

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

CATHERINE ANN MILLER, *et al.*,)
Plaintiffs,)
and)
UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)
v.)
THE BOARD OF EDUCATION OF)
GADSDEN, ALABAMA, *et al.*,)
Defendants.)

C.A. NO. CV-63-N-574-M

CONSENT ORDER

On May 20, 1999, the Defendant Board of Education of Gadsden petitioned this Court for a declaration of unitary status and dismissal of the case. After a one-day hearing, the Court (Acker, J.) entered an order granting the District’s petition. (03/21/00 Mem. Op.) The Eleventh Circuit reversed, remanding the case and directing this Court “to 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 deemed appropriate by the court.” (09/10/01 Order at 5.) The parties undertook discovery and then engaged in good faith negotiations and voluntarily agreed, as indicated by the signatures below, to enter into this Consent Order, subject to the Court’s approval.

After reviewing the terms of the Consent Order, this Court concludes that the entry of the Consent Order is consistent with the Fourteenth Amendment to the Constitution of the United States of America and federal law, and that its entry will further the orderly desegregation of the

Gadsden City School District and is likely to bring about the creation of a unitary school district and the termination of judicial supervision.

Therefore, it is ORDERED, ADJUDGED and DECREED as follows:

I. Unitary Status

- A. The parties' expectation is that this Consent Order will lead to the termination of judicial supervision at the end of the 2004-05 school year. This Consent Order sets forth the totality of the Board's obligations in this desegregation case. In consideration for the Board's agreement to this Consent Order, the plaintiff-parties hereby stipulate that the school district has achieved partial unitary status in the areas of student assignment (except for the student assignment provisions set forth in Sections II and V, below); faculty and staff assignments (except for the faculty and staff assignment provisions set forth in Section III, below); transportation (except for the transportation provisions set forth in Section II, below); facilities (except for the facilities provisions set forth in Section VII, below); extra-curricular activities; and quality of education and curriculum (except for the quality of education and curriculum provisions set forth in Sections VI and X, below). Therefore, this Court no longer retains jurisdiction over the areas not specifically set forth in this Consent Order.
- B. Upon good-faith implementation by the Board of the specific provisions set forth herein, the plaintiff-parties agree to waive any claims that the school district is not unitary with regard to the remaining respects set forth in this Consent Order.
- C. Within thirty (30) days of the end of the 2004-05 school year, the Board may file a motion and supporting documentation with the Court to be declared unitary in all respects and to have this case dismissed. Within thirty (30) days after receiving the Board's motion and supporting information and data, if any, the plaintiff-

parties shall file responses. If any party objects to dismissal, it shall have the burden of demonstrating that the Board has not complied in good faith with any provision of this agreement.

II. Majority-to-Minority (“M-M”) Transfer Policy

- A. The Board shall continue to ensure that majority-to-minority (and any No Child Left Behind Act (NCLBA)) transfers have priority at the schools of their choice ahead of any students from the county.
- B. The Board shall promote its majority-to-minority policy, including promoting the fact that transportation is provided by the district, by providing public service announcements to that effect to, and requesting that such announcements be placed in *The Reporter* and *The Gadsden Times* at least once each month during March, April, May and June of each year; requesting that public service announcements be aired to that effect on WMGJ radio and on Gadsden Comcast Cablevision’s local origination channel; announcing the policy at meetings of the bi-racial advisory committee; and providing to all teachers and mailing to each parent or guardian, within ten (10) days of the end of each school year, a flyer describing the majority-to-minority policy, transportation by the district, eligibility requirements, the deadline for submission of applications, and the name and telephone number of knowledgeable school district official(s) who are available to answer questions about the policy. The Board shall designate and train one central office administrator to serve as the coordinator of the policy, and shall ensure that all school principals and front office staff and central office personnel are informed of the procedures for m-m transfers and of the contact information for the central office administrator who is the designated policy coordinator.
- C. To the extent that any obligation imposed on the Board in the immediately

preceding paragraph is contingent on the actions of persons or parties over whom the Board does not exercise control, the Board shall not be deemed to be out of compliance with that paragraph if such contingent actions are not performed.

III. Personnel Assignment

- A. 1. Barring the imposition of state-mandated budget cuts, the Board shall ensure that the racial make-up of the certified teaching staff and the non-certified staff, respectively, at each and every school in the district are within 10% below and 20% above the district-wide average for schools serving the same grades (*e.g.*, elementary, middle, high);
2. Should state-mandated budget cuts be imposed, the Board shall use its best efforts to comply with the preceding paragraph. In the event that the percentage of African American or white certified or non-certified staff at any school falls outside the range prescribed in the preceding paragraph, the Board shall, within thirty (30) days of its personnel actions, notify the parties in writing. The Board's submission to the parties shall identify each such school in which the prescribed range has not been met, specifying (for each instance) the extent to which the Board has failed to meet the prescribed range, explaining the reasons for each such failure, and specifying each and every personnel decision (and the bases for such decision) that caused the school to fall outside the prescribed range. If, after reviewing the Board's submission and any reasonable clarifying information that may be requested pertaining to the above, any party believes that the Board has not complied in good faith or that its failure to meet the prescribed range at any school was avoidable, it may notify the Board and attempt to resolve such issue(s) and/or seek appropriate relief from the Court.
- B. The Board shall undertake the following efforts to recruit African American

teachers: (1) continue to visit colleges and universities, including historically black institutions, to meet with prospective teachers; (2) continue to mail letters to prospective teachers and career counselors regarding vacancies; and (3) request career counselors to provide resumes of qualified African American teachers.

- C. Should any vacancies occur in the central office, the Board shall advertise vacancies for a period of at least 21 days and post vacancy announcements in the faculty lounges and main offices of all schools.

IV. Bi-Racial Advisory Committee

- A. The Board shall re-establish an independent Bi-Racial Advisory Committee, to advise and make recommendations to the superintendent and school board regarding existing board policies and any additional policies and/or programs to advance desegregation and improve education in the system. Within twenty (20) days of the entry of order, the private plaintiffs shall appoint and submit to the parties the names of 3 citizens of Gadsden, and the defendants shall appoint and submit to the parties the names of 3 citizens of Gadsden who are not affiliated with the Gadsden City School District, to serve on the Committee. The Committee shall at all times be composed of at least 3 members of each race. The Board shall encourage the Committee to meet, pursuant to appropriate notice, at a reasonable time and place to be determined by the Committee, and the Board shall make available appropriate meeting facilities within the school district if requested by the Committee; and the Board shall encourage the Committee to maintain appropriate records and minutes of its meetings. The Board shall supply the Committee with reasonable staff support and technical assistance, including assistance in typing, printing and distributing meeting minutes, and such reasonable information as the Committee may request, in writing, including but

not limited to copies of the semi-annual reports provided by the Board to the Court and parties pursuant to this consent order. The Board shall make available at its central office copies of the Committee's meeting minutes. At least once a year, the Board shall designate a regularly scheduled public Board meeting, to which Committee members will be invited with at least thirty (30) days' notice, during which each Committee member shall be afforded the opportunity to address to advise and make recommendations regarding policies and/or programs to advance desegregation and improve education in the system.

V. Student Assignment

- A. At the elementary school level, the Board shall assign students randomly (without regard to race) to classrooms.
- B. The Board shall strictly enforce attendance zone lines by requiring two forms of proof of residence for new students (an affidavit from the parent or guardian is insufficient); in the absence of two forms of proof, the parent or guardian of each new student must submit an affidavit as to residence and a photo identification, and must appear for an interview with Sandra Graham or any other qualified central office staff member designated by the Board.

VI. Quality of Education

- A. The Board shall ensure that students at Litchfield High School have equal access to the same courses that are offered at the other high schools by, at a minimum, providing at Litchfield every course provided by other schools at least once each year (assuming at least eight students sign up for the course) and ensuring that advanced placement/honors classes are separate and have distinct curricula from regular classes.
- B. The Board shall approve and disseminate to all middle and high school students

the following policy concerning independent study classes: If fewer than eight students sign-up for a course offered at Litchfield, a student may request, in writing, to be offered an independent study for an advanced placement/honors class with the Independent Study Application Form which shall be provided by the Board. The Independent Study Application Form must be submitted within seven days after the beginning of the semester in which the independent study is requested. The Litchfield principal shall review any Independent Study Application Form submitted and allow the student to enroll in the independent study provided that:

1. A certified teacher is available to teach the independent study;
2. An advanced core level class is available; and
3. The principal and the Superintendent, or his designee, approves the class as an independent study.

Factors which are to be considered in approving the independent study include coordination of the teacher's and student's regular class schedule with the independent study schedule, availability of teaching staff, and availability of classroom space. Should more students sign up for an independent study than can be accommodated, students will be granted the independent study on a first come first serve basis. Such independent study classes shall use state- and District-approved textbooks, along with a course syllabus, and shall provide a final grade for each student for the course.

- C. The Board shall ensure that guidance counselors at Cory Middle School and Litchfield High School inform eighth and ninth graders, respectively, of the District's policies related to independent study classes; the availability of AP and

honors courses over the upcoming school years (*i.e.*, which courses will be offered during which semesters); and that teachers inform all students enrolled in AP classes about the availability and location of AP exams, and provide all students appropriate information and counseling about the AP exams.

- D. The Board shall post the Independent Study Program at Litchfield High School and Cory Middle School, mail to each parent or guardian, within ten (10) days of the end of each school year, a flyer describing the Independent Study Program, and include the Independent Study Program in the Litchfield student handbook, including a full description of the independent study policy set forth in paragraph B above.

VII. Facilities

- A. The Board shall undertake renovations at Litchfield High School, including but not limited to the following:
1. Modifying the gymnasium by installing seating in the stage area to ensure adequate spectator seating;
 2. Ensuring that all computers have internet access, be repaired to good working order (ensuring that at least 85% of the school's computers are operational at any given time), and have comparable software to those at Gadsden's other high schools;
 3. Ensuring that all work stations in the chemistry lab are in working order and fully operational, and that all missing or broken lab bench drawers are replaced;
 4. Building a new weight room and two new coaches offices and repairing locker rooms (including steps to eliminate flooding);
 5. Converting and expanding a regular classroom to a separate room for art

comparable to those at Gadsden's other high schools, including the installation of water lines, appropriate lighting, and storage and display spaces for artwork;

6. Modifying the band room to accommodate chorus by, among other things, installing risers and a sound system, to ensure that the room is comparable to the chorus rooms at Gadsden's other high schools;
7. Upgrading lighting in hallways and classrooms by ensuring that lighting levels be increased and maintained above the 50 foot candle minimum (Standard promulgated by Illuminating Engineering Society (IES)), established by replacing every light fixture not so illuminated (*e.g.*, by washing diffusers, by replacing dysfunctional diffusers, by replacing the entire light fixture, by upgrading the ballasts to electronic ballasts);
8. Replacing inferior or broken desks; and
9. Replacing all stained or missing ceiling tiles with new tiles and repairing all roof leaks.

B. The Board shall undertake renovations at Cory Middle School, including but not limited to the following:

1. Ensuring that all computers have internet access, be repaired to good working order (ensuring that at least 85% of the school's computers are operational at any given time), and have comparable software to those at Gadsden's other middle schools;
2. Upgrading lighting in hallways and classrooms by ensuring that lighting levels be increased and maintained above the 50 foot candle minimum (Standard promulgated by Illuminating Engineering Society (IES)), established by replacing every light fixture not so illuminated (*e.g.*, by washing diffusers, by replacing dysfunctional diffusers, by replacing the

- entire light fixture, by upgrading the ballasts to electronic ballasts);
3. Replacing gym bleachers (pursuant to Board's Capital Plan);
 4. Replacing or repairing all wall structures that have sustained water damage as a result of roof leaks;
 5. Replacing all stained or missing ceiling tiles with new tiles and repairing all roof leaks;
 6. Modifying the band room to accommodate chorus by, among other things, installing risers and a sound system, to ensure that the room is comparable to those at Gadsden's other middle schools; and
 7. Replacing all bathroom partitions and requiring the maintenance department to survey all bathrooms for other needs and to undertake all appropriate renovations and repairs.

VIII. Discipline

The Board shall continue to maintain discipline data, by race, for each school.

IX. Reports by Dr. Harold Bishop

The Board shall fully implement the plans and recommendations set forth by Dr. Harold Bishop in his reports dated May 15, 1999 and June 2, 1998.

X. Reporting

- A. By September 15 and February 15 of each year, the Board shall file with the Court and the parties a report that includes student enrollment data, by race, at each school; the number and percentage, by race, of administrators (listed by position, to include central office staff, principals, assistant principals, counselors, librarians/media center staff, etc.), certified and non-certified staff; the number of students in the District, by school and by race, enrolled in each honors, advanced placement, and independent study class, including a description of any independent study class(es); the reason(s) for denial(s) of any request(s) or

proposal(s) for independent study class(es) at Litchfield High School; narrative descriptions, data and supporting documents on the implementation of each provision of this Consent Order; syllabi for all advanced placement/honors and independent study classes at each high school.

- B. Within sixty (60) days after receiving any report as required under this Consent Order, the plaintiff-parties shall inform counsel for the Board in writing of any provisions of the agreement with which they believe the Board has not fully complied.
- C. Upon reasonable notice to the Board, the plaintiff-parties shall be afforded one opportunity each school year to visit Litchfield High School and Cory Middle School, along with any consultant(s) of the plaintiff-parties. The scope of the site visit shall be to ensure compliance with the provisions of this Consent Order. Each school year's visit shall last no more than one day, on a date that is mutually agreeable to all parties.

XI. Unforeseeable Changes in Circumstances

Should any provision of this Consent Order become, in the Board's view, impossible or impractical to implement because of unforeseeable changes in circumstances, it may consult with the plaintiff-parties to attempt to modify the Consent Order. If the parties are unable to agree on the appropriateness of any proposed modification, the Board may petition the Court detailing the reasons for such modification and the plaintiff-parties shall have the opportunity to file responses.

XII. Jurisdiction

This Court shall retain jurisdiction over this case to enforce this Consent Order.

XIII. Unresolved Issues

The private plaintiff and the defendant stipulate that, despite good faith efforts, that they are unable to resolve the following issues:

- A. 1. Whether the membership of the Bi-Racial Advisory Committee should be limited to parents with children in the school system or should include other

members of the community.

2. Whether the Bi-Racial Advisory should be provided specific instructions about its duties to advise and make recommendations to the Gadsden City School District that advance desegregation and improve the education in the system.

3. Whether the Bi-Racial Advisory Committee shall be limited in the amount of time it is afforded to address the Gadsden City Board of Education during a regularly scheduled board meeting.

B. Whether the Gadsden City School District should provide a special forum for the Gadsden community to address the name of General Forrest Middle School.

Accordingly, the parties will submit these issues for the Court's determination in the manner and time ordered by the Court.

Furthermore, the parties stipulate that the Court shall determine an appropriate time and procedure for a fairness hearing in accordance with Rule 23(e), Fed. R. Civ. P., and applicable federal law.

SO ORDERED, this _____ day of _____, 2003.

Hon. Scott Coogler
United States District Judge

The undersigned consent to the entry of this Consent Order.

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