

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

2:67-CV-632-BO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CONSENT ORDER AND
)	DECLARATION OF PARTIAL
BERTIE COUNTY BOARD)	UNITARY STATUS
OF EDUCATION, <i>et al.</i>)	
)	
Defendants.)	

INTRODUCTION

On April 23, 2003, this Court granted the United States' Motion for Further Relief, finding that the Bertie County Board of Education had not effectively eliminated all vestiges of discrimination in two discrete areas: (1) student assignment at Askewville Elementary School, and (2) faculty and staff assignment at Askewville Elementary School. In addition, the Court found that the board's "free transfer" policy, which permitted students to transfer freely both within the district, as well as to schools outside the district, hindered desegregation. As a result, the Court ordered the board to prepare and submit a plan for further desegregation of the district's schools.

On June 23, 2005, this Court entered a Consent Order that furthered the Bertie County Schools' progress toward the elimination of all remaining vestiges of past segregation and toward declaration of unitary status by improving minority representation at Askewville Elementary School and by expressing satisfaction with the new transfer and admissions policies adopted by the board in 2003. It did not expressly address the issue of faculty and staff assignments at Askewville, although at the hearing on this matter prior to the acceptance of the Consent Order, counsel for both parties notified this Court that the district had adequately addressed the concerns previously raised by the United States.

In addition to the above issues, the United States also has expressed concern about certain district facilities. The board maintains that the status of physical facilities is not subject to the Court's 2003 order. However, independent of the facilities concerns raised by the United States, the board recognizes that many of the district's facilities are aging and that as a result of continued declining enrollment over the past several decades the district has greater capacity than its current needs. In addition, the board acknowledges that its smallest schools have created a financial drain on the district and that it can enhance the educational opportunities for all students by pursuing the consolidation of its elementary schools.

This Consent Order and Declaration of Partial Unitary Status is intended to comply with this Court's June 23, 2005, Order; to address all outstanding issues between the parties; to obtain a declaration of partial unitary status; and to outline an expected time line for a declaration of complete unitary status by the board and bring this litigation to final resolution. Accordingly, the United States and the Bertie County Board of Education consent to the entry of this Order.

DESEGREGATION PLAN

I. Student Assignment and Facilities.

During the 2005-2006 school year and pursuant to the June 23, 2005, Consent Order, the board re-drew the elementary school attendance lines to further the board's desegregation efforts by increasing the African American student population at Askewville Elementary School to 60% of the population at large. The attendance zones for the 2005-2006 school year are outlined at Appendix A. The racial make-up for each school in 2005-2006 under this student assignment plan is as follows:

School	Grades	Black	% Black	White	Other	Total
Askewville	K-5	90	60%	52	9	151
Aulander	K-5	144	87%	17	4	165

Colerain	K-5	206	88%	25	3	234
J.P.Law	K-5	70	83%	13	1	84
West Bertie	K-5	339	91%	17	17	373
Windsor	K-5	352	85%	47	13	412
Total Elementary		1201	85%	171	47	1419

The 60% African American representation in the student body at Askewville was achieved only by creating classrooms that exceeded the maximum number of students permitted by the North Carolina Department of Public Instruction. This over-capacity issue is one of concern both to Dr. Nettie Collins-Hart, the current superintendent, and to the board. Over-crowded classrooms are not an environment conducive to student learning. As a result, for the upcoming 2006-2007 school year, and for any subsequent years that Askewville Elementary School may remain open as contemplated pursuant to this desegregation plan, the board will continue to move the attendance lines and assign students to Askewville in a manner that maximizes minority student enrollment but which maintains classroom sizes that do not exceed the maximum numbers established by the Department of Public Instruction.

At the close of the 2006-2007 school year, the board will close both Askewville Elementary School and J.P. Law Elementary School. With current student enrollments of 151 and 84 respectively, these two schools are the smallest in the district and are financially more costly to maintain. Declining enrollment in the district has created sufficient capacity to absorb the students currently assigned to these schools into the remaining elementary schools. (Aulander Elementary School, the third smallest school with a current student population of 165 students, currently has not been slated for closure at the end of the 2006-2007 school year only because it is not clear that the district has the capacity to absorb these students.) The attendance zones for all elementary schools will then be re-drawn to accommodate the Askewville and J.P. Law students into the

remaining four schools: Aulander, Colerain, West Bertie, and Windsor Elementary Schools.

The board retains the option of keeping Askewville and J.P. Law schools open for two additional school years if, at the end of the 2006-2007 school year, there are sufficient funds identified and specifically earmarked for the construction of a new elementary school with a capacity of 450 students. If that occurs, the board shall close J.P. Law, Askewville, and Aulander elementary schools at the end of the 2008-2009 school year, re-draw the attendance lines for the elementary schools and open the new school to students at the start of the 2009-2010 school year. The location of any new elementary school shall be determined by the Board of Education subject to the objection of the United States and will be driven by the needs of the students within the district.

By March 1, 2007, the board will notify the United States of its decision to either close Askewville and J.P. Law schools at the end of the 2006-07 school year, or to keep them open two additional years while a new elementary school is being constructed. If the schools are to be closed at the end of the 2006-07 school year, the board will provide to the United States proposed new attendance zones as well as projected enrollment and racial make-up of the remaining four elementary schools. The United States will have 30 days to review, and the parties will notify the court by April 15, 2007 if they are unable to reach an agreement regarding student assignment or attendance zones at the elementary school level. Similarly, the board will provide to the United States the location of the proposed new elementary school once that location has been selected. The United States will have 30 days to review, and the parties will notify the court within 45 days after the United States' review period has expired if they are unable to reach an agreement on the new elementary school location.

If the board decides to build a new elementary school, the board will inform the United States of the proposed location, likely attendance zones, and projected enrollment before a final

decision is made regarding location. By March 1, 2009, the board will provide to the United States final proposed attendance zones as well as projected enrollment and racial make-up of the district's four elementary schools. The United States will have 30 days to review, and the parties will notify the court by April 15, 2009 if they are unable to reach an agreement regarding student assignment at the elementary school level.

The Board of Education retains the sole discretion to determine which of these options is selected. Nothing in this Consent Order shall be construed as compelling the Bertie County Board of Commissioners to finance the construction of a new elementary school or to require the Board of Education and County Commissioners to place the construction of a new elementary school at a higher priority than any other project that the Board of Education and County Commissioners may consider.

The board's decision to pursue closing the three smallest elementary schools in the district was not designed solely to address the facilities concerns raised by the United States. Closing these schools will allow the board to improve the educational program it offers not only to the students currently attending these three schools, but to all of the students in the Bertie County Public Schools. Accordingly, the board is committed to closing these three schools and building a new elementary school when funding for that facility can be secured.

Information provided by the board indicates that the district has been taking race into account when assigning students to classrooms at two elementary schools, Aulander and West Bertie, resulting in racially identifiable classrooms at both schools. The board agrees to stop this practice, and will not use race as a factor in classroom assignments in a manner that results in racially identifiable classrooms.

The desegregation plan outlined in this Consent Order addresses all of the concerns raised by the United States and this Court in terms of student assignment at Askewville Elementary

School and all facilities concerns raised by the United States.

II. **Student Transfers.**

The board will continue to deny requests for intra- or inter-district transfers which do not comply with board admission and transfer policies. See Appendix B. These policies, as implemented, adequately address all concerns previously raised by the United States and this Court regarding student transfers.

III. **Faculty and Staff Assignments.**

Pursuant to the desegregation plan adopted in 1969, the board assigned and filled faculty and staff positions pursuant to a race-neutral policy. In its April 20, 2003, Order, this Court held that the board's efforts to desegregate the faculty and staff at Askewville Elementary School up to that time were insufficient. In making this finding, the Court noted that in 1972-73, 86% of the teacher's in Askewville were white, and in 2000-01, 91% were white. In contrast, during those same years, white teachers comprised 47% and 54% of the faculty district-wide.

As a result of the April 23, 2003 Order, the board altered the manner in which faculty and staff are assigned to Askewville. To the extent that existing faculty and staff within the district were willing to transfer into or out of Askewville to further support the district's efforts to desegregate the school's faculty and staff, these changes were made. In addition, as vacancies occurred throughout the district, reassignments of existing personnel were considered first if such a reassignment would support faculty and staff desegregation efforts.

These changes have removed the racial identifiability of the faculty in Askewville, bringing this school in line with the faculty district-wide. For the 2005-06 school year, 38% of the faculty members at Askewville are white, and 46% of the non-certified staff are white. The United States and this Court are satisfied that the board has met all of the concerns raised in the area of faculty and staff assignment at Askewville Elementary School.

IV. **Reporting Requirements.**

On November 1, 2006, and annually thereafter until this case is dismissed, the board will submit the following information to the United States for the then-current school year:

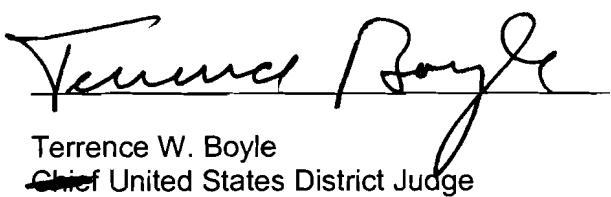
1. A copy of the elementary school attendance lines;
2. The student enrollment, by race, at each elementary school in the district; and
3. For each classroom in each elementary school, the enrollment in the class, by race, the grade served, and the subject or program of the class.

DECLARATION OF UNITARY STATUS

This Court, being satisfied that the Bertie County Board of Education has taken all reasonable steps to remove the vestiges of discrimination in the areas of transportation, extra-curricular activities, faculty assignment, and staff assignment, does hereby ORDER, ADJUDGE and DECREE that the Bertie County Public Schools are UNITARY in the areas of transportation, extra-curricular activities, faculty assignment and staff assignment.

It is the expectation of the parties that the Bertie County Public Schools will be declared unitary in the areas of student assignment and facilities after the timely execution of the desegregation plan contained in this Consent Order and that the parties will jointly move the Court for an order of dismissal at the end of the 2009-2010 school year.

SO ORDERED, this 17 day of March 2006.



Terrence W. Boyle
~~Chief~~ United States District Judge

WE CONSENT:

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