FILED
2016 May-20 PM 03:37
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LINDA STOUT, et al.,	)	
	)	
Plaintiffs,	)	
	)	
UNITED STATES OF AMERICA,	)	**Case No.: 2:65-cv-00396-MHH**
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	**For filing in Case No.: 2:16-mc-00199-MHH**[1]
	)	
JEFFERSON COUNTY BOARD OF EDUCATION, et al.,	)	
	)	
Defendants.	)	

ORDER

The Hoover Board of Education seeks court approval for a plan to revise student assignments for more than 2,200 students in the Hoover public school district. (Doc. 58-4, p. 8). Hoover contends that the revised student assignments will create "attendance zones with contiguous boundaries" and will eliminate the

[1] On February 3, 2016, for administrative purposes, the Court directed the Clerk of Court to create a miscellaneous case number to allow the parties, the public, and the Court easier access to docket entries relating to the Hoover school district in *Stout v. Jefferson County Bd. of Educ.*, Case No. 2:65-cv-396-MHH. The miscellaneous case number is 2:16-mc-199-MHH. The Court did not sever the Hoover system from the original Jefferson County school desegregation action. Unless otherwise noted, in this opinion, the Court cites to documents contained in miscellaneous case number, 2:16-mc-199-MHH.

district's current practice of assigning students living in apartment complexes to schools well beyond their neighborhood schools. (Doc. 39, pp. 3-6).

The circumstances that give rise to the current zoning proposal are familiar to the Hoover community. The district has been analyzing school capacity issues for a number of years and has developed various plans to address the challenges that the district faces because of population growth in the western area of Hoover. (*See, e.g.*, Doc. 39, p. 2; Doc. 58, pp. 51, 62, 98, 114-15, 122, 129, 147, 179). Many of those plans were not implemented. The current plan is the product of a collaborative effort among the Hoover public school district, the private plaintiffs, and the United States. (Doc. 39, p. 2; Doc. 58, pp. 8, 22, 57, 106-07, 123, 176).

Hoover's proposed new student assignment plan would affect just under 20% of the students in the district. (Doc. 39-1, pp. 10-11; Doc. 58-4, p. 8). While the major impact of the proposed assignments, if implemented, would be felt among elementary school students, the new assignments also would affect middle and high school students. (Doc. 39-1, pp. 10-11; Doc. 58-4, p. 8). Of the students who would attend new schools under Hoover's proposed plan, 69% are elementary school students; 18% are middle school students; and 13% are high school students. (Doc. 39-1, p. 11; Hoover Ex. 4, p. 8). Moreover, although African-American students currently constitute just under 26% of the district's total student population (Doc. 28-1, p. 2; Doc. 58-3, p. 5), nearly half of the students facing

reassignment under the proposed rezoning plan are African-American. (Doc. 39-1, pp. 10-11; Doc. 58-4, p. 8).

Given the scope of the proposed new student assignments and the circumstances surrounding the proposal, the Court studied Hoover's motion carefully. The Court conducted a day-long hearing on April 7, 2016. (Doc. 58). The Board presented evidence from the recently appointed Superintendent of Hoover City Schools, Dr. Kathy Murphy; Hoover's Assistant Superintendent of Instruction, Dr. Ron Dodson; and Hoover's Assistant Superintendent for Administration, Melody Greene. The Board introduced into evidence five exhibits as part of its presentation to the Court. (Docs. 58-1, 58-2, 58-3, 58-4, 58-5). The United States introduced testimony from its expert demographer, Matthew Cropper. The Court has considered the testimony and data in the record and the concerns expressed by members of the Hoover community who have greeted the district's rezoning motion with skepticism. (Docs. 27-1, 27-2, 29-1, 29-2, 29-3, 30-1, 31-1, 32-1, 32-2, 33-1, 35-1, 36-1, 37-1, 38-1, 38-2, 38-3, 42-1, 44-1, 45-1, 45-2, 46-1, 47-1, 48-1, 49-1, 49-2, 49-3, 50-1, 50-2, 50-3, 51-1, 52-1, 61-1, 62-1, 63-1, 64-1, 65-1, 66-1, 68-1, 71-1, 72-1, 73-1; Docs. 67, 67-1, 67-2, 67-3, 67-4, 69, 69-1, 69-2, 69-3, 69-4, 69-5, 69-6, 69-7). To better understand the circumstances surrounding the pending student assignment motion, the Court also studied the district's previous student assignment requests. (Docs. 3, 5, 7).

Based on its review of the data in the record relating to the Hoover public school system, the Court finds that Hoover has demonstrated that the district has legitimate school capacity issues. In the twenty-eight years since Hoover separated from the Jefferson County public school district and formed its municipal public school system, Hoover has added ten new schools. Two high schools; three middle schools; one intermediate school; ten elementary schools; and one alternative school now comprise the City of Hoover's public school system. (Doc. 18, pp. 68-69; Doc. 28-1, p. 2; Doc. 58, pp. 41-42). Over the past decade, Hoover's student population has expanded significantly. Between the 2005-2006 academic year and the 2015-2016 academic year, Hoover's student population grew by more than 2,000 students to nearly 14,000 students. (Doc. 39-3, p. 6).

A number of schools absorbed a substantial portion of the district's new students. For example, Riverchase Elementary added 105 students between the 2007-2008 school year and the 2015-2016 school year. Berry Middle School added nearly 100 students, and Spain Park High School added just over 250 students. Hoover High School outpaced the growth of all of the other Hoover schools, adding nearly 500 new students over the past decade. (Doc. 58, p. 80; http://images.pcmac.org/Uploads/HooverCity/HooverCity/Divisions/DocumentsCa

tegories/Documents/HCSEnrollment-2007-2015.pdf).[2] Additional growth is anticipated in the southwest section of the city over the next few years. (Doc. 58, pp. 62, 76, 80).

Because of the growing student population, many of Hoover's schools have neared or exceeded their optimal capacity, and a few schools are nearing maximum capacity. In contrast, a few schools in the district – three to be exact – are using 70% or less of their optimal capacity. (Doc. 39-3, pp. 7-8). Faced with these capacity issues, the district wishes to redraw some of the zone lines within the city to redistribute students in heavily populated schools and make room in schools near areas of the city in which new residential construction will produce new public school students. School overcrowding is largely a practical and logistical challenge that the district must address because of its potential negative effects on the educational services offered to all students in the district; however, to fulfill its constitutional obligations in this case, Hoover must ensure that any solutions adopted to address overcrowding do not operate in a racially discriminatory manner.

Neither the United States nor the private plaintiffs take issue with Hoover's conclusion that student attendance zone lines should be redrawn to address school

[2] Hoover City Schools, HCS Enrollment – 2007-2015, available under ENROLLMENT at http://www.hoovercityschools.net/Default.asp?PN=DocumentUploads&L=1&DivisionID=20974&LMID=993267&ToggleSideNav= (last visited May 20, 2016). The Court takes judicial notice of the enrollment data because the information "can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201(b)(2).

capacity issues; however, the United States and the private plaintiffs argue that if rezoning is to take place, then revised student assignments should impact not only students living in multi-family dwellings but also students who reside in single-family dwellings. More than a decade ago, the district adopted a practice of assigning students living in apartment complexes to schools beyond their neighborhood schools. (Doc. 58, pp. 73-74). The Court refers to these assignments as cluster assignments.[3] In a previous iteration of its rezoning plan, the district proposed increasing the number of apartment complex cluster assignments without a commensurate reassignment of students living in single-family dwellings. The Court does not condone and would not approve the unilateral use of cluster assignments as a means of resolving school capacity issues

[3] The parties have used the terms enclave zoning, satellite zoning, island zoning, and noncontiguous zoning to describe the pockets of students from apartment complexes who the district has bussed to schools beyond the students' neighborhood schools. (*See* Doc. 39, pp. 3-6; Doc. 58, pp. 73, 121). The Court refers to these assignments as "cluster assignments" because when the district first mentioned the assignment of students living in apartment complexes in a 2004 rezoning motion, the assignments consisted of clusters of anywhere from 4 to 120 students who the district bussed from approximately 20 of Hoover's 37 apartment complexes to an elementary school other than the school nearest the apartment complex. (Doc. 5, pp. 10, 12-13; Doc. 5-1, pp. 15 (Springaire), 22 (Colonial Grande – Galleria)).

The record demonstrates that the district adopted the cluster assignment practice at least one year before the district filed its rezoning motion in 2004. (Doc. 5, pp. 10, 12-13; Doc. 69-2, p. 2). In that motion, the district sought permission to create a zone for a new elementary school and approval for revised student assignments for both single-family dwellings and multi-family dwellings for multiple elementary schools. (Doc. 5-1, pp. 3-4). The district mentioned students residing in apartment complexes once in its motion. The district stated: "The new student attendance zones reassign students to redistribute the high concentrations of apartment students more equitably to the various elementary schools." (Doc. 5, p. 2). The Court approved the district's request to rezone both single-family and multi-family dwellings. (Doc. 6).

because doing so places an inequitable burden on students who are members of minority populations within the Hoover district, including African-American students. (*See* Doc. 5-1, pp. 12-22 (describing the racial composition of the public elementary school students residing in apartment complexes in Hoover during the 2004-2005 academic year); Doc. 67-1 (describing the racial composition of the public school students residing in apartment complexes in Hoover during the 2015-2016 academic year)). As Dr. Dodson recognized, use of cluster assignments for this purpose would cause disruption to students residing in multi-family dwellings every time the district shifted assignments to make room for population growth in Hoover. (Doc. 58, pp. 129-30). That would be unfair and would violate the district's obligations under the desegregation order in this case.[4]

The district's current student assignment proposal distributes more equitably the burden of rezoning among students residing in single-family dwellings and students residing in apartment complexes and multi-family dwellings. There is no doubt that reconfiguration of student assignments can be unsettling for students who have to change schools. These changes also impact students' families, teachers, and administrators. It is appropriate for students residing in single-family dwellings – the majority of whom are Caucasian in Hoover – to have to make the

[4] The Court recognizes that the current student assignment proposal involves the reassignment of a proportionally larger share of African-American students than Caucasian students. (*See* Doc. 39-1, pp. 10-11; Doc. 58-4, p. 8); *supra* pp. 2-3. However, unwinding the district's practice of cluster assignments necessarily involves changing the placement of many students from multi-family dwellings, many of whom are African-American.

necessary adjustments along with students who reside in apartment complexes – the majority of whom are African-American in Hoover. (*See* Doc. 67-1). Therefore, the Court approves the rationale for the district's proposed rezoning plan and preliminarily approves the district's proposed plan.

The Court finds, though, that it would be premature to give final approval to the plan at this juncture. The Court denies the district's request to implement the new student assignment plan for the 2016-2017 school year. Because significant revisions to student attendance zones like the changes that Hoover proposes are disruptive for students and their families, public school districts endeavor to use rezoning sparingly, and new student assignment plans should have longevity. Because they have devoted their time and resources to this major rezoning project, the parties have not yet fully assessed issues that the district must address to meet its obligations under the desegregation order in this case. The desegregation order, commonly called a *Singleton* order, that has governed this action for the past forty-five years describes the work that the district must complete "to transition to a unitary, nonracial system of public education." *Green v. County School Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 436 (1968). In *Green*, the Supreme Court held that the constitutional end of a public school desegregation case like this one is the elimination of racial discrimination from public education "root and branch." *Id.* at 438, 440 (quoting *Bowman v. Cnty. School Bd. of Charles City Cnty.*, 382 F.2d

326, 333 (4th Cir. 1967) (Sobeloff, J., concurring)). Hoover's overarching goal must be to satisfy the *Green* factors so that the district may ask the Court for a declaration of unitary status. The Court's "end purpose" is "to remedy the [constitutional] violation and, in addition, to restore [to] state and local authorities" the control of their public schools. *Freeman v. Pitts*, 503 U.S. 467, 489 (1992).[5]

The district's proposed student assignment zones must account for any opportunities that the district may offer students as part of the district's efforts to achieve unitary status. These opportunities include voluntary transfer options such as majority-to-minority transfers and magnet programs.[6] To ensure long-term stability in student assignments, the Court directs the parties to evaluate the *Green* factors thoroughly and determine how efforts to reach unitary status may impact

[5] In *Green v. County School Bd. of New Kent Cnty., Va.*, 391 U.S. 430 (1968), the Supreme Court identified six areas that the Court must examine to evaluate whether the Board has fulfilled its obligation to eliminate the vestiges of *de jure* segregation: (1) student assignments; (2) facilities; (3) faculty; (4) staff; (5) transportation; and (6) extracurricular activities. *Id.* at 435. The *Green* factors provide a framework for assessing a public school district's progress toward a unitary school system, but the factors are not exhaustive. *See Freeman*, 503 U.S. at 492 ("It was an appropriate exercise of its discretion for the District Court to address the elements of a unitary system discussed in *Green*, to inquire whether other elements ought to be identified, and to determine whether minority students were being disadvantaged in ways that required the formulation of new and further remedies to ensure full compliance with the court's decree.").

[6] Hoover's separation agreement with Jefferson County states that "[a]ll provisions and agreements herein regarding student attendance must yield to and be consistent with the federal court orders respecting such matters." (Doc. 4, pp. 4, 15). Specifically, regarding transfers, Hoover agreed that "any minority student may transfer to a school with a different majority population (black to white) as set forth in" the *Singleton* order. (Doc. 4, p. 5). Majority-to-minority transfers and other student assignment tools used for purposes of fulfilling the constitutional goals of desegregation typically are offered to students on a voluntary basis and provide students with an opportunity to use a facility or participate in a program to which the student might not otherwise have access. These important tools facilitate a district's efforts to eliminate the vestiges of *de jure* segregation.

student assignments in Hoover. **On or before January 17, 2017**, the parties shall submit to the Court a written assessment of the *Green* factors and an analysis of the extent to which other school desegregation factors may affect the district's proposed student assignments. The parties shall use this assessment to revise, as necessary, the proposed student assignment plan and then present the final proposed plan to the Court. The parties shall also use the assessment to prepare and propose to the Court by **May 31, 2017** a comprehensive plan for a path toward unitary status in Hoover.[7] The Court is confident that the district and the Hoover community will benefit from this assessment, and the Court anticipates that the parties will be better positioned to seek final approval of a student assignment plan for the 2017-2018 school year.

DONE and **ORDERED** this May 20, 2016.

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

[7] The Court anticipates that a comprehensive plan will examine the current demographics of the district, address the *Green* factors and other areas in which the effects of racial segregation may persist, and provide steps to remedy discrimination based on race or ethnicity that affects minority populations within the school system so that when the district moves for a declaration of unitary status, the district will be in a position to demonstrate that it operates a nonracial system of public education. *See Bd. of Edu. v. Dowell*, 498 U.S. 237, 250-51 (1991) (The district is "subject to the mandate of the Equal Protection Clause of the Fourteenth Amendment," and the Court may evaluate the district's proposed path toward a declaration of unitary status "under appropriate equal protection principles.").