

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOYCE MARIE MOORE, ET AL.,
Plaintiffs,

CIVIL ACTION NO.: 65-15556

VERSUS

SECTION "B" (1)

TANGIPAHOA PARISH SCHOOL BOARD,
Defendant.

JUDGE: IVAN L. R. LEMELLE

**RULE 59 MOTION FOR NEW TRIAL
AND, ALTERNATIVELY, RULE 60 MOTION FOR RELIEF FROM ORDER**

NOW INTO COURT, through undersigned counsel, comes Defendant Tangipahoa Parish School Board who, pursuant to Fed. R. Civ. Proc., Rule 59(a)(1)(B) and Rule 59(e) and, alternatively, Rule 60(b)(6), moves the court for a new trial in connection with the order rendered herein on November 12, 2009, in Document No. 852, for the following reasons:

1.

In accordance with the court's directive, Alton B. Lewis, Jr., representing defendant, held discussions with James A. Gray, II, representing plaintiffs, as to the content of a proposed procedure for the hiring/selection of principals and other supervisory and administrative personnel. The procedure in defendant's proposed procedure, as found in Exhibit A to the "Motion and Order to Approve Proposed Procedure for Hiring of Principals and Other Supervisory/Administrative Personnel" (Doc. No. 845), is consistent with Mr. Lewis' understanding of the procedure discussed with Mr. Gray. Evidence of the discussions and a showing that the procedure in defendant's Exhibit A is consistent with said discussions was not before the court because the matter was decided on the pleadings and memoranda.

2.

The aim of Messrs. Lewis and Gray was to present a proposed procedure that would provide a preference for black applicants seeking the position of principal or other supervisory and administrative positions while, at the same time, seeking to assure that the most qualified applicant would be hired. The procedure also recognizes the need for the school system, through its superintendent, to meet the good faith requirement in school desegregation cases by leaving the ultimate decision for recommendations for hiring in his hands. Finally, it was agreed that review of hiring decisions should not be on a position by position basis but, instead, on a cumulative basis twice a year in order that a pattern of behavior could be reviewed.

3.

Unlike teachers, principals and other supervisory and administrative positions require special traits and characteristics that are not essential to a classroom teacher. These include such traits and characteristics as leadership ability; an even temperament; an ability to inspire subordinates and, in the case of principals, teachers and students; a willingness to constructively engage with parents and community members; personal integrity is necessary to insure fair and honest evaluations of subordinates; an ability to work cooperatively and harmoniously with other supervisors, administrators, the superintendent, and school board members is required. Defendant's proposed procedure recognizes merely meeting the educational and, in certain instances, experience requirements in a position description should not, standing alone, dictate that the applicant be hired.

4.

Defendant's procedure ensures that recommendations of the superintendent are informed through an interview and evaluation process conducted by the person or persons who will have

immediate supervisory responsibility. These persons, especially where applicants are employees of the school system, are in the best position to evaluate whether a particular applicant possesses the traits and characteristics required to be a principal or to be a supervisor or hold other administrative positions.

5.

Defendant's procedure assures that plaintiffs and the Court Compliance Officer will review all principal and supervisory/administrative appointments and seek court intervention in the event they believe that future corrective action is necessary.

6.

The procedure in Order (Doc. No. 852) only provides for review by the Court Compliance Officer and plaintiffs where a) the superintendent does not choose a qualified black applicant b) the Committee (comprised of the Chief Desegregation Plan Implementation Officer, Director of Personnel, and Minority Recruitment Officer) approves the rejected black applicant for hiring and c) the superintendent refuses to concur in the Committee's recommendation. If the Committee agrees with the superintendent's decision not to hire a black applicant, the superintendent's decision is not reviewable under the Order and no procedure is provided for judicial review, save a private cause of action by the black applicant who is not hired.

Accordingly, a new trial ought to be granted in order to prevent the possibility of an injustice that conceivably may occur in instances where the Committee agrees with a refusal by the superintendent to hire a black based upon insufficient grounds. Review by the Committee, comprised of persons subordinate to the superintendent, is not a sufficient safeguard to assure that the review always will be fairly and impartially conducted. A court has the power and duty

to order a new trial whenever, in its judgment, the action is required in order to prevent injustice. See Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2805.

7.

The Committee review process in the Order undermines the authority of the superintendent by allowing persons under his supervision to “second-guess” his decisions.

8.

In the limited circumstance in which judicial review of a proposed hiring recommendation is available under the Order, the process is lengthy and not conducive to the efficient operation of the school system.

9.

Accordingly, defendant respectfully requests a new trial and, alternatively, relief from the Order in Document No. 852. Defendant respectfully submits that the jointly discussed procedure between Messrs. Lewis and Gray for hiring of principals and other supervisory/administrative personnel is better crafted to achieve the goal of increasing the number and percentage of black principals and other supervisory/administrative personnel and assuring that hiring decisions are reviewable by plaintiffs, the Court Compliance Officer, and the court, when deemed necessary by either the plaintiffs or the Court Compliance Officer.

10.

Additionally, a new trial, or relief from the Order, ought to be granted in order to amend or alter the Order. The Order as written granting plaintiffs’ procedure contains a glaring hole in that it limits review by plaintiffs and the Court Compliance Officer to only situations in which the superintendent fails to recommend the hiring of a black applicant in face of a recommendation by the Committee that the applicant should be hired. An amendment or

alteration incorporating certain portions of plaintiffs' procedure with certain portions of defendant's proposed procedure would address both the need for a stated diversity goal and a selection and review process that would not adversely affect the efficiency of the operation of the school system, but would include supervisor interviews and evaluations to better inform recommendations by the superintendent. Such an amendment or alteration also would place the onus upon the superintendent to demonstrate a good faith commitment to the goal of increasing the number and percentage of black principals and other supervisors and administrative personnel.

WHEREFORE, Defendant Tangipahoa Parish School Board prays that a new trial be ordered herein and upon conclusion thereof that the Order in Document No. 852 be set aside or amended or altered.

Defendant prays in the alternative for relief from the Order in Document No. 852.

By Attorneys,

s/ Charles L. Patin, Jr.

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CERTIFICATE OF SERVICE

I certify that on November 16, 2009, I electronically filed the foregoing document with the Clerk of Court by using CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ Charles L. Patin, Jr.
Charles L. Patin, Jr.