

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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BRENDA K. MONROE, et al.,	)	
	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 72-1327
	)	
JACKSON-MADISON COUNTY SCHOOL	)	
SYSTEM BOARD OF EDUCATION, et	)	
al.,	)	
	)	
Defendants.	)	

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ORDER GRANTING MOTION FOR DECLARATION OF PARTIAL UNITARY STATUS

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This case originated as two 1963 desegregation actions, later consolidated following the merger of the Madison County and Jackson, Tennessee school systems. The current parties are the individual plaintiffs (the "Monroe Plaintiffs"), the plaintiff United States of America, defendant Jackson-Madison County School System Board of Education ("JMCSS" or the "Board"), and the defendant-intervener Madison County, Tennessee.

On November 25, 2008, the Monroe Plaintiffs, the United States of America, and Defendant JMCSS (collectively, the "Movants") jointly moved the Court to approve a proposed order

and agreement, which provide that Defendant JMCSS has achieved unitary status in all areas except student assignment. The Movants agreed that the Defendant had achieved unitary status in the areas of facilities, faculty and staff, transportation, and extracurricular activities. The proposed agreement provides for continued monitoring of the district's desegregation efforts related only to student assignment to conclude at the end of the 2009-2010 school year.

Madison County, Tennessee (the "County") objected to the negotiated order and agreement on November 25, 2008, and, on December 12, 2008, moved for declaration of full unitary status and dissolution of the desegregation decree. The United States and JMCSS responded on December 29, 2008, and Brenda K. Monroe responded on December 30, 2008. On July 9, 2009, the County filed a supplemental memorandum in support of its motion for declaration of unitary status and dissolution of the desegregation decree.

JMCSS filed a supplemental memorandum addressing unitary status on July 24, 2009, changing its position from the joint motion filed on November 25, 2008, and asserting that JMCSS has achieved unitary status. For the following reasons, the Court declares that JMCSS has achieved partial unitary status.

**I. Background**

In November 1990, a consent judgment was entered addressing the consolidation of the Jackson City Schools and the Madison County Schools. On or about November 28, 2000, the parties to the consent judgment entered into another agreement (the "Agreement"), which set forth a long-term voluntary desegregation plan.

The Agreement set out a two-phase program toward a final goal of declared unitary status. During the first phase (the "Implementation Period"), JMCSS agreed to secure funding for and accomplish school construction, renovation, and other projects included in a Long-Range Plan attached to the Agreement. (Agreement ¶ 6.) The Implementation Period was not to exceed four years. (Id.)

After completion of the Implementation Period, a second phase (the "Monitoring Period") began, which was to last two years. (Id., ¶ 23.) During the Monitoring Period, a set of three benchmarks was created toward partial and/or full unitary status. First, at the end of the first year of the Monitoring Period, if no issue about the facilities obligations of the Agreement had been pursued through the Dispute Resolution Process provided in the Agreement, the parties would jointly ask the Court to enter an order stating that partial unitary status had been achieved as to facilities. (Id., ¶ 24.) Second, at the

end of the second year of the Monitoring Period, if no issue about student assignment, faculty and staff, pupil transportation, and/or extracurricular activities had been pursued through the Dispute Resolution Process, the parties would jointly ask the Court to enter an order stating that partial unitary status had been achieved as to student assignment, faculty and staff, pupil transportation, and/or extracurricular activities. (Id., ¶ 25.) Third, at the end of the Monitoring Period, if the parties had resolved all matters, they would jointly ask the Court for an order declaring that full unitary status had been achieved.

(Id., ¶ 28.) If the parties had not resolved all matters, the 2000 Agreement mandated a return to this Court as follows: "Otherwise, they shall jointly request that the Court establish a schedule for presentation and adjudication of remaining questions one or more of the parties contend are relevant to the Motion [for Declaration of Unitary Status] and will jointly request the Court to establish a new discovery schedule." (Id.)

The Agreement was signed by all of the then parties on or about November 28, 2000. By Order dated December 8, 2000, the Court approved the Agreement, mandating that "defendants, the Monroe plaintiffs and the United States are hereby directed fully to implement the provisions of

this Agreement." (Dec. 8 Order, p. 2.) That order was not appealed and no party has sought relief from it under Federal Rule of Civil Procedure 60.

The Agreement was made expressly contingent on JMCSS's obtaining funding sufficient for construction and renovation of new schools, stating that "[i]n the event the Board is unable to obtain a commitment for the full funding anticipated in the Plan for all capital (construction and renovation) projects, this Agreement shall be void and unenforceable." (Agreement, ¶ 5(c).) To comply with this condition, JMCSS requested approximately fifty million dollars from Madison County, the entity that funds JMCSS, to fund the capital projects. The County approved and expended the funds.

The Monitoring Period began on July 1, 2004, and ended on June 30, 2006. (Aff. of Debra Owen, ¶¶ 5-6.) The parties have completed the Implementation and Monitoring Periods, and no disputes were pursued through the Dispute Resolution Process provided in the Agreement. The parties did not petition the Court for partial unitary status as to facilities at the end of the first year of the Monitoring Period, nor did they petition the Court for partial unitary status as to student assignment, faculty and staff, pupil transportation, and/or extracurricular activities at the

end of the second year of the Monitoring Period. At the end of the Monitoring Period, the parties did not petition the Court for full unitary status or jointly request that the Court establish a schedule for presentation and adjudication of any remaining questions.

At a meeting held in February 2007, the JMCSS Board voted not to seek a declaration of unitary status. On August 26, 2008, the Court entered an order allowing the County to intervene.

After the Monitoring Period, the parties engaged in negotiations about outstanding issues in the case. As a result of those negotiations, all of the parties, except the County, reached an agreement (the "2008 Proposed Agreement"). The Movants also sought a declaration of partial unitary status in all areas except student assignment, including facilities, faculty and staff, pupil transportation, and extracurricular activities. In support of their contention that JMCSS had not yet achieved unitary status in the area of student assignment, the Movants submitted documentation about the racial breakdown at each school from the 1999-2000 school year through the 2007-2008 school year. (JMCSS' Second Supp. to Mot., Exh. A.)

The 2008 Proposed Agreement provided for continued monitoring of the Board's desegregation efforts in the area of student assignment through the end of the 2009-2010 school year.

The 2008 Proposed Agreement also required the Board to “implement, prior to further or additional capital improvements in the system... the expansion or improvement of the site at Jackson-Central Merry East Campus to accommodate practice fields for desired sports and construction of a regulation high school stadium...with a regulation track....” The 2008 Proposed Agreement provided that the Parties would “continue to discuss” construction of a medical/healthcare magnet school. It also mandated that the Alternative School be evaluated and restructured, if necessary, following the evaluation.

The Court held a status conference on January 5, 2009, during which the parties agreed that the issue of partial unitary status had been fully briefed and that no hearing would be required for the Court to rule on partial unitary status. The parties reaffirmed that position at a status conference on August 4, 2009.

On July 9, 2009, the JMCSS Board met and voted to pursue a declaration of unitary status. Thus, the Board has effectively withdrawn from the 2008 Proposed Agreement.

## **II. Analysis**

### **A. Partial Unitary Status**

The Supreme Court has made clear that district courts have a duty to return control of desegregated school districts to local school boards once unitary status has been achieved.

Missouri v. Jenkins, 515 U.S. 70, 88 (1995). A finding of unitary status may be partial. Id. (citing Freeman v. Pitts, 503 U.S. 467, 491 (1992)). In general, a district court's approval of a class action settlement as fair, adequate and reasonable, is reviewed for abuse of discretion. Fidel v. Farley, 534 F.3d 508, 513 (6th Cir. 2008). "The voluntary settlement of school desegregation controversies is to be encouraged, even though such litigation implicates the important civil rights of the plaintiff class." Robinson v. Shelby County, 566 F.3d 642, 648 (6th Cir. 2009).

A district court must delicately balance the private and public interest in amicable settlement of litigation and the constitutional policy requiring desegregation of the nation's schools. Id. at 649 (citing Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee, 616 F.2d 305, 319 (7th Cir. 1980)). "[I]n assessing whether the settlement is fair, equitable, and reasonable, 'the district court must not forget that it is reviewing a settlement proposal rather than ordering a remedy in a litigated case.'" Id. (citing Armstrong, 616 F.2d at 314-15). The Sixth Circuit agreed with the Armstrong court's explanation:

[N]o settlement [should] be approved which either initiates or authorizes the continuation of clearly illegal conduct. A school desegregation settlement which authorizes clearly unconstitutional behavior is, on its face, neither fair, reasonable, nor adequate as required by the class action standard. In applying this principle, however, the court must not decide unsettled legal questions; any illegality

or unconstitutionality must appear as a legal certainty on the face of the agreement before a settlement can be rejected on this basis.

Robinson, 566 F.3d at 649(citing Armstrong, 616 F.2d at 319-20).

"Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system." Freeman v. Pitts, 503 U.S. 467, 490 (1992). "Local control over the education of children allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs." Milliken v. Bradley, 418 U.S. 717, 742 (1974).

A school district has met its obligation when "the constitutional violator has complied in good faith with the desegregation decree since it was entered," and when "the vestiges of past discrimination have been eliminated to the extent practicable." Missouri, 515 U.S. at 89. The Supreme Court has identified six features "of the school system that must be freed from racial discrimination before the desegregation process will be deemed successful and local control will be allowed to resume: student assignment, faculty assignment, staff assignment, facilities and resources, transportation, and extracurricular activities." Robinson, 566 F.3d at 650 (citing Green, 391 U.S. at 435). All parties agree that the Jackson-Madison County Schools have achieved unitary

status in the areas of facilities, faculty and staff, pupil transportation, and extracurricular activities.<sup>1</sup>

The following factors must inform the sound discretion of a district court in ordering partial relief from a desegregation order:

(1) whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; (2) whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system; and (3) whether the school district 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 courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

Missouri, 515 U.S. at 89 (citing Freeman, 503 U.S. at 491).

All of the parties, including the Plaintiffs, agree that Jackson-Madison County Schools have achieved unitary status in five of the six areas. Addressing facilities, the Plaintiffs offer the following caveat: the finding that the board maintains its facilities on a non-discriminatory basis "does not preclude the parties from negotiating and/or arguing for construction of a new school if they can demonstrate that such construction is a reasonable remedy in response to the Board's continuing obligation to desegregate its schools and disparities in student assignments." (Pl. Prop. Order 6.)

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<sup>1</sup> The County contends that the school system has also achieved unitary status in the area of student assignment, but the United States and the Monroe Plaintiffs disagree.

First, the record demonstrates that JMCSS has fully and satisfactorily complied with the decree in the five areas where Court supervision is to be withdrawn. Significantly, since the parties entered into the Agreement in 2000, no disputes have been pursued through the Dispute Resolution Process provided in the Agreement. No party argues that the Board has not complied with the decree in the areas of facilities, faculty and staff, pupil transportation, and extracurricular activities.

Second, the Court need not retain judicial control over those areas to achieve compliance in the area of student assignment. The Monroe Plaintiffs and the United States suggest that retention of judicial control over the area of facilities may be necessary to achieve desegregation in the area of student assignment, but concede that the "Board operates and maintains its facilities on a non-discriminatory basis." (Pl. Prop. Order. 6.)

Third, JMCSS's record of compliance has demonstrated a good faith effort to desegregate the school district. See Reed v. Rhodes, 179 F.3d 453, 466 (6th Cir. 1999). "In considering a grant of incremental or total unitary status, the Court should accord particular attention to the school system's historic record of good faith compliance." Reed v. Rhodes, 934 F. Supp.

1533, 1551 (N.D. Ohio 1996). The Sixth Circuit has held that district courts must "afford great weight to the appraisal of the most interested parties to this litigation, particularly where the record illustrates defendant's compliance with the desegregation order..." Robinson, 566 F.3d at 653 (citing Reed v. Rhodes, 179 F.3d 453, 466-67 (6th Cir. 1999)). Here, all of the parties agree that the Jackson-Madison County Schools have achieved unitary status in all areas except student assignment. The record in this case demonstrates that JMCSS has complied in good faith with the Agreement and the Court's prior orders.

JMCSS has complied with the decree and manifested its good faith effort to desegregate through its demonstrated compliance. JMCSS has eliminated the vestiges of past de jure discrimination in the five agreed areas to the extent practicable. The Court GRANTS the motion for declaration of partial unitary status in the areas of facilities, faculty and staff, pupil transportation, and extracurricular activities.

#### **B. Student Assignment**

The parties shall engage in reasonable efforts to address the remaining area, student assignment, by agreement on or before December 31, 2009. The parties shall report on their efforts at a status conference on October 1, 2009, at 1:30 p.m. If the parties are unable to agree, the Court will establish

deadlines for discovery and set a date for a hearing on student assignment.

**III. Conclusion**

For the foregoing reasons, the motion for declaration of partial unitary status is GRANTED. The Jackson-Madison County School System has achieved unitary status in the areas of facilities, faculty and staff, transportation, and extracurricular activities.

So ordered this 5th day of August, 2009.

s/ Samuel H. Mays, Jr.  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE