

SEP 11 1995

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**DUPLICATE**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SEP. 8 1995

LUTHER D. THOMAS, Clerk  
By: *[Signature]*  
CLERK

VALENCIA MILLS, et al.,

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VERSUS

CIVIL NO. 68-CV-11946-WCO

ROBERT R. FREEMAN, et al.

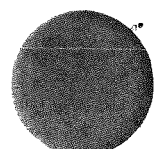
ORDER

The captioned case is before the court for consideration of this court's prior order dated September 27, 1994 [218-1]. Therein the court stated:

Defendants are hereby directed to provide all information necessary to the court concerning the following issues: (1) teacher allocation and (2) per pupil expenditures. Defendants may also submit a brief on the question of why they contend that there are no further issues for the court to determine.

Order of September 27, 1994, at 1. Subsequent to the September 27 order, the court granted two extensions of time in which defendants could comply with that order, and in which plaintiffs could respond to the proffered evidence and the brief in support of dismissal.

Consistent with the aforementioned orders, defendant Dekalb County School System ("DCSS") has submitted a brief in support of final dismissal of this case. A ruling favorable to DCSS would have the effect of terminating this court's supervisory relationship with DCSS, and fully returning control of the school system to local authorities. Previously, this court has found DCSS to be in compliance with a number of factors set forth by the United States Supreme Court in Green v. School Board of New Kent County, 391 U.S. 430 (1968). Specifically, this court has found that DCSS is in compliance in the following categories: student assignments,



transportation, physical facilities, and, extracurricular activities. The court did not dismiss the case in its entirety though, because the DCSS was found not to be "unitary" in respect to faculty assignments and resource allocation. The latter of the two, resource allocation, was considered in tandem with "quality of education," which is not distinctly categorized in Green, *supra*. This court's ruling was ultimately reviewed by the United States Supreme Court. Freeman v. Pitts, 503 U.S. 467 (1992). The Freeman court held that it was appropriate, if the facts warranted, for the district court to relinquish supervision incrementally. *Id.* at 492. Further, the Court sanctioned the use of a "quality of education" analysis, notwithstanding its absence from the Green paradigm. *Id.* at 492-93. The case was remanded for further consideration consistent with the Freeman decision. *Id.* at 500.

This court conducted a telephone conference on September 6, 1995. At such conference, the parties appeared to be uncertain about the issues remaining for adjudication in this case,<sup>1</sup> and asked the court to provide some clarification.

Based on holding of Freeman, *supra*, the court finds that in order to dismiss this case it must enter a finding of "full compliance" as to the remaining Green factors, namely faculty assignments and resource allocation. This is consistent with the

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<sup>1</sup> Defendants and the intervenor plaintiffs were represented by counsel at the teleconference. Counsel for the original plaintiffs was unable to be contacted in time for the conference, but has since communicated with the court via facsimile (with copies to other counsel), and has been apprised of the topics discussed during the teleconference.

court's September 27 order, which instructed the DCSS to submit evidence as to teacher allocation and per pupil expenditures, which are functional synonyms for the two remaining Green factors noted by the Supreme Court. Further, as indicated in this court's order dated June 30, 1988, and supported by the Supreme Court's acknowledgement of the flexibility of the Green inquiry, Freeman, supra, at 492-93, the court also must be satisfied that the quality of education is consistent throughout the DCSS. This can be ascertained in large part by a thorough examination of resource allocation, but the court is not restricted to that evidence alone. It is important to emphasize that the court will not revisit those Green factors in which full compliance was previously found to exist. Lastly, the Freeman opinion requires this court to certify that the DCSS has acted in good faith in the implementation of the desegregation decree. "The District Court should address itself to whether the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable." *Id.* at 492 (quoting Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237, 249-50 (1991)) (emphasis added).

To summarize, the court finds that three specific issues relevant to the question of "unitariness" require resolution before this case can be dismissed in its entirety:

- (1) full compliance with faculty assignments;
- (2) full compliance with resource allocation; and
- (3) a demonstration of good faith in compliance with the desegregation decree by DCSS.

In addition, before entering an order of final dismissal in this case, the court must be satisfied that the "quality of education" in the DCSS is consistent with both the letter and spirit of the desegregation decree.

Accordingly, defendants are hereby DIRECTED to submit a new brief in support of final dismissal, with particular emphasis on those categories set forth above [218-1]. Further, defendants may submit statistical evidence, as current as is available, appended to such brief, demonstrating full compliance as to faculty assignments and resource allocation. Defendants' brief shall be submitted on or before 30 days after the date of this order. Thereafter, plaintiffs are DIRECTED to file a response indicating why this court should not dismiss this case in its entirety [218-1]. As with defendants, plaintiffs should focus their brief on those issues set forth above. Plaintiffs' response shall be submitted on or before 30 days after defendants' brief is filed. If necessary, defendants' may file a response brief within 15 days after plaintiffs' response is filed. Either side may file a motion for oral argument contemporaneously with the submission of their respective briefs. The parties should be mindful of the amended local rule, which limits briefs to 25 double-spaced pages, and replies to 15 double-spaced pages. LR 220-1(d), NDGa. (effective August 1, 1995). Further, all parties shall append to their respective briefs a specific description of what additional evidence, if any, relating to the "quality of education" issue they intend to present to the court in the event that a hearing is

conducted, and an estimate of the time needed for such a presentation of evidence.

IT IS SO ORDERED this 3<sup>rd</sup> day of September, 1995.

*William C. O'Kelley*

WILLIAM C. O'KELLEY  
United States District Judge

**ENTERED ON DOCKET**

**SEP 08 1995**

BY *AM* L.D.T., CLERK  
DEPUTY CLERK