1962 WL 72849
United States District Court, E.D. Arkansas.

DOVE
v.
PARHAM

Aug. 30, 1962.

Opinion

HENLEY, J.

***1** This cause is now before the court on the motion of Sarah Etoria Howard, a 14 year old minor, for leave to intervene herein as a party plaintiff. The motion is accompanied by the proposed intervention.

An examination of the proposed intervention discloses that movant is a Negro public school student who completed the 9th grade at the Townsend Park School operated by the defendant district and was promoted to the 10th grade at the conclusion of the 1961–62 school year. The School Board assigned movant to the Townsend Park School for the 1962–63 school year, and movant applied to the Board for a lateral transfer to the Dollarway School operated by the defendant district. The Board denied movant's application and after exhausting her administrative remedies movant filed the instant motion.

In her proposed intervention movant complains principally that her application for transfer was denied, and she contends that the denial has deprived her of federally protected rights. She also complains in general that the Board's overall desegregation plan is not a sufficient compliance with the duties of the Board under the Brown decisions and under the orders of this court and of the Court of Appeals in this case.

The proposed intervention, in addition to alleging that movant and other Negro students similarly situated are unconstitutionally excluded from attendance at the formerly all-white Dollarway School, alleges "that the defendants maintain a policy of assigning teachers, principals and other administrative personnel to the schools in the Dollarway District on the basis of race and color all of which is done to the injury and detriment of the plaintiffs, this intervenor and the members of the class represented." And the fourth paragraph of the prayer of the proposed intervention is that defendants be enjoined from assigning teachers and personnel on the basis of their own race and color and on the basis of the race and color of the pupils attending the schools to which the personnel are to be assigned.

Defendants have filed a response to the motion in which response they advance no objection to the proposed intervention, except to the extent that it relates to the alleged policy of assigning employees of the District on the basis of race or color, and they ask that all allegations relative to such policy be excluded from the intervention when filed.

Assuming without deciding that the allegations relative to the teachers and other personnel of the District raise a substantial federal question, and assuming further without deciding that movant has standing to raise such a question, the court agrees with counsel for the defendants that such question should not be raised or litigated within the framework of this lawsuit which is now well into its fourth year of life, having been commenced in February 1959. This litigation has never involved any questions of the assignment of teachers or other employees to any particular school. Throughout its life the case has been simply a suit to compel the District and its officials to admit students to attendance in the public schools without unconstitutional racial discrimination, and the court is concerned primarily in this case and at this time with whether the actions which the Board has taken and proposes to take in that direction constitute a sufficient compliance with the Board's obligations.

***2** To permit movant to inject into this pupil assignment case issues as to alleged discrimination in the assignment of employees of the District to particular schools would necessarily bring into the case persons who are not parties to the suit and whose interests are not represented herein, would present questions not heretofore involved, and would obviously hinder and delay the termination of this litigation, which is already protracted.

Hence, the defendants' objections to the allegations relative to the assignment of teachers and other personnel will be sustained, and those allegations will not be considered by the court nor will the court hear evidence bearing upon them.

It is, therefore, CONSIDERED, ORDERED and

ADJUDGED that subject to the qualifications above set forth the motion of Sarah Etoria Howard for leave to intervene herein as a party plaintiff be, and it hereby is, granted, and the Clerk of this court is hereby directed to file the proposed intervention. Defendants are granted three days from this date within which to respond to the intervention, and the intervention is set down for hearing at 10 o'clock A. M., on Thursday, September 6, 1962.

All Citations

Not Reported in F.Supp., 1962 WL 72849, 7 Fed.R.Serv.2d 500