1975 WL 175356
Only the Westlaw citation is currently available.
United States District Court,
N.D. Mississippi, Delta Division.

Kelly MCNEAL, et al Plaintiffs
v.
TATE COUNTY SCHOOL DISTRICT, et al
Defendants

No. DC 70–29–S.
|
July 11, 1975.

MEMORANDUM OF DECISION

***1** The opinion of the Court of Appeals for the Fifth Circuit,[1] in reversing and remanding the action sub judice to this court for consideration in light of the rule of the case established therein, provided:

> From these holdings, we synthesize the rule for this case to be that the court must assay the present district plan of student assignment which results in racial segregation with a punctilious care, to see that it does not result in perpetuating the effects of past discrimination. Ability grouping, like any other non-racial method of student assignment, is not constitutionally forbidden. Certainly educators are in a better position than courts to appreciate the educational advantages or disadvantages of such a system in a particular school or district. School districts ought to be, and are, free to use such grouping whenever it does not have a racially discriminatory effect. If it does cause segregation, whether in classrooms or in schools, ability grouping may nevertheless be permitted in an otherwise unitary system if the school district can demonstrate that its assignment method is not based on the present results of past segregation or will remedy such results through better educational opportunities. 508 F.2d at 1020.

Initially, on consideration of the problems involved in this action, this court held that the segregated classrooms in the school district might well exist because "the black child has not had the advantages which the white child has had." This holding had reference to the economic and educational advantages which the average black child in the district had available to him prior to attaining school age as compared to those available to the average white child.

It was not until August of 1970, when freedom of choice was abolished in the defendant school district, that students were assigned to the attendance centers of the district without regard to race.

For approximately ten (10) years prior to abandonment of the freedom of choice plan, the defendant district used a plan for the assignment of students within grades to grade-sections based upon the students ability to learn as predicted by faculty determinations. The school authorities, believing that this method affords the individual student the very best educational opportunities, have insisted on continuing the use of such a plan.

This method of student assignment within the grades has resulted in a number of all-black grade-sections.

The school district stoutly maintains that the method of student assignment now used by its faculty affords the best educational advantages obtainable for all students, regardless of race. The court is of the opinion that the only presently feasible alternative to the plan of assignment now utilized by the defendant district is to adopt some method of random student assignment. The school district contends that such a method would destroy the ability of the faculty and staff to effectively instruct and educate the students in the schools of the district.

***2** The law of the case sub judice requires the entry of an order by the court directing the district to assign students in each elementary and junior high grade to grade-sections by the use of random selection, unless the court finds that the present system of ability grouping will, through better educational opportunities, remedy the present results of past segregation or discrimination.

The parties concede that as a rule the black child is prone to enter the first grade with pre-school educational and economic advantages inferior to those of the average white child. The result of such a situation is that a majority of the black children are placed in groups of slow learners, thus creating a number of all-black classes or sections. The inability of the black child to compete can be traced, in part, to the dual system of schools in which the parents of the black child received an education inferior to the education received by their white counterparts.

If the present plan of student assignment is to receive the court's approval, it is incumbent upon the district to show

that the use of the plan will afford educational advantages superior to those afforded by the random plan and, also, that the use of such a plan will remedy the present results of past discrimination.

The court is convinced from the evidence introduced that the plan utilized by the defendant district affords the student the best obtainable educational advantages. As the opinion of the Fifth Circuit reflects, educators are in a better position than courts to appreciate the educational advantages or disadvantages of such a system. The court should not usurp the prerogative of the school authorities unless such is required by a constitutional mandate.

In response to the court's request, defendant school district has prepared and submitted a plan which embodies basically the present formula of student assignment.[2] In order to insure the compliance with and proper application of the plan, the district proposed to create a committee in each of its elementary schools which would be charged with the duty to review each assignment to make certain that the assignment is made without regard to race and only on the basis of the ability of the child to learn, as reflected by the child's achievement records.

A number of parents, both black and white, appeared at the hearing and testified on the issue of assignments of students under the ability grouping plan. The parents were almost of one voice to the effect that the grouping of students according to ability to learn was an acceptable method of student assignment. There was, however, some concern as to whether the plan then in effect had been fairly administered, and whether assignments had always been made without regard to race.

The record indicates that the district has made some progress in eliminating the all-black sections within the elementary grades of the school.

The district is alert to the availability of remedial educational programs for those children who are found to be proper candidates therefor. This evidences an earnest desire on the part of school officials to aid the disadvantaged child and assist such a child to obtain a better education. The district has been able to secure Title I funds in substantial amounts to implement the program for each year starting with the 1970—71 session.

***3** The majority of students participating in these special programs for the benefit of the handicapped and/or disadvantaged child are members of the black race. Meaningful progress is being made by the faculty and staff of the schools of the district in remedying the disadvantages of the underpriviledged students.

The court finds that the plan proposed by defendant school district may, in time, remedy the present results of past segregation in that it affords the black students in the district greater educational opportunity than would be available under a random selection assignment plan. It is upon this finding that the court has determined to allow the plan submitted to the court to be effective for the school year 1975—76.

The court does, however, reserve the right to require defendant school district to come forward with a plan of random assignment of students for the future if the proposed plan does not cause real progress to be made during the 1975—76 school year in eliminating all-black sections within the grades of the schools. Five years have elasped since the establishment of a unitary system in the defendant school district. Material progress must be made in the elimination of all-black grade-sections if the school district is to avoid the imposition of an at random assignment of students.

An appropriate order will be entered by the court.

All Citations

Not Reported in F.Supp., 1975 WL 175356

Footnotes

1 McNeal v. Tate County School District, 508 F.2d 1017 (1975)

2 The district's proposed assignment plan which is now under consideration by the court is set forth in Appendix A to the court's order in this case issued in conjunction with this memorandum.