

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

and

CHARLIE RIDLEY, et al.,

Plaintiff-Intervenors-
Appellants,

v.

STATE OF GEORGIA (WAYNE COUNTY), et al.

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS APPELLANT

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AND CORPORATE DISCLOSURE STATEMENT

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not believe that oral argument is necessary or desirable in this case.

TABLE OF CONTENTS

	PAGE
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT	C-1
STATEMENT REGARDING ORAL ARGUMENT	
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	7
ARGUMENT:	
I. THE DISTRICT COURT'S <u>SUA SPONTE</u> DISMISSAL OF THIS CASE VIOLATED CLEARLY ESTABLISHED PROCEDURES FOR CONCLUDING SCHOOL DESEGREGATION CASES	8
A. Prior to Dismissing This School Desegregation Case, The District Court Was Required To Provide Notice, A Hearing, And A Finding That The School District Has Achieved Unitary Status	8
B. Defendant's Characterization Of The Court's Order Is Implausible And Does Not Save It	11
II. THE DISTRICT COURT ERRED IN REFUSING TO REACTIVATE THIS CASE WITH RESPECT TO APPELLEE WAYNE COUNTY SCHOOL DISTRICT FOR FURTHER	

TABLE OF CONTENTS (continued):	PAGE
PROCEEDINGS IN LIGHT OF EVIDENCE OF	
VIOLATIONS OF THE COURT'S ORDERS	15
CONCLUSION	21
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

CASES:

<u>Brown v. Board of Educ.</u> , 349 U.S. 294 (1955)	12
<u>Childers v. Wayne County Bd. of Educ.</u> , C.A. No. 298-127	
(S.D. Ga. Jan. 20, 2000)	4, 14
<u>Conley v. Gibson</u> , 355 U.S. 41 (1957)	16
<u>Elston v. Talladega County Bd. of Educ.</u> , 997 F.2d 1394	
(11th Cir. 1993)	7
<u>Green v. County Sch. Bd.</u> , 391 U.S. 430 (1968)	12
<u>Kidder, Peabody & Co., Inc. v. Brandt</u> , 131 F.3d 1001	
(11th Cir. 1997)	6
* <u>Lee v. Etowah County Bd. of Educ.</u> , 963 F.2d 1416	
(11th Cir. 1992)	<u>passim</u>
<u>Lee v. Macon County Bd. of Educ.</u> , 584 F.2d 78	
(5th Cir. 1978)	9, 13
<u>Leatherman v. Tarrant County Narcotics and Intelligence</u>	
<u>Coordination Unit</u> , 507 U.S. 163 (1993)	16
* <u>Lockett v. Board of Educ.</u> , 111 F.3d 839 (11th Cir.	
1997)	10, 16-17

CASES (continued):

PAGE

Pate v. Dade County Sch. Bd., 588 F.2d 501
(5th Cir. 1979) 13, 19

Pickens v. Okolona Mun. Separate Sch. Dist., 594 F.2d
433 (5th Cir. 1979) 13

* Pitts v. Freeman, 755 F.2d 1423 (11th Cir. 1985) . . . 8-9, 12

* Raney v. Board of Educ., 391 U.S. 443 (1968) 12, 18

Reynolds v. Roberts, 202 F.3d 1303 (11th Cir. 2000) 8-7

Rufo v. Inmates of Suffolk County Jail, 502 U.S.
367 (1992) 14

Spangler v. Pasadena City Bd. of Educ., 537 F.2d 1031
(9th Cir. 1976) 14

Stovall v. City of Cocoa, 117 F.3d 1238 (11th Cir. 1997) . . . 6

United States v. City of Miami, 2 F.3d 1497
(11th Cir. 1993) 6

United States v. Georgia, C.A. No 12972 (N.D. Ga.
Aug. 1, 1969) 2

United States v. Georgia, 428 F.2d 377 (5th Cir. 1970) . . . 3

United States v. Georgia, 466 F.2d 197 (5th Cir. 1972) . . . 3

United States v. Georgia, 691 F. Supp. 1440
(M.D. Ga. 1988) 4

United States v. Georgia, 702 F. Supp. 1577
(M.D. Ga. 1989) 10

United States v. Georgia (Meriwether County), 19 F.3d
1388 (11th Cir. 1994) 15

CASES (continued):

PAGE

United States v. Georgia (Troup County), 171 F.3d 1344
 (11th Cir. 1999) 2, 4, 15

United States v. Texas Educ. Agency, 647 F.2d 504
 (5th Cir. 1981) 9-10

Vaughns v. Board of Educ., 758 F.2d 983 (4th Cir. 1985) . . . 17

Western Water Management, Inc. v. Brown, 40 F.3d 105
 (5th Cir. 1994) 13

* Youngblood v. Board of Pub. Instruction, 448 F.2d 770
 (5th Cir. 1971) 9, 12-13

CONSTITUTION AND STATUTES:

Civil Rights Act of 1964, Section 407

42 U.S.C. 2000c-6 1

28 U.S.C. 1345 1

28 U.S.C. 1291 2

28 U.S.C. 1292(a)(1) 2

RULES AND REGULATIONS:

Fed. R. Civ. Proc. 59(e) 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-11468G

UNITED STATES OF AMERICA,

Plaintiff-Appellant

and

CHARLIE RIDLEY, et al.,

Plaintiff-Intervenors-
Appellants

v.

STATE OF GEORGIA (WAYNE COUNTY), et al.

Defendants-Appellees

BRIEF FOR THE UNITED STATES AS APPELLANT

JURISDICTIONAL STATEMENT

This school desegregation action was brought pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6 (1969), to enforce the Fourteenth Amendment to the United States Constitution. The district court had subject matter jurisdiction pursuant to 28 U.S.C. 1345 (1969) and 42 U.S.C. 2000c-6 (1969). The district court issued an order dismissing this action on February 16, 2000, and ordering the clerk of the court not to accept any further filings in this case. On March 2, 2000, the United States submitted to the district court a motion to amend the judgment pursuant to Fed. R. Civ. P. 59(e). On March 3, 2000, plaintiff-intervenors also submitted a motion to reconsider and amend the judgment. As discussed more fully below, the

district court instructed the clerk of the court to place the motions in the case file but not to file stamp or docket them, consistent with the court's February 16 order. On March 17, 2000, the plaintiff-intervenors filed a notice of appeal. The United States filed a timely notice of appeal on April 14, 2000. This Court has appellate jurisdiction pursuant to 28 U.S.C. 1291 and 1292(a)(1).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in dismissing this action sua sponte and terminating the outstanding school desegregation decrees without providing the parties notice of the proposed dismissal, holding a hearing, or finding that the school system had achieved unitary status.

2. Whether the district court erred in refusing to return this action to its active docket for further proceedings upon motion of the plaintiffs suggesting that defendant Wayne County School District was in violation of the court's desegregation orders.

STATEMENT OF THE CASE

1. On August 1, 1969, the United States filed this school desegregation action in the Northern District of Georgia against the State of Georgia and various other individual defendants. United States v. Georgia, C.A. No. 12972 (N.D. Ga.). On December 17, 1969, the court issued a detailed desegregation decree covering 81 school districts throughout the State. See United States v. Georgia (Troup County), 171 F.3d 1344, 1345 (11th Cir.

1999). In 1970, the private plaintiffs intervened in the case, represented by the named plaintiff, Charlie Ridley, Jr., and others. See United States v. Georgia, 428 F.2d 377 (5th Cir.). In 1972, the Fifth Circuit ordered that the affected school districts be joined and that the case be split, with each judicial district handling the cases for the schools in its district. United States v. Georgia, 466 F.2d 197, 200. The Southern District case involves 21 school systems, including the Wayne County School District.

2. In December 1973, the state defendants moved to terminate the decree. Ultimately, the parties negotiated a consent decree that dissolved the detailed 1969 decree and put in place a more general "permanent injunction." On February 14, 1974, the District Court for the Southern District entered an order based on this consent decree, setting out certain requirements with respect to student assignment, faculty and staff assignment, student transfers, and facilities. See Consent Order at 2-3 (R1-5).^{1/} A provision of the Consent Order also placed 18 of the school districts, including defendant Wayne County School District, on the court's inactive docket, "subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary." Consent Order ¶ 2 (R1-5). Around the same time, virtually identical consent decrees were entered in the Middle

^{1/} References to "R__ - __ - __" are to the volume number, docket entry number, and (where applicable) to the page number or page range of the original document in the record.

and Northern District cases. See Troup County, 171 F.3d at 1345-1346; United States v. Georgia, 691 F. Supp. 1440, 1441-1442 (M.D. Ga. 1988).

3. Since the 1973 Consent Decree was issued, the case with respect to defendant Wayne County School District (the School District) has remained on the court's inactive docket. At no time has the School District requested the court to declare that it has achieved unitary status or otherwise requested that it be dismissed from the case.

4. On January 21, 2000, plaintiff-intervenors filed a motion to reactivate the Southern District case with respect to the Wayne County School District, alleging that the School District was in violation of the court orders.^{2/} At the same time, Anita Childers, a teacher bringing an employment discrimination case against the Wayne County School Board, Childers v. Wayne County Bd. of Educ., C.A. No. 298-127 (S.D. Ga.), filed a motion to consolidate her case with the desegregation case.^{3/} Childers also requested a stay in her case pending consideration of the motion to reactivate the desegregation case.

^{2/} See R4-84-3 & n.1. The motion also requested permission to substitute new named plaintiff-intervenors to replace the original class representatives who have graduated or left the school system.

^{3/} Anita Childers is represented by George McGriff, who is also local counsel to the NAACP Legal Defense and Education Fund, which has represented the plaintiff-intervenors in the desegregation case since 1970.

5. On February 4, 2000, after reviewing plaintiff-intervenors' motion and examining available information, the United States filed a response, supporting plaintiff-intervenors' motion and requesting reactivation on the ground that recent data indicated that the School District may be in violation of the 1974 Consent Decree.^{4/} The State of Georgia filed no response. Defendant Wayne County School District filed a motion for an extension of time to file a response.

6. On February 16, 2000, before receiving a response from any defendant, the court issued an order denying Childers' motion to consolidate because the court saw "no practical or substantive reason for consolidation apart from some arguable similarity in the issues or content of the cases." Order at 2 (R4-89). The district court then denied Childers' motion to stay her employment case pending the Ridley plaintiffs' motion to reactivate the desegregation case "[b]ecause the Ridley case will not be reactivated at this time." Order at 2 (R4-89). The case was not to be reactivated because the court had decided to dismiss it:

It is further **ORDERED** that the Ridley case, Civil Action No. 3009, shall be and hereby is terminated and **CLOSED** for all purposes. In the event that any party submits any document under the style or number of Civil Action No. 3009, such pleading and document may be retained by the Clerk and simply lodged in the physical file of said case. No response or any docketing of any item submitted in Civil Action No. 3009 shall be required.

^{4/} See R4-86. The United States also separately filed a brief statement indicating that it did not oppose Childers' motion to consolidate (R4-88).

Order at 2 (R4-89) (emphasis in original).

7. Plaintiff-intervenors and the United States attempted to file motions seeking reconsideration of the court's order of dismissal.^{5/} On March 20, 2000, the School District submitted a brief in opposition to these motions.^{6/} The clerk of the court informed the United States that the judge ordered the clerk to place the United States' motion in the case file but not to file stamp or docket it, consistent with the court's February 16 order.

8. Plaintiff-intervenors filed a notice of appeal on March 17, 2000, and the United States filed a notice of appeal on April 14, 2000. On April 21, 2000, plaintiff-intervenors-appellants filed a motion for summary reversal that is presently pending before this Court. On May 2, 2000, the United States filed a motion for summary reversal that is also presently pending.

9. This Court reviews a district court's termination or modification of a consent decree, or its refusal to modify or enter a consent decree, for abuse of discretion. See Stovall v. City of Cocoa, 117 F.3d 1238, 1240 (11th Cir. 1997); cf. Kidder, Peabody & Co. v. Brandt, 131 F.3d 1001, 1003 (11th Cir. 1997); United States v. City of Miami, 2 F.3d 1497, 1509 (11th Cir.

^{5/} See The United States' Motion to Amend (Mar. 2, 2000) (not recorded on trial docket sheet, as ordered by the district court, R4-89-2); Plaintiff's Motion to Reconsider and Amend Order (Mar. 3, 2000) (not recorded on trial docket sheet, as ordered by the district court, R4-89-2).

^{6/} See Defendant's Response to Plaintiffs' Motion to Reconsider and Amend Order (Mar. 20, 2000) (not recorded on trial docket sheet, as ordered by the district court, R4-89-2).

1993). The interpretation of the provisions of a consent decree is subject to de novo review. Reynolds v. Roberts, 202 F.3d 1303, 1312-1313 (11th Cir. 2000). When a district court makes findings of fact, those findings are reviewed for clear error, while its legal conclusions are reviewed de novo. Elston v. Board of Educ., 997 F.2d 1394, 1405 (11th Cir. 1993).

SUMMARY OF ARGUMENT

This Court's precedents have required, for almost 30 years, that prior to terminating a school desegregation decree and relinquishing jurisdiction, a court must find that the school district has achieved unitary status by eliminating, to the extent practicable, the vestiges of past discrimination. These precedents have further established that before making these findings, the district court must provide plaintiffs with notice of its intent to consider dismissal and a hearing at which the plaintiffs may present evidence and argument regarding whether the case should be dismissed. In dismissing this case sua sponte, without affording plaintiffs any notice, holding any hearing, considering any evidence, or finding that the school system had achieved unitary status, the district court flagrantly violated these well-established principles.

The sua sponte dismissal was particularly inappropriate in this case, because it was issued in response to motions by the plaintiffs seeking reactivation of the case with respect to the Wayne County School District and indicating that this school district was in violation of the court's orders. The consent

decree specifically provides for such reactivation "on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary." Consent Order ¶ 2 (R1-5). Plaintiffs made a "proper application" which the district court denied without giving any reason, other than that it had decided to dismiss the case entirely. The Supreme Court and this Court have made clear that district courts have a continuing obligation to exercise jurisdiction to ensure compliance with school desegregation orders and the elimination of remaining vestiges of discrimination. The plaintiffs in this case provided sufficient evidence to warrant an inquiry into whether further action was needed by the court.

ARGUMENT

I. THE DISTRICT COURT'S SUA SPONTE DISMISSAL OF THIS CASE VIOLATED CLEARLY ESTABLISHED PROCEDURES FOR CONCLUDING SCHOOL DESEGREGATION CASES

As discussed below, the district court's sua sponte dismissal, without notice, an opportunity to be heard, or any finding that the school district had attained unitary status, violated procedures for the orderly disposition of school desegregation cases that have been clearly established in this Circuit for almost 30 years.

A. Prior To Dismissing This School Desegregation Case, The District Court Was Required To Provide Notice, A Hearing, And A Finding That The School District Has Achieved Unitary Status

"A line of Fifth Circuit cases established the procedure to be used in this circuit in bringing school desegregation cases to

a conclusion." Pitts v. Freeman, 755 F.2d 1423, 1426 (11th Cir. 1985) (footnote omitted). This line of cases requires that

[i]n order to conclude a school desegregation case, a district court must hold a hearing to determine if the school system indeed has achieved unitary status. The plaintiffs should receive notice of the hearing's purpose, and the hearing should give them an opportunity to show why the court should continue to retain jurisdiction.

Ibid. (citations omitted).

Pitts itself is an especially appropriate precedent, as it arose from this action's companion litigation in the Northern District of Georgia under strikingly similar circumstances. As in this case, the dismissal at issue was prompted by a request from plaintiffs for relief from alleged non-compliance with the prior court orders. The plaintiffs had filed a motion for further relief to enjoin certain new school construction. Id. at 1424. "In ruling on that motion, the district court, without giving notice and holding a hearing on the issue, stated that the DeKalb County School System was unitary." Ibid. This Court reversed for failure to afford plaintiffs with notice and an opportunity to contest the unitary status of the school. Ibid.

The basic requirements of notice and a hearing have been settled in the Fifth and Eleventh Circuits for almost 30 years. See Youngblood v. Board of Pub. Instruction, 448 F.2d 770, 771 (5th Cir. 1971) ("In no event, however, shall the District Court dismiss the action without notice to the plaintiffs below and a hearing providing opportunity to plaintiffs-appellants to show cause why dismissal of the cause should be further delayed.");

Lee v. Macon County Bd. of Educ., 584 F.2d 78 (5th Cir. 1978) (same); United States v. Texas Educ. Agency, 647 F.2d 504 (5th Cir. 1981) (same); Lee v. Etowah County Bd. of Educ., 963 F.2d 1416, 1424 (11th Cir. 1992) ("What is essential is that the district court not terminate a desegregation case before the plaintiffs are afforded an opportunity to demonstrate to the court why the case should not be dismissed.").^{2/}

Moreover, in addition to giving plaintiffs notice and an opportunity to be heard, the district court is required to make specific determinations:

To terminate a school desegregation case * * * a court must be satisfied that the school system has complied in good faith with the court's desegregation decree and has eliminated, to the extent practicable, the vestiges of its past de jure discrimination. * * * [T]he defendant school authority has the burden of proving that it has achieved unitary status -- that it has eliminated the vestiges of its dual system to the extent practicable. Until the school system is found to have attained unitary status, the defendant has the burden of proving that any current racial imbalance within the school system is not related proximately to the prior violation.

Lee, 963 F.2d at 1425 (citations omitted). See also Lockett v. Board of Educ., 111 F.3d 839, 842 (11th Cir. 1997); United States

^{2/} The histories of the Lee case and the Georgia desegregation cases are very similar. The United States was a party in both cases and, in 1974, agreed to a consent decree in the Lee litigation that was substantially the same as the 1974 orders issued in Georgia. 963 F.2d at 1419. However, in Lee, rather than dismissing the long-standing decrees sua sponte, the district court issued an order to show cause why the case should not be dismissed, permitted four months of discovery, and held a hearing before dismissing the case based on summary judgment affidavits and documentary evidence. Id. at 1419-1420. On appeal, this Court reversed, holding that the existence of disputed issues of material fact required a full evidentiary hearing. Id. at 1424-1426.

v. Georgia, 702 F. Supp. 1577 (M.D. Ga. 1989) (denying defendants' motion to dismiss Middle District of Georgia desegregation case without a hearing or determination of unitary status).

In this case, the district court followed none of the required procedures. It provided no notice to the parties that it was contemplating dismissal. The court provided the plaintiffs with no opportunity to object before it dismissed the case and refused to consider objections afterwards. The court made none of the required legal conclusions or factual findings and could not properly have done so, since the only evidence before the court indicated that, if anything, the School District was not unitary.

B. Defendant's Characterization Of The Court's Order Is Implausible And Does Not Save It

In its pleading before the district court, the School District did not attempt to defend the court's authority to terminate the decree without notice, hearing, or a declaration of unitary status. Instead, the School District argued that the order simply dismissed the case without terminating the decree, thereby requiring that any further enforcement of the decree be undertaken through a new action based on a new complaint, rather than through enforcement proceedings in the original case. Defendant's Response to Plaintiffs' Motion to Reconsider and Amend Order at 2-3. This interpretation of the order is implausible and does not protect it from reversal upon appeal.

First, the order itself is not susceptible of the School District's interpretation. The order says: "It is further **ORDERED** that the Ridley case, Civil Action No. 3009, shall be and hereby is terminated and **CLOSED** for all purposes." The language could hardly be more sweeping. The court did not give any indication that the prior decree was to remain in effect -- it did not, for example, say that the case was terminated "for all purposes" except enforcement of its orders in a separate proceeding. Moreover, the use of the word "terminated" strongly suggests an intent to terminate the underlying decree, as the term is generally applied to orders, not cases.

Second, relinquishing jurisdiction prior to finding that the school system had attained unitary status would have been in violation of Supreme Court and Eleventh Circuit precedent requiring the court to retain jurisdiction to enforce its decree until the case can be finally closed. See, e.g., Brown v. Board of Educ., 349 U.S. 294, 301 (1955) ("During this period of transition [to a unitary system], the courts will retain jurisdiction of these cases."); Green v. County Sch. Bd., 391 U.S. 430, 439 (1968) ("[T]he court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed."); Raney v. Board of Educ., 391 U.S. 443, 449 (1968) ("Dismissal will ordinarily be inconsistent with the responsibility imposed on the district courts by Brown II"). This is particularly clear in this Circuit. See Lee, 963 F.2d at 1422 ("[T]he district court must retain jurisdiction * * * .")

(emphasis added); Pitts, 755 F.2d at 1426 (until unitary status is found, "[d]istrict courts must retain jurisdiction"); Youngblood, 448 F.2d at 770 (vacating district court's sua sponte dismissal and requiring the district court to retain jurisdiction).^{8/} Thus, until the School District attains unitary status, plaintiffs are not required to undertake de novo litigation to seek compliance with existing court orders.

Third, even if the requirement that the district court retain jurisdiction were not absolute, and even if the district court simply intended to require any future enforcement action be pursued through a new and separate case, making this modification to the prior consent decree without notice to the parties, an opportunity to be heard, or appropriate findings of fact and conclusions of law, would have been erroneous. Even the School District understands the district court's order to have at least modified Paragraph 2 of the 1974 consent decree by withdrawing a party's right to seek enforcement of the decree by reactivating the case from the court's inactive docket. Sua sponte modification of a consent decree without notice and an opportunity to be heard is reversible error. See Western Water

^{8/} Thus, in interpreting ambiguous orders, the old Fifth Circuit consistently assumed that a court that retains jurisdiction has not concluded that the school district has achieved unitary status. See Pickens v. Okolona Mun. Separate Sch. Dist., 594 F.2d 433, 436 (1979); Pate v. Dade County Sch. Bd., 588 F.2d 501, 504 (1979); Lee v. Macon County Bd. of Educ., 584 F.2d 78, 81-82 (1978). For the same reason, it is implausible to conclude that the district court in this case intended to relinquish jurisdiction over the case without also terminating the underlying decree.

Management, Inc. v. Brown, 40 F.3d 105, 109 (5th Cir. 1994)

("Although a district court retains jurisdiction to modify an injunction * * * under certain circumstances, we find no authority allowing such a modification to be made without notice.") (footnote omitted); Spangler v. Pasadena City Bd. of Educ., 537 F.2d 1031, 1032 (9th Cir. 1976) (notice and hearing required before sua sponte modification of a desegregation decree). Moreover, the Supreme Court has made clear that modification of a consent decree should be rare and must be undertaken only when "a significant change in circumstances warrants revision of the decree" and when "the proposed modification is suitably tailored to the changed circumstance." Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 383 (1992). The district court made no such findings in this case.^{2/}

^{2/} In its pleading to the district court, the School District argued that such a modification would have been appropriate in this case because the plaintiff-intervenors' motion to reactivate was a subterfuge to seek further discovery in Childers' employment discrimination action. The district court made no such factual findings. In denying Childers' motion to consolidate, the court never even suggested that any misconduct had taken place. Moreover, if the court had been concerned that Childers might be seeking an unfair advantage in her employment case, its denial of her motion to consolidate presumably was a sufficient cure. If not, the court could have issued appropriate discovery or other orders in that litigation. In any event, dismissing an unrelated case prosecuted by the federal government would not have been a "suitably tailored" response to any concern the court may have had about the conduct of the Childers litigation. Prematurely relinquishing jurisdiction over a case concerning the constitutional rights of thousands of school children, in contravention of this Circuit's clear precedents, cannot be justified on the grounds the School District hypothesizes.

Thus, regardless of whether the district court intended to terminate its injunction (as seems likely from the text of the order) or simply relinquish jurisdiction (as the School District suggests), the order was manifestly erroneous.

II. THE DISTRICT COURT ERRED IN REFUSING TO REACTIVATE THIS CASE WITH RESPECT TO APPELLEE WAYNE COUNTY SCHOOL DISTRICT FOR FURTHER PROCEEDINGS IN LIGHT OF EVIDENCE OF VIOLATIONS OF THE COURT'S ORDERS

The district court also denied plaintiffs' motions to restore the case with respect to Wayne County to the court's active docket. The district court did not give any reason for denying the motion, other than to state that "the Ridley case will not be reactivated at this time" and ordering the case "terminated and **CLOSED** for all purposes." Order at 2 (R4-89).

Reactivation is properly permitted to enable plaintiffs, and the court, to ensure compliance with the desegregation decree, as demonstrated by its repeated use in similar circumstances in the Northern District case. See United States v. Georgia (Troup County), 171 F.3d 1344, 1346 (11th Cir. 1999) (describing identical reactivation provision and noting that the court reactivated the case to issue additional relief in the form of a supplemental consent order); United States v. Georgia (Meriwether County), 19 F.3d 1388, 1390 (11th Cir. 1994) (noting that the district court granted the plaintiff-intervenors' petition to reactivate the case to seek an injunction against school construction alleged to violate prior court orders).

Plaintiffs in this case made a "proper application" and provided sufficient evidence that "further proceedings are necessary." Plaintiff-intervenors clearly alleged a violation of the decree. R4-84-3 & n.1 ("The plaintiff-intervenors maintain that Wayne County School District is in violation of the 1974 Consent Order."). Furthermore, although the United States has not alleged a violation, it did cite evidence warranting further investigation into the School District's compliance. In particular, we noted that the percentage of minority teachers in the school district had dropped from about 20% in 1973 to about 7% in 1999; at least one elementary school had become racially identifiable because of a decrease in minority enrollment from 25% in 1973 to 4% in 1999; and substantial disparities exist between the types of diplomas received by black and white students (for example, approximately 13% of black students receive diplomas with college preparatory endorsements, compared to 56% of white students), possibly indicating discriminatory tracking within the schools. See R4-86-4-5 & Exhibits.^{10/} These

^{10/} In its pleading before the district court, the School District complained that plaintiffs failed to provide a sufficient level of factual detail to warrant reactivation, but this would not have been a basis for denying the motion. As discussed above, the United States' pleading did provide a significant level of factual detail. Moreover, detailed facts need not be pleaded even in a de novo complaint. See Leatherman v. Tarrant County Narcotics & Intelligence Coordination Unit, 507 U.S. 163, 168 (1993) ("[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.") (quoting Conley v. Gibson, 355
(continued...)

facts would, in the context of a hearing on unitary status, be sufficient to raise a rebuttable presumption of continuing unlawful conduct. See Lockett v. Board of Educ., 111 F.3d 839, 843 (11th Cir. 1997) ("a district court must presume that substantially disproportionate racial compositions within the schools is constitutionally violative"); Vaughns v. Board of Educ., 758 F.2d 983, 991 (4th Cir. 1985) (plaintiffs were entitled to a presumption that racial disparities in special education placement were the result of prior de jure discrimination); R4-86-4-5 (evidence indicating, among other things, that one elementary school had become almost all white and that minority students received a disproportionate share of special education diplomas). This should be sufficient to warrant reactivation of the case.

Contrary to the School District's suggestion to the district court, the fact that the United States did not allege a violation, or that plaintiffs did not adduce sufficient evidence to prove a violation, should not be a basis for denying the motion. Permitting plaintiffs and the court to investigate credible indications of violations of the court's order is consistent with the language of the decree, its overall structure, and the obligations of the district court in a desegregation case.

¹⁰/ (...continued)
U.S. 41, 47 (1957)).

The decree permits reactivation "should it appear that further proceedings are necessary." Consent Decree ¶ 2 (R1-5) (emphasis added). There is no requirement that a violation be proved or that it become blatant before any "further proceedings" are held. The term "further proceedings" is broad enough to encompass proceedings to determine the state of compliance. Moreover, this broad language should be read in light of the consent decree as a whole, which makes clear that the reactivation provision was intended to be a vehicle for monitoring compliance with the court's orders. Unlike many modern consent decrees in institutional reform cases, the 1973 Consent Decree does not provide for compliance monitoring other than through the auspices of the district court. That is, there is no court monitor appointed and no provision regarding plaintiffs' access to records or other compliance-related information. Instead, the decree addresses compliance and monitoring solely through the reactivation provision.

Making reactivation and further court proceedings the vehicle for compliance monitoring was consistent with cases requiring the district courts to take an active role in monitoring compliance and ensuring progress toward unitary status. The Supreme Court has held that district courts have an obligation to retain jurisdiction in desegregation cases to ensure that the desegregation plan "is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and

finally achieved." Raney v. Board of Educ., 391 U.S. 443, 449 (1968) (quotation marks and citation omitted). See also Lee v. Etowah County Bd. of Educ., 963 F.2d 1416, 1422 (11th Cir. 1992) (the purpose of retaining jurisdiction is "to ensure proper implementation of the plan, to guard against the possibility of recurring constitutional violations, and to ensure the achievement of the ultimate goal -- a unitary public school system") (citations omitted). This Court has explained that "the district court has a continuing responsibility to appraise the system in the light of actual conditions and experience and make required changes to assure the maintenance of a unitary system." See Pate v. Dade County Sch. Bd., 588 F.2d 501, 504 (5th Cir. 1979) (emphasis added).

Placing desegregation cases on an inactive docket is only consistent with these obligations if the court is able, and willing, to reassert jurisdiction when questions regarding "actual conditions" arise and whenever further action by the court may be necessary to "ensure proper implementation of the plan" or "guard against the possibility of recurring constitutional violations."

The School District's interpretation of the reactivation provision, on the other hand, essentially requires a district court to abdicate its role in guarding against regression, by permitting reactivation only when the school district's non-compliance has become sufficiently blatant and entrenched to be easily demonstrable without recourse to the court's monitoring or

fact-finding authority. If this interpretation is accepted, placing a case on the inactive docket is little different than dismissing the case entirely and requiring plaintiffs to commence fresh litigation to enforce compliance with the decree, a result clearly prohibited by this Court's precedents. See pp. 12-13, supra.

There are further practical reasons to reject the School District's suggestion that reactivation is appropriate only upon a substantial demonstration of a violation. First, such a standard makes the motion to reactive the subject of major, substantive litigation, when it is more appropriately a simple procedural device to permit the district court to adjudicate such substantive disputes in an orderly manner. Second, requiring plaintiffs to establish a violation in order to gain access to information needed to verify compliance creates an incentive for potentially unnecessary litigation while also impeding the ultimate goals of ensuring compliance with court orders and eventual dismissal of the case. Finally, the School District's restrictive interpretation is not necessary in order to protect defendants from the burdensome litigation defendant seems to anticipate. Reactivation does not limit the district court's usual authority to control the course of the "further proceedings" to protect the District from unwarranted or excessive burdens. Simply denying plaintiffs the ability to conduct any further proceedings before the district court because

of fears that the district court may conduct those proceedings inappropriately is a disproportionate and unwarranted response.

CONCLUSION

This Court should reverse the district court's sua sponte dismissal of this action and denial of plaintiffs' motions to restore the case to its active docket with respect to the Wayne County School District.

Respectfully submitted,

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