1994 WL 603105
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United States District Court, N.D. Illinois, Eastern Division.

Sheena HODGES, by her father and next friend, Willie HODGES, and Nikishia Hunter, by her mother and next friend Daucenia Hunter, each, solely on their own individual behalf; and Dede, Teteh and Kwame Atiogbe, by their father and next friend Gotlieb Atiogbe, Jaime and Edgardo Duran, by their mother and next friend Elena Duran, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
PUBLIC BUILDING COMMISSION OF CHICAGO, Chicago Board of Education, and the City of Chicago, Defendants.
CHICAGO BOARD OF EDUCATION, Defendant/Cross Plaintiff,
v.
PUBLIC BUILDING COMMISSION OF CHICAGO, Defendant/Cross Defendant.

No. 93 C 4328.
|
Oct. 31, 1994.

MEMORANDUM OPINION AND ORDER

CASTILLO, District Judge.

***1** Plaintiffs have filed a revised motion to maintain class action for declaratory and injunctive relief under Rule 23(b)(2) of the Federal Rules of Civil Procedure. For the reasons set forth in this Opinion, the Court hereby grants this motion and certifies plaintiffs' proposed class. The class will be defined as, "all present and future African–American and Hispanic students and applicants of the Chicago High School for Agricultural Sciences ("CHSAS")."

The Court does not accept the assertions of the defendants, Public Building Commission ("PBC") and the City of Chicago ("City") that there is no objective manner to identify the members of the proposed class. The subject matter of this litigation is not unusual and there is no shortage of cases which have certified classes incorporating future class members into their definition. *See Ramos v. State of Illinois,* 781 F.Supp. 1353 (N.D.Ill.1991) (certifying class of Hispanic voters whose right to vote had been or would continue to be abridged by the existing aldermanic election/redistricting schedule); *Gomez v. Illinois State Bd. of Educ.,* 117 F.R.D. 394 (N.D.Ill.1987) (court certified class of all spanish speaking children who were or would be enrolled in Illinois public schools, or who were eligible or would be eligible to be enrolled in such schools and who should have been or who had been assessed as limited English proficient; joinder impracticable); *Walters v. Thompson*, 615 F.Supp. 330 (N.D.Ill.1985) (court certified class of present and future segregated prisoners). *See also B. H. v. Johnson,* 715 F.Supp. 1387, 1389 (N.D.Ill.1989) (civil rights); *Franklin v. City of Chicago,* 102 F.R.D. 944, 946 (N.D.Ill.1984) (Bua, J.) (civil rights); *Williams v. New Orleans SS Association,* 673 F.2d 742 (5th Cir.1982) (employment discrimination); *Senter v. General Motors*, 532 F.2d 511 (6th Cir.), *cert. denied,* 429 U.S. 870 (1976) (employment discrimination); *Weaver v. Reagen*, 701 F.Supp. 717 (W.D.Mo.1988) (government benefits/AIDS); *Kilgo v. Bowman Transportation, Inc.*, 789 F.2d 859, 878 (11th Cir.1986) (employment discrimination/sex) (class included future and deterred job applicants, "which of necessity cannot be identified."); *Probe v. State Teachers' Retirement Systems,* 780 F.2d 776 (9th Cir.), *cert. denied,* 476 U.S. 1170 (1986) (employment/sex). In fact, in this case, unlike the others cited above, there will always be a definitive point at which class members will be readily identifiable. This point will occur when they apply to CHSAS.

Defendants contention that "plaintiff's interests diverge substantially from those of members of the [purported] class" is also unavailing. Judge Moran addressed this "inadequacy of representation" argument in *Ramos v. State of Illinois,* 781 F.Supp. 1353 (N.D.Ill.1991), noting that any potential conflict of interest between potential members of the class does not warrant denial of class certification, since a court need not "individually identify the class members in a Rule 23(b)(2) class." *Id.* at 1355. *See also Doe v. Guardian Life Insurance Co. of America*, 145 F.R.D. 466, 474 (N.D.Ill.1992) (court should not assume a conflict within the class without evidentiary support). Plaintiffs have provided the court with a "basic generic description of those who are complaining here" and we think, like Judge Moran in *Ramos,* that "the classes presently proposed will serve the purpose(s)" alleged, because the interests of the named plaintiffs are coextensive with those of the absentee members. *Ramos,*

781 F.Supp. at 1355; *Gomez*, 117 F.R.D. at 402. Further, the representatives and the class will mutually benefit if relief is obtained, and there are no foreseeable long-term economic consequences which might adversely affect future class members (as defendants contend). *Gomez*, 117 F.R.D. at 402. *See also Williams v. State Bd. of Elections*, 696 F.Supp. 1559 (N.D.Ill.1988) (Grady, C.J.). Finally, the cases defendants cite are not persuasive in light of *Ramos*, a case which the court finds closely analogous to this one.

***2** Defendants contend that Rule 23(a)(3)'s typicality requirement is not met for the same reasons used to oppose plaintiffs' adequacy of representation. Defendants arguments are again unavailing. Rule 23's requirement of typicality has been satisfied, because all potential class members "share an interest in the originally proposed expansion" of CHSAS. Pls. Reply at 4. Plaintiffs correctly argue that,

> Present students desire the improvement of conditions at CHSAS envisioned by the original proposal. Some future applicants—those who eventually [may] be admitted to CHSAS—share that desire. All future applicants also want the increased chances for admission that would ensue under the original proposal.

Plaintiffs' Reply at 4. The typicality requirement is also satisfied because plaintiffs claims "arise from the same event or practice or course of conduct that gives rise to the claims of the [purported] class members and is based on the same legal theory," namely, defendants' rejection of the original CHSAS proposal. *Rosario*, 963 F.2d at 1018. Determination that the plaintiffs' claims are typical of the claims of the class necessarily compels a finding that common questions of fact exist.[1] *Newberg On Class Actions*, § 3.13 (1994). Thus the court finds the fact that current students and future applicants may have some different reasons for wanting implementation of the original proposal immaterial. The purported class shares overlapping reasons which warrant certification of the class.[2]

Additionally, the Court rejects defendant PBC's assertion that the above-defined class members will not suffer real and immediate harm as a result of the defendants' refusal to implement the original plans for the CHSAS expansion. Aside from the very real fact that each of these applicants will suffer a substantially reduced chance of admission to CHSAS when they apply, the Court takes judicial notice that many of the defendants' answers readily admit that at the present time CHSAS suffers from various substandard physical conditions.[3]

All Citations

Not Reported in F.Supp., 1994 WL 603105

Footnotes

1 The commonality requirement in Rule 23(a)(2) is satisfied when the claims alleged by the class share a single issue of law, *Meirsonne v. Marriott Corp.,* 124 F.R.D. 619, 622 (N.D.Ill.1989) (Shadur, J.); *Armstrong v. Chicago Park District,* 117 F.R.D. 623, 628 (N.D.Ill.1987) (Shadur, J.), or arise out of a common nucleus of operative fact." *Rosario v. Livaditis,* 963 F.2d 1013, 1018 (7th Cir.1992) ("the fact that there is some factual variation among the class grievances will not defeat a class action").

2 Defendants concede that Rule 23(a)(1)'s numerosity requirement is satisfied. *See* Def.City's Opp. to Pls. Revised Motion for Class Certification at 1–2.

3 The underlying facts regarding this case are adequately set forth in this Court's Memorandum Opinion dated September 1, 1994, which granted and denied, in part, the defendants' motion to dismiss. Thus, these facts will not be repeated in this order.