

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



KALIMA JENKINS, et al.,)
)
Plaintiffs,)
)
vs.)
)
STATE OF MISSOURI, et al.,)
)
Defendants,)
)
MARK ANTHONY NEVELS, by his)
next friend, MARK TODD)
NEVELS;)
)
ANTHONY GREEN, by his next)
friend, ANNIE VANN;)
)
and)
)
MARCUS JONES, by his next)
friend, DIANE JONES,)
)
Movants.)

No. 77-0420-CV-W-4

MARK ANTHONY NEVELS, ET AL.'S MOTION
TO MODIFY LONG RANGE MAGNET SCHOOL PLAN

COME NOW Movants Mark Anthony Nevels, by his next friend, Mark Todd Nevels; Anthony Green, by his next friend, Annie Vann; and Marcus Jones, by his next friend, Diane Jones, by and through their attorneys of record, and pursuant to the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. Sections 1981 & 1983 move this Court to modify its November 12, 1986 order approving the KCMSD Long Range Magnet School Plan with respect to the magnet school admissions racial quota policy currently in effect, on the following grounds:

1. Movants are black public schoolchildren enrolled in

the School District of Kansas City, Missouri (hereinafter "KCMSD" or "the district") who are presently, and in the future may be, precluded from attending the KCMSD magnet school of their choice as a result of the magnet school admissions racial quota policy established by the district and approved by this Court. Just prior to the beginning of school on September 5, 1989, these Movants -- who had appeared on waiting lists for magnet schools they desired to attend, and for which space was available -- were assigned to traditional schools which will provide them an inferior education; these assignments are the direct result of the district's magnet school racial quotas. Movants bring this action through their parents and next friends.

2. Movants are members of the class of students certified by this Court in its February 27, 1985 order, to-wit: "a class consisting of all present and future elementary and secondary education students in the Kansas City, Missouri School District." (Order of February 27, 1985 (Doc. #1060) at 2.)

3. On November 12, 1986, this Court entered its order (Doc. #1237) approving the KCMSD Long Range Magnet School Plan and authorizing implementation of the plan over a six-year period. As part of the plan, certain racially-based admissions guidelines were established to enhance "integration in the KCMSD, consistent with fairness to magnet program applicants and the importance of providing choices of magnet programs to as many students as possible." (KCMSD Long Range Magnet School Plan at 17.) The plan provided that "[t]hese guidelines shall to) be applied to each grade separately." (Id.)

5. Movants are suffering, and will continue to suffer, irreparable injury as a direct result of the 60%-40% magnet school racial quota admissions policy established by the KCMSD

be reexamined by the District Court annually and revised to further these goals. In particular, as nonminority nonpublic and suburban students come into the system, the maximum percentages of minority students should be reduced." (Id.)

4. The plan also established the following racial quota admissions policy:

[2]d. All other timely applications will be accepted on a first-come, first-serve basis, within a specified application period. For each four nonminority students admitted, six minority students will be admitted until the program is filled or applications of nonminority or minority students run out.

i. If applications of nonminority students run out, minority students will continue to be accepted until the program is filled or until the minority percentage reaches a maximum level of 2% lower than the minority percentage in that school in the preceding school year. For example, at a magnet program opening in 1987-88, if applications of nonminority students run out before the program is filled, and the school was 86% minority in 1986-87, applications of minority students will continue to be accepted until the program reaches a maximum of 84% minority. If, in fact, the program is filled at a level of 76% minority, 74% would be the maximum for the following year, although the District should attempt each year to increase the 2% level of reduction.

ii. If applications of minority students run out, nonminority students will continue to be accepted until the program is filled or the nonminority percentage reaches 50%.

(Id. at 18.) These "racial composition guidelines . . . [are to] be applied to each grade separately." (Id.)

5. Movants are suffering, and will continue to suffer, irreparable injury as a direct result of the 60%-40% magnet school racial quota admissions policy established by the KCMSD and currently in place for the 1989-90 school year. This racial

quota has the effect of limiting the number of black schoolchildren who can attend a KCMSD magnet school of their choice, thus denying certain otherwise eligible black schoolchildren, including Movants, the same educational opportunity to participate in, and benefit from, the KCMSD magnet school program as that presently enjoyed by white schoolchildren. Although presumably the beneficiaries of the court-ordered desegregation remedy imposed, Movants and other similarly-situated black students have been denied the equal protection of the laws by the present quota policy.

6. Representatives of these Movants, and of a significant portion of the black community in Kansas City, have repeatedly approached class counsel (and the architect of the magnet school plan), Mr. Arthur A. Benson II, requesting his agreement to seek modification of the magnet school admissions quotas along lines set forth herein. Although class counsel has sought modification of certain other aspects of the magnet school plan, he has steadfastly refused to seek the relief now prayed for by these Movants. In fact, Mr. Benson has made public statements voicing his opposition to the relief sought by Movants and, further, stating unequivocally his unwillingness to listen to or represent the interests of the black community on this and related issues.

7. Class counsel has a conflict of interest in his continued representation of the interests of present and future white students being recruited for KCMSD magnet schools against

the interests of current and future black students, such as Movants, denied equal access to magnet schools as a result of these racial quotas.

8. Movants' constitutional rights and interests are being jeopardized by the magnet school admissions quotas in effect. These rights and interests clearly are divergent from those represented by class counsel. These rights and interests are not being, and will not be, adequately represented or protected by class counsel. Movants have the right to separate representation of their adverse interests.

9. In support of this motion, Movants respectfully submit the accompanying memorandum of facts and law.

WHEREFORE, Movants Mark Anthony Nevels, et al. pray this Court modify its prior order approving the KCMSD Long Range Magnet School Plan with respect to the magnet school admissions quotas and enter its order:

- (a) authorizing Movants' separate representation;
- (b) modifying the Long Range Magnet School Plan so that
 - (i) the race-based admissions quotas are removed as mandatory guidelines and replaced as enrollment goals;
 - (ii) regardless of the corresponding nonminority enrollment in KCMSD magnet schools or grade levels wherein a 60% minority admissions ceiling currently is in effect, minority students shall be granted access to admission to at least 60% of student positions

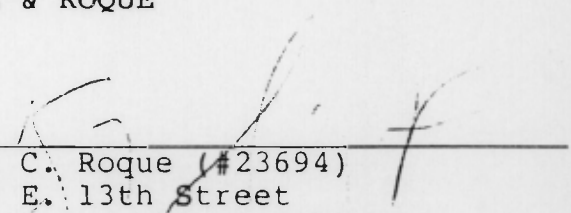
available in those schools or grade levels; and
(iii) regardless of the corresponding nonminority enrollment in KCMSD magnet schools or grade levels wherein a 2% minority reduction quota currently is in effect, minority students shall be granted access to admission to at least the number of student positions available that will permit the 2% minority reduction to occur in those schools or grade levels;
(c) for such other and further relief as the Court deems necessary and proper.

WRITTEN REQUEST FOR ARGUMENT AND HEARING

Pursuant to Local Rule 13A, Movants Mark Anthony Nevels, et al. hereby request this Court schedule argument and an evidentiary hearing on their Motion to Modify Long Range Magnet School Plan at the Court's earliest convenience.

Respectfully submitted,

PAYNE & ROQUE

By 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by first-class U.S. mail, postage prepaid, this 21 day of September, 1989 to:

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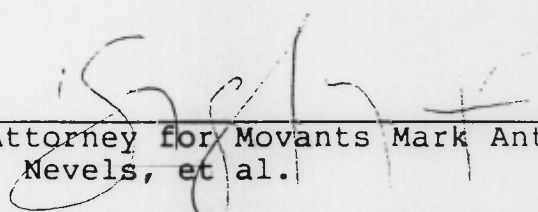
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