

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 7:70-cv-00861-HL
)	
THE BOARD OF EDUCATION OF)	
VALDOSTA CITY, GEORGIA, <i>et al.</i> ,)	
)	
Defendants)	
_____)	

CONSENT ORDER

This Consent Order arises out of the good faith efforts of Plaintiff United States of America (the “United States”) and Defendant Board of Education of Valdosta City, Georgia (the “Board”) to address and resolve the Board’s ongoing obligations to comply with the consent decree approved by this Court on June 30, 2008 (“2008 Consent Decree”) in this school desegregation case and applicable federal law. The 2008 Consent Decree declared the Valdosta City Schools (the “District”) partially unitary in the areas of student assignment, transportation, extracurricular activities, and facilities, but required the Board to undertake certain remedial measures to satisfy its affirmative desegregation obligations in the areas of faculty and staff.

The United States has reviewed the Board’s annual compliance reports, information produced by the Board in response to information requests and formal discovery requests, and other publicly available information. Based on that review, the United States determined that the Board has not yet fully satisfied its obligations in the areas of faculty and staff. The parties have negotiated modifications to the Board’s obligations under the 2008 Consent Decree, as set forth herein, which are intended to bring the Board into compliance with its remaining faculty and

staff obligations within the next two years. This Consent Order establishes “a roadmap to the end of judicial supervision” of the Board in this case. *See N.A.A.C.P., Jacksonville Branch v. Duval Cnty. Sch.*, 273 F.3d 960, 963 (11th Cir. 2001).

This Consent Order is jointly entered into by the United States and the Board. As indicated by the signatures of counsel below, the United States and the Board respectfully request that the Court approve this Consent Order. Upon the Court’s approval of this Consent Order, the Board agrees to withdraw its Motion for Unitary Status and Motion to Dismiss currently pending before the Court in this case. This Consent Order is not, and shall not be construed as, an admission of liability by the Board.

The Court, having reviewed the terms of this Order, finds that it is consistent with the objectives of the Fourteenth Amendment to the United States Constitution and will facilitate the orderly desegregation of the District. Thus, the Court **ORDERS, ADJUDGES, AND DECREES** the following:

I. PROCEDURAL HISTORY

This school desegregation lawsuit was initiated by the United States on November 30, 1970. In an order dated April 1, 1971 (“1971 Order”), the Court ordered the Board to implement a desegregation plan that provided for the desegregation of the District’s schools in terms of student assignment, faculty and staff assignment, and other factors. 1971 Order at 8. The student assignment provisions of the desegregation plan were subsequently modified by orders of the Court on April 10, 1979, February 12, 1981, and August 17, 1993.

The 2008 Consent Decree, approved by the Court on June 30, 2008, declared the District partially unitary in the areas of student assignment, transportation, extracurricular activities, and facilities, and dissolved all injunctions pertaining to those areas. 2008 Consent Decree at 6. The

2008 Consent Decree required the Board to undertake a plan of action to meet its affirmative desegregation obligations in the areas of faculty and staff, over which the Court retained jurisdiction. *Id.* The 2008 Consent Decree required the Board to take steps including: (a) adopting a plan to address the District's policies and procedures related to recruitment, hiring, and assignment of school-based faculty, administrators, and certified staff; (b) maintaining all applications for employment for a three-year period from the date of submission, creating a database of all applications, and considering an applicant for all vacancies for which the applicant qualifies during the retention period; and (c) ensuring that all school-based faculty and certified staff are assigned such that the proportion of black faculty and staff members at each school would be within 15 percentage points of the district-wide ratio by the 2010-2011 school year, including through affirmative recruitment efforts and, if necessary, reassignment. *Id.* at 6-8. The Board also was required to submit annual compliance reports to the United States and the Court. *Id.* at 8-9.

The United States has engaged in an ongoing review of this case since the entry of the 2008 Consent Decree. The Board filed its Motion for Unitary Status and Motion to Dismiss on March 21, 2011, which the United States opposed in its response, filed on November 21, 2011. Upon the Court's approval of this Consent Order, the Board's Motions will be withdrawn.

II. STIPULATED FACTS

In the 2011-2012 school year, the District has ten schools serving 7,648 students. The District has five elementary schools serving grades K-5, two middle schools serving grades 6-8, one high school, and one alternative school serving grades 6-12. The district-wide student population is 76.2 percent black, 18.6 percent white, and 5.2 percent other.

The 2008 Consent Decree required that the percentage of black school-based faculty (administrators, teachers, and certified staff) at each non-alternative school would be within 15 percentage points of the district-wide average by the 2010-2011 school year “to ensure that no school is identified as a white or a black school by the race of the faculty assigned thereto.” 2008 Consent Decree at 7. The District has made substantial progress in achieving the goals set forth in the 2008 Consent Decree, due to a combination of affirmative recruiting measures, reassignments of faculty members between schools, other actions, and attrition through retirements and resignations.

The District-wide percentage of black faculty has increased from 31.6 percent in 2007-2008 to 33.4 percent in the 2011-2012 school year. The number and percentage of black faculty members from 2007-2008 to 2011-2012 are listed in Table 1 below. While the faculties at five schools deviated more than 15 points from the District-wide averages in 2007-2008 and 2008-2009, only one school, Newbern Middle, remained out of compliance in the 2010-2011 school year. In 2010, the Board transferred faculty members between the District’s two middle schools to bring the predominantly black J.L. Newbern’s faculty closer to compliance, from 41.6 percentage points above the District-wide average black faculty percentage in 2009-2010 to 19.2 percentage points above the District-wide average in 2010-2011. This year, J.L. Newbern remains out of compliance (24.3 percentage points above the District-wide black faculty average). The District has faced challenges bringing J.L. Newbern into full compliance, including the school’s previous status as a “needs improvement” school, the lack of teachers with middle school level certifications elsewhere in the District, and the Board’s District-wide reduction in force in 2010.

Recognizing these challenges, the parties have agreed to modify the numerical targets from ± 15 percentage points to ± 20 percentage points, which will remain consistent with applicable case law and provide the Board greater flexibility.

TABLE 1: Number and Percentage of Black Faculty (2007-2008 to 2011-2012)					
	2007-08	2008-09	2009-10	2010-11	2011-12
J.L. Lomax ES (K-5)	<i>14 (46.7%)</i>	24 (43.2%)	25 (42.2%)	19 (32.2%)	17 (34.3%)
S.L. Mason ES (K-5)	<i>5 (13.2%)</i>	30 (38.5%)	<i>11 (14.3%)</i>	14 (21.5%)	14 (20.9%)
Sallas Mahone ES (K-5)	<i>4 (11.4%)</i>	<i>11 (12.8%)</i>	17 (20.7%)	14 (19.6%)	13 (18.7%)
Southeast ES (4-5)	<i>16 (69.6%)</i>	<i>28 (69.1%)</i>	<i>17.5 (53.0%)</i>	14 (44.4%)	17 (43.6%)
W.G. Nunn ES (PK-5)	13 (26.0%)	<i>13 (16.7%)</i>	20 (26.3%)	20 (23.8%)	20 (24.7%)
J.L. Newbern MS (6-8)	<i>28 (60.9%)</i>	<i>39 (65.0%)</i>	<i>51 (75.6%)</i>	<i>28 (51.9%)</i>	<i>32 (57.7%)</i>
Valdosta MS (6-8)	13 (30.2%)	19 (27.9%)	20.5 (29.1%)	<i>35.5 (47.0%)</i>	30 (42.6%)
Valdosta HS (9-12)	19 (21.3%)	70 (34.8%)	45 (28.0%)	49 (29.0%)	44 (30.6%)
Pinevale Learning Ctr. (Alt./6-12)	n/av	n/av	<i>15 (55.6%)</i>	<i>15 (53.6%)</i>	<i>14 (52.8%)</i>
<i>District-wide</i>	112 (31.6%)	234 (35.6%)	222 (34.0%)	208.5 (32.7%)	201 (33.4%)

Italics indicate that percentage of black faculty deviates more than 15 percentage points from District-wide average.

The 2008 Consent Decree further required the Board to “complete a review and evaluation of its current personnel policies and procedures related to the recruitment, hiring and assignment of faculty, administrators and certificated staff members” and to develop a new personnel plan including “provisions related to training, recruitment, hiring procedures and assignment of faculty and staff.” 2008 Consent Decree at 6-7. The Board is required to ensure that all administrators, faculty, and certified staff are informed of the provisions of the 2008 Consent Decree and of the District’s hiring procedures. *Id.* at 7. The Board, with the assistance of the Southeastern Equity Center, developed a new personnel plan in the fall of 2008, which was revised in 2009, 2010, and 2011. The Board submitted a copy of each version of the personnel plan to the United States for review and approval. The personnel plan contains a summary of the Board’s obligations under the 2008 Consent Decree and detailed provisions for the affirmative recruitment of minority faculty members, hiring and interview procedures, and

faculty and staff assignment (including involuntary reassignments). While the personnel plan does not contain provisions regarding reduction in force procedures, any reductions in force are governed by the 1971 Order and governing case law, as well as by Board policy.

In compliance with the 2008 Consent Decree, the Board has maintained an electronic database of all employment applications received, retained applications for three years from the date of submission, and considered applicants for all positions for which they qualify during that three-year period. The Board has produced the applicant database to the United States annually.

III. LEGAL STANDARDS

“The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system.” *Freeman v. Pitts*, 503 U.S. 467, 485 (1992). A school district under a desegregation order is obligated to (1) fully and satisfactorily comply with the court’s desegregation decrees for a reasonable period of time; (2) eliminate the vestiges of the prior *de jure* segregation to the extent practicable; and (3) demonstrate a good-faith commitment to the whole of the court’s decrees and to the applicable provisions of the law and the Constitution. *See id.* at 491-92; *Bd. of Educ. of Oklahoma City Pub. Sch., Indep Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248-50 (1991); *N.A.A.C.P., Jacksonville Branch*, 273 F.3d at 966; *Lockett v. Bd. of Educ. of Muscogee Cnty. Sch. Dist.*, 111 F.3d 839, 842 (11th Cir. 1997). The affirmative duty to desegregate is a continuing responsibility, and “[p]art of the affirmative duty . . . is the obligation not to take any action that would impede the process of disestablishing the dual system and its effects.” *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 537-38 (1979). “Each instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment.” *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 458-59 (1979).

The proper measure of a district's progress toward unitary status "is the effectiveness, not the purpose," of its actions. *Brinkman*, 443 U.S. at 537-38; *see also Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 25 (1971). A district must show both past compliance with its desegregation obligations and a commitment to the future operation of school system in a non-discriminatory manner. *See Dowell*, 498 U.S. at 247. To that end, a district must demonstrate its "affirmative commitment to comply in good faith with the entirety of a desegregation plan," not simply that it "had [not] acted in bad faith or engaged in further acts of discrimination since the desegregation plan went into effect." *Freeman*, 503 U.S. at 499.

With respect to faculty and staff assignment, *Singleton v. Jackson Municipal Separate School District* requires that "principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." 419 F.2d 1211, 1217-18 (5th Cir. 1969) (en banc), *rev'd in part on other grounds sub nom. Carter v. West Feliciana Parish Sch. Bd.*, 396 U.S. 290 (1970).¹ The *Singleton* court instructed that immediately, and if need be through the use of faculty reassignment, the racial composition of the faculty at each school reflects that of the district-wide faculty ratio. *See id.* at 1218. In the event that a school district operating under a desegregation order must institute a reduction in force,

the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

¹ This case was decided prior to the circuit split in October 1981 and therefore is precedent in the Eleventh Circuit. Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452 (codified in scattered sections of 28 U.S.C.); *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981).

Prior to such a reduction, the school board will develop or require the development of nonracial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

Id. at 1218.

IV. STIPULATED MODIFICATIONS TO 2008 CONSENT DECREE

The Board agrees and is ordered to implement in good faith the following provisions, which modify the Board's obligations under the 2008 Consent Decree. The parties agree that the prior orders of this Court shall continue in full force and effect except to the extent that they are modified by this Order.

A. Assignment of Faculty and Certified Staff

All school-based faculty (administrators, teachers, and certified staff) serving grades K-8, including personnel who work at multiple school sites, will be assigned on a basis such that the percentage of black faculty at each school serving grades K-8 (including the District's alternative school) is within twenty (20) percentage points of the District-wide average by the beginning of the 2012-2013 school year. The District-wide average will be calculated based on the total faculty population for all schools in the District, including Valdosta High School and the District's alternative schools. The District will take all necessary steps, including voluntary and involuntary reassignments, to ensure that all schools are in compliance at the beginning of the 2012-2013 school year and remain in compliance in the 2013-2014 school year. Any new schools opened during the term of this Consent Order will be subject to the requirements of this paragraph. The District will continue implementing affirmative measures to recruit, hire, and retain qualified black faculty members.

To the extent reassignment of faculty between schools is necessary to comply with this provision, the Board will, no later than sixty (60) days before the beginning of the school year, notify all current personnel at every school in the District of the opportunity to apply to voluntarily transfer to another school in the District. The Board will give all interested personnel a reasonable period in which to express interest in a reassignment. The Board will consider all interested personnel who are qualified for positions elsewhere in the District, and whose transfer would advance the desegregation goals of this Consent Order. The Board will make reassignment decisions in accordance with the goals of this Consent Order.

If the Board conducts a reduction in force (“RIF”) during the term of this Consent Order, the Board will follow procedures consistent with the requirements set forth in *Singleton*, as quoted in Section III above, and Board Policy: Reduction in Force, which require, *inter alia*, that the Board “develop or require the development of nonracial objective criteria to be used in selecting the staff member who is to be dismissed or demoted[,] . . . [which] shall be available for public inspection and shall be retained by the school district.” In the event of an anticipated RIF, a draft RIF plan containing the objective criteria by which the RIF will be conducted will be submitted to the United States for its review no later than ninety (90) days prior to the anticipated implementation of the reduction in force. The United States will notify the Board of its consent or provide comments, if any, within thirty (30) days of receipt of the proposed plan. The parties will work to resolve any disputes voluntarily, but will seek the assistance of this Court if any disagreements cannot be resolved within thirty (30) days from the date the United States provides comments. The RIF plan, upon approval of the United States and the Board, will be communicated to all personnel in writing and posted on the District’s website, no later than thirty (30) days before the RIF is implemented.

In the event that the Board reasonably determines that a RIF must be conducted with less than ninety (90) days' notice to the United States, the Board will notify the United States immediately, in writing, of the extenuating circumstances and may request an expedited review of the proposed RIF plan. The parties will work in good faith to agree to a RIF plan in a timely manner consistent with the extenuating circumstances. The Board will communicate the approved RIF plan in writing and via the District's website to all personnel as soon as practicable and prior to the implementation of the RIF.

In no event will any RIF (planned or emergency) be implemented without either the consent of the United States or this Court's approval.

B. Personnel Policies and Procedures

Within forty-five (45) days of entry of this Consent Order, the Board will amend its personnel plan to reflect the terms of this Consent Order, and will provide a copy of the proposed revisions to the United States for its agreement. The United States will provide comments, if any, within thirty (30) days of receipt of the proposed revisions. The parties will work to resolve any disputes voluntarily, but will seek the assistance of this Court if any disagreements cannot be resolved within thirty (30) days from the date the United States provides comments. The Board, with the United States' consent, will submit the agreed-upon personnel plan to the Court for its approval.

The Board, acting through its Superintendent, will distribute a copy of the revised personnel plan and any subsequent updates to all faculty (administrators, teachers, and certified staff) in hard copy or by electronic mail. The Board will post a copy of the personnel plan and this Consent Order on the District's website at www.gocats.org under both the "Quick Links" box and as separate links under the Departments/Human Resources pull-down menu. The Board

will include a link to the personnel plan on all electronic job postings (including on the TeachGeorgia.org website), and the URL to the personnel plan in all print advertisements or hard copy job postings.

C. Maintenance of Applications

The Board will continue to maintain copies of all applications received for school-based faculty positions (administrator, teacher, certified staff) for a three-year period from the date of submission, consistent with the requirements of ¶ IV.B. of the 2008 Consent Decree. All applicant files will include the information listed in ¶ IV.B. of the 2008 Consent Decree and will be maintained at the Board's central office. The applications, as well as all written and electronic records created or maintained in connection with the Board's processing or review of those applications, will be produced for the United States' inspection upon request and reasonable notice. The Board may discontinue the use of an electronic database of applications, previously required by the 2008 Consent Decree.

D. Monitoring and Reporting

The Board will submit semi-annual reports to the United States and the Court no later than October 15 and April 15 of each year, containing all of the information listed in ¶ IV.B. of the 2008 Consent Decree since the date of the previous report, except for the central office information previously requested in ¶ IV.B.2.e. of the 2008 Consent Decree, as well as the following information:

1. A certification by the Board, through its Superintendent or counsel, that the Board is maintaining the applications and information listed in ¶ IV.C. above and is considering all applicants for every vacancy for which they qualify during the three-year period of retention.

2. A roster of administrators, faculty, and certified staff at schools serving grades K-8 (including alternative schools) as of the date of the report, by school, indicating each employee's name, race, and position.
3. A statement of whether any reductions in force or involuntary reassignments were made since the date of the previous report, with a detailed narrative description of the procedures employed to implement those actions, with any relevant supporting documentation.
4. In the October 15 report only, a list of all personnel who resigned, retired, or were terminated in the previous year, including each such employee's name; race; position at the time the employee left District employment; departure date; whether the employee retired, resigned, or was terminated; and, if the employee was terminated, the reason for the termination.

The report to the Court will be filed electronically using the Court's CM/ECF system. All data, rosters, and lists produced to the United States will be submitted electronically in Microsoft Excel format or a similar format approved by the United States. The United States will notify the Board, in writing, of any comments, recommendations, objections, or requests for clarification or supplemental information within sixty (60) days of receipt of each report, and will give the Board a reasonable opportunity to address any concerns or produce supplemental information. The parties will attempt to resolve any disputes voluntarily, but will seek the assistance of the Court if they are unable to resolve any issues within a reasonable period of time.

V. FINAL TERMINATION

Continued judicial supervision of this case will be limited to ensuring that the District: (1) takes all actions identified in this Consent Order, and (2) refrains from taking any actions that

reverse its progress in desegregating the school system. The parties commit to negotiate in good faith any disputes that may arise, but the United States may seek judicial resolution of any noncompliance. The parties may move, separately or jointly, for a declaration of complete unitary status no sooner than March 1, 2014. The applicable provisions of the Federal Rules of Civil Procedure and the local rules of this Court will apply to any such motion.

VI. EFFECT OF PRIOR ORDERS

All Orders not inconsistent herewith remain in full force and effect.

SO ORDERED, this 29th day of February, 2012.

s/Hugh Lawson
The Honorable Hugh Lawson
United States District Judge

The following signatures of counsel indicate the parties' consent to the form and content of this Consent Order.

For Plaintiff United States of America:

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Dated: February 28, 2012

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