

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

**TANGIPAHOA PARISH SCHOOL BOARD'S MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION TO AMEND DESEGREGATION PLAN ORDER
AND REQUEST FOR ORAL ARGUMENT**

Plaintiffs' motion to amend the new school desegregation plan Order and request for oral argument should be denied for the following reasons:

Plaintiffs admit there is no need for an amendment to the Order (Doc. No. 876) to address prior court orders relating to arbitration.

The new school desegregation plan specifically provides in Paragraph 37 as follows:

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.*
(boldface print by the court; emphasis supplied.)

Plaintiffs readily admit that there is no need for their proposed amendment relating to arbitration of unfavorable personnel actions by the school board. On page 4 of Motion to Amend Desegregation Plan Order Plaintiffs state as follows:

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.

Plaintiffs cite no instance in which the school board has challenged an employee's right to arbitrate an unfavorable personnel action and plaintiffs' unfounded concern that such a challenge

might occur is an insufficient reason to amend the new school desegregation plan. Accordingly, oral argument on this proposed amendment is clearly unnecessary and would only serve to generate unnecessary legal fees and travel costs inuring solely to the benefit of attorneys and to the detriment of the school board.

The new school desegregation plan addresses site selection for new schools and retains the requirement for court approval for improvements to existing schools where the cost exceeds \$125,000.

The new school desegregation plan calls for the construction of five new schools. Attachment "A" to the plan sets forth the location of each of the new schools. Attachment "C" contains projections showing that each of the new schools is projected to have a desegregated student enrollment. Subparagraph 31(A) addresses new school construction not otherwise provided for in the new school desegregation plan, school improvements resulting in additions to physical plant, and expansions to capacities of schools not otherwise provided for in the Comprehensive Assessment in Attachment "I" to the Order. It provides as follows:

Court approval shall be required for (i) the construction of a new school not otherwise authorized herein, (ii) improvements to a school resulting in an addition to its physical plant, and (iii) expansions to the capacity of a school not otherwise provided for in the Comprehensive Assessment.

Subparagraph 31(B) address school repairs. It provides as follows:

Court approval shall be required for repairs to existing school facilities not otherwise contained in the Comprehensive Assessment where the cost of the repair exceeds one hundred twenty-five thousand dollars. Upon the filing of a motion by the school board petitioning the court for approval of a repair exceeding one hundred twenty-five thousand dollars, plaintiffs shall interpose any objection they may have within 15 days of the date of service of the motion.

Attachments "A" and "C", together with Subparagraphs 31(A) and (B), fully incorporate the substantive language of Order No. 18 (Doc. No. 522-1). Pursuant to Paragraph 37 of the new

school desegregation plan, Order No. 18 is now modified to conform to the aforementioned provisions of the new school desegregation plan. Accordingly, the purpose for plaintiffs' proposed amendment is needlessly redundant and should be denied without oral argument.

Paragraph 30(A) of the new school desegregation plan is limited to addressing facilities issues.

Paragraph 30(A) is limited to addressing the *Green* factor relating to school facilities at historically and racially identifiable black schools. It has nothing to do with student assignments. When Paragraph 30 is read in its entirety, this is crystal clear to any reader taking the time to read the paragraph. Paragraph 30 provides as follows:

30(A). The school district shall take affirmative steps to eliminate any remaining vestiges of the prior *de jure* segregation at its historically and/or racially identifiable black schools addressed in this paragraph. For purposes of this Order, these schools are comprised of the following: Kentwood High School, O.W. Dillon Elementary School, Woodland Park Early Learning Center, Roseland Elementary School, Amite Elementary School, Amite High School, West Side Middle School, Hammond High School, Hammond Junior High School, Hammond Eastside Upper and Lower Elementary School, Hammond Westside Upper and Lower Elementary School, Woodland Park Elementary School, Independence Elementary School, and Independence Middle School.

30(B). The school district has conducted an evaluation and review of the *facilities needs* at the abovementioned schools and all other school facilities and developed a plan to address facilities needs (hereinafter referred to as the "Comprehensive Assessment") in the area of school replacement, roofs, heating and air conditioning systems, plumbing and restroom facilities, window treatments, equipment, and other needs.

The Comprehensive Assessment shall be implemented by the school district. The Comprehensive Assessment is attached as **Attachment "I"** to this Order. (boldface print by the court; emphasis supplied.)

The new school desegregation plan addresses the racial isolation of white students currently assigned to racially identifiable white schools and voluntary desegregation methodologies to promote racial diversity at the racially identifiable white schools in the new school desegregation plan.

Plaintiffs' concern with desegregating "white" schools ignores Attachment "C" to the Order which carves student attendance zones desegregating a substantial number of the school system's schools. The new student attendance zones also serve to reduce the number of white students assigned to racially identifiable white schools by rezoning a substantial number of them to the three new elementary schools provided for in the new school desegregation plan. Under the feeder plan, most of these students will progress to schools for junior high and high school that are presently racially identifiable black. Each of the three new elementary schools is projected to have a desegregated student enrollment. See Attachment "C", pages 187-188 of the Order.

Plaintiffs' concern also ignores the impact of other desegregation methodologies within the Order such as majority-to-minority transfers (Paragraph 3 and Attachment "D"), magnet transfers (Paragraph 2(A) and (B)); Attachment "B", page 61 (providing an enrollment preference to students whose race will promote desegregation of magnet schools)), academic transfers (Paragraph 4¹), and inter-district transfers (Paragraph 8 requiring that new inter-district transfer students be assigned to a school in which their enrollment will not increase the majority race of a racially identifiable school or result in a desegregated school becoming racially identifiable). Finally, plaintiffs' concern tends to forget the testimony of plaintiffs' own expert who did not recommend the involuntary assignment of black students to Champ Cooper Elementary School.

¹ Paragraph 4 provides in pertinent part as follows: "No academic transfer shall be allowed that would result in a receiving desegregated school becoming racially identifiable. No academic transfer shall be allowed that would result in an increase in the number of majority race students at a racially identifiable school."

The court's prior directive sought provisions for inclusion in the new school desegregation plan.

Prior to the March 4, 2010, signing of the new school desegregation order, the court issued a directive, communicated to counsel for the parties by the Court Compliance Officer, directing counsel to provide the court with provisions for consideration by the court for inclusion in the new school desegregation Order. Defendant promptly provided the court with a comprehensive plan containing provisions it deemed necessary and desirable for inclusion in the Order. Plaintiffs' counsel did not. Instead, plaintiffs waited until the twenty-third hour of the twenty-eighth day following the signing of the Order to present the very proposed provisions previously requested by the court through its directive.

While the motion to amend may be timely under the federal rules, it is clearly late based upon the court's directive. Now that plaintiffs' provisions have been submitted, it is clear that none of them are either necessary or desirable for inclusion in the Order. The arbitration provision is admittedly unnecessary even by plaintiffs' own admission. The provision relative to new school sites and court approval for repairs in excess of \$125,000 is already addressed in the Order. The concern raised regarding Paragraph 30 has nothing to do with facilities and the Order, as written, addresses racial isolation of white students through new student attendance zones, feeder patterns, and voluntary desegregation methodologies designed to enhance racial diversity in racially identifiable white schools.

Conclusion

For all the foregoing reasons, plaintiffs' motion to amend the new school desegregation Order and their request for oral argument should be denied.

By Attorneys,

s/ Charles L. Patin, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2010, 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.

Charles L. Patin, Jr.
Charles L. Patin, Jr.