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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent, MARY ELLEN CRAWFORD, etc., et al; BUSTOP, a Corporation; BETTER EDUCATION FOR STUDENTS TODAY, an Unincorporated Association; ROBERT LOVELAND and MARY KEIPP; CHARLES DREEBIN, etc., et al.; and UNITED TEACHERS/LOS ANGELES, Real Parties in Interest.	2 CIVIL NO. 59999 ORDER ON PETITION FOR WRIT OF SUPERSEDEAS AND PETITION FOR WRIT OF MANDATE.
MARY ELLEN CRAWFORD, etc., et al., Plaintiffs and Respondents, v. BOARD OF EDUCATION OF THE CITY OF LOS ANGELES, Defendant and Appellant.	2 CIVIL NO. 60000
BUSTOP, a Corporation; BETTER EDUCATION FOR STUDENTS TODAY, an Unincorporated Association; ROBERT LOVELAND and MARY KEIPP; CHARLES DREEBIN, etc., et al.; and UNITED TEACHERS/LOS ANGELES, an Unincorporated Association, Intervenors.	

THE COURT:*

In the Los Angeles Board of Education desegregation cause, Crawford v. Board of Education (1976) 17 Cal.3d 280, the California Supreme Court in 1976 affirmed the trial court judgment finding both de jure and de facto segregation in the schools operated by the Los Angeles Board of Education, reversed the trial court's order defining a desegregated school in terms of specific racial and ethnic percentages of white and non-white pupils, and remanded the cause to the trial

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*Before Roth, P.J., Fleming, J., and Compton, J.

court for preparation and implementation of "a reasonably feasible desegregation plan . . . to alleviate segregation." (pp. 285-86.) The court noted that the Constitution does not require a school board to achieve any particular racial or ethnic balance or even an approximate racial or ethnic balance, but merely requires reasonably feasible steps to alleviate school segregation. The court pointed out a number of the tools which are available to the trial court to accomplish this. One of these is busing (pupil reassignment and pupil transportation).

On remand post-judgment hearings were held in the trial court, and the latter adopted and put into effect in 1978 a plan which included mandatory reassignment of pupils attending grades 4 through 8 in every school whose white enrollment exceeded 70 percent. Thereafter on 7 July 1980 the trial court issued a further order which is the subject of the petition for writ of supersedeas. That order established 11 subareas within the Los Angeles Board of Education district and directed that schools be desegregated this fall to the fullest extent possible within each subarea for grades 1 to 9, with grades 10, 11, and 12 to be desegreated one-a-year thereafter.

The court's order declared that a desegregated school is one possessing a plurality of white pupils not in excess of 5 percent over the largest of any of the minority groups. Groups are classified as white, black, Asian, and

Hispanic. (The court also declared that a desegrated school with only two racial groups could run from 40 to 60 percent white, but since we are informed by the Board of Education no such schools exist, that part of the order is without practical effect.) The Board of Education seeks a writ of supersedeas to stay enforcement of this order pending appeal.

I

PETITION FOR WRIT OF SUPERSEDEAS

Certain factual anomalies arise as a result of the length of time this cause has been pending. When the cause was first brought in 1963, the composition of the district was over 60 percent white. The cause was tried and an order entered in 1970 based on 1968 statistics showing a pupil composition of 54 percent white. The 1970 order required desegregation between majority whites and minorities. Meanwhile, however, the white component in the school system declined, and in 1979 the white component within the school district had fallen to 27 percent and the white component of the kindergarten class to 17 percent. Projections at the hearing indicate that the school district in 1987 will be 14 percent white. Of the 11 areas created by the court, areas 1, 2, and 3 possess white majorities of 59 percent, 60 percent, and 53 percent, respectively. Areas 4, 5, 6, and 7, located in the central, western, and southern parts of the school district, are racially mixed among the four groups, none of which has a majority of pupils from any group. Area 8 has a

black majority of 64 percent, area 9 is almost equally Hispanic and black (49 percent and 46 percent, respectively), and areas 10 and 11 have Hispanic majorities of 87 percent and 76 percent.

The trial court's order purports to require allocation within areas of pupils among schools on the basis of four racial groups in order to achieve the goal that no school will have a white plurality in excess of 5 percent over the next largest group.

The Board of Education seeks to stay the trial court's order by writ of supersedeas pending appeal, claiming (1) the order is automatically stayed by Code of Civil Procedure section 916 on the filing of an appeal by the Board, and the trial court is without authority under Code of Civil Procedure section 1110(b) to put its order into immediate effect; (2) the Board has been given insufficient time to translate the superior court's order into a workable desegregation plan for this fall; and (3) the court's rigid and fixed definition of a desegregated school is contrary to the mandate handed down by the Supreme Court in its 1976 opinion and will require busing to and from schools which are already desegregated under any reasonable definition of desegregation.

1. We do not believe Code of Civil Procedure section 916 has any great relevancy to a cause such as this, where final judgment has already been entered and which has been remanded to the trial court merely for preparation and implementatic

of a post-judgment plan to put into effect a decision already arrived at by the Supreme Court. Under such circumstances we do not believe section 916 necessarily controls. Code of Civil Procedure section 1110(b), relied on by the court as authority for the trial court's order, while somewhat contrived in its application, sufficiently serves as a basis for putting the trial court's order into immediate effect.

2. Nor are we impressed by the Board's argument that there is insufficient time to put the court's order into effect. This cause has been pending for 17 years, four of them on remand in the trial court. The elements which constitute the cause are, and have been, familiar to all concerned for many years. Were we to accept the argument that changing circumstances make it difficult to implement a pupil assignment and pupil transfer order in a rapidly evolving area such as Los Angeles, it would never be feasible and practicable to put such an order into effect.

3. We think, however, the Board's claim that the trial court's order is contrary to the Supreme Court's mandate in Crawford has merit. The trial court's order and guidelines purport to require and put into effect a rigid definition of segregation which appears contrary to the admonition and remarks made by the California Supreme Court in reversing the rigid definition of segregation which had been adopted by the trial court in its original order in 1970. Under the not-in-excess-of-5 percent white plurality

definition of the trial court[1/] extensive pupil reassignment and pupil transportation will be required in schools which are already desegregated under any reasonable standard and the same will be required in 32 magnet schools presently in operation which are also desegregated under any reasonable standard. (Petitioner has listed these schools at pages 32, 35, 36, and 37 of its petition for supersedeas.) It appears to us the trial judge has fallen into the same error made by the earlier trial judge in this cause and the same error made by the identical trial judge at bench in NAACP v. San Bernardino Unified School District (1976)

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1. "I GROUP CLASSIFICATIONS

"The classifications for desegregation shall be based on identification of the predominant ethnic and racial character of each student and shall be limited to one of four groups: (1) Hispanic; (2) white; (3) black; and (4) other minorities, of whom Asians/Pacific Islanders constitute a large majority, but in which group other minorities are included.

"II DEFINITION OF A DESEGREGATED SCHOOL

"The court adopts as a working definition of a desegregated school containing only two racial/ethnic groups, one with a simple majority of white students, plus or minus 10%. In those areas where there are sufficient numbers of minority groups and the practicalities of the situation make it reasonable and feasible, the court adopts a definition of a multiethnic desegregated school which would require a plurality of white children, plus or minus 5%, over the largest of any of the minority groups present. The white complement in a desegregated school may not exceed 10% more than a majority in a biethnic school or 5% more than a plurality in a multiethnic school."

17 Cal.3d 311, 314, 325-327, where the California Supreme Court also reversed the trial court for establishing set racial or ethnic percentages for a plan of desegregation.

It also appears to us that, in addition to the error of set, fixed percentage standards for desegregation, the trial court exceeded its mandate by seeking to bring about integration among the four groups in terms of specific racial and ethnic percentages, a proposal, which if perfected, would require massive amounts of additional pupil reassignment and pupil transportation to achieve racial balance among four groups in each school. Such an objective is unwarranted by the mandate of Crawford, which spoke in terms of alleviating desegregation between whites and all minority groups and rejected any constitutional requirement for "racial or ethnic balance." (p. 303.) The underlying constitutional basis which compels removal of legal school segregation is grounded upon past discrimination practiced by whites against minority groups. Nothing in Crawford, or any other case of which we are aware, suggests that any past segregation has existed by reason of legal discrimination by one minority group against another minority group. Hence the discrimination which is the subject of constitutional legal redress is that of whites against minorities. We conclude that the constitutional requirement for elimination of segregation by reason of past discrimination is to be evaluated in terms of whites and all minorities considered as a group. (Crawford v. Board of

Education (1976) 17 Cal.3d 280, 287, 302, 303, 304; NAACP v. San Bernardino Unified School District (1976) 17 Cal.3d 311, 314, 326, 327.) In this respect the trial court's order may have exceeded its authority under Crawford, and we conclude that that part of its order requiring fixed ratios and quotas of pupils allocated among four racial groups should be stayed.

Having said this, we add that we think the trial court's division of the Los Angeles School District into 11 subareas is a positive step in the creation of a workable and practical plan for alleviation of existing segregation to the extent feasible within the Los Angeles School District pursuant to the mandate of the California Supreme Court in Crawford. To the extent it cuts geography down to size, it reduces involuntary busing. The subarea plan has the further advantage of keeping young pupils in their own home areas and permitting them to continue their education in locations with which they have some identification and familiarity. We therefore decline to stay other parts of the trial court's order.

II

PETITION FOR WRIT OF MANDATE

The Board also attacks the order of the trial court denying the Board's petition to annul all pupil reassignment and mandatory transportation within the Los Angeles School District on the ground that the recent amendment

to article 1, section 7(a) of the California Constitution removes authority from the California courts to order such transportation in connection with a plan of desegregation. The constitutional amendment, however, specifically states that it does not apply to pupil assignment or pupil transportation ordered by the courts to remedy violations of the 14th Amendment to the United States Constitution.[2/]

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2. **§ 7. Due process and equal protection; pupil school assignment or transportation; privileges and immunities**

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this state, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979–80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this state and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

Plaintiffs attack article 1, section 7(a) on the ground that it is unconstitutional under the federal constitution as an attempt to reimpose segregation and on the further ground that in any event the article does not apply to Crawford in that this cause involves de jure segregation, which is clearly a violation of the 14th Amendment redressable by the courts through use of pupil assignment and pupil transportation. (Columbus Board of Education v. Panick (1979) 443 U.S. 449; Dayton Board of Education v. Brinkman (1979) 443 U.S. 526.) Plaintiffs also cite the original findings, conclusions, and judgment of the trial court in this cause adjudicating de jure segregation, and they point to the statement in the California Supreme Court's opinion on appeal declaring that "[t]he findings in this case adequately support the trial court's conclusion that the segregation in the defendant school district is de jure in nature." (Crawford, p. 285.)

The opinion of the California Supreme Court in this cause is somewhat ambiguous, in that its main element consists of elimination of racial isolation in California schools regardless of the cause and regardless of de jure or de facto segregation, and the consequent duty imposed by the court on California school boards under the California Constitution to accomplish this goal. On an application for peremptory writ we think we are governed by two principles: (1) A provision of the California Constitution is presumptively

constitutional until declared otherwise in a plenary proceeding before a California appellate court, the California Supreme Court, or the United States Supreme Court. (2) Such being the case, the critical determination here is whether the Crawford decision involves de jure rather than de facto segregation. Since the California Supreme Court's opinion said it did involve de jure segregation, we will assume it did until we are told otherwise, or until we have examined the issue in a plenary hearing. On the basis of this assumption mandatory pupil assignment and mandatory pupil transportation are available at bench as a remedy for unconstitutional racial segregation. We think any general overturning of existing busing orders, if such is required by the constitutional amendment of article I, section 7(a), should await an authoritative determination on the merits. We, therefore, deny the petition for writ of mandate, but by separate order we accelerate the appeal or appeals presently filed in this cause from the order of 7 July 1980.

III

SUPERSEDEAS-STAY ORDER

Pending further order of this court, Item 3 of the trial court's order of 7 July 1980 is stayed to the extent it incorporates those parts of guidelines I and II which define a multi-ethnic desegregated school as one requiring a plurality of white pupils not in excess of 5 percent over the next largest ethnic group in the school. The

trial court's order and guidelines are stayed to the extent they define desegregation of schools in terms of percentages and quotas and to the extent they require anything more in a particular school than substantial desegregation (in general, rough equality between majority and minority groups to the extent reasonably feasible) between the white component in the school and all minority groups considered as a whole within the school. The order and guidelines are further stayed to the extent they require pupil reassignment or pupil transportation to or from a presently substantially desegregated school. In other respects the petition for writ of supersedeas-stay is denied.

IV

DISPOSITION

The petition for writ of mandate is denied.

Let a writ of supersedeas issue in accordance with this order.