

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JOYCE MARIE MOORE, ET AL.,

CIVIL ACTION  
NO. 65-15556

VERSUS

TANGIPAHOA PARISH SCHOOL BOARD, ET AL.

JUDGE LEMELLE  
MAGISTRATE SHUSHAN

MOTION TO AMEND DESEGREGATION PLAN ORDER

NOW INTO COURT come the plaintiffs, through undersigned counsel, pursuant to Rule 52(b) and Rule 59(e) of the Federal Rules of Civil Procedure and move the court to amend and clarify its Order, entered March 4, 2010 (R. Doc. 876), which amended the desegregation plan to eliminate all vestiges of racial segregation in the public schools of Tangipahoa Parish, to wit:

A.

Paragraph 30(A) of the approved plan (R. Doc. 876) presently provides in part:

The school district shall take affirmative steps to eliminate any remaining vestiges of prior de jure segregation at its historically and/or racially identifiable black schools addressed in this paragraph.

The Order addresses affirmative obligations to eliminate remaining vestiges of de jure segregation at historically and/or racially identifiable black schools but impose no obligations on the school district to address historically and/or racially identifiable white schools in the system. Continuing

historically and/or racially identifiable schools, both black and white, are the indicia of unlawful de jure discrimination based on race and color that violates the Fourteenth Amendment to the Constitution of the United States. The very purpose of the new desegregation plan is to remove what the defendants have admitted are remnants of de jure racial segregation in the school system.

The desegregation plan approved by the court is largely a voluntary plan and there is no reason to exclude an obligation to likewise require voluntary affirmative action to eliminate vestiges of de jure segregation evidenced by historically and/or racially identifiable white schools in the system. The foregoing observations are especially important considering that the court provides in paragraph 38 that the "Order shall expire at the conclusion of the third school year following the date of initial operational status of the three new elementary schools," entitling the school system to "bring forward a motion to end this lawsuit with respect to the same and demonstrate therein its substantial compliance with the provisions of this Order related to teacher and student assignments." In the absence of a requirement that the school system make a good faith effort to desegregate clearly racially identifiable white schools, which are now and always have been overwhelmingly white, the option given regarding an end of this lawsuit raises serious Fourteenth

Amendment problems. The language of paragraph 30(A) should be amended to at least include the requirement of a good faith effort to eliminate remnants of de jure desegregation at historically and/or racially identifiable white schools in the Tangipahoa Parish School System.

B.

Paragraph 37 of the Order at issue provides:

37. With the exception of prior court orders expressly referenced or retained herein, all prior orders of the court that are inconsistent or in conflict with the provisions of this Order are hereby modified to conform to the provisions of this Order.

R. Doc. 191 and R. Doc. 193 reference court orders which state, Part II (Faculty, Staff and Students):

L. Teachers and administrators within the parish shall be given adequate notice of any unfavorable personnel actions taken by the School System...and the reasons for the action and shall have the right to request review from . . .

.....

- 4) An arbitrator from the American Arbitration Association selected cooperatively by the School Board and Tangip

The court recently granted plaintiffs' motion to enforce this provision regarding a school principal. See R. Docs. 856 and

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<sup>1</sup> The parties recently agreed that since the former black teacher organization no longer existed, it would be appropriate for counsel for plaintiffs to substitute for the LEA in selecting the arbitrator.

867. While plaintiffs do not view anything in the foregoing provisions of the prior orders that conflicts with the new order, out of an abundance of caution, to prevent later controversy, plaintiffs believe that these provisions are of great importance and should be expressly noted in the new desegregation order. As demonstrated by the Alden Foster matter, litigation over issues concerning teachers can be extensive. Arbitration proceedings allow for a preliminary review, development of facts, and resolution conflicts, that can greatly reduce expenditure of judicial and party resources.

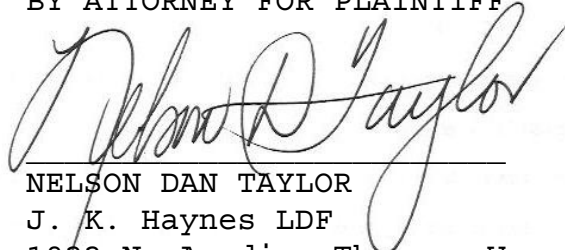
C.

The defendants are required to build new schools under the new desegregation plan approved by the court. The defendants of course are free to exceed what the court minimally requires. However, whether they just comply with what the court requires or exceed requirements, considering prior controversies concerning the building of schools and major improvements, plaintiffs request the court to retain specific language from 1977 Order # 18 [R. Doc 522-1], as amended, to wit:

Recognizing that the law requires that selection of sites for schools to be constructed in the future, the selection of schools to be enlarged or altered, and all other future construction programs must effectuate the development and continuation of a unitary school system serving the educational needs of the parish without regard to race, the school board, prior to building any

school or making any improvement in excess of \$125,000.00, shall submit to the plaintiffs and the court a planning study and analysis by which the plaintiffs and the court can objectively review whether the proposed construction is consistent with the school board's affirmative duty to ensure that the proposed construction or improvements assist in bringing about a unitary system. *See: United States v. Board of Public Instruction*, 395 F.2d 66 (5th Cir. 1968) and *Lee v. Autauga Board of Education*, 514 F.2d 646 (5th Cir. 1975).

BY ATTORNEY FOR PLAINTIFF



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CERTIFICATE

I hereby certify that, on this day, April 1, 2010, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system which gives notice of filing to all counsel of record.



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