

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

MICHAEL MADISON, et al.,
Plaintiffs,
and
United States of America,
Plaintiff-Intervenor,
v.
SULLIVAN COUNTY BOARD OF EDUCATION, et al.,
Defendants.

C.A. No. 2:00-CV-094

**MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION
TO INTERVENE AS PLAINTIFF-INTERVENOR**

INTRODUCTION

Plaintiff Michael Madison filed the original complaint in this lawsuit on March 24, 2000, against the Sullivan County Board of Education ("SCBE" or "District"), Keith Glover (principal), Harmon Peters (teacher), and four students formerly enrolled in the District. Plaintiffs moved to file an amended complaint to include an additional plaintiff, Marquita Madison, and on September 14, 2000, the Court granted the motion.

Plaintiffs allege, inter alia, that they were denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and that they were discriminated against on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq., and its implementing regulations. Specifically, Plaintiffs complain that the District, through its knowing inaction and failure to protect them from a racially hostile environment, discriminated against them on the basis of their race in violation of Title VI. Moreover, Plaintiffs allege that the District's failure to intervene to stop the harassment constitutes a denial of equal protection under the Fourteenth Amendment.

Plaintiff Michael Madison, a former student at Sullivan County East High School ("East"), claims that throughout the school years 1995-96, 1996-97 and 1997-98, he was repeatedly subjected to harassment on the basis of race which prevented him from enjoying the educational benefits and opportunities provided by the District. Michael claims that teachers witnessed, and administrators were aware of, such harassment, but failed to take immediate and appropriate corrective action, and were deliberately indifferent to the harassment. This harassment culminated in a racially motivated assault on October 1, 1997. Michael did not return to school after the assault and completed his education on a home-bound educational program. As a result of the harassment, Michael alleges that his mental and emotional health has suffered.

Plaintiff Marquita Madison, also a former student at East, claims that throughout the school years 1998-99 and 1999-00, she was repeatedly subjected to harassment on the basis of race which prevented her from enjoying the educational benefits and opportunities provided by the District. Marquita and her parents repeatedly informed the District - including the high school principal,

assistant principals, and other staff - of the ongoing harassment. Marquita alleges that the District did not take immediate and appropriate corrective action, and was deliberately indifferent to the harassment.

The United States seeks to intervene in this lawsuit to enforce the Fourteenth Amendment and Title VI, and to ensure that recipients of Federal financial assistance do not unlawfully discriminate on the basis of race. When recipients discriminate, the United States has an interest in having such conduct declared unlawful and enjoined, appropriate remedies implemented, and the victims made whole. In addition, the United States has a significant interest in the proper interpretation and enforcement of Title VI.

DISCUSSION

I. The United States Should be Granted Intervention as of Right Pursuant to Federal Rule of Civil Procedure 24(a).

Rule 24(a) of the Federal Rules of Civil Procedure sets out the standards by which parties may intervene as of right. See Fed. R. Civ. P. 24(a). Rule 24(a) articulates two ways in which a party may intervene as of right:

Upon timely application, anyone shall be permitted to intervene in an action (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a). The United States should be granted leave to intervene under either standard.

A. A Statute of the United States Confers an Unconditional Right to Intervene in this Action.

42 U.S.C. § 2000h-2 provides that:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

See Fed. R. Civ. P. 24(a)(1) (codifying that intervention will be granted 'when a statute of the United States confers an unconditional right to intervene'). This statutory language unambiguously establishes the right of the United States to intervene in this case, in which Plaintiffs have alleged 'a denial of equal protection of the laws under the fourteenth amendment.' See *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 431, 96 S. Ct. 2697, 2702, 49 L. Ed. 2d 599 (1976); *United States v. Jefferson County Bd. of Educ.*, 372 F.2d 836, 896 (5th Cir. 1966), modified, 380 F.2d 385 (5th Cir. 1967)(en banc); *Smith v. Board of Educ. of Morrilton Sch. Dist.*, 365 F.2d 770 (8th Cir. 1966); see also 7C Wright, Miller & Kane, *Federal Practice & Procedure* § 1906 at 244 (2d ed. 1986) (United States has unconditional right to intervene under Section 2000h-2). The statute also entitles the United States to seek the "same relief as if it had instituted

the action." Fed. R. Civ. P. 24(a)(2). The Attorney General has certified this case as one of general public importance. ^u (See Exhibit A). In addition, for the reasons set forth below, the United States' motion to intervene is timely. Therefore, the United States has met the requirements under 42 U.S.C. § 2000h-2, which provides authority for the United States to intervene and prosecute this case.

B. The United States Has an Interest in This Action That Is Not Adequately Represented by the Existing Parties.

The Sixth Circuit has determined that intervention of right is permitted under Rule 24(a)(2) when: (1) an applicant claims a substantial legal interest in the subject matter; (2) the disposition of the action may as a practical matter impede its ability to protect its interest; and (3) that interest is not adequately represented by existing parties. *Grutter v. Bollinger*, 183 F.3d 394, 397-98 (6th Cir. 1999). The Sixth Circuit interprets Rule 24 liberally in favor of potential intervenors. See *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227 (6th Cir. 1984).

1. A Substantial Legal Interest

The United States' special role in representing the public interest supports intervention in this case. The United States has a significant interest in enforcing the Equal Protection Clause of the Fourteenth Amendment in cases of general public importance and in seeing that recipients of federal funds do not unlawfully discriminate. In situations where discrimination has occurred, the United States has an interest in having such conduct declared unlawful and enjoined, and appropriate remedies implemented to compensate the victims and prevent like discrimination in the future for all students.

Moreover, as the United States' sole enforcer of Title VI in federal courts, the Department of Justice has a strong interest in the proper and effective application and interpretation of Title VI and its implementing regulations.

Finally, the law concerning peer-on-peer harassment is an emerging area; the United States can play an important role in ensuring that legal standards are developed and applied consistently across the country in accordance with the Supreme Court's recent decisions in this area. See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649-50, 119 S. Ct. 1661, 1674-75, 143 L. Ed. 2d 839 (1999) (adopting deliberate indifference standard in student harassment cases); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 276, 118 S. Ct. 1989, 1992, 141 L. Ed. 2d 277 (1998) (holding that school district can be liable for money damages under Title IX for teacher-student sexual harassment).

2. Impairment of Interest

The disposition of this action may impede the United States' ability to protect these interests. The Sixth Circuit has found that this prong is met where the disposition of a case may have adverse stare decisis effects. *Jansen v. City of Cincinnati*, 904 F.2d 336, 341 (6th Cir. 1990). As the Sixth Circuit stated, '[u]nder the doctrine of stare decisis, once a court has applied a principle of law to a certain set of facts, it will apply that principle to all future cases involving facts that are substantially the same.' *Id.* The United States has an interest in the effective enforcement of federal civil rights laws, and a decision rendered in this case could adversely affect the scope and nature of the United States' future prosecution of claims of peer-on-peer racial harassment under Title VI and the Fourteenth Amendment.

3. Adequacy of Representation

Finally, the requirement of Rule 24(a)(2) is met if the applicant shows that representation of her interest 'may be' inadequate. The burden for making this showing is minimal. *Trbovich v. Mine Workers*, 404 U.S. 528, 538, 92 S. Ct. 630, 636, 30 L. Ed. 2d 686 (1971); *United States v. Schreiber*, 150 F.R.D. 106, 109 (S.D. Ohio 1993). The United States seeks to intervene, in part, to ensure that the District takes remedial action to prevent similar discrimination in the future. The United States has a unique interest in enforcing federal law and in seeking appropriate remedies for federal violations. See generally *SEC v. United States Realty & Imp. Co.*, 310 U.S. 434, 459-60, 60 S. Ct. 1044, 1055, 84 L. Ed. 1293 (1941). In contrast, Plaintiffs are seeking compensatory damages on their own behalf and have no responsibility to consider the larger implications of Defendants' discrimination. Therefore, the United States' interest cannot be adequately represented by Plaintiffs. See *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 998-99 (8th Cir. 1993) (holding that where interests of existing party and the intervenor are 'disparate, even though directed at a common legal goal, ... intervention is appropriate').

II. The United States Should Be Granted Permissive Intervention Pursuant to Rule 24(b).

In the alternative, the United States should be granted permissive intervention. Rule 24(b) states that permissive intervention is allowed 'when an applicant's claim or defense and the main action have a question of law or fact in common.' Fed. R. Civ. P. 24(b). 'In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.' *Id.*

Rule 24(b) further provides that '[w]hen a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency ... the officer or agency upon timely application may be permitted to intervene in the action.' *Id.*

This provision was added in 1946 to avoid "exclusionary constructions" of the United States' right to intervene. See Fed. R. Civ. P. 24, 1946 Advisory Committee Notes. Prior to the adoption of this explicit statutory authority, the Supreme Court held that the United States may have 'a sufficient interest in the maintenance of its statutory authority and the performance of its public duties to entitle [it] to intervention.' *United States Realty*, 310 U.S. at 460.

This case raises important issues concerning the legal standards to be applied in actions enforcing federal civil rights laws, specifically Title VI of the Civil Rights Act of 1964. It is appropriate, therefore, that the United States be allowed to participate as Plaintiff-Intervenor.

III. The Motion to Intervene Is Timely.

Timeliness is a requirement for both intervention as of right and permissive intervention. To determine the timeliness of a motion to intervene, a court should consider all relevant circumstances. *Bradley v. Milliken*, 828 F.2d 1186, 1191 (6th Cir. 1987). In particular, a court should consider: (1) the point to which the suit has progressed;

(2) the purpose for which intervention is sought;

(3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case;

(4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and

(5) the existence of unusual circumstances militating against or in favor of intervention.

Triax, 724 F.2d at 1228; see Michigan Ass'n for Retarded Citizens v. Smith, 657 F.2d 102, 105 (6th Cir. 1981).

The motion for intervention is timely given that this suit has not progressed beyond the initial pleading stage of litigation: the original complaint in this lawsuit was filed on March 24, 2000; the school district defendants answered in May 2000, and three of the four student defendants have not yet answered the complaint. Additionally, the Court has recently permitted the amendment of the complaint to include an additional plaintiff. Finally, discovery has not yet commenced and no scheduling order has yet been entered. The Court's Rule 16 conference has been set for December 6, 2000.

The United States became aware of this lawsuit soon after the filing of the initial complaint and thereafter commenced a preliminary inquiry into the allegations raised. The delay in the United States' filing of the motion to intervene was necessary for the United States to evaluate whether the case is one of general public importance and one in which serious and credible allegations of discrimination are involved. In determining whether to seek intervention, the United States requested and reviewed information from both the Plaintiffs and the District.

On October 18, 2000, the United States informed the parties that the Attorney General had certified this as a case of general public importance, and provided a ten-day period for the parties to indicate whether they were interested in engaging in settlement negotiations. In a good faith effort to facilitate a settlement, the United States did not file its motion to intervene during this period. Only after the District declined to engage in such discussions has the United States moved to intervene.

In sum, because this case is in the initial stage of litigation and the United States has acted diligently in moving to intervene, the original parties will not be prejudiced if the motion is granted.

CONCLUSION

For the foregoing reasons, the United States' Motion to Intervene should be granted.

Respectfully submitted,

BILL LANN LEE
Assistant Attorney General
Civil Rights Division

JEREMIAH GLASSMAN (DC Bar# 172395)

MICHAEL S. MAURER (DC Bar# 420908)

JAVIER M. GUZMAN (DC Bar# 462679)

KIRAN A. AHUJA (GA Bar# 005801)

Attorneys for Plaintiff-Intervenor

U.S. Department of Justice

Civil Rights Division

Educational Opportunities Section

Patrick Henry Building

601 D Street, N.W., Suite 4300

Washington, DC 20530

(202) 514-4092

1. This certification is not reviewable by Defendants or the Court. See *United States v. Greenwood Mun. Separate Sch. Dist.*, 406 F.2d 1086, 1089-90 (5th Cir. 1969); *Carter v. School Bd. of West Feliciana Parish*, 569 F. Supp. 568, 571 (M.D. La. 1983).