IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>and<br><br>CHARLES RIDLEY, et al.,<br><br>Plaintiff-Intervenor,<br><br>v.<br><br>STATE OF GEORGIA *et al.,*<br>(DUBLIN CITY SCHOOL DISTRICT)<br><br>Defendants. | ) | Civil Action No. 3009 |

**MOTION TO ENFORCE ORDERS OF JULY 16, 1971 AND MAY 19, 1978, FOR ISSUANCE OF RULE TO SHOW CAUSE, AND FOR FURTHER RELIEF**

Plaintiff the United States respectfully moves this Court to grant relief necessary to fully enforce the terms of the July 16, 1971 Order ("1971 Order") with respect to inter-district transfers from the Dublin City School District ("Dublin") and the terms of the May 19, 1978 Order ("1978 Order) with respect to class assignments at Dublin's elementary schools and middle school. The United States also respectfully moves this Court to order Dublin to show cause why it should not be held in contempt for repeated and willful violations of the 1978 Order. To achieve full compliance with the 1971 Order, the United States seeks further relief that enjoins the Laurens County School Board ("Laurens") from accepting transfers that violate the Order and that requires Laurens to verify students' residences.

In support of this motion, the United States would respectfully show the Court as follows:

1. On August 1, 1969, the United States filed suit against the State of Georgia and various school agencies and officials of the state alleging that the defendants were operating dual school systems based on race in violation of the Fourteenth Amendment and federal law. United States v. State of Georgia, C.A. No. 12,972 (N.D. Ga.). The suit was filed in the United States District Court for the Northern District of Georgia and that Court issued several orders to desegregate 81 school districts in Georgia.

2. Pursuant to that Court's Order of December 17, 1969 ("1969 Order"), Dublin submitted its first desegregation plan. The plan was approved by that Court on April 21, 1970. On July 16, 1971, that Court issued an order amending its earlier orders in several areas including inter-district transfers and requiring the Ridley districts to submit new desegregation plans for the 1971-72 school year.

3. The 1971 Order prohibits Dublin from allowing "more than 5% of [its] minority students . . . to transfer to other districts where they are either in the majority or made a part of a larger minority percentage than in the district from which they have transferred, excluding those instances where all students of both races in a certain category are transferred by contract approved by the State School Board." 1971 Order at 3, § I(3) (Tab 2); see also 1969 Order at 3. The Appendix of the Order defines "minority race" as "the race, black or white, which constitutes less than half of the total pupil enrollment, in any school district for any one regular school year." Appendix to 1971 Order at ¶ I (Tab 2). Because Dublin is a minority white district, see Tab 1 at 1, no more than 5% of its resident white students may transfer to majority white public school districts.

4. On February 22, 1972, that Court approved a new student assignment plan designed to

eliminate the racial identifiability of Dublin's schools. On September 5, 1972, pursuant to the directions of the United States Court of Appeals for the Fifth Circuit, that Court entered an order which, inter alia, added each individual school district as a party defendant and transferred to this Court jurisdiction over Dublin among other school districts.

5. While this Court placed many Ridley districts on the inactive docket in 1974 and subjected them to a permanent desegregation injunction, this Court kept Dublin on the active docket. See Feb. 14, 1974 Order at 6 (attachments omitted) (Tab 4). This Court ordered districts on the active docket, including Dublin, to "continue to comply with all of the requirements of the December 17, 1969 Order of the United States District Court for the Northern District of Georgia, as subsequently, modified, with [certain] exceptions." Id. at 7. None of the exceptions involves transfers, and Dublin remains on the Court's active docket; thus, the 1971 Order still governs Dublin with respect to transfers among other areas.

6. In 1977, the United States determined that from the 1973-1974 school year through the 1976-1977 school year, Dublin was assigning students to classes on the basis of their scores on the Iowa Test of Basic Skills and that the use of achievement tests for class assignments "had resulted in extensive classroom segregation" at two elementary schools and the junior high school, "the over representation of black students in the lower [level] sections," and in majority white high level sections at two of the three majority black schools. 1978 Order at 2 (Tab 3). On May 19, 1978, the Court approved a Consent Order that requires Dublin to "eliminate classroom segregation in the elementary schools and in non-elective courses taught in the junior high school" and to "assign students to classes on the basis of any racially neutral method it considers educationally sound so that each section shall be composed of from 50% to 150% of the minority

student quotient for that grade level." Id. at 3. As is true for all of the Ridley orders, "minority" means the numerical minority race be it black or white.

7. Dublin's reports filed with the Georgia Department of Education for the past seven years show that it has allowed substantial numbers of white students to transfer to Laurens, which is 65% white, in violation of the 5% limit imposed by the 1971 Order. See Tabs 5 and 7. The numbers of transfers to Laurens that have violated the Order are approximately as follows: 108 in the 1997-98 school year; 205 in the 1998-99 year; 239 in the 1999-2000 year; 260 in the 2000-2001 year; 287 in the 2001-02 year; 107 in the 2002-03 year; and 113 in the 2003-04 year. See Tab 7.

8. Dublin's PK-12 white enrollment has fallen during those years from 1,385 students in March 1997 to 763 in November 2003, and its total enrollment has changed from 36% white to 24% white. See Tab 8 at 1. The negative effect of the violative transfers to Laurens has been particularly acute in Dublin's elementary schools. For example, Moore Street Elementary was 29% white in the 1996-97 year and only 9% white in 2002, and Saxon Elementary was 27% white in the 1996-97 year and only 11% white in 2002. See Nov. 13, 1996 Report at 4, 6 (Tab 5 at 11, 13); Tab 20 at 21, 25. This school year, Dublin implemented a single grade configuration for grades K-5, but the percentages of whites in these grades remain below 20% except for in first grade where it is 22%, and are far lower than they were in the 1996-97 year. See Tab 8 at 1.

9. Dublin has violated the Order because it has done nothing to try to stop the transfers and has facilitated them by transferring hundreds of records to Laurens for students whose transfers violate the Order. Although Georgia law requires school districts to transfer records upon request from a public or private school, see Rule160-5-1-.14(2)(a), Dublin should not have

sent records to Laurens for students whose transfers violate the Order because the Order takes precedence over state law. See U.S. Const. art. VI, cl. 2.

10. In response to the United States' concerns about the violations, Dublin indicated that it "would agree to an Order requiring it not to comply with state law and, instead, prohibiting it from sending records of students residing within the Dublin City School District to the Laurens County School District or any private school." Letter of Nov. 24, 2003, at 2 (Tab 10 at 2). The United States seeks an order prohibiting Dublin from transferring records to public schools, not private schools, for students whose transfers exceed the Order's 5% limit. See Valley v. Rapides, 646 F.2d 925, 944 (5th Cir. 1981) (court may order districts to withhold records from public schools but not private schools).

11. Laurens is not a Ridley district because it entered into a voluntary desegregation plan with the former United States Department of Health, Education, and Welfare. Although Laurens is not a Ridley district, the transfers it has been accepting from Dublin interfere with the 1971 Order by permitting more than 5% of Dublin's white resident students to transfer to a majority white district.

12. The United States notified Laurens that the number of white students it had accepted from Dublin each year since 1996 had far exceeded the number permitted by the 1971 Order and were impeding desegregation in Dublin. See Letter of Aug. 6, 2003, at 1 (Tab 11). The United States sought Laurens's cooperation to achieve compliance with the Order, see id. and Letter of Mar. 10, 2004 (Tab 12), but Laurens refused to deny transfers that violate the 1971 Order and to conduct residency verification to stop Dublin residents from flouting the 1971 Order by feigning residence in Laurens's school attendance zone. See Letter of Mar. 12, 2004 (Tab 13).

13. Dublin currently grants and intends to continue granting parents' requests for copies of their children's school records, and Laurens's counsel has represented that Laurens accepts copies of records when enrolling transfers. Because Laurens may accept transfers without Dublin's consent under Georgia law, see Ga. Code § 20-2-293(a), and will accept copies of records from parents residing in Dublin, full enforcement of the 1971 Order will not be possible unless this Court enjoins Laurens from accepting transfers that exceed the Order's 5% limit. Given Laurens's knowing interference with the Order, Laurens must be enjoined from accepting transfers that violate the Order and the Court has the power to grant such relief. See All Writs Act, 28 U.S.C. § 1651(a); United States v. New York Tel. Co., 434 U.S. 159, 174 (1977) ("The power conferred by [28 U.S.C. § 1651(a)] extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice . . . ."); Rapides, 646 F.2d at 943 (holding that the court "had broad power under the All Writs Act, 28 U.S.C. § 1651 to enjoin third parties, including state courts, from interfering with its desegregation orders"); Bullock v. United States, 265 F.2d 683, 691 (6th Cir. 1959) (holding lower court had jurisdiction to enjoin private individuals from interfering with desegregation order under All Writs Act); United States v. State of Texas, 356 F. Supp. 469, 471 (E.D. Tex. 1972) (enjoining state court from interfering with transfer provision of desegregation order under All Writs Act); United States v. Hall, 472 F.2d 261, 265-67 (5th Cir. 1972) (holding court could enjoin non-parties from interfering with desegregation order pursuant to its inherent power to make a binding judgment and Federal Rule of Civil Procedure 65(d)).

14. Compliance with the 1971 Order will not be possible unless this Court also orders

Laurens to verify students' residences. As explained in the supporting memorandum, the United States has reason to believe that Dublin residents have falsely claimed residence in Laurens during the past two school years and are even more likely to do so if this Court enjoins Laurens from accepting transfers that violate the 1971 Order. According to the representations of Laurens's counsel, Laurens requires only that parents provide an address that is within the Laurens County school district zone. See Tab 12 at 1. These minimal residency requirements are woefully inadequate to stop parents from flouting the 1971 Order and must be replaced with procedures such as those described in the supporting memorandum. See Rapides, 646 F.2d at 942 ("a federal district court's desegregation order will bind the children affected, their parents, and state and local officials"); Board of Educ. of Indep. Sch. Dist. 89, Oklahoma County v. York 429 F.2d 66 (10th Cir. 1970) (injunction requiring parents to send their son to certain school in district "was 'necessary and appropriate' in the aid of the court's jurisdiction over the underlying segregation problems" and valid under All Writs Act).

15. Dublin's classroom data from the 2001-02, 2002-03, and 2003-04 school years show that Dublin also has violated the terms of the 1978 Order. See Tab 10 at 6-32, Tab 20, and Attachment A to Middle School Assignment Plan (Tab 21). It has not eliminated classroom segregation and its assignment methods have not been racially neutral for they continue to create many single race classes consisting of only black students at all three elementary schools and in non-elective courses at the middle school. See id. The data further show that most of Dublin's classes are not comprised of 50% to 150% of the minority student quotient for grades Kindergarten through eight. See id. For these reasons, Dublin's assignment methods at the middle school and the three elementary schools have violated and continue to violate the Order.

16. Dublin's racially segregative assignment practices also violate other federal law requiring the elimination of classroom segregation that results from homogeneous or ability grouping practices. See, e.g., Johnson v. Jackson Parish Sch. Bd., 423 F.2d 1055, 1056 (5th Cir. 1970) (districts must eliminate segregated classrooms to eliminate vestiges of discrimination); Adams v. Rankin County Bd. of Educ., 485 F.2d 324, 327 (5th Cir. 1973) (school board may not direct or permit segregated classes); Montgomery v. Starkville Mun. Separate Sch. Dist., 854 F.2d 127, 130 (5th Cir. 1988) (same); United States v. Gadsen, 572 F.2d 1049 (5th Cir. 1978) (enjoining segregative ability grouping); Moses v. Washington Parish Sch. Bd., 456 F.2d 1285 (5th Cir. 1972) (same); Simmons v. Hooks, 843 F. Supp. 1296, 1302 (E.D. Ark. 1994) (same).

17. Dublin attempts to justify its assignment methods on the basis of its concern about white students leaving the district for Laurens's schools or other schools. See Letter of Apr. 28, 2003, at 5, 8 (Tab 25 at 2, 3). Concerns of white flight, however, do not justify implementing policies and practices that perpetuate the vestiges of the dual school system. See United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484, 491 (1972); Stell v. Savannah-Chatham County Bd. of Educ., 888 F.2d 82, 85 (11th Circuit 1989) ("fear of 'white flight' cannot justify delaying desegregation") (citing Scotland, 407 U.S. at 491); United States v. Desoto Parish Sch. Bd. 574 F.2d 804, 816 (5th Cir. 1978) (same); see also Christian v. Board of Educ. of Strong Sch. Dist. No. 83 of Union County, 440 F.2d 608 (8th Cir. 1971).

18. Since the early 1990s, the United States Department of Education has attempted to persuade Dublin to change its middle school assignment methods so that they comply with the 1978 Order, but Dublin has refused to comply. See Tab 19. In 2001, the United States Justice Department began examining Dublin's assignment methods at the middle and elementary

schools. Between 2001 and 2003, the Justice Department requested information from Dublin and conducted two site visits. In August 2003, the United States proposed a new consent order to address Dublin's violations of the 1978 Order. See Letter of Aug. 5, 2003 (Tab 22). Dublin rejected the proposal and made an unacceptable counterproposal that fails to remedy the violations and continues to use racially segregative assignment practices. See Tab 10.

19. The United States through its Departments of Education and Justice has spent a decade trying to remedy the assignment violations without having to enlist the Court's assistance. Dublin has rejected the United States' efforts in this regard. Therefore, the United States now moves for enforcement of the 1978 Order and issuance of a rule to show cause why Dublin should not be held in contempt for its willful and repeated violations thereof.

WHEREFORE, the United States respectfully requests that the Court fully enforce the terms of the 1971 Order with respect to inter-district transfers and the terms of the 1978 Order with respect to class assignments and direct Dublin to show cause why it should not be held in contempt for its long standing violations of the 1978 Order. The United States also respectfully moves this Court for further relief enjoining Laurens from accepting transfers that violate the 1971 Order and requiring Laurens to verify students' residences so that Dublin residents cannot flout the Order by falsely claiming residence in Laurens's attendance zone. A proposed order is attached to this motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this ____ day of April, 2004, a true copy of the foregoing motion, supporting memorandum, and proposed order was served via first-class mail, postage prepaid, upon the following attorneys of record:

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