

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

FILED

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

LINDA STOUT, et al.,)

Plaintiffs,)

and)

UNITED STATES OF AMERICA,)

Plaintiff-Intervenor,)

vs.)

CIVIL ACTION NO. CV65-J-396-S

JEFFERSON COUNTY BOARD OF)
EDUCATION, et al.,)

Defendants.)

ENTERED

SEP 15 2000 *asl*

CONSENT ORDER

This matter came before the Court pursuant to the Joint Motion for Approval of Consent Order filed September 5, 2000, by Defendants Jefferson County Board of Education, et al. ("Board"), Plaintiffs Linda Stout, et al., and Plaintiff-Intervenor United States of America.

The parties, having engaged in good-faith discussions, information exchange, and negotiations regarding the Board's proposed closure of two schools, and regarding the Board's implementation of the Court's requirements with respect to intra-district student transfers, reached agreement on further relief with respect to student assignments, as set forth below, and accordingly, request that their agreement be approved by and entered as an Order of the Court.

After reviewing the terms of this Consent Order, the Court concludes that entry of this Consent Order comports with the objectives of the Fourteenth Amendment to the Constitution

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of the United States of America and applicable federal law and, if properly implemented, will further the orderly desegregation of the Jefferson County School District.

It is, therefore, ORDERED, ADJUDGED, and DECREED as follows:

I. Proposed Student Reassignments and Attendance Zone Modifications

A. West Jefferson High School

1. The Board proposes to end student assignments to West Jefferson High School for grades 7 through 12, and to reassign such students to other schools. The District's rationale for the proposed closure of West Jefferson is twofold. The District has represented the following. For many years, enrollment at West Jefferson has been such that its students have not been exposed to the same academic and extracurricular programs and experiences as have their peers at larger and more educationally diverse high schools. Because of declining enrollment and low population growth in the West Jefferson attendance zone, the district has maintained but not significantly upgraded the physical facility. The severe budget deficit under which the Board is presently operating lends urgency to the closing of the high school. The Board cannot afford to continue to incur the substantial maintenance and expense costs associated with the operation of a school the size, location, and nature of which preclude affording their students the same measure of academic and extracurricular involvement and opportunity as is available in other settings.

2. In the 1999-2000 school year, West Jefferson served 141 students in grades 7-12, and 205 students in grades K-6. West Jefferson's student body was 87.9% white (12.1% black) in grades 7-12 and 5.85% black (94.15% white) in grades K-6. The Board proposes that beginning with the 2000-01 school year, students in grades 7-12 at West Jefferson instead

would be assigned to one of five other schools, whose attendance zones would be adjusted to include portions of West Jefferson's attendance zone.

3. On September 8, 1971, the Court approved attendance zones for the Jefferson County schools, including a "West Jefferson [attendance] zone" which the Court directed should "provide all twelve grades." September 8, 1971 Order, §I (a)(20) and Attachment Z. The Court also specified "conditions for alteration of [the] zone line between [the West Jefferson zone and the] Oak Grove [zone]." *Id.*, §I(a)(20).

4. The Board now proposes to amend section I (a)(20) of the September 8, 1971 Order so that it applies to students in grades K through 6 only. The Board also proposes to add portions of the current West Jefferson zone (for students in grades 7-12) to the current attendance zones for five other current schools located near to West Jefferson: Bagley Junior High; Corner High; Bottenfield Junior High; Minor High; and Oak Grove High. A map of proposed revised attendance zones is attached hereto as Exhibit A. As a result of these changes the Board estimates that the enrollment of each of these schools would increase, as follows: Bagley (14 students; all white), Corner (25 students; all white), Bottenfield (21 students; 12 white and 9 black); Minor (15 students; 6 white and 9 black); and Oak Grove (71 students, all white). The projected number of students distributed from West Jefferson to other schools would be 146: 128 white and 18 black. See Exhibit B hereto.

5. Data presented by the Board indicate that its proposed reassignments from West Jefferson would not impede student desegregation. Although four of five schools would move slightly farther from the 1999-2000 district-wide average racial composition (76.93% white; 21.7% black), no school's racial composition would be affected by as much as a half percentage

point: Bagley (99.72% white; unchanged); Corner (99.79% to 99.8% white); Bottenfield (54.0% to 53.58% black); Minor (53.33% to 53.44% black) ; and Oak Grove (93.17% to 93.63% white). Moreover, the data presented by the Board indicate that to lessen the impact on student desegregation of the proposed reassignments from West Jefferson would require imposing significant additional transportation burdens on students to be reassigned, by requiring them to attend schools farther from their home.

6. At West Jefferson, in 1999-2000 there were currently 54 employees, including 2 administrators (0 black, 2 white), 33 teachers (1 black, 32 white), 2 other certificated staff (1 black, 1 white), and 17 non-certificated employees (1 black, 16 white). Of these employees, the Board estimates that 27 no longer would be assigned to work at West Jefferson if the school ceased to serve students in grades 7-12.

7. Data presented by the Board also indicate that its proposed student reassignments from West Jefferson would not impede faculty or staff desegregation. In particular, the Board estimates that 18 certificated staff (7% black; 93% white) and 9 non-certificated staff (0% black; 100% white) at West Jefferson in 1999-2000 will be reassigned to other schools. At most, the faculty or staff at these schools is expected to change by fewer than five (5) percentage points. Although the reassignment of staff is subject to variables that make a precise projection and analysis of those changes impossible at this juncture, the Board has committed to implementing faculty and staff reassignments (as well as any other faculty or staff changes) in a racially nondiscriminatory manner so as to further faculty and staff desegregation, and further, to report to the other parties as soon as practicable the results of changes in faculty and staff employment due to student reassignments from West Jefferson.

B. Gilmore-Bell Vocational High School

8. The Board also proposes to end student assignments to Gilmore-Bell Vocational High School, which serves students in grades 9 through 12, and to reassign such students to other schools. Gilmore-Bell provides specialized programming for certain (primarily self-contained) disabled students and for students who choose to focus on preparation for vocational training and/or employment after high school. Gilmore-Bell draws its enrollment from throughout the District; it has no attendance zone.

9. The District proposes to close Gilmore-Bell for largely the same reasons it proposes to close the grade 7-12 component of West Jefferson High School (see discussion at paragraph I.A.1., supra). The District represents the following. At one time Gilmore-Bell served a larger number of nondisabled students. It also served as a vocational services center for the western part of Jefferson County and provided vocational services for students at several area schools. It also served as a regional transportation "hub" for the school system, thereby facilitating access to the school. In recent years, overall enrollment at the school has dropped. The reasons for this include the system's efforts to educate students with disabilities in "mainstreamed" settings with students in regular education programs, rather than in settings with concentrations of students with disabilities. Further, Gilmore-Bell no longer serves the same role as an area vocational center.

10. In the 1999-2000 school year, Gilmore-Bell had a student of population of 114 in grades 9-12. Gilmore-Bell's student body was 49.12% black (50.88% white); disabled students and vocational education students at the school were 45% and 55 % black, respectively.

11. The Board proposes that beginning with the 2000-01 school year: (a) disabled

students assigned to Gilmore-Bell in 1999-2000 (or who would have been assigned there for the first time in 2000-01) instead would be assigned to schools appropriate for them based on their special education needs and based on special education programs available at various District schools; and (b) other students at Gilmore-Bell in 1999-2000 (or who would have volunteered for assignment there for the first time in 2000-01, to pursue vocational education programs) would have access to equivalent vocational education programs elsewhere in the District.

12. The Board has acknowledged its obligation under the Constitution and this Court's Orders, and in particular, the Consent Decree approved by the Court and entered February 26, 1976, "to promote desegregation" in the operation of its vocational education program, including in establishing and implementing "attendance zone lines and student transfer policies ... for vocational facilities in the district," as well as in determining "locations" for "vocational courses in the system" At 2, ¶4. Further, the Board has reaffirmed its commitment to "take the steps necessary to insure that the dual system is not re-established" in its vocational education programs, as set forth in the February 26, 1976 Consent Decree. *Id.* The Board also acknowledges its continuing mandate under federal law (20 U.S.C. §§ 1400, *et seq.*) and corresponding regulations to provide a free appropriate public education to students with disabilities as defined and determined under the law.

13. The Board has shared with plaintiffs and the United States its estimates of the numbers of special education and vocational education students who would attend other District schools upon closure of Gilmore-Bell. The District proposes to transfer students now assigned to Gilmore-Bell on a full-day basis, beginning in 2000-2001, to five other high schools. The total number of these students attending Gilmore-Bell in 1999-2000, and who did not graduate that

year, and thus, the total number projected to be transferred to other schools beginning in 2000-2001, is 99 (40 white and 59 black); of these students, 60 (34 black; 26 white) were in 1999-2000, and thus are expected to be in 2000-2001, special education students. Also attending Gilmore-bell in 1999-2000, on a less than full-day basis, were 132 students (80 white; 52 black), of whom 53 received special education services at their "home" school. Finally, of the 231 non-graduating students attending Gilmore-Bell in 1999-2000, 145 (79 black; 66 white) participated in vocational education programs there. These students shall have access to comparable opportunities at school other than Gilmore-Bell.

14. The Board has represented that reassignment of Gilmore-Bell students to other western-area schools has been based on a careful review of the educational and programmatic needs of the affected students, and upon the appropriate placement for the students. Data reflecting the proposed student reassignments, the exceptionality (disability classification), placement (or "LRE") code, race and grade for each student has been provided to the plaintiffs and the United States. Summary data are included herewith in order to preserve the confidentiality of the students. (See Exhibit D hereto.)

15. Data presented by the Board indicate that its proposed student reassignments from Gilmore-Bell would not impede student desegregation: although enrollments at each of five (5) schools would move slightly farther from the district-wide average (76.93% white; 21.7% black), such changes in most instances would be less than one percentage point, and at most would reach 1.4%. See Exhibit C.

16. At Gilmore-Bell there were 41 employees in 1999-2000. There were 2 administrators (1 black, 1 white), 26 teachers (7 black, 19 white), 2 other certificated staff (1

black, 1 white), and 11 non-certificated employees (2 black, 9 white).

17. Data presented by the Board indicate that its proposed student reassignments from Gilmore-Bell would not impede faculty or staff desegregation. The District estimates that in the event of its proposed closure of Gilmore-Bell, the impact on faculty and staff desegregation would be minimal. In particular, the Board estimates that 18 certificated staff (18% black; 72% white) and 9 non-certificated staff (12% black; 88% white) at Gilmore-Bell in 1999-2000 would be reassigned to other schools. At most the faculty or staff at these schools is expected to change by fewer than five (5) percentage points. The Board has committed to implement faculty and staff reassignments (as well as any other faculty or staff changes) in a racially nondiscriminatory manner so as to further faculty and staff desegregation, and further, to report to the other parties as soon as practicable the results of changes in faculty and staff employment due to student reassignments from Gilmore-Bell.

18. In light of the foregoing, the Board shall be permitted to close West Jefferson High School for grades 7 through 12, to close Gilmore-Bell Vocational High School, to implement changes in the attendance zones heretofore applicable to West Jefferson High School students in grades 17-12, and to reassign non-graduating students previously assigned to West Jefferson and to Gilmore-Bell, in accordance with the proposals, agreements, and representations described above.

II. Intra-District Transfers

19. The Board has acknowledged that for at least a decade, it has failed to strictly enforce the provisions of applicable Court Orders concerning the transfer of students between

schools in the Jefferson County, Alabama school system (*i.e.*, "intra-district" transfers), including the Singleton "majority to minority" transfer provision mandated by the Fifth Circuit's September 7, 1972 Order, see Stout, et al., v. Jefferson County Bd. of Educ., et al., 466 F.2d 1213, 1216, and the "hardship" transfer provision contained in the Court's September 8, 1971 Order, see §§ IV(e). In particular, the Board acknowledges that it has failed to conduct, or to cause school officials to conduct: (a) a thorough analysis of the compliance of applications for intra-district transfers with provisions of applicable Orders limiting the grounds for such transfers (*e.g.*, in accordance with the "Singleton" majority-to-minority provision, or in cases of "exceptional and compelling personal hardship unique to the student or the student's family," see September 8, 1971 Order § IV [e]); (b) an analysis of the cumulative impact on student desegregation, at each school, of approved applications for intra-district transfers; or (c) adequate training of administrative personnel to assure compliance with such obligations. The Board has further acknowledged that such practices have led to non-compliance with applicable Court Orders, and to intra-district transfers which individually and/or cumulatively have undermined desegregation at various sending and receiving schools.

20. The Board has reaffirmed a commitment to strictly enforce the provisions of applicable Court Orders related to intra-district transfers.

21. The Board, in accordance with its affirmative duty to consider student desegregation in all decision-making, and further, to facilitate implementation of its desegregation obligations with regard to intra-district transfers, agrees to take, and is hereby ordered to take, the following steps:

(a) The Board will prepare materials (in consultation with the other parties)

explaining the intra-district transfer process, including relevant legal requirements, for distribution to District staff involved in acting on requests for such transfers; the Board further agrees to annually instruct staff in properly implementing the process, including by using such materials.

(b) The Board will prepare, for use in analyzing and acting on intra-district transfer requests, additional information regarding such requests and requests which are approved, and also regarding their racial impact; based on such information, the Board agrees to exert best efforts to eliminate non-compliance with the intra-district transfer provisions of applicable Court Orders during and for the 2000-01 school year. Section VII ("Reporting"), sub-sections (c) (4) - (c) (6), of the September 8, 1971 Order are supplemented as follows, in a new sub-section (7):

(i) The Board shall include in reports of individual student transfers required by sections (c) (4) - (6) data reflecting total numbers of students by race and school (sending and receiving); the Board also shall report annually, by race and school, and whether granted or denied, intra-district transfer requests due to "exceptional and compelling personal hardship unique to the student or the student's family," September 8, 1971 Order, § IV (e).

(ii) In addition to majority to minority transfers and *bona fide* hardship transfers, the Board shall accept and approve *bona fide* applications for transfers furthering desegregation of the Jefferson County schools, in that once granted they would move both sending and receiving schools closer to the district-wide average racial percentage for the grades served by each school; the

Board also shall report annually individual and summary data regarding such applications, by race and school, and whether granted or denied.

ENTERED this 14 day of September, 2000.



UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED:

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