase the ad valorem taxes for the benefit of the school system.<sup>3</sup> The tax proposal was defeated.

Although the tax proposal was defeated, the financial projections for the Clay County school system changed such that, instead of a projected deficit in excess of \$600,000 for the 2002-2003

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<sup>1</sup> The Mellow Valley Plaintiffs and the Bibb Graves Plaintiffs each filed motions to dismiss and objections to the consent decree on March 5, 2003. These motions also are denied in light of the court's denial of the motions to intervene.

<sup>2</sup> Clay County Board of Education Brief in Support of Motion to Reject Proposed Consent Decree, Appendix A (filed March 10, 2003).

<sup>3</sup> *Id.* Brief, para. 8.

school year, the Board anticipated an operating surplus.<sup>4</sup> When parents of students attending Bibb Graves and Mellow Valley learned that at least one of the principal reasons for the July 23, 2002 Board decision to close both schools no longer existed, *i.e.*, a projected deficit, they asked the Board to reconsider its decision.<sup>5</sup> The Board did so, but on January 17, 2003, by a 3-2 vote, the Board authorized its attorney to submit the consent decree for this court's approval.<sup>6</sup> This was done on February 26, 2003.

On February 27, 2003, a newly composed Clay County Board of Education,<sup>7</sup> by a vote of 3-2, voted to rescind the prior Board's two decisions to close Mellow Valley and Bibb Graves schools.<sup>8</sup> The reconstituted Clay County Board of Education now petitions this court to reject the predecessor Board's previously filed Joint Motion to Approve Consent Order. The court must deny the Board's request. The court is not free to reject the consent decree solely because the reconstituted Board no longer wishes to honor it. *See Stovall v. City of Cocoa, Florida*, 117 F.3d 1238, 1242 (11th Cir. 1997); *Allen v. Alabama State Board of Education*, 816 F.2d 575 (11th Cir. 1987). Eleventh Circuit case law makes clear that the new Board cannot succeed in its attempt to withdraw its predecessor's properly granted consent.

Approval of the consent decree, however, is a separate matter. The Eleventh Circuit also has clearly stated that "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.

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<sup>4</sup> *Id.* para. 9.

<sup>5</sup> *Id.* para. 9.

<sup>6</sup> *Id.* Appendix B.

<sup>7</sup> *Id.* para. 11. Board Chairman Mark Bowen resigned his position to accept a position on Governor Bob Riley's cabinet. His resignation was effective January 20, 2003. In February 2003, a new member filled the vacancy.

<sup>8</sup> *Id.* Appendix C.

For the 2001-2002 school year, the student body of Bibb Graves School had a racial composition that was 72 percent white, 28 percent black, while Mellow Valley School was reported to be 99.5 percent white.<sup>9</sup> In addition to the numerous briefs filed by the parties, the court held a status conference on March 13, 2003, and asked the parties to further brief the issues concerning intervention, the Clay County Board of Education's request to withdraw the proposed consent decree, and the feasibility of closing both schools at this time of the year.<sup>10</sup> After considering the responses of all of the parties, the court finds that the consent decree should be approved as it is not unconstitutional, unlawful, unreasonable, or contrary to public policy. In desegregation cases, proposed school closings must not "perpetuate or re-establish the dual system." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 21 (1971). Closing Mellow Valley and Bibb Graves will not perpetuate or re-establish the dual system. There being no evidence presented to the court to indicate that the proposed consent decree is unconstitutional, unlawful, unreasonable, or contrary to public policy, the court grants the Joint Motion to Approve Consent Order filed on February 26, 2003.

Accordingly, it is ordered that the motions to intervene are DENIED. It is further ordered that the motion to reject the proposed consent decree is DENIED. It is further ordered that the Joint Motion to Approve Consent Order is GRANTED. It is further ordered that the parties will meet and

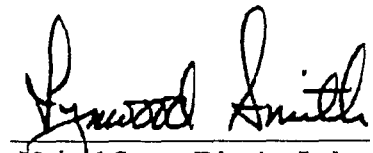
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<sup>9</sup> Brief in Support of Motion to Reject Proposed Consent Decree (filed March 10, 2003), para. 3.

<sup>10</sup> After the March 13, 2003 Status Conference, Board chairman Richie Farrow resigned, leaving a 2-2 split of the Board regarding the proposed consent decree. See Brief of Clay County Board of Education (filed April 11, 2003) at 2. Based upon the papers filed with the court, it appears that the vacancy has not been filled. Counsel for Clay County advised the court in its brief filed after the status conference that the remaining four members of the Board are deadlocked 2-2 on the issue of feasibility of closing the two schools at this point in the school year. Thus, the Board can offer this court no information regarding feasibility at this time. *Id.* at 4 n.1. Despite the Board's current abstention, it previously indicated that it was willing and able to begin the process of closing a school as late as mid-May. On May 16, 2002, the Board first voted to close Bibb Graves before the 2002-2003 school year. See Reply Brief of the United States (filed April 21, 2003) at 4, Exhibit 1 (Letter from Sweeney to Miller of 5/17/02).

confer to develop a revised timetable pursuant to Section III, Paragraph 5 of the Consent Order regarding information to be provided to the parties-plaintiff and report back to the court in writing by close of business on May 30, 2003. The report shall state whether the information listed in Section III, Paragraph 5 of the Consent Order has been provided to the parties-plaintiff or what agreed upon date the information will be provided to the parties-plaintiff.<sup>11</sup> The report will further inform the court whether a status conference is necessary to resolve any further disputes.

DONE this 13<sup>th</sup> day of May, 2003.

  
United States District Judge

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<sup>11</sup> According to the United States, the Board has already supplied answers to some of the requests such as the proposed racial composition of the consolidated schools and the proposed bus routes, both of which have already been reviewed by the parties in the course of negotiating and approving the consent decree. See Brief of the United States (filed April 21, 2003) at 5.