

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

LINDA STOUT, et al., }
 }
 Plaintiffs, }
 }
 UNITED STATES OF AMERICA, }
 }
 Plaintiff-Intervenor, }
 }
 v. }
 }
 JEFFERSON COUNTY BOARD OF }
 EDUCATION, et al., }
 }
 Defendants. }

Case No.: 2:65-cv-00396-MHH

MEMORANDUM OPINION AND ORDER

Introduction

Consistent with its obligations under the desegregation order that governs this action, the Jefferson County Board of Education seeks court approval for a proposed grade reconfiguration for the district’s three remaining K-8 schools and for the Pleasant Grove schools. The Board also wishes to introduce an International Baccalaureate Program for middle school students in the district. As explained below, neither the private plaintiffs nor the United States oppose Jefferson County’s motion regarding grade reconfiguration, and, with the

understanding that the proposed location for the middle school IB program will be temporary, neither opposes that program. (Doc. 1078, p. 21, n. 11).

The Court examines the Board's proposals to determine whether they advance, or at least do no harm, to the goals of this public school desegregation case. *See Green v. County School Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 436 (1968), and *Freeman v. Pitts*, 503 U.S. 467, 489 (1992) (explaining that in a public school desegregation case, "the court's end purpose" is "to remedy the [constitutional] violation" and ensure that the district has transitioned to "a unitary, nonracial system of public education" so that the court may "restore [to] state and local authorities" the control of their public schools). The Court recognizes that existing uncertainty regarding the proposed separation of the Gardendale public school system from the district hampers the parties' ability to formulate a comprehensive plan for achieving unitary status. The district proposes the grade reconfigurations and the middle school IB program with the understanding that additional adjustments in school assignments may follow resolution of the Gardendale separation issue.

The Jefferson County Board bears the burden of establishing that the proposed grade reconfigurations and the middle school IB program neither perpetuate nor reestablish a dual school system and that the plans "further desegregation and help to eliminate the effects of the previous dual school system."

Harris by Harris v. Crenshaw Cnty. Bd. of Educ., 968 F.2d 1090, 1095 (11th Cir. 1992). On the record before the Court, the Board has met its burden.

I. K-8 Grade Reconfiguration and Pleasant Grove Grade Reconfiguration

For a number of academic, programmatic, and economic reasons unrelated to desegregation, the Board wishes to adjust the grade configurations in the Pleasant Grove attendance zone and at Corner School, Bagley Jr. High School, and Brighton School. (Doc. 1078, pp. 3-4, 6-7, 9-10, 13-14). Because the Board wishes to make these changes for reasons other than desegregation, the Court does not evaluate the overall wisdom of the proposals but instead considers only the constitutional ramifications of the proposed changes. The Court defers to local decision-makers on matters that do not implicate the Court's desegregation order.

A. Corner School and Bagley Jr. High School

Corner School and Bagley Jr. High School are part of the Corner High School zone. In this feeder pattern, West Jefferson serves students in kindergarten through sixth grade, and Corner School and Bagley Jr. High School serve students in kindergarten through eighth grade. All students then attend Corner High School. (Doc. 1078, p. 4). Instead of operating Corner School and Bagley Jr. High School as K-8 schools, the Board wishes to convert Bagley Jr. High School to Bagley Elementary School. Bagley Elementary School would serve students in

kindergarten through fourth grade. The Board would then convert Corner School to a middle school that would serve grades five through eight. (Doc. 1078, p. 4).

Jefferson County's proposed changes to Corner School and Bagley Jr. High School will have no impact on desegregation because the racial composition of the student bodies of the reconfigured schools will be nearly identical to those at the existing schools. (See Doc. 1078, pp. 5-6). For example, the student body of Bagley Jr. High School currently is 99.60% Caucasian and 0.20% African-American. (Doc. 1078, p. 5). The student population at the new Bagley Elementary would be 98.73% Caucasian and 0.54% African-American. (Doc. 1078, p. 6). The reconfiguration of Corner School produces similar results. Currently, the student body of Corner School is 98.12% Caucasian and 0.75% African-American. (Doc. 1078, p. 5). The student population at the new Corner Middle School would be 99.37% Caucasian and 0.21% African-American. (Doc. 1078, p. 6). Although the reconfiguration appears to do little to advance the goals of this action, the reconfiguration does no harm. Therefore, the Court approves the Board's request to change the grade configuration for Corner School and Bagley Junior High School.

B. Brighton Middle School

Brighton Middle School currently serves students in kindergarten through eighth grade. (Doc. 1078, pp. 7-8). Brighton Middle School students may attend Hueytown High School or Pleasant Grove High School. (Doc. 1078, p. 8). The Board wishes to combine Brighton students in seventh and eighth grade with Pleasant Grove students in seventh and eighth grade and relocate all of those students to Pleasant Grove High School. (Doc. 1078, p. 10).¹

The Board contends that this reconfiguration offers a variety of benefits:

There are slightly more than 150 students in grade six through eight [at Brighton]. In grades seven and eight, where many of the curricular and extracurricular offerings such as athletics, career technical classes, advanced academic classes and similar activities are normally made available, there are around 100 students. This low number of students limits offerings in both instructional and extracurricular areas. For example, Brighton does not offer any advanced level courses for the middle school students. Students who attend Brighton must wait until high school to take Algebra I, which forces them to ‘double up’ on math courses during one of their high school years in order to get on the advanced math track. Since no advanced courses are offered, gifted students have to be served through a pullout program that is limited to three hours per week. In other middle schools, gifted students participate in advanced level classes that meet daily. Currently, Brighton offers no career technology programs and it is the only school that does not provide any career tech programs for middle school students.

As far as athletics, Brighton currently offers volleyball, girls and boys basketball and cheerleading but activities requiring the participation of larger numbers of interested students (i.e. football, soccer, softball or baseball) are not offered as there are not enough participants. To

¹ Sixth grade students will remain at Brighton.

compare, Pleasant Grove, with approximately 125 students in each middle school grade, offers football, seventh and eighth grade basketball, girls basketball, track (indoor and outdoor), softball, baseball, volleyball, bowling and cross country to the middle school students there. Hueytown, with approximately 250 students in each middle school grade, offers all of the activities provided at Pleasant Grove plus boys tennis and boys golf.

...

The administration believe[s] that combining the seventh and eighth grades with those in Pleasant Grove and relocating those grades to Pleasant Grove High School would create operating efficiencies, enhance opportunities and foster a smoother transition for Brighton Middle School students into a community where many would be attending high school anyway.

(Doc. 1078, pp. 9-10).

Before submitting the Brighton proposal to the Court, the Board held two meetings in the Brighton school community. Approximately 75 parents attended the first meeting, and approximately 32 parents attended a second meeting. (Doc. 1078, p. 11). The Board also distributed surveys to parents. (Doc. 1078, p. 11; Doc. 1078-8, pp. 2-7). Parents expressed concern that the Board's proposal might eliminate the choice that Brighton students have to attend Hueytown or Pleasant Grove in high school. The Board has indicated that it plans to continue to allow Brighton students to choose whether they will attend Hueytown High School or Pleasant Grove High School; however, students will have to select their high school before they enter seventh grade. (Doc. 1078, pp. 11-12). The Board plans to work with the private plaintiffs and the United States to determine whether the

choice option is sustainable long-term or whether the district should utilize another option, such as assigning Brighton ninth grade students to either Pleasant Grove or Hueytown. (Doc. 1078, p. 12).²

Student population reports describing the racial composition of the existing Brighton student population and the projected student population under the district's proposed reconfiguration demonstrate that the reconfiguration will not change the overall racial composition of the school. (Doc. 1078-7, pp. 2-4). Currently, the Brighton Middle School student body is 66.54% African-American and 2.92% Caucasian; the race of 29.38% of the students at Brighton Middle School is not specified. (Doc. 1078-7, p. 2). The student body of Pleasant Grove Middle School is 77.08% African-American and 21.88% Caucasian. The student body of Pleasant Grove High School is 75.86% African-American and 22.61% Caucasian. (Doc. 1078-7, p. 2). Under the Board's proposal, the student body of Brighton Elementary would be 64.43% African-American and 5.22% Caucasian; the racial composition of the balance of the student population is not specified.

² The 1971 desegregation order offers Brighton students who are African-American a transfer option. The order states:

Students attending schools in the Brighton . . . zone[] where their race is in the majority shall be permitted to attend any other school in the Jefferson County system where their race is in the minority, and shall be given priority to space. Transportation shall be provided if the school to which the transfer is made is within twelve (12) miles of the previous school and is situated in a contiguous school zone.

(Doc. 226, p. 8).

The combined Pleasant Grove High School, including seventh and eighth grade students from Pleasant Grove and Brighton, would be 78.05% African-American and 18.07% Caucasian. (Doc. 1078-7, p. 4).

Because the grade reconfiguration that the Board proposes will not increase overall racial disparities in the schools in the Brighton feeder pattern, the Court approves the Board's request to convert Brighton Middle School to a K-6 school. The Board may move seventh and eighth grade students from Brighton to Pleasant Grove High School, and the Board may combine the Brighton students with Pleasant Grove seventh and eighth grade students at Pleasant Grove High School.

C. Pleasant Grove Reconfiguration

Schools in the Pleasant Grove attendance zone include Pleasant Grove Elementary School (K-5), Pleasant Grove Middle School (6-8) and Pleasant Grove High School (9-12). (Doc. 1078, p. 13).³ In May 2009, the Court granted the Board's request to construct the current Pleasant Grove High School campus. (Doc. 959; Doc. 960). The Board converted the old Pleasant Grove High School campus to Pleasant Grove Middle School. (Doc. 1078, p. 13).

The Board would like to move seventh and eighth grade students from the Pleasant Grove Middle campus to the Pleasant Grove High School campus and to

³ As previously mentioned, students from Brighton Middle School also may attend Pleasant Grove High School. *See supra* p. 5.

move sixth grade students from the Pleasant Grove Middle School campus to the Pleasant Grove Elementary campus. The Board explained that it would like to make these adjustments because:

Pleasant Grove High School is well under capacity, serving slightly more than five hundred students in a facility able to accommodate more than twice that. Middle school enrollment is smaller than it needs to be in order to operate the [middle] school efficiently. Less than 400 students are currently enrolled in the middle school, making it the Board's smallest dedicated middle school in terms of population. In addition, the middle school is a much older facility than the high school. It is also in close proximity to the new high school.

The Board believes it is in the best interests of its students to move the seventh and eighth grades at Pleasant Grove Middle School to the new high school and to move the sixth grade to the elementary school. Doing so will create operational efficiencies, will provide seventh and eighth grade students with much improved facilities and elective offerings, and will give the Board more flexibility in class and employee assignment by grouping grades with similar teacher certification requirements together. At the high school, seventh and eighth grade classrooms would be located so as to provide appropriate separation between students in those grades and the older students. The facility has more than ample space in which to do so. The Board does not expect that any teacher losses will occur as a result of the changes. The principal of Pleasant Grove Middle School [] will be assigned initially to the high school for the 2016-2017 school year to assist with the transition. For 2017-2018, it is expected that [the principal of Pleasant Grove Middle School] would be returned to a traditional principal role at one of Jefferson County's other schools. Support staff will either be accommodated at the High School or at the proposed Middle School IB program, which the Board hopes to operate temporarily at the Pleasant Grove Middle School site.

(Doc. 1078, pp. 13-14).

The Board's plan does not impact the racial composition of the student body in the Pleasant Grove feeder pattern because the grades six through eight are simply moving to different campuses. For example, currently, the student body of Pleasant Grove Elementary is 74.39% African-American and 22.85% Caucasian. (Doc. 1078-9, p. 2). Under the Board's plan, the student body of Pleasant Grove Elementary would be 74.55% African-American and 20.31%. (Doc. 1078-10, p. 2). Because the relocation of the current middle school classes will not affect the overall racial composition of those classes, the Court approves the Board's request to move Pleasant Grove seventh and eighth grade students from the Pleasant Grove Middle School campus to the Pleasant Grove High School campus and to move Pleasant Grove sixth grade students to Pleasant Grove Elementary.

II. Middle School IB Program

To advance the goals of this action, the Board asks the Court to approve an IB program for middle school students in Jefferson County. The Board's "continued expectation and commitment is that the program will be diverse and will be comparable to the system's overall composition in terms of demographics." (Doc. 1078, p. 19).

Since 1991, the Board has offered an IB program to high school students at the Shades Valley High School campus. (Doc. 1078, pp. 15-16; *see also* Doc.

1078-13, p. 7).⁴ The Court approved the current admission process for JCIB on July 6, 2005. (Doc. 903). JCIB has a diverse student population. Of the 360 students enrolled for the 2015-2016 school year, 198 (or 55%) were Caucasian, and 114 (or nearly 32%) were African-American. (Doc. 1078-12, p. 2).

The Board wishes to “leverage the success of the JCIB program and to increase opportunities for Jefferson County students” by offering a middle school IB program known as the Middle Years Programme (“MYP”). (Doc. 1078, p. 16). The MYP is for students who are between 11 and 16 years old. (Doc. 1078-13, p. 3; *see also* Doc. 1078, p. 17). The program “encourages students to become creative, critical and reflective thinkers,” and it “emphasizes intellectual challenge, encouraging students to make connections between their studies in traditional subjects and the real world.” (Doc. 1078-13, p. 3). The MYP “fosters the development of skills for communication, intercultural understanding and global engagement,” and it “prepares students to meet the academic challenges of the IB Diploma Programme.” (Doc. 1078-13, p. 3). Students accepted to the program will take courses in English, Foreign Language, Mathematics, Science, Humanities, Technology, the Arts, and Physical Education. (Doc. 1078-13, p. 4).

The Board will use an admission process for the MYP that parallels the admission process for the JCIB program. (Doc. 1078, p. 17). The Board plans to

⁴ The Board characterizes JCIB as a magnet program. (Doc. 901, p. 3).

open the MYP to all students in the district, and the Board anticipates an enrollment of between 350 and 400 students.⁵ The Board received applications in the spring of 2016 for the 2016-2017 school year, and the Board has reviewed those applications. Two hundred sixty-three rising sixth through eighth grade students completed applications. (Doc. 1078, p. 18).⁶ Of the students who applied for admission to the MYP for the 2016-2017 school year, 43.3% are African-American; 46.8% are Caucasian.⁷

The Board proposes to temporarily house the program at the former Pleasant Grove Middle School campus. (Doc. 1078, p. 20). The district will provide transportation for students participating in the MYP. (Doc. 1078, p. 16). The Board recognizes that “[u]nder ideal circumstances, a county-wide program such as the MYP program would be located at a central site that is easily accessible by students throughout the system.” (Doc. 1078, p. 19). With the understanding that the Board eventually will locate the MYP program at a more centrally located

⁵ To help gauge initial interest in the MYP and to analyze the program’s potential impact on desegregation, the Board accepted applications for the program in 2015. (Doc. 1078, p. 18). The Board received 462 applications. (Doc. 1078-15, p. 2). Of the students who applied, 48% were African-American; 40% were Caucasian. (Doc. 1078-15, p. 2). The initial applicant pool reflects the racial composition of the district, which for the 2015-2016 school year was 47.50% African-American and 43.53% Caucasian. (See Doc. 1033-1, p. 1).

⁶ Although the Board expects an overall annual enrollment of between 350 and 400 students, the Board anticipates lower enrollment projections for the first year because the Board believes that demand for participation by seventh and eighth grade students will be lower than for sixth grade students during the first year of the MYP. (Doc. 1078, p. 16, n. 9).

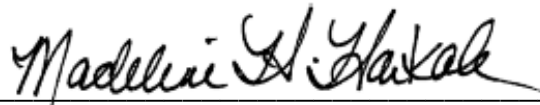
⁷ This applicant pool also closely tracks the overall racial composition of the district. See *supra* n. 5.

facility, the Court approves the Board's request to operate the MYP temporarily on the Pleasant Grove Middle School campus.⁸

Conclusion

For the reasons discussed above, the Court **GRANTS** the Board's motion to reconfigure certain grades and to introduce a middle school IB program for the district. (Doc. 1078). The Board may implement the proposals discussed above for the 2016-2017 school year.

DONE and **ORDERED** this July 25, 2016.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

⁸ The Board has indicated that it is committed to securing a permanent site for the MYP in the Fultondale area. (Doc. 1078, pp. 19-20). If Gardendale remains part of the Jefferson County system, then the Board may possibly combine the Gardendale and Fultondale High School zones and repurpose Fultondale High School for use as the MYP school. (Doc. 1078, p. 20, n. 10). After the Court rules on Gardendale's motion for approval to operate an independent public school system, the parties will be in a better position to begin a comprehensive review of all of Jefferson County's desegregation obligations. The Court anticipates that Jefferson County, in collaboration with the private plaintiffs and the United States, will consider possible permanent locations for the MYP as part of the comprehensive review that the parties will undertake. (*See* Doc. 1078, p. 21, n. 11).