

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Defendant.

NO. 0005124

CONSENT DECREE

1. The United States has filed a complaint alleging that the Board of Education of the City of Chicago (the "Board") has engaged in acts of discrimination in the assignment of students and otherwise, in violation of federal law. The United States alleges further that such acts have had a continuing system-wide effect of segregating students on a racial and ethnic basis in the Chicago public school system.

2. In addition, the United States Department of Health, Education and Welfare ("HEW") in 1979 and in 1980 found the Board ineligible for funding under the Emergency School Aid Act on the basis of its determinations that the Chicago public school system is characterized by racially segregated and overcrowded schools. Following a presentation of facts by the Board in defense of its actions, these HEW determinations were reaffirmed by the Department of Education on June 12, 1980.

3. The Board neither admits nor denies the allegations of the complaint in this action. It recognizes, however, that the Chicago public school system is characterized by substantial racial isolation of students.

4. The Board believes that racial isolation is educationally disadvantageous to all students and that educational benefits will accrue to all students through the greatest practicable reduction in the racial isolation of students.

5. The Board believes that litigation of this action would require a substantial expenditure of public funds and a substantial commitment of Board and staff time and resources, at a time when financial and personnel resources are already greatly limited, and that such resources can more appropriately be used to achieve the educational goals of the school system. The parties further believe that litigation of this action would be protracted and that settlement of the action is in the public interest.

6. In light of these considerations, the parties, as indicated by the signatures of their counsel below, have determined to settle this action and resolve the United States' request for injunctive relief by entry of this consent decree. The parties submit to the jurisdiction of the Court and acknowledge that subject matter jurisdiction exists over this action under the Fourteenth Amendment of the United States Constitution; under Titles IV and VI of the Civil Rights Act of 1964, 42 U.S.C.

2000c and 2000d; and under 28 U.S.C. §1345. The Board waives the notice provisions of those acts. Both parties waive the entry of findings of fact and conclusions of law. Each party shall bear its own costs.

7. Both parties agree that this Consent Decree is final and binding as to the issues resolved herein. The Court shall retain jurisdiction of this action for all purposes, until a final order is entered terminating this litigation.

8. In the event that objections or challenges are raised (e.g., through intervention or separate collateral lawsuits) to the lawfulness or appropriateness of (a) this decree, any provision hereof, or proceedings pursuant hereto, or (b) any aspect of the desegregation plan provided for in Part I hereof after approval of the plan by the Department of Justice or by the Court, the Board and the Department of Justice shall defend the lawfulness and appropriateness of the matter challenged. If any such collateral lawsuit arises in state court, the parties shall seek to remove such action to the U.S. District Court.

WHEREFORE, the parties having freely given their consent, the terms of the Decree being within the scope of the complaint, and the terms of the Decree being fair, reasonable and adequate, it is hereby ORDERED, ADJUDGED, and DECREED that:

I. STUDENT DESEGREGATION

1. Systemwide Remedy. The Chicago Board of Education (the "Board") will develop and implement a system-wide plan to remedy the present effects of past segregation of Black and Hispanic students.

2. Basic Objectives

2.1 Desegregated Schools. The plan will provide for the establishment of the greatest practicable number of stably desegregated schools, considering all the circumstances in Chicago.

2.2 Compensatory Programs in Schools Remaining Segregated. In order to assure participation by all students in a system-wide remedy and to alleviate the effects of both past and ongoing segregation, the plan shall provide educational and related programs for any Black or Hispanic schools remaining segregated.

2.3 Participation. To the greatest extent practicable, the plan will provide for desegregation of all racial and ethnic groups, and in all age and grade levels above kindergarten.

2.4 Fair Allocation of Burdens. The plan shall ensure that the burdens of desegregation are not imposed arbitrarily on any racial or ethnic group.

3. Board Discretion in Plan Development.

3.1 Board Discretion in Selecting from Alternatives. The Department of Justice recognizes that there is a broad range of constitutionally acceptable plans that will fulfill the basic objectives stated in Part 2. The Department of Justice further recognizes the Board's familiarity with and sensitivity to the unique situation presented in Chicago, and the authority of the Board, in its discretion, to select from within the constitutional range the plan that best meets the needs of the Chicago School District.

3.2 Racial/Ethnic Balance or Specific Ratios Not Required. The parties recognize that courts have not required specific racial ratios in schools as a necessary remedy in desegregation cases, that racial and ethnic balance throughout the Chicago School District is neither practicable nor required, and that no particular definition of a desegregated school is required.

4. Techniques. In establishing desegregated schools, the Board may use the following techniques, among others:

4.1 Voluntary Techniques.

4.1.1 Permissive transfers that enhance desegregation, with transportation at Board expense.

4.1.2 Magnet schools that enhance desegregation.

4.1.3 Voluntary pairing and clustering of schools.

4.1.4 If magnet schools or other voluntary techniques are used, each shall contain racial/ethnic goals and management controls (e.g., an alternative that would require mandatory re-assignments) to ensure that the goals are met.

4.2 Mandatory Techniques Not Involving Transportation.

4.2.1 Redrawing attendance areas.

4.2.2 Adjusting feeder patterns.

4.2.3 Reorganization of grade structures, including creation of middle schools.

4.2.4 Pairing and clustering of schools.

4.2.5 Selecting sites for new schools and selecting schools for closing to enhance integration.

4.3 Mandatory Reassignment and Transportation. Mandatory reassignment and transportation, at Board expense, will be included to ensure success of the plan to the extent that other techniques are insufficient to meet the

objective stated in §2.1. The plan may limit the time or distance of mandatory transportation to ensure that no student shall be transported for a time or distance that would create a health risk or impinge on the educational process. These limitations may vary among different age and grade levels.

- 4.4 Priority and Combination of Techniques. The plan may rely upon the techniques listed above and any other remedial methods in any combination that accomplishes the objective stated in §2.1.

5. Exceptions.

- 5.1 Justification for Remaining Identifiable Minority Schools. With respect to any schools that remain identifiable as Black or Hispanic schools, the plan shall provide specific justification in terms of practicability (i.e., educational or practical considerations), in the context of the extent to which the plan as a whole achieves the objectives stated in Part 2.
- 5.2 Stably Integrated Schools. The plan may create exceptions with respect to individual schools which it shows are already stably integrated (or will become stably integrated by the time of implementation of the plan).

5.2.1 Initial Exception. The plan may exclude such schools from reassignment of students if the extent of integration is within a reasonable range of that to be achieved in the schools referred to in §2.1.

5.2.2 Subsequent Exception. The plan may provide for the later exclusion from student reassignment of any initially included school that, through demographic changes or other factors, promises to become stably integrated.

5.2.3 Subsequent Inclusion. The plan should include sufficient flexibility to enable any of the techniques outlined above to be applied to any school in which stability of integration is threatened by unforeseen circumstances.

6. Bilingual Education. The Board's legal obligations to provide bilingual education for non- and limited-English speaking students shall be discharged in a manner consistent with the overall objectives of the plan. To the extent that students who require bilingual education are reassigned, they shall not be reassigned in a manner that interferes with their participation in bilingual programs.

7. Compensatory Programs in Schools Remaining Segregated. To accomplish the objective stated in §2.2, the plan will include specific programs for Black or Hispanic schools remaining segregated, in the following areas among others:
- 7.1 Remedial and compensatory educational programs.
 - 7.2 Improved curricula and instructional and evaluative techniques (including the utilization of tests that validly measure student achievement) for academic, vocational and alternative educational studies.
 - 7.3 Pre-service and in-service instruction for administrators, principals, teachers and other school personnel.
 - 7.4 Selection, and evaluation of the performance of, principals and supporting leadership staff.
 - 7.5 Testing, counseling, guidance and student welfare.
 - 7.6 Physical facilities, safety and security.
 - 7.7 Supportive relationships between such schools and groups and institutions in the community and in government.
8. Overcrowding. The Board is encouraged but not required to eliminate overcrowded schools. The plan should provide, to the greatest extent practicable considering all the circumstances, for the elimination of racially disproportionate overcrowding of classrooms and school sites.

9. Discipline. The plan shall include provisions to ensure that discipline is administered in a non-discriminatory manner.

10. Resegregation. The plan shall contain provisions to ensure against resegregation of students after implementation, in the following areas:

10.1 In-School. The plan shall include provisions to ensure that students attending desegregated schools are not resegregated within their schools without adequate educational justification. This provision shall apply to the assignment of students to classrooms as well as to programs of instruction.

10.2 Student Reassignment. The plan shall include provisions to ensure that students shall not be reassigned in a manner that, considering the district as a whole, causes the resegregation of schools.

10.3 Structural adjustments. The plan shall include provisions to ensure that site selections, construction, school closings, readjustments of attendance areas and feeder patterns, and new placement of mobile classrooms shall be accomplished so as not to cause the resegregation of schools.

10.4 Educational Program Adjustments. The plan shall include provisions for utilization in desegregated schools of such of the specific programs referred to in Part 7 hereof as the Board concludes are necessary to ensure against resegregation of such schools.

11. Facilitating Success of the Desegregation Process.

11.1 Community Involvement. The plan will establish programs to promote public involvement with and support for the desegregation process.

11.2 School Personnel. The plan will provide for pre-service and in-service training programs for Board personnel such as administrators, teachers, auxiliary staff, bus drivers and monitors.

11.3 Other Institutions. The Board shall endeavor to involve in the desegregation process state and local government, private businesses, colleges and universities, civic and community organizations, labor unions, professional organizations, religious and cultural institutions, the parochial school system and other private schools.

12. Voluntary Interdistrict Pupil Transfers. The plan will include provisions, including without limitation the payment of transportation costs, to encourage and facilitate voluntary interdistrict pupil transfers having integrative effects between schools in the Chicago School District and schools in other districts in the Chicago Standard Metropolitan Statistical Area ("SMSA").
13. Reporting. The plan shall establish a system of record-keeping and reporting through which the Board's compliance with the provisions of this agreement can be monitored.
14. Flexibility. The parties to this agreement recognize that neither the principles set forth above nor the desegregation plan can provide for every contingency and that exceptions will be necessary. The burden is on the Board, however, to justify such exceptions on the basis of educational and practical considerations.
15. Financial Cost of the Plan.
 - 15.1 Each party is obligated to make every good faith effort to find and provide every available form of financial resources adequate for the implementation of the desegregation plan.

15.2 Each party reserves the right to seek to add additional parties who may be legally obligated to contribute to the cost of the desegregation plan.

15.3 The parties recognize that financial cost of implementation does not excuse the failure to develop a desegregation plan consistent with the principles set forth in §§ 2 - 14, and is not a basis for postponement, cancellation or curtailment of implementation of the plan after it has been finally adopted, but is one legitimate consideration of practicability in meeting the objective stated in §2.1.

16. Time table. The plan will be developed in accordance with the schedule set forth in Attachment A and will be implemented beginning with the 1981-82 school year.

17. Public Participation. The Board will receive and consider comments and recommendations from all persons and groups during the development of the desegregation plan.

18. Resolution of Disagreements. If the parties to this decree are unable to agree as to whether the desegregation plan is consistent with the principles set forth above in §§ 2 through 15, the disagreement will be submitted to the court for resolution.

II. ADDITIONAL PROGRAMS AND PARTIES

1. Interagency Coordination. The Department of Justice agrees that it will, pursuant to the Attorney General's authority (including that under Executive Order 11764 to coordinate the enforcement of Title VI of the Civil Rights Act of 1964), initiate and carry forward discussions with other agencies of the federal government to bring about a coordinated affirmative administration of federal grant programs in the Chicago SMSA with the goal of contributing to the creation and maintenance of stably integrated schools in the Chicago SMSA. These federal programs include, for example, housing, employment and transportation in addition to education.

2. State Responsibility.

2.1 The Department of Justice will thoroughly pursue and promptly complete its investigation of whether the State of Illinois should be made a party defendant and be required to assist and support, financially and otherwise, the implementation of the desegregation plan discussed in Part I. The investigation will examine whether the State and/or its agencies have contributed, through action and inaction, to the segregation of, or other discrimination against, students in the Chicago School District.

2.2 Upon completion of the investigation the Department will submit the factual findings thereof to the Court and, if warranted by the results of the investigation, promptly take such enforcement action as is appropriate under the circumstances, consistent with the Attorney General's responsibilities under Title IV of the Civil Rights Act of 1964.

3. Interdistrict Remedies.

3.1 The Department of Justice will thoroughly pursue and promptly complete its examination of the extent to which interdistrict remedies for segregative conditions in schools in the Chicago school district may be appropriate, including (without limitation) by reason of the possibilities that:

3.1.1 The State of Illinois together with school districts in the Chicago SMSA, or some of them, may have acted in effect as a metropolitan school district with respect to vocational, special and other educational programs; and

3.1.2 The State of Illinois together with State housing agencies and other agencies of state government, including units of local government in the Chicago SMSA, or some of them, may have contributed to the segregation of the races in

the Chicago SMSA by racially discriminatory use of state or federal housing laws or programs, or of state or local land use control laws.

3.2 Upon completion of the investigation, the Department will submit the factual findings thereof to the Court and will take whatever enforcement action is appropriate under the circumstances, consistent with the Attorney General's responsibilities under Title IV of the Civil Rights Act of 1964.

4. LEAA Grant Condition. The Department of Justice agrees that the entry of this consent decree is a sufficient basis for the removal, from the grant awarded by the Law Enforcement Assistance Administration to the Board on September 10, 1980, (#80-JS-AX-0043), of the condition relating to Title VI of the 1964 Civil Rights Act and §815 of the Criminal Justice Improvement Act of 1979.

III. OTHER ISSUES

1. Classroom Segregation. The Board will promptly implement a plan to ensure that no student is assigned to a racially/ethnically isolated or identifiable classroom except when the assignment is justified educationally. The plan will be consistent with the Board's application for a waiver of ineligibility for funding under the Emergency School Aid Act ("ESAA") for Fiscal year 1979, which was found acceptable by the Department of Health, Education and Welfare ("HEW") and is presently acceptable to the Department of Education.
2. Bilingual Programs. The Board will promptly implement a plan to ensure that non- and limited English speaking students are provided with the instructional services necessary to assure their effective participation in the educational programs of the Chicago School District. The plan will be consistent with the Board's application for a waiver of ineligibility for funding under ESAA for fiscal year 1979, which was found acceptable by HEW and is presently acceptable to the Department of Education.
3. Faculty Assignment. The Board will promptly implement a plan to assure that the assignment of full-time classroom teachers to schools will be made in such a manner that no school is identified as intended for students of a particular race, color or national origin. Except as specifically provided

herein, the plan shall be consistent with the Board's application for a waiver of ineligibility for funding under ESAA for fiscal year 1979, which was found acceptable by HEW and is presently acceptable to the Department of Education.

3.1 Not later than November 1, 1981, with respect to the full-time classroom teachers in each school faculty, the racial/ethnic composition and the proportion of experienced teachers will be between plus and minus fifteen percent of the systemwide proportions of such teachers with respect to such characteristics, and the range of educational training will be substantially the same as exists in the system as a whole.

3.2 The Board will make every good faith effort to follow professional staff assignment and transfer practices which, when taken together as a whole on a frequently reviewed periodic basis, will assure that the racial composition, the experience and the educational background of individual school faculties and administrative staff more nearly approach */ the city-wide proportions of minority, experienced, and more extensively trained professional staff; provided, however, that nothing in

*/ Plus or minus ten percentage points of city-wide averages for race, experience and training for each type of school facility.

this Plan shall require the assignment or transfer of any person to a position for which he or she is not professionally qualified. The Board will not adopt or follow assignment and transfer practices which will foreseeably result in the racial identifiability of schools based on faculty or administrative staff composition or in unequal distribution of experienced and more extensively trained staff.

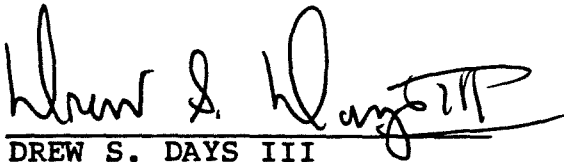
- 3.3 The failure of a particular school or schools to meet the guidelines will not constitute noncompliance with the above guidelines if the district provides a detailed satisfactory explanation justifying such failure to meet the guidelines.

Date

ENTER:

UNITED STATES DISTRICT JUDGE

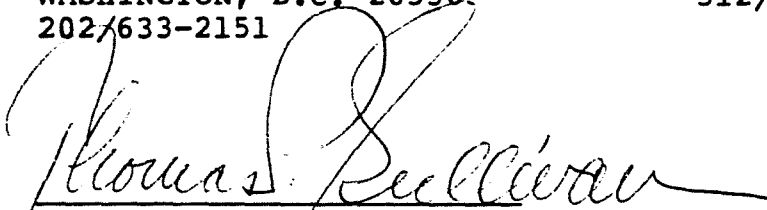
THE UNDERSIGNED CONSENT TO THE ENTRY OF THIS DECREE:



DREW S. DAYS III
Assistant Attorney General
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530
202/633-2151



ROBERT C. HOWARD
PRESSMAN & HARTUNIAN, CHTD.
55 E. Monroe Street (4005)
Chicago, IL 60603
312/372-6475



THOMAS P. SULLIVAN
United States Attorney
219 South Dearborn Street
Chicago, IL 60604
312/353-5300

Attorneys for the
United States of America

Attorneys for the
Board of Education of the
City of Chicago