

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 70-1069-CIV-FULTON (MORENO)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENDRY COUNTY SCHOOL DISTRICT and
CLARENCE J. CHAPMAN, Superintendent of
Schools, Hendry County School District, Florida;
SAINT LUCIE COUNTY SCHOOL DISTRICT,
and J. WALTER HEBB, Superintendent of
Schools, Saint Lucie County School District,
Florida,

Defendants.

NOTICE OF FILING

THE COURT hereby files a letter from the Center for Equal Opportunity dated October 20, 2009. The Court retained jurisdiction in 1975 to enforce the permanent injunction issued by former Chief Judge Fulton. As the case was dismissed and closed in 1975, the Court shall refrain from requiring the Clerk to randomly assign it to another judge, unless one of the parties requests it.

DONE AND ORDERED in Chambers at Miami, Florida, this 12 day of November, 2009.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Superintendent Richard Murphy
Hendry County School District
25 East Hickpochee Avenue
LaBelle, Florida 33935

Acting United States Attorney Jeff Sloman

Linda Chavez
Center for Equal Opportunity
7700 Leesburg Pike
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October 20, 2009

The Honorable Federico A. Moreno
Chief Judge, U.S. District Court
400 N. Miami Avenue, Room 13-3
Miami, Florida 33128-1812

Dear Chief Judge Moreno:

Recently the Center for Equal Opportunity received a copy of a list compiled by the United States Department of Justice of "open" school desegregation cases, one of which is in the Southern District of Florida, namely "United States v. Hendry County School District, No. 70-1069." We wanted to write to the judge who had authority over the case, but learned from your clerk's office (which was very helpful) that Judge Charles Fulton, who had had the case, was deceased, and there was no readily available information regarding which judge, if any, has been assigned to the case subsequently; in all events, the last entry in the court's docket was on December 21, 1978. We suspect, accordingly, that the court may consider the case closed, or at least very inactive, even though the Justice Department lists it as "open."

I am writing to you, as chief judge, to suggest that it would be a good idea to confirm with the school district and the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section that the case is in fact closed—that is, that this school district is unitary, the case is dismissed, full authority for making educational decisions has been returned to the local school boards, and the federal judicial role has ended—and, if not, whether it should be.

Let me explain why I think this is worth your going to this trouble. According to the Justice Department's list, there are well over two hundred school districts that, often after decades, remain under court order for desegregation. This strikes us as a very odd situation, some 55 years after the decision in *Brown v. Board of Education*, and 45 years after Title IV of the Civil Rights Act of 1964 authorized and directed the Department of Justice to initiate and obtain full desegregation. If these school districts are not yet desegregated, then this is inexcusable. But if they are, then it is inexcusable that they are still under court order. Among other things, it would mean that these school districts would be barred not only from assigning students on the basis of neighborhood schools and assigning teachers on the basis of their respective, legitimate preferences, but it would also make it difficult or impossible to adopt reforms such as school choice, charter

schools, or school vouchers. This state of affairs compromises the educational opportunities of all children—black and white, Hispanic and Asian, Native American and Middle Eastern.

The Supreme Court has noted in strong language that the jurisdiction of the federal courts is limited both temporally and substantively to remedying intentional school segregation. For instance, in *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 247-48 (1991), the Court emphasized that the decrees entered in school desegregation cases "are not intended to operate in perpetuity." Rather, "[f]rom the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination." The Court went on to stress that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination." (Quoting *Spangler v. Pasadena City Board of Education*, 611 F.2d 1239, 1246 n.5 (9th Cir. 1979) (Kennedy, J., concurring).)

One might think that the defendants in the cases – usually local school districts – would urge termination of these cases once their original purpose had been achieved. Unfortunately, however, we know that in many cases the school districts themselves are not eager to reopen the cases, to review the remedies entered years if not decades ago, and to ascertain the current constitutional status of the formerly dual school systems. These orders have been a crutch for the local school boards, obviating the need for hard decisions regarding school reform, providing an easy excuse for poor academic performance, and justifying all forms of bureaucratic inertia. No one wants to open what is often seen as a political can of worms.

Not only is this situation contrary to Supreme Court decisions that make clear that these orders are supposed to be of limited duration, but these orders are also sometimes in tension with the more recently passed federal No Child Left Behind Act. See, e.g., Diana Jean Schemo, "Few Exercise New Right to Leave Failing Schools," *New York Times* (Aug. 29, 2002) ("In many Southern states, administrators are struggling to comply with the new law without violating school desegregation orders, which assign students to schools on the basis of race."); Mary Leonard, "Ga. School District Told to Comply with New Law but District Concerned 'No Child' Act at Odds with Desegregation Rule," *Boston Globe* (Sept. 5, 2002) ("Education Department officials say they suspect some school districts might use desegregation orders to delay implementing the school transfer option.").

Accordingly, many judges have *sua sponte* reviewed the status of their school desegregation cases, to ascertain whether a continued judicial role is appropriate. This course best honors the law, but we hope you would agree that it is also simply good case management.

The close and proper control of its docket is of course an important concern for any court. This is true for all litigation – a judge would wonder about the status of any 20- or 30-year-old case – but especially in matters touching upon the two constitutional imperatives

implicated here: the Fourteenth Amendment's guarantee of an educational system that does not use racial or ethnic classifications (*see Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007)), and the Tenth Amendment's promise of a locally controlled school system (*see, e.g., Dowell, supra*).

In any event, we would urge your honor to look into this matter – to ascertain whether your court's continued supervision of the school district is legally justified to the end of achieving a not yet-achieved unitary system. Either the school district has failed to desegregate, or a desegregation order is lying around like a loaded weapon, awaiting someone's abuse of it to hamstring the school board and students' educational opportunities. In all likelihood, the time is due, and probably long overdue, for the school district to be declared unitary, the case dismissed, full authority for making educational decisions formally returned to the local school board, and the federal judicial role clearly declared to be at an end.

I appreciate your willingness to consider this suggestion. Please note that neither I nor any organization with which I am associated is a party or amicus before your court or before any other court in a school desegregation matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Linda Chavez', with a stylized, cursive script.

Linda Chavez