

# United States Court of Appeals

For the Eleventh Circuit

FILED *ejw*

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No. 00-12224

U.S. DISTRICT COURT  
ND OF ALABAMA  
FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

District Court Docket No.  
63-00574-CV-AR-M

Aug 8, 2001  
THOMAS K. KAHN  
CLERK

CATHERINE ANN MILLER, a minor,  
by Pauline McAfee Miller, her  
mother and next friend, et al.,

Plaintiffs-Appellants,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor-Appellant,

A True Copy - Attested:  
Clerk, U.S. Court of Appeals,  
Eleventh Circuit

By: *[Signature]*  
Deputy Clerk  
Atlanta, Georgia

versus

THE BOARD OF EDUCATION OF GADSDEN,  
ALABAMA, a public body corporate,  
P.V. LOVE, EDWIN G. LYTLE, M.C. BENTLEY,  
members of the Board of Education of  
Gadsden, Alabama, I.J. BROWDER, Superintendent  
of Schools of Gadsden, Alabama,

Defendants-Appellees.

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Appeals from the United States District Court  
for the Northern District of Alabama  
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## J U D G M E N T

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: August 8, 2001  
For the Court: Thomas K. Kahn, Clerk  
By: Eggleston, Natak



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FILED *W*

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

U.S. DISTRICT COURT  
N.D. OF ALABAMA  
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No. 00-12224  
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D. C. Docket No. 63-00574-CV-AR-M

CATHERINE ANN MILLER, a minor, by  
Pauline McAfee Miller, her mother and next friend, et al.,

Plaintiffs-Appellants,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor-Appellant,

versus

THE BOARD OF EDUCATION OF GADSDEN, ALABAMA,  
a public body corporate,  
P.V. LOVE, EDWIN G. LYTLE, M.C. BENTLEY,  
members of the Board of Education of  
Gadsden, Alabama, et al.,

Defendants-Appellees.

\_\_\_\_\_  
Appeals from the United States District Court  
for the Northern District of Alabama

\_\_\_\_\_  
(August 8, 2001)

Before BIRCH, WILSON, and FARRIS\*, Circuit Judges.

\_\_\_\_\_  
\*Honorable Jerome Farris, U.S. Court of Appeals for the Ninth Circuit, sitting by designation.

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PER CURIAM:

We are asked to review the district court's declaration of unitary status for the Gadsden, Alabama public school system that had been laboring under a desegregation order imposed by a case initiated in 1963. For the reasons set forth below, we remand this case to the district court for further proceedings consistent with this opinion.

### BACKGROUND

In November 1963, a class of African-American school children filed suit alleging that the Board of Education of Gadsden, Alabama violated their rights under the Equal Protection Clause of the Fourteenth Amendment by operating and maintaining a dual school system based on race. Later that year, an order enjoining the school board from discriminating was entered by the court. It was followed in 1975 by a consent decree ordering desegregation. Thirty-seven years after the commencement of this case, on February 1, 2000, following much back and forth between the parties and a series of hearings that resulted in more orders and decrees, the district court held a one-day unitary status hearing. Appellants presented evidence they allege illustrates that there was no parity between the educational opportunities and course availability at predominantly black schools versus those that were more integrated or predominantly white. After weighing this against the evidence presented by the school board, the district court relinquished jurisdiction of

the case and declared the school system to be desegregated on March 21, 2000. Having before us the order of the district court, we review the appeal.

#### DISCUSSION

Appellants present two grounds for appeal in this case. First, they allege that the district court applied the wrong legal standard in determining that the school district was unitary and desegregated. Second, they allege that the district court erred in dismissing the instant suit.

We review issues regarding the correct legal standard for dismissal *de novo*, while the district court's conclusion that a school system has achieved unitary status is reviewed for clear error. *See Lockett v. Bd. of Educ. of Muscogee County*, 111 F.3d 839, 841-42 (11<sup>th</sup> Cir. 1997).

In determining whether a school system has complied with a consent decree, the district court must decide: "(1) whether the local authorities have eliminated the vestiges of past discrimination to the extent practicable and (2) whether the local authorities have in good faith fully and satisfactorily complied with, and shown a commitment to, the desegregation plan." *Lockett*, 111 F.3d at 842; *Freeman v. Pitts*, 503 U.S. 467, 485-86 (1992). The burden of demonstrating that the initial constitutional violation has been remedied falls on the defendant. *Lee v. Etowah County Bd. of Educ.*, 963 F.2d 1416, 1425 (11<sup>th</sup> Cir. 1992).

Appellants argue that the district court failed to make specific findings about whether the Board had eliminated the vestiges of state-imposed segregation to a practicable extent. They also contend that the court was remiss in not basing its findings upon and specifically referring to the consent decree as required in making its decision.

To determine whether the vestiges of segregation have been eliminated, a court looks to six factors: student assignment, faculty assignment, staff assignments, transportation, extracurricular activities, and facilities. *Green v. Sch. Bd. of New Kent County*, 391 U.S. 430, 435 (1968) (identifying factors). Any order that arises out of a motion for declaration for unitary status must address these factors along with any others that the court deems appropriate. *See Board of Educ. of Oklahoma City v. Dowell*, 498 U.S. 237, 245 (1991); *Manning v. Sch. Bd. of Hillsborough County*, 244 F.3d 927, 942 (11<sup>th</sup> Cir. 2001); *Lockett*, 111 F.3d at 842.

The district court's memorandum opinion of May 21, 2000 which declared unitary status for the school system makes several findings of facts. Some support the conclusions of the court but several cut against it. Ultimately, however, the court failed to address the six *Green* factors in its opinion, thus making it difficult to review both whether the vestiges of segregation had been eliminated or if the court applied the correct legal standard in so finding. Moreover, many of the *Green* factors were

also used as a basis for the consent order of May 24, 1995 issued by the district court. By not addressing these factors, the district court made it impossible to review whether there was a good faith effort to comply with the consent order.

Since we conclude that from the record as established on appeal it is difficult to review whether the district court applied the correct legal standard or erred in its finding, we remand the case back to the district court. During the period of remand, we ask that the district court hold additional evidentiary hearings that specifically address student assignment, faculty assignment, staff assignments, transportation, extracurricular activities, facilities, and any other factors raised in the consent decree and deemed appropriate by the court. Furthermore, in writing its decision in this case, the court should be guided by these factors and the potential for conflicting evidence on some in enunciating its decision. We too realize that court supervision cannot last forever in these cases but before a decision may be reached on a case that has spanned almost forty years, more in-depth analysis of the factors relating to the initial constitutional violation is required. *See Jenkins v. Missouri*, 515 U.S. 70, 89 (1995) (The ultimate objective of any desegregation order is the “restoration of state and local authorities to the control of a school system that is operating in compliance with the Constitution”); *Manning*, 244 F.3d at 941 (same); *Lockett*, 111 F.3d at 841 (“The

Supreme Court intended this federal supervision of local school systems to be a temporary measure”).

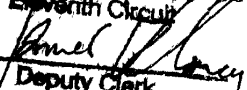
#### CONCLUSION

Because we find the record insufficient for review of this case, we remand the case for further factual findings consistent with this opinion.

REVERSED AND REMANDED.

FARRIS, Circuit Judge, specially concurring:

Good schools or good jails? Unfortunately, there is a relationship between the two and the failure of the former leads to the necessity of the latter. Assuming that the school board of Gadsden, Alabama is as concerned as the court with providing good schools, our remand is to permit consideration of the necessary factors. I therefore join the majority.

A True Copy - Attested:  
Clerk, U.S. Court of Appeals  
Eleventh Circuit  
By:   
Deputy Clerk  
Atlanta, Georgia



**United States Court of Appeals**

Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

FILED

**Thomas K. Kahn**  
Clerk

01 SEP 10 AM 8:05  
In Reply, Give Number  
Of Case And Names of Parties  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

September 06, 2001

Perry D. Mathis  
Clerk, U.S. District Court  
1729 Fifth Avenue North, #140  
Birmingham AL 35203

RE: 00-12224-HH Catherine Ann Miller v. The Board of Education  
DC DKT NO.: 63-00574 CV-AR-M

The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

Also enclosed are the following:

- Original Exhibits, consisting of: one folder
- Original record on appeal or review, consisting of: six volumes

Please acknowledge receipt on the enclosed copy of this letter.

A copy of this letter and the judgment form, but not a copy of the court's opinion or Rule 36-1 decision, is also being mailed to counsel and pro se parties. A copy of the court's opinion or Rule 36-1 decision was previously mailed to counsel and pro se parties on the date it was issued.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: James Delaney (404) 335-6113

Encl.

Perry D. Mathis  
Clerk, U.S. District Court  
1729 Fifth Avenue North, #140  
Birmingham AL 35203

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September 06, 2001

RE: 00-12224-HH Catherine Ann Miller v. The Board of Education  
DC DKT NO.: 63-00574 CV-AR-M

TO: Perry D. Mathis  
CC: Dennis D. Parker  
CC: Lisa J. Stark  
CC: R. Kent Henslee  
CC: Michael R. White, Sr.  
CC: Anita L. Kelly  
CC: Christina Dasinger Knowles  
CC: Ralph Kenneth Strawn, Jr.  
CC: Lisa Evans, USDOJ  
CC: Jeremiah Glassman  
CC: Michael S. Maurer  
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CC: Administrative File