UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendant.	)	No. 80 C 5124 Hon. Milton I. Shadur

BRIEF IN OPPOSITION TO THE RENEWED MOTION OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE TO INTERVENE

INTRODUCTION

The posture of this case remains as it was on September 4, 1981 when we filed our opposition to the intervention motion of five Chicago Aldermen. We adopt the introductory statements of that brief.

The NAACP has renewed its Motion to Intervene because it wants "to have meaningful input in the development of the final plan . . . . " (NAACP Brief, p. 15). The applicants for intervention base their argument on assertions that the United States "has accepted a plan it originally found unacceptable" (Id. at 19) and that this act caused the NAACP to discover that its interests needed to be protected by timely intervention. For the reasons set out below, the NAACP's Motion should be denied as both unwarranted and premature.

1. The NAACP seeks to accomplish through intervention what it already can do through the third-party procedure suggested

by the court, and there is thus no need to grant the motion at this time. On April 16, 1981, the court invited interested third parties to address suggested details of any desegregation plan to the School Board. To assist this process, the NAACP and other interested parties have been supplied with a quantity of detailed information about the Chicago public schools in appendices prepared by the Board and the United States. This includes past and present racial enrollment data for all schools, maps showing the location of schools, building capacities and the system's track record on voluntary desegregation programs (still missing are the results of voluntary transfers this fall. We have been informed by Board counsel that there have been delays in the computer-processing of this data but we are assured that the information will be available by the time scheduled for the completion of planning guidelines -- October 31). While little constructive comment has been provided to date, */ the information

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*/ In contrast, the United States has made, and continues to make, specific suggestions which it believes are constructive and at the same time are consistent with the proposition that it is the School Board's responsibility, in the first instance, to develop the details of its plan. For example, we have asked the Board (1) to determine whether the creation of tri-ethnic schools can produce more stably integrated schools, especially at schools which are conveniently located for all groups; (2) to promote group transfers of white students in order to desegregate more minority schools; (3) to take the severe isolation of black students into account and not treat all minority students as fungible to create statistical integration not involving blacks; (4) to use practicality as a standard rather than statistically defined desegregation standards; (5) to greatly expand the magnet school program if it is to be the main vehicle for desegregating minority schools; (6) to study groups of high schools as a unit for possible desegregative redistribution of feeder patterns and (7) to consider the reassignment of black students from schools located near white schools in order to make room for the integrative reassignment of white students.

furnished is more than sufficient to enable the NAACP or other third parties to make specific suggestions on the Board's development of a plan. In these circumstances, no useful purpose would be served by granting the present motion.

2. Nor has the United States yet taken any action to suggest the need for NAACP intervention. In our July 21, 1981, Response to the Board's Student Assignment Principles, we listed a number of serious concerns about the direction of the planning process -- concerns that were similar to those expressed by the NAACP as catalogued in its current brief (page 4). Our Response did not reject a desegregation plan, however; nor is the NAACP correct in its suggestion that the subsequent Joint Statement, which we filed with the School Board on August 28, 1981, in any way reflects the United States' acceptance of a desegregation plan. Rather, what we said in the Joint Statement was that it was no longer necessary for the court to order the Board to produce certain information concerning the planning process, since the Board had agreed to produce it voluntarily. */ The Joint Statement further states that clarifications and commitments made by the Board have resolved or allayed many of the earlier concerns of

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*/ In addition we have been supplied with a "Planning Outline" which was filed with the court on September 17, 1981 (which means that it was not available to the NAACP at the time it filed its present brief). Further, the NAACP has had available to it, for study and comment, the Board's draft student reassignment plan (made public in early April, 1981, but ultimately not adopted by the Board).

of the United States for the present. We have no reason to believe that the School Board is not responding to our concerns, such as the need to concentrate on the inclusion of black students in desegregation, in good faith, and the NAACP has supplied no basis for its assertion that our reliance on that good faith at this stage of the proceedings constitutes a failure of duty in representing the interests of the class the NAACP seeks to represent.

3. The NAACP's disagreement with us over the acceptability of the phasing aspects of the Board's plan (NAACP brief, pages 25-26) raises issues of law and fact over which reasonable parties can differ and which are further complicated at this stage of the proceedings by the existence of a situation in which the Board has yet to provide its practicality and justification data. Even so, such differences provide no legitimate basis for intervention. See United States v. Board of School Commissioners of the City of Indianapolis, 466 F. 2d 573, 575 (7th Cir. 1972), cert den., 410 U.S. 909 (1973) (differences of opinion do not mean that the United States is an inadequate representative of the applicants' interests). In December, all parties and the Court will be better able to assess the acceptability of the Board's plan.

4. Nor do we see any benefit to be gained by changing the nature of this case three months before the Board's final plan is due. The NAACP has not demonstrated -- as, indeed, it cannot -- that the Board's Principles will lead inevitably to an unconstitutional plan. Nor has it suggested specific changes in the

Principles that would insure constitutionality. The NAACP remains free to make any and all specific suggestions it may have to the Board. That process, instituted at the Court's behest, adequately serves the NAACP's interests, and fully protects its rights, during this interim period when the Board continues with the development of a comprehensive desegregation plan.

Intervention is thus not necessary, and applicants' present Motion should be denied.

Respectfully submitted,

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