

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**DIANE COWAN, minor, by her mother and
next friend, Mrs. Alberta Johnson, et al.;**
**FLOYD COWAN, JR., minor, by his mother
and next friend, Mrs. Alberta Johnson, et al.;**
LENDEN SANDERS; MACK SANDERS;
CRYSTAL WILLIAMS; AMELIA WESLEY;
**DASHANDA FRAZIER; ANGINETTE
TERRELL PAYNE; ANTONIO LEWIS;**
BRENDA LEWIS;

PLAINTIFFS

and

UNITED STATES OF AMERICA

INTERVENOR-PLAINTIFF

V.

NO. 2:65-CV-00031-DMB

**BOLIVAR COUNTY BOARD OF
EDUCATION, et al.**

DEFENDANTS

ORDER

This desegregation action is before the Court on the parties' joint motion for modification of the Court's May 13, 2016, memorandum opinion and order. Doc. #286.

I
Procedural History

On May 13, 2016, this Court entered a memorandum opinion and order adopting the desegregation plan proposed by the United States of America, which calls for the consolidation of the Cleveland School District's high schools and the consolidation of its middle schools ("Adopted Plan"). Doc. #215 at 96. Under the Adopted Plan, the District would consolidate its ninth through twelfth grade students into a single comprehensive high school housed in the current facilities at Cleveland High School and Margaret Green Middle School. *Id.* at 78, 96. The Adopted Plan also calls for the assignment of all sixth through eighth grade students (except

for the sixth grade students at Bell Elementary and Hayes Cooper Elementary) to a consolidated middle school housed at the current East Side High School facility. *Id.*

On July 11, 2016, the District filed a notice of appeal with the Fifth Circuit Court of Appeals regarding the Court's May 13, 2016, desegregation order. Doc. #219.

On September 22, 2016, this Court entered an order setting a timeline for implementing the Adopted Plan. Doc. #233. Approximately three weeks later, on October 14, 2016, the District submitted its first proposed modification to the Adopted Plan. Doc. #241. On November 18, 2016, the District formally withdrew its first proposed modification in favor of a second modification proposal ("Unified High School Plan"). Doc. #252. The United States and the private plaintiffs opposed the first proposed modification, Doc. #242, and recently concluded a period of discovery related to the merits of the second proposal, Doc. #274. Additionally, the private plaintiffs, without prior explanation or leave of this Court, submitted their own proposed modification on January 11, 2017 ("Private Plaintiffs' Plan"). Doc. #264.

On February 8, 2017, the parties filed a joint motion seeking to modify the Adopted Plan and the corresponding implementation timeline. Doc. #286. In the motion, the parties represent that they have reached a settlement agreement which:

will preserve the Court's May 13, 2016, Order, save one change regarding sixth grade student assignment. Under this agreement, the District will consolidate its ninth through twelfth grade students into a single comprehensive high school housed in the current facilities at Cleveland High School and Margaret Green Junior High School. The District will assign all seventh and eighth grade students to a consolidated middle school housed in the current East Side High School facility. Additionally, the District will expand grade offerings at Cypress Park, Pearman, and Parks elementary schools to include the sixth grade. This change will bring these elementary schools in line with Bell Academy and Hayes Cooper Center, which already include the sixth grade. As a result, all District students will begin middle school at the same time, in the seventh grade, and under one roof.

Id. at 2–3. This proposed modification to the Adopted Plan also calls on the District to “give preference to current Cypress Park fifth grade students who apply for current openings at Hayes Cooper Center and Bell Academy for the 2017–2018 school year.” *Id.* at 3 n.1. In addition to seeking modification of the Adopted Plan, the motion states that the District withdraws its second proposed plan and that the private plaintiffs withdraw their proposed modification.

On February 14, 2017, this Court entered an order directing the parties to provide evidence showing the capacity of the District’s elementary schools to accommodate the District’s sixth grade students. Doc. #288; Doc. #289.

On February 21, 2017, the District submitted an affidavit of Dr. Jacquelyn Thigpen, the District’s superintendent. Doc. #292. Thigpen’s affidavit states that Cypress Park (D.M. Smith Elementary) and Parks Elementary have the capacity to accommodate the proposed sixth grade students. *Id.* However, Thigpen avers that Pearman Elementary currently lacks such capacity. *Id.* at 2. Accordingly, Thigpen proposes changing Pearman Elementary from a kindergarten through fifth grade facility to a first through sixth grade facility. *Id.* The kindergarten students zoned for Pearman would “be placed in a lottery for slots at Parks, Nailor [Elementary], Hayes Cooper, or Bell.” *Id.* Upon completing kindergarten, the students would then begin first grade at Pearman. *Id.* Thigpen represents that this configuration, which has been approved by the Board, would allow Pearman to accommodate the proposed sixth grade students. *Id.*

At the request of the Court, Thigpen, on March 3, 2017, submitted a second affidavit expanding on the District’s plan for accommodating the Pearman kindergarten students. Doc. #304. Thigpen states in her second affidavit that the other elementary schools in the District have the capacity to accommodate the Pearman kindergarten students and that the lottery used to reassign the students will be random. *Id.* Under this formulation, students assigned to the

District's magnet schools (Hayes Cooper and Bell) will have the option to stay at the magnet schools upon completing kindergarten. *Id.* at ¶ 16. Finally, the affidavit represents that “[n]either Private Plaintiffs nor Plaintiff-Intervenor United States of America object to the ... plan” *Id.* at ¶ 19.

On March 6, 2017, this Court entered an order stating that, “upon dismissal of the pending appeal in this matter, the Court ... will modify its May 13, 2016, order as requested in the joint motion.” Doc. #305. On March 8, 2017, the District filed with the Fifth Circuit a motion to dismiss its appeal. The Fifth Circuit dismissed the appeal the next day. Doc. #307.

II **Analysis**

The Court interprets the request to modify the Adopted Plan as one made under Federal Rule of Civil Procedure 60(b), which authorizes a Court to grant relief from a final judgment, order, or proceeding, for any reason that justifies relief. *See, e.g., Evans v. Buchanan*, 512 F.Supp. 839, 849 (D. Del. 1981) (considering motion to amend desegregation plan as Rule 60(b) motion). Pursuant to Rule 60, a court may relieve a party from a final judgment or order if applying the order prospectively is no longer equitable, or for “any other reason that justifies relief.”

Upon consideration, and for the reasons stated in this Court's March 6, 2017, order, the Court concludes that the Adopted Plan should be modified as requested in the parties' joint motion and in Thigpen's affidavits. To this end, it is **ORDERED**:

1. The parties' “Joint Motion for Modification of the Court's Order” [286], as supplemented by Thigpen's affidavits, is **GRANTED**.
2. This Court's May 13, 2016, order [215] accepting the Adopted Plan is **MODIFIED** such that the District shall assign to the consolidated middle school

students in grades 7–8, rather than students in grades 6–8; and the assignment of students in grade 6 shall be in accordance with the plan described in Thigpen’s affidavits.

3. This Court’s September 22, 2016, order [233] will be vacated and modified by separate order.
4. The District’s Unified High School Plan [252] and the Private Plaintiffs’ Plan [264] are **DENIED as moot**.

SO ORDERED, this 13th day of March, 2017.¹

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE

¹ The Court is pleased to formally wish years of success to the Cleveland Central Wolves and to the District’s students as a whole as they proceed under the Adopted Plan as modified.