

1988 WL 288974

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United States District Court, N.D. Alabama,
Southern Division.

Anthony T. LEE, et al., Plaintiffs,
United States of America, Plaintiff–Intervenor and
Amicus Curiae,
National Educational Association, Inc.,
Plaintiff–Intervenor,
v.
MACON COUNTY BOARD OF EDUCATION, et
al., Defendants.

Civ. A. No. 70–AR–0251–S. | July 25, 1988.

Opinion

MEMORANDUM OPINION

ACKER, District Judge.

*1 The predominant motive for the parties having sought and obtained the order which was entered by this court on March 15, 1985, was the parties' recognition of the jurisprudential principle that litigation, even including permanent injunctions with ostensibly unending reporting requirements, must eventually come to an end. On March 15, 1985, this court formally dismissed this action, by consent of the parties, as against Talladega County Board of Education. The finding under Rule 54(b), F.R.Civ.P., was a redundancy, but made it perfectly clear, if it were not already clear, that this case was in all respects concluded as to Talladega County Board of Education, and that any party who disagreed with that conclusion had only the options of filing a post-judgment motion pursuant to Rule 59 or Rule 60, F.R.Civ.P., or taking an appeal to the Eleventh Circuit.

Plaintiffs who unequivocally consented to the order of March 15, 1985 now purport to move to reopen the case "to enforce existing court orders." There are no "existing court orders" in this case applicable to Talladega County Board of Education. The whole point of the dismissal of

March 15, 1985, was to require that any party who found the dismissal erroneous do something about it *then*. On March 15, 1985, there was no retention of jurisdiction by this court and there remained no residual injunction requiring Talladega County Board of Education to do or not to do anything. After March 15, 1985, any violation of statutory or constitutional law by Talladega County Board of Education became the subject of a new and separate complaint.

Plaintiffs invoke neither Rule 59, F.R.Civ.P., nor Rule 60, F.R.Civ.P., because neither rule is available under the allegations made by plaintiffs, who conspicuously are not joined by plaintiff-intervenor, United States of America. Without invoking any procedural rule, plaintiffs ask that this case as to Talladega County Board of Education be resurrected from the dead.

The order of March 15, 1985, was, of course, not intended to give Talladega County Board of Education a license in the future to violate the principles announced in *Brown v. Board of Education* and its progeny. It did, however, finally adjudicate the Board of Education's compliance with *Brown v. Board of Education up to March 15, 1985*. What Talladega County Board of Education has done or has failed to do to comply with the requirements of *Brown v. Board of Education* after March 15, 1985 must be addressed in a separate proceeding brought by a person or persons with standing to bring it.

The court finds it interesting that plaintiffs have indicated their intent to perfect timely appeals from recent similar orders of dismissal as to one or more other public educational entities previously under the injunctive supervision of this court. If plaintiffs can obtain the relief they now seek against Talladega County Board of Education three years after a final order of dismissal, current appeals from similar orders would seem to be unnecessary.

*2 Appropriate separate orders will be entered. In light of the foregoing, the orders are obviously without prejudice to the presentation of the same matters in a new, separate complaint.