IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-M-2313

CONGRESS OF HISPANIC EDUCATORS, et al.,
Plaintiff-Intervener,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervener

v.

SCHOOL DISTRICT NO. 1,
DENVER, COLORADO, et al.,
Defendants.

4/21/99
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COMPLAINT-IN-INTERVENTION

The United States of America, plaintiff-intervener, alleges as follows:

1. This complaint-in-intervention is filed by the Attorney General of the United States on behalf of the United States, pursuant to the Educational Opportunities Act of 1974, 20 U.S.C. § 1701 et seq., Title VI of the Civil Rights Act of 1964, 42 U.S.C.§ 2000d, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, as well as the implementing regulations of Title VI, Section 504, and Title II found, respectively, at 34 C.F.R. § 100, 34 C.F.R. § 104 et seq. and 28 C.F.R. § 35 et seq.

2. This Court has jurisdiction under 28 U.S.C. § 1345 and 20 U.S.C. § 1708.

3. Defendant Board of Education of Denver Public Schools is a body public and as provided by 2 Colo. Rev. Stat. § 22-32-103(1995) is responsible for the administration of services for limited English proficient (hereinafter "LEP") students and special education services for all persons within Denver Public Schools ("District").

4. Defendant Irv Moskowitz is Superintendent of the Denver Public Schools and as such is chief executive officer of School District No. 1, and is sued in his official capacity.

5. Keyes v. School District No. 1, Denver, Colorado, Civil Action No. C-1499, was filed in 1969 seeking the desegregation of Denver Public Schools. The Congress of Hispanic Educators and individually named Mexican-American parents of minor children attending the Denver Public Schools intervened in 1974. 576 F. Supp. 1503 (1983). On November 3, 1980, the plaintiff-intervenors filed a supplemental complaint in intervention on behalf of LEP students. 576 F. Supp. at 1506.

6. On December 30, 1983, this Court issued a Memorandum Opinion and Order on Language Issues finding the District out of compliance with the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1703(f). 576 F. Supp. 1503 (D. Colo. 1983). Thereafter, the parties jointly submitted a plan entitled "Denver Public Schools: A Program for Limited English Proficient Students("Program") to the Court as a settlement of the language issues, and the Court entered an Order on August 17, 1984 which required the District to implement the Program in accordance with

its terms. Subsequently, the District was found to have attained unitary status and the desegregation component of this action was dismissed by Order of September 12, 1995; the outstanding issues pertaining to LEP students were at that time split off from the original action and assigned a new civil docket number. 902 F. Supp. 1274, 1308 (1995). Defendants remain subject to the August 17, 1984 Order.

7. The District is a recipient of federal financial assistance, and as such is subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. The District is also a public entity, within the meaning of 42 U.S.C. § 12131, and as such is subject to Title II of the Americans With Disabilities Act and its implementing regulations. In addition, the District is an education agency, within the meaning of 20 U.S.C. § 1720, and as such is subject to the Equal Educational Opportunities Act of 1974.

8. In a letter of findings which was forwarded to the District on July 31, 1997, the District was found by the Office for Civil Rights of the United States Department of Education (DOE) to be in violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990, due to the District's failure to provide equal educational opportunity to LEP students.

9. The District's actions and inactions, referred to in

the letter of findings and this court's orders, violate the statutes referred to in Paragraph 1., above, and their implementing regulations. In addition, the District's actions and inactions are inconsistent with this Court's August 17, 1984 Order, referred to in Paragraph 6., above.

10. The Department of Education determined that it was unable to obtain voluntary compliance, and in a letter dated July 31, 1997, notified the District that unless the District submitted an adequate plan within 10 days, it would refer the matter to the Department of Justice. On October 6, 1997, DOE referred this matter to the Department of Justice, with a recommendation to intervene in this lawsuit.

11. The parties have resolved all outstanding issues by agreeing to submit two documents to the court for its approval. The first document, "English Language Acquisition Program," sets forth the substantive obligation of the District toward LEP students and includes certain reporting obligations. The second document, entitled "Monitoring," creates a position of monitor which will oversee implementation of the decree for a period of three school years, beginning in 1999-2000. The parties have jointly agreed on a monitor.

12. The referral from OCR is authorized by 42 U.S.C. § 2000d, 34 C.F.R. § 100.8(a), incorporated into the Section 504 regulations at 34. C.F.R. § 104.61, and is authorized by the ADA regulations at 28 C.F.R. § 35.174. Intervention is also independently authorized by the Equal Educational Opportunities

Act of 1974, 20 U.S.C. § 1709.

13. Unless the relief requested herein is required by this court, the Defendants will continue to operate its program for non and limited English proficient students in violation of federal law.

Wherefore, the United States prays that this Court:

1. Order the Defendants to timely implement the English Language Acquisition Program agreed to by the parties and submitted to the Court with the Proposal to Settle Class Action, requiring Defendants to take necessary actions to overcome language barriers that impede equal participation by its students in its instructional programs and ensure that such students can meaningfully participate in such programs;

2. Order the Defendants to comply with the terms of the Monitoring document agreed to by the parties and submitted to the Court with the Proposal to Settle Class Action, and appoint a monitor, Dr. Ernest House, the person agreed to by the parties, to monitor implementation for a period of three school years beginning in 1999-2000;

3. Retain jurisdiction of this action and grant any such additional relief as the needs of justice may require.

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