

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

MICHAEL MADISON, et al.)
 Plaintiffs,)
)
and)
)
UNITED STATES OF AMERICA,) C.A. No. 2:00-CV-094
 Plaintiff Intervenor,)
)
 v.)
)
SULLIVAN COUNTY BOARD OF)
EDUCATION, et al.,)

 Defendants.)

CONSENT ORDER

On March 24, 2000, Plaintiff Michael Madison filed this action, alleging that, while enrolled at Sullivan East High School, Defendants Sullivan County Board of Education ("SCBE"), Keith Glover, and Harmon Peters (collectively, "Sullivan County Defendants"); and Defendants Anson Blevins, Thomas Johnson, Todd Bolling and Jeffrey Rutherford (collectively, "Student Defendants"),¹ caused him to be harassed on the basis of race. On September 14, 2000, an amended complaint was filed adding Marquita Madison as a plaintiff.

In their Amended Complaint, the Madison plaintiffs alleged, inter alia, violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title VI of the

¹On August 5, 2002, upon motion by the Madison plaintiffs, the Court ordered Defendants Glover, Blevins, Johnson, Bolling and Rutherford dismissed from this action.

Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq. In their respective Answers, SCBE, Glover, Peters and Blevins expressly denied the plaintiffs' claims. The United States, after conducting a preliminary evaluation of the plaintiffs' allegations and the Defendants' responses, informed the parties that the Attorney General had certified this case as one of general public importance for purposes of seeking intervention under Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2. Accordingly, the United States filed a motion to intervene as a plaintiff in the case, which the Court granted on November 28, 2000. The Sullivan County Defendants deny the allegations contained in the Intervening Complaint of the United States.

The parties desire to avoid costly and protracted litigation and have voluntarily agreed, as indicated by the signatures below, to resolve the Madison plaintiffs' and United States' claims against the Defendants without the necessity of an evidentiary hearing.

By separate Compromise Settlement Agreement and Release in Full, the Madison plaintiffs have compromised and settled privately all issues between them and the Sullivan County Defendants. SCBE and the United States, as indicated by the signatures of their respective attorneys to this Order, have agreed to resolve the United States' claim against SCBE without the necessity of continuing contested litigation. After

reviewing the terms of the Consent Order, the Court concludes that the entry of this Consent Order comports with federal law and is appropriate under all the circumstances.

Therefore, it is ORDERED, ADJUDGED and DECREED as follows:

I. Factual Background

A. Defendant SCBE is organized under, and exists pursuant to, the laws of the State of Tennessee, and is a recipient of Federal financial assistance. Plaintiff Michael Madison attended Sullivan East High School ("East"), which is operated by SCBE, beginning in the 1995-96 school year through October of the 1997-98 school year. Plaintiff Marquita Madison attended East beginning in the 1998-99 school year through the 1999-2000 school year. Defendant Keith Glover was principal at East and defendant Harmon Peters was a teacher at East during the period that the Madison plaintiffs attended East. The Student Defendants attended East during October of the 1997-98 school year.

B. While attending East, the Madison plaintiffs were allegedly subjected to harassment on the basis of race by their classmates. The United States and the Madison plaintiffs contend that, as a result of this harassment, Michael Madison completed the eleventh and twelfth grades on a homebound program provided by SCBE, and Marquita Madison completed the eleventh and twelfth grades in a different school district. Michael Madison graduated from East upon the completion of his homebound study program;

Marquita Madison graduated from Tennessee High School in Bristol, Tennessee. The Madison plaintiffs and the United States contend that the harassment on the basis of race was severe, pervasive and objectively offensive; that SCBE officials with authority to rectify the situation were given notice of the harassment but failed to take immediate and appropriate corrective actions; that these SCBE officials were deliberately indifferent to this harassment; and that this deliberate indifference prevented the Madison plaintiffs from enjoying educational benefits and opportunities. The Madison plaintiffs and the United States further contend that SCBE's response to the Madison plaintiffs' complaints of harassment constituted a violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964.

C. The Sullivan County Defendants deny these allegations. Neither the Sullivan County Defendants' agreement to the terms of this Consent Order nor any other action taken by the Sullivan County Defendants in connection with this settlement constitutes an admission of wrongdoing or a violation of any state or federal law by the Sullivan County Defendants, the same being specifically denied.

II. Scope and Duration of Consent Order

A. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for four (4) years from the date of entry or ninety (90) calendar days after the last report under Section VII is received, whichever date is later, absent an extension as set forth in Section II.C.

B. The Court shall retain jurisdiction over this action during the four-year period specified above, absent an extension as set forth in Section II.C, to insure compliance with all provisions of this Consent Order.

C. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Order prior to bringing such matters to the Court for resolution. However, in the event that the Defendants either fail to perform in a timely manner any act required by this Order or acts in violation of any provision of this Order, the United States may move the Court to impose any remedy authorized by law or equity.

D. The parties agree that the time limits set forth throughout this Consent Order may be expanded upon mutual consent of the parties. Where SCBE, despite its reasonable efforts, cannot satisfy any time limit or deadline set forth in this Consent Order, the parties shall endeavor in good faith to agree

upon a reasonable extension of the particular deadline in question. If the parties are unable to agree upon an extension, either party may move the Court for an extension, which may be granted upon good cause shown.

III. Injunctive Relief

The Defendants, their agents, employees, successors, and all persons in active concert or participation with them, are enjoined from:

A. Engaging in any act or practice that may discriminate against any student on the basis of that student's race, color or national origin in the administration or provision of educational services, programs, opportunities or benefits;

B. Failing to respond promptly and appropriately to allegations of harassment or discrimination on the basis of race, color or national origin;

C. Retaliating against, or taking any actions that may adversely affect any student or employee because that student or employee has alleged, opposed, or filed or participated in a complaint with SCBE or any federal, state, local or non-governmental entity concerning, harassment or discrimination on the basis of race, color or national origin.

IV. Retention of Expert/Development of Comprehensive Plan and Training Program

A. SCBE shall retain Stephen Wessler and Johnny Purvis, who the parties acknowledge possess expertise in the area of student harassment prevention and training in the context of elementary/secondary education.

1. SCBE shall retain Mr. Wessler to develop a comprehensive plan, as described in Section V, below, that will entail:

a. Revised written policy, practices and procedures for preventing, identifying and remediating harassment and discrimination on the basis of race, color or national origin;

b. An annual climate assessment for each school in the SCBE system regarding student to student and teacher to student interactions to determine whether circumstances warrant school-specific actions;

c. Policies and procedures for investigating complaints and generating reports for evaluation; and

d. Age-appropriate harassment and prevention programs for students; informal sessions on policy and responsibility of staff; and workshops on addressing bias and harassment for all district employees.

2. SCBE shall retain Mr. Purvis to train, administer and implement this comprehensive plan, as described in Section

VI, below, for all SCBE school board members, employees and students.²

B. If Mr. Wessler or Mr. Purvis subsequently is unable to perform the tasks identified in Sections IV.A.1 and IV.A.2, the parties shall identify a mutually acceptable expert to serve as a replacement.

C. Within ninety (90) calendar days from the date of entry of this Consent Order, SCBE shall deliver to counsel for the United States,³ copies of the written school climate assessments and analyses, the proposed Comprehensive Plan, the proposed Training Program, and all supporting materials.

D. Within one hundred twenty (120) calendar days from the date of entry of this Consent Order, the United States shall provide written comments or objections, if any, to SCBE that pertain to the items set forth in Section IV.C, above. SCBE

²For purposes of this Consent Order, "employees" shall be defined to include all central office and school administrators, counselors, teachers, teacher aides, coaches, secretaries, playground supervisors, bus drivers, cafeteria workers, custodians, and all other staff members who have contact with students. SCBE shall make reasonable efforts to include substitute teachers, substitute bus drivers and other substitute or temporary employees in the training described above.

³All documents or reports required to be submitted to the United States pursuant to this Consent Order shall be addressed to: Chief, Educational Opportunities Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, NW, Patrick Henry Building - Suite 4300, Washington, DC 20530.

shall make a good faith effort to address any concerns of the United States, and, where appropriate, incorporate any suggestions or modifications proposed by the United States.

V. Comprehensive Plan for Preventing, Identifying and Remediating Harassment and Discrimination on the Basis of Race, Color or National Origin

SCBE shall begin to implement the Comprehensive Plan within one hundred eighty (180) calendar days from the date of entry of this Consent Order, and shall, at a minimum, include the following provisions:

A. SCBE's general statement of policy. SCBE shall revise its written policy prohibiting harassment and discrimination on the basis of race, color or national origin, to insure that the written policy (1) sets forth SCBE's commitment to protect students from harassment and discrimination and to maintain a nondiscriminatory environment; (2) states that all students, regardless of race, color or national origin, are entitled to an educational environment free from harassment and discrimination; (3) reaffirms that SCBE shall respond to students' complaints of harassment promptly and appropriately; (4) requires all SCBE employees to promptly report, to the principal or a compliance coordinator (as described in Section V.J, below), harassment that they observe, are informed of, or reasonably suspect; and (5) prohibits retaliation against students or SCBE employees who report allegations of harassment or discrimination, or who

participate in the reporting or investigation of such allegations.

B. Definitions and examples of prohibited conduct. SCBE shall define harassment and discrimination on the basis of race, color or national origin, and provide concrete examples of each.

C. Policies and procedures for reporting prohibited conduct. SCBE shall explain how to report allegations of harassment and discrimination, and, with annual revisions (as appropriate), identify to whom at each school in the SCBE system and at SCBE's central office such allegations should be reported. SCBE shall set forth formal complaint procedures and shall also inform students and their parents of their rights to file complaints with the U.S. Department of Education, the U.S. Department of Justice, and other state or local entities, including the right to bring an action in state or federal court.

D. Policies and procedures for investigating complaints. SCBE shall describe the steps it will take to respond to reported incidents of harassment or discrimination, including but not limited to taking disciplinary measures against those found to have engaged in such acts, and, where appropriate, reporting violent or criminal conduct to law enforcement authorities.

E. Policies and procedures for remediating violations. SCBE shall explain the disciplinary measures available against persons who are found to have engaged in harassment or

discrimination on the basis of race, color or national origin. Corrective action shall be, among other things, appropriate to the severity of the harassment; calculated to end the harassment and prevent retaliation; and designed to insure that the offending conduct does not limit and/or interrupt the ability of the complainant (and the victim, if different) to participate in, or benefit from, the educational services, programs and/or opportunities provided by SCBE.

F. Policies regarding confidentiality. SCBE shall explain what efforts it will make, consistent with its legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations, to respect the privacy of the complainant, the victim, individuals against whom a complaint is filed, and witnesses.

G. Dissemination of policies and procedures, and training of personnel. SCBE shall post, in prominent places throughout each school and SCBE administrative building, its revised policies concerning harassment and discrimination on the basis of race, color or national origin.

H. Dissemination of policies and procedures to students and parents. SCBE shall inform students and their parents, through, at a minimum, annual meetings with all students, an annual distribution of notices to students and parents or guardians, by use of the Attendance, Grading and Student Rights and

Responsibility Policy Handbooks, of SCBE's policies prohibiting harassment and discrimination on the basis of race, color or national origin, including how and to whom to report harassment or discrimination, how to file a formal complaint, and what steps SCBE will take to investigate complaints and punish those found to have engaged in prohibited conduct.

I. Student curriculum. As part of each school's regular curriculum, at least annually SCBE shall train students about preventing, identifying and responding to harassment and discrimination on the basis of race, color or national origin;

J. Designation of a compliance coordinator at each school in the District. The compliance coordinators shall be appointed by SCBE's Director of Schools and shall be empowered to receive and investigate complaints of harassment or discrimination, and to take such other actions as may be delineated. SCBE shall insure that appropriate time is afforded the compliance coordinators to fulfill their duties as described herein. SCBE shall inform employees, students and parents or guardians of the identity and role of the compliance coordinator at their respective schools. SCBE shall, on at least an annual basis, provide the compliance coordinators with appropriate training. Such training shall, at a minimum, include (1) how to investigate allegations of harassment or discrimination on the basis of race, color or national origin; (2) how to document and maintain

records of such investigations; (3) how to balance the complainant's privacy and confidentiality concerns with the notification of complainant's teachers to prevent additional incidents of harassment or discrimination; and (4) how to remediate such harassment or discrimination. Any new compliance coordinators who may be designated in the future shall receive appropriate training within thirty (30) calendar days.

K. Record-keeping. SCBE shall maintain a written record ("Incident Report") of each and every allegation, whether verbal or in writing, of harassment or discrimination on the basis of race, color or national origin. The Incident Report shall, at a minimum, include (1) the name of the person making the allegation, and, if different, the name of the alleged victim; (2) the nature of the allegation and the date of the alleged incident; (3) the names of all persons alleged to have committed violations; (4) the names of all persons who may have relevant information about the incident; (5) the written statements of the complainant, the victim (if different from the complainant), the alleged perpetrator, and any witnesses; (6) the outcome of the investigation; (7) any action taken by SCBE; and (8) attached copies of any documents supplied to SCBE or created during the investigation or complaint process. The Incident Report shall be completed no later than fifteen (15) calendar days after the date upon which the complaint is first made. The compliance

coordinators, the school building principal, and the Director of Schools, or his or her designee from the central administration staff, shall be supplied with a copy of each such Incident Report, and, in a space specifically designated, each shall initial the Incident Report to indicate that s/he has reviewed the Report and approves of the actions taken by the investigating official.

VI. Mandatory Education and Training Program

A. SCBE shall begin implementation of the Training Program within one hundred eighty (180) calendar days from the date of entry of this Consent Order. Within two hundred seventy (270) calendar days from the date of entry of this Consent Order, SCBE shall insure that all SCBE school board members and employees have participated in the Training Program.

B. The Training Program shall, at a minimum, include the following:

1. Informing each individual of SCBE's policies prohibiting any act or practice that has the purpose or effect of discriminating against any student on the basis of that student's race, color or national origin in the administration or provision of educational services, programs, opportunities or benefits;

2. Informing each individual of her or his duties and responsibilities under SCBE's Comprehensive Plan for preventing, identifying and remediating harassment and discrimination on the

basis of race, color or national origin, and of the consequences to each individual for failure to comply with these duties and responsibilities;

3. Informing each individual of SCBE's procedures for the prompt reporting of incidents of harassment or discrimination;

4. Discussing how to structure a classroom and school environment in which harassment and discrimination are not tolerated;

5. Holding a question and answer session to review each of the foregoing areas; and

6. Certification of attendance by the person conducting the Training Program for each person attending the program.

C. SCBE shall conduct a comparable Training Program within thirty (30) calendar days of the start of each school year.

D. New SCBE school board members and employees shall participate in a comparable Training Program within thirty (30) calendar days from the start of their affiliation with, or employment in, the SCBE system.

VII. Reports to the United States

A. On a quarterly basis, beginning thirty (30) days from the date of entry of this Consent Order, SCBE shall deliver to counsel for the United States, at the address set forth

previously, a detailed report covering the preceding reporting period containing information about the SCBE's compliance efforts with this Consent Order, including but not limited to:

1. Copies of SCBE's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of race, color or national origin, including any revisions since the previous report;

2. Copies of notices and other materials provided to employees, students and parents of SCBE's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of race, color or national origin, and a description of how and when these notices and materials were distributed;

3. Copies of the agenda (including date of training) and all materials used in the Training Program for SCBE school board members and employees;

4. Copies of all certifications of attendance of SCBE school board members and employees in the Training Program;

5. A list of compliance coordinators, by job title and school;

6. Copies of the agenda (including date of training) and all materials used in the training of compliance coordinators;

7. The names of all trainers and copies of their resumes, vitae and/or brochures;

8. Copies of all posters or notices regarding harassment and discrimination on the basis of race, color or national origin, and a description of when they were posted and where;

9. Copies of all Incident Reports, as described in Section V.K., above. (SCBE may redact the names of students or request that the United States maintain the confidentiality of these records to the extent permitted by law.); and

10. Narrative descriptions of upcoming training and other activities related to the prevention of harassment and discrimination.

B. Within sixty (60) calendar days of receipt of any of the above reports, the United States may request, in writing, clarifications of, or supplementation to, the report. In that event, SCBE shall provide such clarifications and/or permit the inspection and copying of supplemental materials as the United States may reasonably request.

VIII. Compensation of Plaintiff and Release of Claims

In consideration of the mutual covenants, promises and consideration contained herein, the parties agree as follows:

A. This Consent Order (including this release) does not constitute, nor shall it be construed as, an admission of any liability or wrongdoing by any party.

B. The Defendants shall compensate the Madison plaintiffs as set forth in the separate, confidential agreement ("Compromise Settlement Agreement") between the parties for settlement of any and all claims that the Madison plaintiffs may have against the Defendants, and their affiliates and subsidiaries, together with their respective members, directors, officers, agents, and employees, including but not limited to, claims for compensatory damages, personal injury, emotional distress, loss of reputation, humiliation, embarrassment, costs, expenses and attorneys' fees. The Compromise Settlement Agreement shall be signed by the parties contemporaneously with the signing of the Consent Order.

C. The Madison plaintiffs agree that simultaneously with the submission of this Consent Order to the Court, their attorneys shall also file in the United States District Court for the Eastern District of Tennessee, the Stipulation of Dismissal attached hereto as Exhibit A, which Stipulation requests that, contingent on the Court's signing and entering this Consent Order, all claims asserted in Case No. 2:00-CV-094 be dismissed with prejudice, each party to bear its own costs.

E. The Madison plaintiffs agree not to enter into any suit, action, or other proceeding at law or in equity, or to prosecute

further any suit or action that might presently exist, or to make any claim or demand of any kind against SCBE or any of its affiliates and subsidiaries, together with their respective members, directors, officers, agents, and employees, asserting any claim released by the Madison plaintiffs in Section VIII.C, above, other than an action to enforce their rights herein.

F. The Madison plaintiffs acknowledge that they have reviewed this Consent Order (including their release of all claims) and that its language and intended effect have been explained, and that they have had the opportunity to review the Consent Order (including their release of all claims) with their attorneys. The Madison plaintiffs also acknowledge that they have voluntarily entered into this Consent Order (including the release of all claims) of their own free will based only upon the terms and conditions included in the Consent Order and release and the Compromise Settlement Agreement.

G. The provisions of this release will be governed by the laws of the State of Tennessee.

H. If a court of competent jurisdiction determines that any provision contained in this release, or any part thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the release.

I. This Consent Order (including the release of all claims) and the Monetary Settlement Agreement constitutes the entire

agreement between the Madison plaintiffs and the Defendants, and supercedes all prior understandings, whether oral or written, between the parties. Any amendments or modifications to this Consent Order (including the release of all claims) must be in writing and signed by the parties.

J. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

ORDERED, this _____ day of _____, 2002.

THOMAS GRAY HULL
United States District Judge

By their signatures on this and the following pages, the undersigned parties and counsel agree to, and request the entry of, this Consent Order:

Madison Plaintiffs:

Counsel for Madison
Plaintiffs:

MICHAEL MADISON

LARRY L. CRAIN, #9040
5214 Maryland Way - Suite 402
Brentwood, TN 37027
(615) 376-2600

MARQUITA MADISON

BRIAN SCHUETTE
1019 State Street
P.O. Box 48
Bowling Green, KY 42102-0048
(270) 781-7500

LES BAILEY
317 Shelby Street - Suite 201
P.O. Box 847
Kingsport, TN 37662
(423) 378-4469

Counsel for Plaintiff-Intervenor United States:

RALPH F. BOYD, JR.
Assistant Attorney General

MICHAEL S. MAURER, D.C. No. 420908
JAVIER M. GUZMAN, D.C. No. 462679
Attorneys for Plaintiff-Intervenor
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
Patrick Henry Building
601 D Street, NW - Suite 4300
Washington, D.C. 20530
(202) 514-4858

Counsel for, and Representatives of, Defendants:

JIM KISS
President
Sullivan County Board
of Education

PATRICK LEDFORD, #001106
Moore, Stout, Waddell
& Ledford, P.C.
P.O. Box 1345
Kingsport, TN 37662
(423) 246-2344

Dr. JOHN B. O'DELL
Director of Schools
Sullivan County Board
of Education

E. PATRICK HULL, #004337
229 East New Street
Kingsport, TN 37660
(423) 247-6151