Student Assignment Comm.

MEMORANDUM

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July 26, 2000

TO: Elementary and Secondary School District Clients

FROM: Maree F. Sneed
John W. Borkowski

RE: Recent Decision Related to Dissolution of Desegregation Order—Hampton v. Jefferson County Board of Education

I. Introduction

Last month, in Hampton v. Jefferson County Board of Education, Civ. Act. No. 3:98-CV-262-H (W.D. Ky. June 20, 2000), a federal trial court found the public school system of Louisville, Kentucky to be unitary and dissolved a desegregation decree originally put in place in 1975. The court also enjoined the school district from employing rigid racial balance requirements in selecting students for magnet schools but made clear in non-binding dicta its view that the school board remained free to use race as one among many factors in selecting students for magnet schools and to consider race alone as a determinative factor in making assignments to non-magnet schools.

While the Hampton decision, which the school board recently decided not to appeal, is controlling only in the Western District of Kentucky, it may have persuasive value to courts elsewhere. This memorandum summarizes the court's decision, and some of its implications for public school districts. A copy of the opinion is attached for your reference.

II. The Hampton Decision

A. Background

The court's decision was prompted by a somewhat unusual motion to dissolve a 25-year-old desegregation decree. The mother of Ollie Hampton, an African-American student who had been denied admission to a magnet high school, moved to dissolve the desegregation decree that had controlled the school district's student assignment practices for two and a

half decades. The school district argued that the decree should remain in place. Under the decree, strict racial guidelines governed the number of African-American and other students admitted to the magnet school each year. In order to meet this requirement, the school district had denied Ollie's request for admission to the school.

B. Unitary Status

On consideration of the motion to dissolve, the district court reviewed the relevant Supreme Court guidelines for determining unitary status: 1) whether the school board had complied in good faith with the decree, and 2) whether the vestiges of past segregation "had been eliminated to the extent practicable." Hampton, slip op. at 4 (quoting Board of Educ. of Oklahoma City Public Schs. v. Dowell, 498 U.S. 237, 249-50 (1991)). The court found that the school district had satisfied these criteria. Noting the school district's tutorial programs for disadvantaged students, its measures to build public support for desegregation, and its efforts to locate Parent Assistance Centers to serve the African-American community, the court also concluded that the school district had demonstrated its good faith commitment to the constitutional rights of minority students.

Finally, the court addressed the school district's argument that due to the area's "latent demographic imbalance," the school system would resegregate without the decree. The court found that the decree had never been intended to "achieve permanent non-racial housing patterns," id. at 27, and rejected this rationale for keeping the court order in place.

C. Voluntary Desegregation

1. Magnet Schools

Upon dissolving the decree, the court turned to an assessment of whether the school district's magnet admissions practices would remain constitutional in the absence of a court-ordered duty to remedy past discrimination. Applying strict scrutiny, the court held that voluntarily implemented race-conscious student assignment measures could only survive if they were narrowly tailored to meet a compelling state interest.

The court found that none of the school district's proffered justifications was sufficient to uphold the strict racial balance requirements for its magnet schools that had been implemented up to that point pursuant to the court's desegregation orders. The court concluded that under Regents of the University of California v. Bakke, 438 U.S. 265 (1978), the allocation of limited opportunities in magnet schools could not be based solely on race.

The court suggested, however, that under Bakke race could be considered in the future as one of several factors considered in order to promote the educational benefits of diversity. Nevertheless, the court struck down Jefferson County's current magnet admissions procedures because they only considered race.

2. Non-magnet Schools

The court also indicated, however, that the voluntary maintenance of desegregated schools "should be considered a compelling state interest." Id. at 38. The court drew a distinction between selecting students for schools that offer unique educational opportunities (such as magnet schools) and assigning students to schools that are basically equal. With respect to the latter, the court suggested that in its view the use of race as the single determinative criterion would be permissible. The court emphasized its belief that most student assignment decisions should be left (within constitutional parameters) to the discretion of locally elected school boards. Given this latitude, the Jefferson County School Board recently decided not to appeal the decision.

III. Implications

The decision in Hampton has several important implications for public school districts. First, at least where the standards set forth by the Supreme Court in Dowell and Freeman v. Pitts, 503 U.S. 467 (1992), have been satisfied, federal trial courts appear willing to end longstanding desegregation cases.

Second, following several recent decisions from other federal courts, the court held that once a school system is unitary, strict scrutiny would apply to any race conscious student assignment practices that it employs.

Third, in applying strict scrutiny, the court suggested that race could be used voluntarily as a factor in magnet school admissions decisions. The court stated that "particularly in its magnet schools and programs, JCPS might use race, alongside other important non-ethnic measures of diversity, as the kind of 'plus-factor' envisioned in *Bakke*." Id. at 37. The federal courts that have addressed this issue recently have reached different conclusions about whether and the circumstances in which race can be a factor in magnet school admissions.

Finally, in another controversial but well-reasoned discussion, the court in Hampton suggested that non-magnet schools might rely on race

exclusively in furtherance of a school system's compelling interest in the voluntary maintenance of desegregated schools. If the schools are "basically equal," according to the court, then no preferences are being granted to students assigned to one school or another based on their race. Again, the lower federal courts are split on this issue.

Ultimately, the complex issues surrounding a public school system's voluntary use of race-conscious student assignment measures will have to be clarified by the Supreme Court. Until that time comes, the Hampton decision provides some support for school districts that choose to continue or to adopt voluntary desegregation measures. Nevertheless, this decision, as noted above, is only controlling in the Western District of Kentucky and is in tension with some other federal court decisions. School districts should maintain a very cautious approach in continuing or implementing any student assignment practices that may be deemed race-conscious.

If you have any questions about this decision or its implications for your school district, please feel free to call Maree Sneed [(202) 637-6416] or John Borkowski [(504) 593-0824].