

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ANTHONY T. LEE, <i>et al.</i> ,)	
)	
Plaintiffs, and)	
)	
UNITED STATES OF AMERICA,)	Civil Action No. CV 70-S-251-S
)	
Plaintiff-Intervenor,)	
and <i>Amicus Curiae</i> , and)	
)	
NATIONAL EDUCATION)	
ASSOCIATION, INC.,)	
)	
Plaintiff-Intervenor,)	
)	
vs.)	Miscellaneous Case No.
)	MC-07-S-1944-S
MACON COUNTY BOARD OF)	
EDUCATION, <i>et al.</i> ,)	
)	
Defendants.)	Calhoun County School System (Judge C. Lynwood Smith, Jr.)

MOTION FOR UNITARY STATUS
BY THE CALHOUN COUNTY BOARD OF EDUCATION

After many years and significant, good faith efforts over the last nine years in particular, the Calhoun County Board of Education (“the Board”) moves this Honorable Court for an order granting unitary status to the Board, and further ending Court supervision of the Board with respect to this longstanding desegregation case. In support of its motion, the Board would show the Court as follows:

I. PROCEDURAL HISTORY AND BACKGROUND

1. This action is part of the statewide school desegregation litigation, *Lee v. Macon County Board of Education*, which was initiated by Private Plaintiffs in 1963. On July 16, 1963, the United States was added as plaintiff-intervenor and amicus curiae “in order that the public

interest in the administration of justice would be represented.” *Lee v. Macon County Bd. of Educ.*, 267 F. Supp. 458, 460 (M.D. Ala. 1967). On March 22, 1967, the Court ordered the State Superintendent of Education to notify several school systems, including the Calhoun County School System (the “District”), that they were required to adopt a desegregation plan for all grades beginning with the 1967-68 school year. *Id.* at 482. On June 19, 1970, this case was transferred from the Middle District of Alabama to the Northern District of Alabama, where Calhoun County is located.

2. The initial order entered by this Court on August 16, 1971, set forth the original outline of the desegregation plan for the Board. That order has been modified on numerous occasions over the course of the intervening years, including the July 19, 2010 Amended Consent Decree (Doc. 58) (“2010 Consent Decree”), and the February 12, 2015 Consent Order (Doc. 78) (“2015 Consent Order”).

3. The 2010 Consent Decree contained comprehensive provisions designed to establish standards and evaluate progress in each of the five factors set forth in *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 435-42 (1968), plus analysis of quality of education issues relating to a student’s day-to-day experiences as established in *Freeman v. Pitts*, 503 U.S. 467, 472 (1992) (collectively, the “*Green* Factors”). It contained training, reporting, and substantive provisions outlining significant changes in the personnel processes, educational opportunities, and system culture. The Court emphasized that the 2010 Consent Decree was “intended to, in the areas addressed, provide a ‘road map to the end of judicial supervision’ and toward unitary status.” (Doc. 58 at 9) (citing *NAACP, Jacksonville Branch v. Duval County. Sch. Bd.*, 273 F.3d 960, 963 (11th Cir. 2001)). The term of the 2010 Decree was three years after a one-year development and implementation term (*Id.*, at 21).

4. After the initial term expired, the parties undertook further evaluation of the *Green* Factors to determine whether the Board had in fact made sufficient progress toward unitary status or whether there were still areas that needed attention. After that evaluation, the Board, with the consent of the parties, filed a Joint Motion to Approve Consent Order seeking partial unitary status and an extension of the oversight term so that it could continue to address the *Green* Factors in the areas of faculty, staff, and educational opportunities (student discipline) (Doc. 75). The Court then issued the 2015 Consent Order on February 12, 2015 (Doc. 76).

5. In the 2015 Consent Order, the Court withdrew “its jurisdiction over the areas of transportation, student assignment, extracurricular activities, and facilities.” (Doc. 76 at 19). At that time, although the Board demonstrated incremental progress in hiring and retaining African American employees, the Court determined that progress was not sufficient to warrant withdrawal of court oversight in that area. Further, certain identified disparities in student discipline referrals existed. As a result, the Court continued supervision of the Board’s “efforts to recruit, hire, and retain African American faculty, administrators, and certified staff and its policies and practices related to student discipline” through additional reporting requirements (Doc. 76, pp. 7-20). The Court noted that the Board could “move for a declaration of complete unitary status no sooner than forty-five (45) days after the Plaintiff Parties receive the October 2017 compliance report.” (*Id.* at 20). The Board filed its 2017 Report on October 16, 2017 (Doc. 87).

6. In the 2015 Consent Order, the Court directed the Board to retain Faculty Equity Consultants (“Faculty Consultants”) to conduct a comprehensive review of policies and procedures; to train administrators and staff on best practices related to hiring, recruitment, and retention of diverse faculty and certified staff; and to suggest opportunities for improvement.

Those policy and procedural enhancements were previously reported to the Court (*See* Doc. 81, Ex. A). Over the course of the past four reporting periods (*See* Docs. 81, 83, 87, 88 (the “Annual Reports”)), and as reflected therein, the Board has worked closely with the Faculty Consultants to modernize hiring and recruitment protocols, to train personnel involved in the hiring and retention process, to develop a Professional Development and Mentorship Program, to ensure that faculty and staff are hired and assigned in a non-discriminatory manner, and to appropriately track and monitor the impact of the Board’s recruitment and hiring decisions. While the data reveals marginal increases in minority populations across broad employee categories, more significant progress has been made in hiring minority administrators in school leadership¹. This, coupled with implemented procedural improvements, reflect the Board’s good faith commitment to fostering racial and cultural diversity among its employees and serve as the solid framework underpinning continued progress well after judicial supervision is withdrawn.

7. The 2015 Consent Order further directed the Board to retain a Discipline Equity Consultant (“Discipline Consultant”) to conduct a comprehensive review of the Board’s discipline policies and procedures, including the Code of Student Conduct, and to recommend revisions designed to reduce the racial disparity in disciplinary referrals. Those revisions also were previously reported to the Court (*See* Doc. 81, pp. 13-14; Doc. 83, pp. 13-14; Doc. 87, pp. 13-14; Doc. 88, pp. 13-14). Working closely with the Discipline Consultant, the Board expanded the CHAMPS² program of positive behavior interventions and supports (“PBIS”), by identifying and promoting strategies for teaching, encouraging and reinforcing positive student behavior with an eye toward reducing occasions of exclusionary discipline. Throughout the course of the

¹ From 8.2 % in 2011 to 13.2% in 2018. *See* 2011 Report to Court, pp. 3-4; Doc 88, p. 4.

² CHAMPS is a proactive and positive approach to classroom management that encourages clear and appropriate communication exchanges between teachers and students within an established classroom structure that primarily relies on positive reinforcement mechanisms that reward good behavior and set forth reasonable corrections for classroom misbehavior to minimize escalation.

past three reporting periods, the Board has developed and implemented mandatory training for all instructional faculty and staff; developed and implemented procedures for collecting discipline data; regularly evaluated the discipline data collected; and has taken affirmative steps to appropriately address and correct any related issues as necessary. Through those efforts, the Board has seen progressive decreases system-wide in minor and intermediate violation categories attributable to the implementation of the CHAMPS PBIS program and associated recommended strategies. Further, the Board continues to observe, after nearly four years following the implementation of the program, reductions in disproportionality between white and African American students where it previously existed, and has targeted for additional training those communities where substantial improvements have been slower in manifesting.

8. The Annual Reports filed with the Court show most completely the compliance efforts by the Board with respect to the only two areas remaining under the Court's jurisdiction. (*See Docs. 81, 83, 87, 88*).

II. LEGAL STANDARDS

9. The ultimate inquiry in determining whether a school district is unitary is whether the district has: (1) fully and satisfactorily complied in good faith with the court's desegregation orders for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* segregation to the extent practicable; and (3) demonstrated a good faith commitment to the whole of the court's order and to those provisions of the law and the Constitution, which were the predicate for judicial intervention in the first instance. *See Missouri v. Jenkins*, 515 U.S. 70, 88-89 (1995); *Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell*, 498 U.S. 237, 248-50 (1991); *Manning v. Sch. Bd. of Hillsborough County*, 244 F.3d 927, 942 (11th Cir. 2001); *Lockett v. Bd. of Educ. of Muscogee*

County Sch. Dist., 111 F.3d 839, 843 (11th Cir. 1997).

10. The Supreme Court has identified five areas, commonly referred to as the “*Green* factors,” which must be addressed as part of the determination of whether a school district has fulfilled its duties and eliminated the vestiges of the prior dual school system to the extent practicable. These factors are: (1) student assignment; (2) faculty and staff; (3) transportation; (4) extracurricular activities; and (5) facilities. *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 435-42 (1968); *Jenkins*, 515 U.S. at 88; *Dowell*, 498 U.S. at 250. The *Green* factors are not intended to be a “rigid framework”; indeed, the Supreme Court has approved consideration of other indicia, such as quality of education, in evaluating whether a district has fulfilled its desegregation obligations. *See Freeman*, 503 U.S. at 492-93. As has occurred in the case at bar, courts may allow partial or incremental dismissal of a school desegregation case before full compliance is achieved in every area of operation, retaining jurisdiction over those areas not yet in full compliance and terminating jurisdiction over those areas found in compliance. *Id.* at 490-91.

III. FACTS

11. Since entry of the 2015 Consent Order, the Board has continued to report annually on information required in Section VII of that order, including: number and percentage of students, full time teachers, certified staff, principals, assistant principals, administrative and other certified staff at the central office, and all certified personnel, by race/ethnicity for each school and the entire school system.

12. The Personnel Plan for Certified Positions (“the Plan”), approved by the parties in 2010, continues to provide the foundation for the Board’s recruitment and hiring efforts. Doc. 88-1. The Plan has produced significant changes in the district’s hiring process including the

advertising of all certified vacancies on the State Department of Education's website; centralization of the application process; establishment of a central Employment Committee; and development of an applicant database that allows the district to track, sort, and monitor applicants based upon credentials, degree, race, and other key factors. The district is confident these changes have provided a pool of better qualified applicants and have enhanced its minority recruitment efforts. As provided in the 2015 Consent Order, the Board engaged consultants³ provided by the Southeastern Equity Center to review its hiring and recruiting measures, to identify new strategies to accelerate and better sustain its minority recruitment and retention efforts, to revise the Personnel Plan as needed, and to identify other initiatives that will aid the District in its faculty and staff recruitment and hiring efforts.⁴

13. The Board continues to employ the strategies and efforts initially described in the 2015 Report, including but not limited to participation in the Student Internship program with nearby Jacksonville State University ("JSU"); promotion of an inclusive and welcoming environment for all persons regardless of race through its website posting, social media activities, and other promotional efforts; continued use of the "Focused on Success for ALL" campaign first described in the Annual Report to the Court filed October 15, 2010;⁵ use of promotional videos that convey the welcoming nature of the district's schools on the district's website (www.calhoun.k12.al.us) under the following titles: (1) Focused on Community, (2) Focused on Excellence, and (3) Superintendent's Message; broadcast of the District's message from a large screen television mounted in the main entrance area of the Central Office, where all

³ Dr. Donna Elam and Dr. Verdell Roberts

⁴ Both Dr. Elam and Dr. Roberts met with District officials on September 21-22, 2017. Counsel for the United States, Plaintiffs and the Board were able to attend the meetings and to engage in discussions about personnel, student discipline, and the District's efforts under the Consent Decree.

⁵ 2010 Report, pp. 5-7

employees and visitors are greeted by a continuous slide presentation that integrates the “Focused on Success for All” theme with photographic images of students and faculty selected to exemplify the district’s welcoming, diverse and inclusive environment; and positive use of Twitter accounts to “tweet” out good news and images that vividly portray the diverse face of the school system and its friendly, welcoming climate.

14. The Board has continued to engage in recruiting trips each year to career expos hosted by several Historically Black Colleges and Universities (“HBCUs”) in Alabama, including Alabama A&M University, Talladega College, Alabama State University, and Tuskegee University. The Board has also continued to attend recruiting events hosted by the University of Alabama and Jacksonville State University.

15. The District continues to make progress in hiring and strives to retain minority faculty and staff, as demonstrated by an increase in African American principals and assistant principals⁶. Detailed information regarding all postings, applicants, persons referred for interview, persons interviewed, and persons hired are included the October 2018 Report.

16. The District has consistently endeavored to expand its targeted and strategic recruitment to increase the number of African-American faculty and certified staff who apply, are interviewed and hired. Each year since the development of the Plan following entry of the 2015 Consent Order, the District has attended events for seekers of education employment throughout the state, despite moderate results.

17. The District remains committed to its annual training programs for those

⁶ African Americans currently comprise 13.2% of all principals and assistant principals in the District, which comes within less than 2 percentage points of reflecting the African American enrollment percentage for 2017-2018 (which is 14.9%), and reflects an increase from the previous year’s total of 12.8%. *See* Doc 88, p. 4, Table 4; Doc. 87, p. 4, Table 4. While the District understands that the comparison does not constitute the operative legal standard, it does offer some context into the District’s efforts.

administrators engaged in hiring and assignment. In 2018, for example, the District, along with the Faculty Consultants, conducted training on Culturally Competent Leadership, which included training on subconscious bias. Doc. 88, pp.12-13; Docs. 88-5, 88-6, 88-7. The District's dedicated focus on continuing education and training of its current employees as well as all new hires reflects its determination to succeed in attracting and retaining a qualified and diverse field of candidates for all positions. The Board recognizes that having a faculty and staff population that is culturally reflective of its student population fosters an environment where students can imagine themselves holding professional leadership positions later in their lives, thereby fueling their inspiration to achieve in both subtle and overt ways. The District's establishment of a robust framework for success in all areas that touch cultural and racial diversity within its schools mirrors the Board's enduring commitment to equity for its students and the community it serves and those efforts will extend well beyond the end of Court supervision over this matter.

18. Similarly, the District's efforts in the area of discipline are continuing. The District has evaluated whether infractions decreased as expected from implementation of the CHAMPS PBIS program and the use of recommended classroom management strategies and the discipline data confirms that the results of the third year of CHAMPS implementation were positive. Generally, the District continues to observe decreases in the total number of disciplinary infractions for all schools and subgroups, and although the total number of major and severe infractions ticked up slightly in 2018, both overall minor infractions and intermediate infractions have continued to decrease. Doc 88, pp. 15-18.

19. As part of its ongoing efforts, the District has identified those schools where additional work is needed. The Board thereafter conducted CHAMPS PBIS training for the specific schools in those communities where continuing issues were shown, including

Alexandria Middle (which is a new school), and the schools in the Weaver, Wellborn, and Saks communities. CHAMPS PBIS training was conducted as well for all new teachers, taking place on August 2, 2018. Doc. 88, p. 14. CHAMPS training was also undertaken in August 2019 as part of training conducted immediately prior to the school year..

IV. CONCLUSION

20. The Supreme Court has determined that in order to achieve unitary status, the defendant must show that (1) the vestiges of discrimination have been eliminated to the extent practicable; (2) there has been a full and satisfactory compliance with the decree in those aspects of the system where supervision has been withdrawn; (3) retention of judicial control is not necessary or practicable to achieve compliance with the decree in other facets of the system; and (4) it has demonstrated, to the public and to the parents and students of the once disfavored race, its good faith commitment to the whole of the court's decree and to those provisions of the law and the constitution that were the predicate for judicial intervention in the first instance. *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). The Board has met each of the requisite factors, as demonstrated above and through the reports previously submitted.

21. Neither the United States nor the Private Plaintiffs are aware at this time of any objections but reserve the right to respond to any concerns raised during the notice period and fairness hearing.

WHEREFORE, the Calhoun County Board of Education respectfully requests that this Court issue an Order scheduling a fairness hearing and appropriate timelines for the issuance of notice and that, after such hearing, it issue an Order granting unitary status to the Board, dismissing any and all claims against the Defendant Board in the present action and withdrawing its supervision of the Calhoun County Board of Education.

FOR THE CALHOUN COUNTY BOARD OF EDUCATION:

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that there are no known non-CM/ECF participants for mailing by United States Postal Service, and that I electronically filed the foregoing Motion for Unitary Status by the Calhoun County Board of Education with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record on this the 26th day of August, 2019.

s/Whit Colvin _____