

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
ORLANDO, FLA.

APR 6 1962

JULIAN A. BLAKE
CLERK

_____)
EVELYN R. ELLIS, a minor, by JOHN P. ELLIS,)
her father and next friend;)
ARETA G. FRITCHETT, a minor, by ALTAMESE L.)
PRITCHETT, her mother and next friend;)
DANNY CURRY and ZERENA CURRY, minors, by)
WILLIE LEE CURRY, their father and next)
friend;)
CLAUDIA WARE, a minor, by EMMA GAINES, her)
mother and next friend;)
LUTRICIA HENDERSON, a minor, by MARY L.)
HENDERSON, her mother and next friend;)
SYRIAL D. KINSLER and WINSTON K. KINSLER,)
minors, by MORRIS STARKE, their guardian and)
next friend;)
PAMELA WOODLEY, a minor, by GGEORGIA N.)
WOODLEY, her mother and nest friend;)
EVERETT L. WILSON, a minor, by DELORES LANCE,)
his mother and next friend,)

Plaintiffs,)

vs.)

R. EARL KIPP, as Superintendent of the Board)
of Public Instruction of Orange County,)
Florida, MRS. FLORENCE FISHBACK, as Chairman)
of the Board of Public Instruction of Orange)
County, Florida, and MRS. BETHEL TURNER,)
WILSON LEONARD and KENNETH W. FOLKS, as)
Members of the Board of Public Instruction of)
Orange County, Florida,)

Defendants. .)
_____)

1215-Orl civ.

COMPLAINT

Jurisdiction

1. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1343(3), this being an action which is authorized by law, Title 42, United States Code, Section 1938, to be commenced by any citizen of the United States

to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and by Title 42, United States Code, Section 1981, as hereinafter more fully appears.

Type of Proceeding

2. This is a proceeding for a permanent injunction enjoining defendants from continuing to pursue their policy, custom and usage of operating a compulsory biracial school system in Orange County, Florida and for further relief as hereinafter more fully appears.

3. This proceeding is brought as a class action by the named adult plaintiffs on behalf of their minor children and on behalf of all other children in Orange County similarly situated, pursuant to the provisions of Rule 23(a)(3) of the Federal Rules of Civil Procedure. The plaintiffs and the members of the class which they represent are all minor Negro children and their parents who are citizens of the United States and of the State of Florida. All of the minor plaintiffs are eligible to attend and are presently attending public schools limited by the defendants to attendance by Negro children. The minor children and all similarly situated are similarly affected by the policy, practice, custom and usage of defendants in operating a compulsory biracial school system in Orange County, Florida. The members of the class are so numerous as to make it impracticable to bring each member of the class individually before this Court, but there are common questions of law and fact involved affecting the several rights of the members of the class and a common relief is sought for the plaintiffs and for each member of the class. The plaintiffs herein fairly and adequately

represent the class.

Plaintiffs

4. The plaintiffs in this case are: Evelyn R. Ellis, a minor, by John P. Ellis, her father and next friend; Areta G. Pritchett, a minor, by Altamese L. Pritchett, her mother and next friend; Danny Curry and Zerena Curry, minors, by Willie Lee Curry, their father and next friend; Claudia Ware, a minor, by Emma Gaines, her mother and next friend; Lutricia Henderson, a minor, by Mary L. Henderson, her mother and next friend; Syrial D. Kinsler and Winston K. Kinsler, minors, by Morris Starke, their guardian and next friend; Pamela Woodley, a minor, by Alfred N. Woodley, her mother and next friend; Everett L. Wilson, a minor, by Delores Lance, his mother and next friend. The minor plaintiffs and their guardinas are Negro citizens of the United States and of the State of Florida, residing in the City of Orlando, Florida, which is located in Orange County, Florida. Each minor plaintiff is eligible under the laws of the State of Florida to attend the public schools operated by the defendant in this case. Each minor plaintiff is presently enrolled in a Negro public school under the jurisdiction, management and control of defendants.

Defendants

5. The defendants in this case are the Board of Public Instruction of Orange County, Florida and R. Earl Kipp,^{as} Superintendent of the Board of Public Instruction of Orange County, Florida; Mrs. Florence Fishback, as Chairman of the Board of Public Instruction of Orange County, Florida; and Mrs. Bethel Turner, Wilson Leonard and Kenneth W. Folks, as Members of the Board of Public Instruction of Orange County, Florida. The Board of Public Instruction maintains and operates the public school system of Orange County, Florida, pursuant to the laws of the State of Florida. The defendant R. Earl Kipp is the

Superintendent of Public Instruction of Orange County, Florida, and, as such, is the chief administrative officer of the Board of Public Instruction of Orange County, Florida. All of the defendants are sued in their official capacity.

Policy of Which The Plaintiffs Complain

6. Plaintiffs allege that defendants, acting under color of the laws of the State of Florida, have pursued and are presently pursuing a policy, custom and usage of operating a compulsory biracial school system in Orange County, Florida. The biracial school system operated by defendants consists of a primary system of elementary schools, junior high schools and senior high schools limited to attendance by white children residing in Orange County. The schools in this primary system are staffed by white teachers, white principals and all other white professional personnel. These schools are located in various parts of the County; but, regardless of location, these schools may be attended by white children only. The defendants also maintain a secondary system of "colored" schools or "Negro" schools limited to attendance by the Negro children residing in Orange County. These schools are likewise located in various parts of the County and regardless of location may be attended by Negro children only. These schools are staffed entirely by Negro personnel. The teachers are all Negroes. The principals are all Negroes and the other professional personnel is all Negro.

The compulsory biracial school system came into existence as a result of the requirements of state law and is presently continued, maintained and perpetuated by defendants as a matter of policy, custom and usage. Certain schools in the system have long been designated and have long been known as Negro schools and certain schools have long been designated and have long been known as white schools. A dual set of elementary schools have long been and are presently maintained by defendants. One set of lines relates to the attendance areas for the Negro

elementary schools and one set relates to the attendance areas for the white elementary schools. These lines overlap where Negro and white children reside in the same residential area and where separate Negro and white elementary schools have been constructed close to each other. Negro children attending certain Negro elementary schools, upon promotion, attend certain designated Negro junior high schools, where such Negro junior high schools exist in conjunction with Negro elementary schools. White children attending certain designated white elementary schools, upon promotion, attend certain designated white junior high schools where such white junior high schools exist in conjunction with white elementary schools. Negro children attending certain designated Negro junior high schools, upon graduation, attend certain designated Negro high schools. White children attending certain designated white junior high schools, upon graduation, attend certain designated white high schools. The racial policy, custom and usage presently pursued by defendants with respect to professional school personnel is that Negro teachers may teach only in Negro schools and white teachers may teach only in white schools. The same policy, custom and usage applies with respect to principals and other regular professional personnel. This racial policy was also originally decreed by State law and is now followed, maintained and perpetuated by defendants as a matter of policy, custom and usage.

Plaintiffs further allege that pursuant to the policy, custom and usage of operating a biracial school system in Orange County, Florida, certain of the public schools of the County are limited to attendance by Negro students, including some of the minor plaintiffs who reside nearer to schools limited to white students, who are required to attend schools limited to Negro students which are considerably removed from their places of residence. In some instances, some of the minor plaintiffs and other minor Negroes similarly situated are required to travel

long distances to attend a Negro Public School, whereas they reside nearer to schools designated by the defendants as exclusively white schools.

Defendants' Refusal to Change the Policy

7. Defendants were formally petitioned by Negro parents of children eligible to attend the public schools of Orange County, Florida, to abolish racial segregation in the Public School System. Despite this petition directed to the defendants, defendants have failed and refused to discontinue the policy, custom and usage of operating a compulsory biracial school system in Orange County, Florida. Defendants' refusal to change the said policy operates to prevent minor plaintiffs and others similarly situated from being assigned by defendants to white schools nearer to the places of residence of said minors to which said minors would be assigned if they were white and which they presently desire to attend.

Administrative Remedies

8. Plaintiffs have not exhausted remedy provided by the Florida Pupil Assignment Law for the reasons that the remedy provided is inadequate to provide the relief sought by the plaintiffs in this case and the Fifth Circuit has held that said remedy need not be exhausted prior to invoking the jurisdiction of this Court.

Plaintiffs allege that the defendants have not applied the criteria of the Pupil Assignment Law as a means of effecting desegregation of the public school system of Orange County, but have employed that law as a means of maintaining and preserving segregation. Plaintiffs further allege that the criteria of the Florida Pupil Assignment Law have been applied by defendants only in those cases where Negro children have sought admission to white schools.

9. Plaintiffs allege that all of defendants' budgets relating

to the operation of the schools contain racial designations based on the fact that there is in operation a compulsory biracial school system. All new school construction plans proposed, adopted and executed by defendants are based upon the fact that there is in operation a compulsory biracial system of schools. All funds appropriated and expended by defendants are also appropriated and expended by defendants separately for Negro schools and separately for white schools.

10. Plaintiffs allege that as a result of the operation of the school system on a racially segregated basis many parts of the school curriculum are open only to white pupils and white teachers.

Irreparable Injury

11. Plaintiffs and the members of the class which they represent are injured by the operation of a compulsory biracial school system in Orange County and by the refusal of the defendants to reorganize the biracial school system into a unitary non-racial system. The operation of a compulsory biracial school system in Orange County violates rights secured to plaintiffs and members of their class by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The plaintiffs and members of their class are irreparably injured by the policy of assigning teachers, principals and other professional school personnel on the basis of race and color of the children attending the school to which such personnel is to be assigned. The injury which plaintiffs suffer is irreparable and will continue to be irreparable until enjoined by this Court. Any other relief to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience not only to plaintiffs and those similarly situated as pupils and parents of

Orange County but also to defendants as public school officials.

WHEREFORE, plaintiffs respectfully pray that this Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a decree enjoining defendants, and each of them, their agents, employees, successors, and all persons in active concert and participation with them, from continuing to operate a compulsory biracial school system in Orange County, Florida.

2. Enter a decree enjoining defendants, their agents, employees, successors, and all persons in active concert and participation with them, from continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based upon race and color.

3. Enter a decree enjoining defendants, their agents, employees, successors and all persons in active concert and participation with them, from assigning pupils to schools in Orange County on the basis of race and color of the pupils.

4. Enter a decree enjoining defendants, their agents, employees, successors, and all persons in active concert and participation with them, from assigning teachers, principals and other professional personnel to the schools of Orange County on the basis of the race and color of the persons to be assigned and the race and color of the children attending the schools to which the personnel is to be assigned.

5. Enter a decree enjoining defendants, their agents, employees, successors and all persons in active concert and participation with them, from approving employment contracts and construction programs and approving policies, curricula and programs which are designed to perpetuate or maintain or support a school system operated on a racially segregated basis.

In the alternative, plaintiffs pray that this Court enter a decree directing defendants to present a complete plan, within a period of time to be determined by this Court, for the

reorganization of the entire school system of Orange County into a unitary, non-racial school system which plan shall include a plan for the assignment of children on a non-racial basis; the assignment of teachers, principals and other professional school personnel on a non-racial basis; the allotment of funds on a non-racial basis; the approval of budgets on a non-racial basis; and the elimination of any other discrimination or distinction in the operation of the school system or in the school curricula which are based solely upon race and color.

Plaintiffs pray that if this Court directs defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full implementation of defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant them such other, further, additional or alternative relief as may appear to the Court to be equitable and just.

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