IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, et al.,

Plaintiffs,

v.

CONGRESS OF HISPANIC EDUCATORS, et al.,

Plaintiffs-Intervenors and Counter-Defendants,

v.

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

Defendants and Cross-Defendants,

and

THE STATE OF COLORADO ex rel. GALE A. NORTON,

Defendants-Intervenor, Cross-Plaintiff, and Counter-Plaintiff.

RESPONSE OF THE CONGRESS OF HISPANIC EDUCATORS ET AL., TO MOTION TO MODIFY THE LANGUAGE RIGHTS DECREE OF AUGUST 17, 1984

Pursuant to this Court's suggestion on February 1, 1995, the Denver Public Schools (hereafter "District") has submitted a motion to modify. The Congress of Hispanic Educators (CHE) agrees that the next step is for the District to specify what it wishes to modify. It should further provide at such time the evidence it intends to rely upon for each proposed modification. CHE should then be given an adequate time to respond. As this matter has lingered since the October 25, 1994 filing by CHE, we would suggest that a twenty (20) day period be provided for each of these activities.

While the Court's order to the District on February 1 did not

request a response to the civil contempt filing by Plaintiffs, the contempt motion should be calendared to be resolved at the same time. It might be best to consider Plaintiffs motion as one for enforcement rather than contempt, but it does deserve to stand on its own. While it is true that a failure to live up to existing obligations is highly relevant to whether to modify or dissolve an existing decree, Board of Education of Oklahoma City v. Dowell 498 US 237 (1991), the Court should additionally have a vehicle to enforce all orders for which the District has not established the predicate for modification.

The question of violation of the Agreement and Decree is highly factual. While many of the facts are resolved by paper discovery already completed, there will be need for live testimony. We would suggest that a status conference be held following the two submissions suggested above so that a trial schedule can be established.

The District in point C of its submission raises an issue that is premature, but should not go unchallenged at this time. It suggests that the standard by which to measure a proposed modification is whether it comports with 20 USC 1703(f). The central question is whether a proposed modification can be justified by a substantial and significant change in the facts or the law. While there are different formulations of the burden that the District must meet, substantial, relevant change is the centerpiece of any modification. Compare United States v. Swift & Co. 286 US 106, 119 (1932) with Rufo v. Inmates of Suffolk County

Jail 112 S.Ct. 748 (1992). Further, provisions of a Consent Decree that flow from a finding of a federal violation, as here, may well exceed the legal minimum for determining a violation. Firefighters v. Cleveland 478 U.S. 501, 525-26 (1986).

In sum, Plaintiffs-Intervenors propose

A. That the District be required to set forth that which it wishes modified, along with supporting material, within twenty days.

B. That the Congress of Hispanics Intervenors be given twenty days to respond and

C. That the Court set a status conference thereafter to finalize a trial schedule on the two motions.

Respectfully Submitted,

April 20, 1995
Date

Peter D. Roos
For CHE Intervenors

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing RESPONSE OF THE CONGRESS OF HISPANIC EDUCATORS ET AL., TO MOTION TO MODIFY THE LANGUAGE RIGHTS DECREE OF AUGUST 17, 1984 was mailed, postage prepaid, on this 20th day of March, 1995, addressed to:

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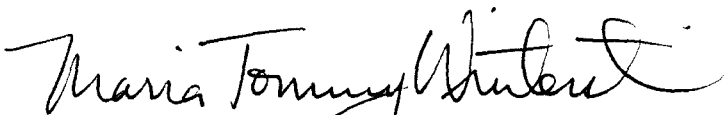

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