

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

KALIMA JENKINS, et. al., )  
 )  
Plaintiffs, )  
 )  
VS. ) No. 77-0420-CV-W-4  
 )  
STATE OF MISSOURI, et.al., )  
 )  
Defendants. )  
 )  
 )



SUGGESTIONS IN SUPPORT OF MOTION TO INTERVENE

I. Description of Proposed Intervenors

Hashina Webster, Nia Webster, Ailey Pope, Kimberly Beasley, Arthur Beasley, Felicia Rhodes, and Christina Gravely are African American children who are now enrolled in either an elementary or secondary school of the Kansas City, Missouri School District (hereafter referred to as "KCMSD").

Shara Kennedy and Cassandra Young are African American students who recently attended KCMSD schools. Both young ladies were forced to withdraw from KCMSD schools and enroll in private schools because of the discriminatory and psychologically damaging denial of equal educational opportunities by the KCMSD.

Ajamu Webster is an engineer and president of DuBois Consultants, a local civil engineering company. As a parent and community activist, he has been actively involved in educational reform in the Kansas City, Missouri School District. He is a member of the

KCMSD's Educational Equity Task Force and previously served on the now defunct KCMSD Accountability Task Force. Mr. Webster is a former chairman of the School Advisory Committee (SAC) at Pinkerton Latin Grammar Elementary School and served on the planning task force for Paul Robeson Classical Greek Middle School. He is a member of the Board of Directors of the Black Chamber of Commerce of Greater Kansas City and the W.E.B DuBois Learning Center where he also tutors mathematics.

Carol Coe is a member of the Kansas City, Missouri City Council representing the Third Council District, which encompasses more KCMSD schools than any councilmanic district in the city. Prior to being elected to the City Council, Ms. Coe served on the Jackson County Legislature. As a parent and elected official, she has tracked implementation of the desegregation plan and is concerned about the failure of the parties to directly attack the vestigial effects of segregated schools on her constituency.

Ernestine Kennedy is Director of Adult Day Care at the Palestine Senior Citizens Activity Center. She has been actively involved with KCMSD schools for several years, is a graduate of KCMSD schools and was previously vice chair of the SAC at the Satchel Paige Classical Greek and Blenheim Elementary Schools. Although her daughter has enrolled in a private school for the 1994-95 school year because of KCMSD's failure to offer equal educational opportunities, she is interested in KCMSD becoming unitary so her daughter can return to the public school system.

Bea Sanders is an administrator for a federal agency. She was actively involved with the SAC at J.A. Rogers until she was forced to enroll her daughter in a private school

because of the discriminatory and psychologically damaging treatment her daughter received from KCMUSD administrative personnel.

Elizabeth Rhodes is a concerned and involved parent whose daughter, currently attending a KCMUSD middle school, is being denied equal educational opportunities during implementation of the desegregation plan.

Mona Hicks is chair of the SAC at Van Horn High School where the curricular practices and actions of KCMUSD personnel deny her daughter equality of educational opportunity.

Patricia Beasley has three children in KCMUSD's schools: a daughter at Southeast High School, a daughter at Southeast Middle School, and a son at Faxon Annex. Although all of her children are being adversely affected by KCMUSD's malfeasance and inequitable implementation of the desegregation plan, she is particularly concerned about the injuries inflicted upon her son by the inferior and substandard conditions at Faxon Annex.

## II. Circumstances Warranting Intervention in this Case

Among the vestiges found by the Court in this case was "low achievement" and "general attitude of inferiority among blacks," Jenkins v. Missouri, 593 F. Supp. 1485, 1492-93 (W.D. Mo. 1984). Despite this finding of the deleterious effects of the dual school system on the academic achievement of African Americans and in spite of frequent admonitions from the Desegregation Monitoring Committee (DMC), the parties have failed to effectively address the specific educational injuries and the stigma inflicted upon African American students (See DMC reports to the Court for the years 1991-93).

An analysis of the student achievement data published by the KCMSD leaves little doubt that desegregation programs and initiatives have not been sufficiently targeted to address the academic deficits and needs of the victims. On average, white students in the KCMSD are at or above state and national norms in virtually every subject at nearly all grade levels. They no longer suffer the ill effects of the "system wide reduction in achievement" found by the Court to be a vestige of segregation. However, the Court's finding of "low achievement and a general attitude of inferiority among blacks" persists. Commencing at grade 2 and continuing through out their schooling, on average, the African American students remain significantly (and in many areas substantially) below state and national norms. (See 1993 Student Achievement By School, Grade, and Racial/Ethnic Code).

The data also indicate that as students progress through the system from grade to grade, the gap in academic achievement levels between white students and African American students widens. A disturbing indicant of the lingering inequality of KCMSD's school system, after nine (9) years of the Milliken II quality education program, is that although African American and white students generally begin their school careers at near academic parity, by the time they graduate from KCMSD schools, the African American students are over three (3) full years behind their white counterparts in reading skills, and two and one-half (2 1/2) years behind in math skills.

"[The] success of quality education programs must be measured by their effect on the students, particularly those who have been the victims of segregation." Jenkins v. Missouri 11 F.3d 755, 766 (8th Cir. 1993). Applying the standard set by the Eighth Circuit in this case, the remedies requested by the parties have not been effective "and further action is

necessary in order to provide real and tangible relief to minority students". Freeman v. Pitts, 112 S.Ct. 1430,1447 (1992).

The fact that KCMSD and Plaintiffs are "friendly adversaries" in these proceedings cannot continue to be overlooked. While that relationship may have been appropriate during the liability phase, it has not been in the best interest of African American students during the remedial phase. Plaintiffs' posture during the recent hearing on conditions in the Traditional Schools (July 19, 1994) is emblematic of the problem.

Plaintiffs' counsel offered no evidence during those proceedings and in his opening statement seemed to blame the victims for their plight. Without offering any empirical data or probative evidence to validate his conclusions, he stated that "poor kids are from dysfunctional families" (see Transcript, 385); that their "families are not involved in their education" (see Transcript, 386); and that the problems of the Traditional Schools are caused by the socio-economic status of the students. (See Transcript, 386). This perspective undoubtedly impedes Plaintiffs' ability to accurately and adequately assess the lingering debilitating effects of KCMSD's inequitable educational delivery system or the unequal nature of the KCMSD's curricular programs and instructional methodologies.

Throughout this important phase of the litigation, all critical decisions relative to the educational interests of the African American children have been made without meaningful input from the victims or their parents. Because little has been done by the parties to remedy the most crippling and incapacitating vestige of "low achievement" and

"general attitude of inferiority among blacks," the intervention motion was filed by concerned African American parents -- parents who are committed to eradicating the stigmatizing vestiges of KCMSD's dual system of education. Parents who believe that the Court, not the constitutional violators and not the Plaintiffs' counsel must be the final arbiter of the victims' rights.

### III. In Light Of The Circumstances Permission To Intervene Should Be Granted

When a school system has been found to be racially segregated, Brown II imposes an affirmative duty on local school boards to take whatever steps are necessary to convert the system to a unitary one where racial discrimination has been eliminated "root and branch," Green v. School Board of New Kent County, 391 U.S. 430, 437-439 (1968). A school board's failure to discharge that duty compounds the original constitutional violation caused by the operation of a segregated system. Dayton Board of Education v. Brinkman, 433 U.S. 406, 414 (1977). While such a failure might conceivably be the predicate for a new lawsuit, the courts have determined that it should not.

In Hines v. Rapides Parish School Board, 479 F.2d 762 (5th Cir. 1973), the Court reasoned that while "every group must be allowed the opportunity to show the Court that the desired and legally required unitary school system has not been achieved by an earlier court order," the interest of avoiding undue confusion and a multiplicity of lawsuits makes a petition to intervene in the existing desegregation action rather than the initiation of an new lawsuit the best vehicle for presenting such claim. Id. at 765.

In Hines, the court held that intervention is the appropriate method for parents or organizations to question deficiencies in the implementation of desegregation orders.

The Hines court also identified the nature of the information that must be contained in a school intervention petition as well as factors district courts should look for when evaluating the merits of such a petition. Judge Morgan, writing for the Court, explained that:

[the] petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent and the ways in which the goal of a unitary system had allegedly been frustrated. The district court could then determine whether these matters had been previously raised and resolved and/or whether the issues sought to be represented by the new group were currently known to the court and parties in the initial suit. If the court determined that the issues these new plaintiffs sought to present had been previously determined or if it found that the parties in the original action were aware of these issues and completely competent to represent the interests of the new group, it could deny intervention. If the court felt that the new group had a significant claim which it could best represent, intervention would be allowed.

479 F2d. at 765.

In addition to the factors stated in Hines, there are factors established by Rule 24 of the Federal Rules of Civil Procedure for intervention in a federal lawsuit.

Intervention in a school case may be ordered under the permissive intervention standards of F. R. Civ. P. 24(b) which provide, in pertinent part, that "[upon] timely application anyone may be permitted to intervene in an action ... when an applicant's claim or defense and the main action have a question of law or fact in common." The Rule also provides that "[in] exercising its discretion the court shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

While the decision, whether to permit intervention, is a matter left to the sound discretion of the trial court, NAACP v. New York, 413 U.S. 345, 365, 93 S.Ct. 2591, 37

L.Ed.2d 648 (1973), petitions by parents alleging serious breakdown in the school desegregation processes should be reviewed with a receptive eye. See Graves v. Walton County School Board of Education, 686 F.2d 1135 (5th Cir. 1980). In Graves, when finding that a trial court had abused its discretion by denying intervention, the circuit court stated:

This court has long recognized the intense interest of parents in the education of their children, and it has been solicitous of their opportunity to be heard. Intervention in suits concerning public schools has been freely allowed, and we see no reason why it should be denied here, especially in view of the lack of prejudice to other parties. Should future conduct indicate a different motive on the part of the concerned parents, the district court may take appropriate action.

Id. at 1142, n.5. See also, Liddell v. Caldwell, 546 F. 2d 768 (8th Cir. 1976).

There are compelling reasons why intervention should be allowed here. As parents, the proposed intervenors have a vital interest in the education of their children. See Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); Graves v. Walton County Board of Education, 686 F.2d. at 1142, n.5. They also have an expectation, based on Brown v. Board of Education and its progeny, that their children will not have to attend an illegal dual school system. However, the failure of the existing parties in this case to devise and implement an effective plan to eliminate the lingering vestige of "low achievement" and "general attitude of inferiority among blacks" has seriously thwarted that expectation and promises in the future to preclude their children (as well as thousands of other African American children) from ever recovering from the ill-effects of a segregated school system.



Given the fundamental importance of the constitutional right at stake, the long-term inability or unwillingness of the parties to develop a plan to eliminate all the vestiges of segregation in order to provide the victims with real and tangible relief, the lack of any prejudice that would result from allowing intervention here, the fact that a vigorous and creative voice would be added to the cast of principals in this case, the disregard for educational interests of the African American students, and the fact that there are no overriding reasons under the Hines guidelines or Rule 24 for denying intervention, granting intervention here and now would not only be appropriate but would materially advance the interest of justice.

In Graves v. Walton County Board of Education, *supra*, the Fifth Circuit stated that "[intervention] in suits concerning public schools has been freely allowed, and we see no reason why it should be denied here, especially in view of the lack of prejudice to the other parties." 686 F.2d at 1142, n.5. It is improbable, in view of the nature of this intervention motion, that any prejudice would occur to any of the parties as a result of the parents' inclusion in this case.

If anybody, in fact, has reason to complain of prejudice, it is the African American children of the KCMSD who have had to endure inequitable and ineffective curricular practices and racially isolated school settings because of the continuing failures of the parties. For its part, the KCMSD has neglected its traditional schools, most of which are inferior and racially identifiable, despite a clear constitutional duty to develop effective educational improvement programs for those schools. The KCMSD has failed to comply with its continuing obligation to use its resources to eradicate all the effects of

its historically segregated school system and seems to have forgotten about the educational interests of its African American students. For too long, the KCMSD has inappropriately treated the process of desegregation as a process that focuses solely on integrating the schools. The KCMSD should have proceeded, to adjust or modify the sequence of its capital improvement projects to accommodate the needs of the victims of discrimination who attend traditional schools when it became apparent that old buildings and annexes would have to be utilized. It should have devised and implemented victim specific programs to address the academic injuries of the African American students. Its failure to treat the desegregation process as an ongoing function of both integration and eradication of vestiges is, in large measure, the reason why this motion for intervention is necessary today.

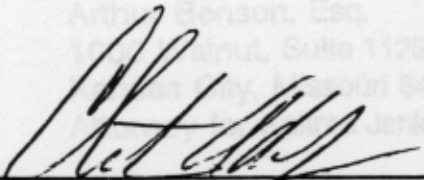
Another reason why intervention is necessary, however, stems from the disquieting failure of the other parties to fulfill their responsibilities to the African American children of the KCMSD and, indeed, to this Court. This case was instituted for the purpose of achieving desegregation in the KCMSD public schools. It was initiated on behalf of the African American students of the KCMSD to provide *them* with relief from the damages inflicted by defendants' discriminatory conduct. Somehow, the parties failed to pursue victim specific remedies for the African American children. Somehow, the parties seemed to lose sight of or chose to ignore the vestige of "low achievement" and "general attitude of inferiority among blacks." Somehow, in the midst of so many African American children attending inferior and racially identifiable

facilities, the parties forgot or ignored the plight of these students and the objective of the capital improvements program.

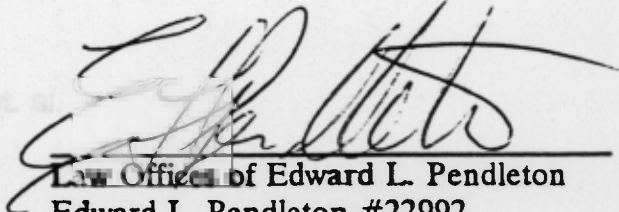
IV. Conclusion.

For the reasons discussed in these suggestions, as well as for the reasons contained in the accompanying Motion To Intervene, the movants should be allowed to intervene in this action as party plaintiffs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Intervene, Complaint in Intervention, and Suggestions in Support of Motion fo Intervene were mailed on this 1 day of December 1994 to:

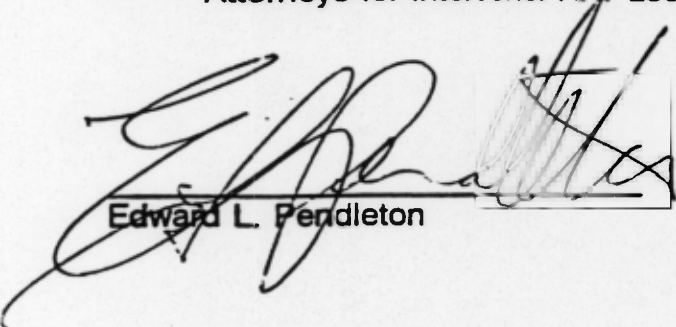
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