

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

FILED

2012 JUN 25 A 9 21

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

ANTHONY T. LEE, *et al.*,)
)
 Plaintiffs,)
)
 UNITED STATES OF AMERICA,)
)
 Plaintiff-Intervenors and)
Amicus Curiae,)
)
 NATIONAL EDUCATION ASSOCIATION,)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 MACON COUNTY BOARD OF)
 EDUCATION,)
)
 Defendants.)

Civil Action No. 70-251-S

FORT PAYNE CITY
BOARD OF EDUCATION

JOINT MOTION TO APPROVE CONSENT ORDER

The parties respectfully move the Court to approve the attached proposed Consent Order entered into by Plaintiffs Lee, *et al.*, Plaintiff-Intervenor and *Amicus Curiae* United States of America, and Defendant Fort Payne City Board of Education (the "Board") in this school desegregation case. In support of this motion, the parties state the following:

1. This action is part of a statewide school desegregation litigation initiated in 1963. On March 22, 1967, the Court ordered the State Superintendent of Education to notify a number of school systems, including the Board, that they were required to adopt a desegregation plan for all grades commencing with the 1967-1969 school year. This case was transferred from the

Middle District of Alabama to the Northern District of Alabama pursuant to a March 31, 1970 court order.

3. In an order dated July 25, 1974 (“1974 Order”), the Court dissolved the regulatory injunction in place at the time, replacing it with a permanent injunction, which held that the Board, its superintendent, and its individual board members were “permanently enjoined from operating a dual system of racially identifiable schools” and were to “take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color or national origin.” 1974 Order at 1-2. The Board was further ordered to take specific actions regarding student assignment (including transfers), faculty and staff, transportation, and facilities. *Id.* at 2-3. The Court placed this case on its inactive docket, subject to reactivation “on proper application by any party, or on the Court’s motion, should it appear that further proceedings are necessary.” *Id.* at 3. As the 1974 Order was not a grant of unitary status for the purpose of ending court oversight, the Board remains subject to its terms.

4. On November 21, 2006, the United States initiated a case review of the Board’s compliance with its desegregation obligations. Between 2006 and 2011, the United States requested, and the Board provided, information and data on the outstanding issues in the case.

5. Based on its case review, the United States notified the Board that, in its opinion, the Board had satisfied its desegregation obligations in the areas of transportation, extracurricular activities, and facilities, but that the Board has not yet fully satisfied its obligations in the areas of student assignment (including transfers) and faculty and staff. The Private Plaintiffs have since concurred in that assessment.

6. The parties have negotiated in good faith the terms of the attached proposed Consent Order. The parties intend that the Board’s compliance with this Consent Order will

result in the Board fulfilling its obligations in the areas of student assignment and faculty and staff within the next two years.

7. The parties agree that the proposed Consent Order represents “a roadmap to the end of judicial supervision” of the Board, *see NAACP v. Duval Cnty. Sch. Bd.*, 273 F.3d 960, 963 (11th Cir. 2001), allowing the Board to move for a declaration of complete unitary status no sooner than forty-five days after the Board submits its July 1, 2014 compliance report to the United States and the Court.


8. Continued judicial supervision of this case will be limited to ensuring that the District takes all actions identified in this Consent Order and refrains from taking any actions that reverse its progress in desegregating the school system. The District retains the burden of eliminating the vestiges of *de jure* segregation in the areas still under this Court’s supervision.

9. The parties agree to the terms of the proposed Consent Order.

WHEREFORE, for the reasons stated above, the parties respectfully request that the Court approve the accompanying proposed Consent Order.

Respectfully submitted,

For Plaintiffs,
Lee, *et al.*:



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DATED: 6/22/12

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DATED: 6/20/2012

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