[ms-0234.002.003.014]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

KARI CARLIN, et al., Plaintiffs, v. BOARD OF EDUCATION, et al., Defendants.	)	No. 303800 MEMORANDUM OF INTENDED DECISION

In compliance with an order dated November 28, 1977, the San Diego Unified School District has filed its revised "Plan for Racial Integration, 1978-82." It now becomes the duty of the court to determine if the plan ". . . promises to achieve meaningful progress[1/] toward eliminating . . . [school] segregation . . . ." (286).[2/]

1/ All underlining is supplied unless otherwise indicated.

2/ All unidentified page numbers refer to Crawford v. Board of Education (1976) 17 Cal.3d 280. "San Bernardino" refers to National Association for the Advancement of Colored People v. San Bernardino (1976) 17 Cal.3d 311.

A unanimous school board on recommendation of its staff has proposed an all voluntary plan and the Citizens Advisory Commission for Racial Integration (CACRI)[3/] approved the plan without dissent.[4/] There are five members of the board of education, the president of which is a black minister who has served on the board for more than fourteen years; staff that developed the plan worked under the immediate supervision of a black educator and members of the citizens' commission include the leaders of the National Association for the Advancement of Colored People, the Urban League and the Chicano Federation.[5/]

This court is mindful of the Supreme Court's statement that

> "plans developed and implemented by local school boards, working with community leaders and affected citizens, hold the most promising hope for the attainment of integrated public schools . . ." (286).

The high Court's guidance includes the observation that a plan is not "invalid simply because it relies upon voluntary actions of parents and students . . .' [T]here might be no objection to allowing

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3/ The commission consists of eleven whites, three blacks, one Filipino and one Hispanic.

4/ The vice-chairman of CACRI, who is president of the Urban League, testified that he had approved the plan for secondary schools but not the one for elementary schools. He was not present on January 23, 1978 when the commission voted on the elementary school segment. Yet the minutes of the commission on subsequent dates (January 25, February 3, February 6, February 8, February 15, February 22 and March 1) contain no objection to the plan by the vice-chairman.

5/ The Chicano Federation was granted permission to appear as amicus curiae on October 29, 1976. From time to time its counsel was present during court hearings, yet no briefs were filed and no presentation was made.

such a device to prove itself in operation' . . ." The ultimate test, the Court stated, is whether the plan produces meaningful progress toward desegregation. (San Bernardino, Fn. 19, pp. 327-328).

Should this all voluntary plan be allowed to prove itself in operation? If the district's ongoing programs have produced meaningful progress and planned programs promise to continue such progress, then complete and immediate desegregation of all of the district's schools is not constitutionally required (Fn. 18, p. 306). The key to judicial deferment, we are told, is the "school board's demonstration of its commitment to the necessity of immediately instituting reasonable and feasible steps to alleviate school segregation . . ." (306).

Has the board demonstrated a commitment to immediately institute reasonable and feasible steps to alleviate segregation? Have the board's programs produced meaningful progress? Do they promise to continue such progress? The Voluntary Ethnic Enrollment Program (VEEP), site and teacher initiated projects, compensatory education programs, magnet schools, learning centers and secondary exchange programs have produced meaningful progress. Only time will reveal what progress we can expect in the future. Crawford cautions the trial court to ". . . stay its hand even if it believes that alternative techniques might lead to more rapid desegregation." "We have learned," the Supreme Court states "that the fastest path to desegregation may result in resegregation . . ." (286). In the only reported decision on the subject since Crawford, the

District Court of Appeal in Los Angeles observed:

> "The history of performance of trial and appellate courts in this country in involvement with the operation of schools and school districts unfortunately has too often been one of over involvement rather than restraint." (Bustop v. Superior Court (1977), 69 Cal.App.3d 66 at 73.)

Respecting these admonitions, this court will conditionally approve the plan and evaluate its actual operation through court appointed monitors. The voluntary plan should have its chance.

CONDITIONS

The conditions are the following:

1. Additional Elementary Learning Centers shall be planned so as to include participation therein by substantially all minority isolated children in grades 4 to 6 who are not otherwise enrolled in magnet programs or VEEP. The program should be handled in the same way as the Balboa Park and Camping Programs, that is, all children should be included except those whose parents opt out. Consideration should be given for the use of neutral locations to reduce travel time and the disparity between neighborhoods.

This program has the advantage of providing an integrated educational experience one day each week while maintaining the security of the neighborhood school. 6/

6/ Sixty-five percent of the children enrolled in this program had never before attended a racially mixed school (Kaplan survey).

In making this condition the court took into consideration the Kaplan survey's finding that 87 percent of black parents, 83 percent of Hispanic parents, 68 percent of Pan Asian parents and 75 percent of white parents favored the program and thought it should be continued.

2. At the secondary level, the Secondary Instructional Exchange Program should be expanded and operated on an "opt-out" basis insofar as possible.

3. The voluntary pairing and clustering proposal set forth in the board's original plan submitted on June 12, 1977 (pages 131-138) and recommended by CACRI in the Spring of 1977 should be reinstated.

4. The proposal for the Secondary Bilingual Centers at Collier Junior High School and Point Loma High School shall proceed according to plan.

5. Optional zones shall be eliminated by September of 1979, as planned.

6. The board will submit to the court on or before June 8, 1979, its determination concerning the effectiveness of the all voluntary plan; whether it has, in fact, produced meaningful progress toward the further elimination of segregation and whether limited mandatory assignments of pupils will be necessary for the following academic year.

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The court wishes to caution the district against the expenditure of large sums of money for ambitious magnet schools that cannot realistically be considered to have a significant effect on desegregation. The Dailard Performing Arts magnet and the one contemplated for a minority school are extremely expensive and will accommodate relatively few minority students. Moreover, it is not unlikely that the minority students who will be attracted to Dailard shall be those who are already enrolled in desegregated schools.[7/] Transportation costs to magnet schools are much greater than those for paired or clustered programs. With magnets, those applying from all over the district must be transported to one location. The court suggests that it may be more sensible to concentrate effort and funds where it is most likely to pay off, i.e., fundamental schools, bilingual programs,[8/] learning centers, secondary instructional exchange programs, pairing and clustering and other magnet schools that are likely to accommodate a relatively substantial number of minority isolated children.

EVALUATION

Both sides have proposed mathematical formulae to be used for evaluation of the program. But an accurate evaluation cannot

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7/ One such example is Longfellow Intercultural Magnet. Of 168 minority students, only 60 come from minority schools. The balance, 108, were already enrolled in racially balanced or white isolated schools.

8/ Kaplan survey revealed that the largest percentage of white parents (31%) and black parents (33%) prefer the fundamental magnet. The largest percentage of Hispanic parents (33%) prefer bilingual schools. Enrollment patterns in existing magnet schools confirms this preference.

be made by the use of statistical manipulations. As noted by Michael Madigan, the Mayor's representative to CACRI, the school's evaluation plan "leaves open the qualitative measures such as determining what happens when students actually get on the campus."[9/]

The court will observe the progress of the program and evaluate the plan through an Integration Task Force which will be formed under the chairmanship of Chief of Police William B. Kolender. This task force will appoint monitors (balanced individuals in each community) who will visit all minority isolated, tipping magnet and "receiving" schools to observe and report the progress of the integration plan.[10/] Its objective will be to evaluate the program as it affects individual children; to concentrate on the substance of integration not just the form of racial balance. The latter is continuously changing so that even if schools are balanced, there is great probability that before long they will again become imbalanced[11/]

9/ CACRI Meeting, January 18, 1978. Plan Vol. II.

"For too long the courts, legislators, schoolmen and social scientists have been obsessed with questions of quantity rather than quality, with mathematical ratios, quotas and balance, rather than with the educational process itself. The real test -- to translate desegregation into integration still remains." (St. John, School Desegregation, at xii).

10/ The court contemplates a monitoring program similar to the one used in Denver. See Limits of Justice, Kalodner and Fishman, 1978 pp. 210-214.

11/ "Even if one assumes that a desegregation decree will be neutral in its impact on . . . population movement, a continuation of the [movement by white families to the suburbs] will leave very little white school population with which to integrate." Ibid. at p. 14.

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(See Exhibit 4N's and Pasadena City Board of Education v. Spangler, (1976) 427 U.S. 424).

An integrated educational experience is helpful to many minority youngsters. It helps them to better prepare for a constructive, creative role in our multi-racial society; it increases their chances for success and perhaps most important it expands their horizons. It gives them confidence and the required motivation to seek and get a share of the wealth of this great nation.[12/]

Our goal must therefore be to choose the methods that appear most likely to give every youngster who desires it unlimited opportunity while at the same time, protecting others who may be harmed by separation from their "home-school" or neighborhood environment. This must be done in a way that will encourage participation by all races, allay parental fears and encourage middle class families to remain within the system. The program must discriminate for the student's welfare, not against him. Such a course of action is the on that will be "reasonably feasible."

Dated: 12 JUN 1978

Lorin H. Welsh
Judge of the Superior Court

12/ "Several students interviewed reported that the best thing they got out of transferring was, seeing new neighborhoods in San Diego; how different the kids are -- they dress all kinds of ways; . . . to look at nice homes and wish you lived there." Evaluation of the Voluntary Ethnic Enrollment Program prepared by L. E. Orcutt & Associates, Inc. (Court's Exhibit C to hearing of May 17, 1978.)

". . . the detriments traditionally identified with segregated education rest in significant part outside the academic sphere." It is the "isolated setting, apart from students who make up a majority of the nation's population" that imposes "psychological and sociological burdens" on minority children (296).

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