

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DEC 12 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MURRAY L. HARRIS, CLERK
By
Deputy *Joyce A. Murray*

J. AND R. DOE, ET AL Ø
 Ø
 PLAINTIFFS Ø

VS. Ø

JAMES PLYLER, ET AL Ø
 Ø
 DEFENDANTS Ø

CIVIL ACTION NO. TY-77-261-CA

PRETRIAL ORDER

The matter having come before the court at a pretrial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure and Larry R. Daves, Tyler, Texas, having appeared as counsel for plaintiff, and John Hardy having appeared as counsel for James Plyler and the School Board Members of the Tyler Independent School District, and Susan Cardwell having appeared as counsel for State of Texas, Attorney General's Office, the following action was taken:

Nature of Action
and Jurisdiction

This is an action brought by plaintiffs for permanent injunctive and declaratory releif pursuant to 28 U.S.C. Section 1331, and 1343 (3) and (4), for violation of 42 U.S.C., Section 1983 and 2000 (d) and the Fourteenth Amendment to the United States Constitution.

Jurisdiction is not contested by defendants.*

* Contested Issues of Law - State # 3.

Stipulations and Statements

The following stipulations and statements were submitted, attached as an appendix, and made a part of this order: *

- a. A comprehensive written stipulation or statement of all uncontested facts;
- b. Contentions of plaintiffs and defendants, respectively;
- c. A written list or lists of potential witnesses to be called by each party;
- d. An agreed statement of the contested issues of fact and of law;
- e. A list of all depositions to be read in evidence and statements of any objections thereto;
- f. An itemized statement of special damages.

The foregoing was modified at the pretrial conference as follows:

Exhibits

I. Plaintiffs' Exhibits

1. Transcript of proceedings on hearing for temporary injunctive relief.
2. All exhibits introduced by plaintiffs at hearing for preliminary injunctive relief.
3. List of hours and costs of plaintiffs' attorneys.

II. Defendants Exhibits

1. 1977-78 Operating Budget for Tyler Independent School District.

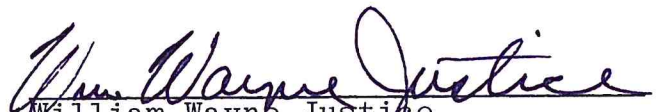
Limitations and Reservations

a. Reserved to each of the parties is the right to further supplement the list of witnesses upon application of the Court and for good cause shown.

b. There is reserved to each of the parties the right to call such rebuttal witnesses and offer such rebuttal exhibits as may be necessary without prior notice thereof to the other party.

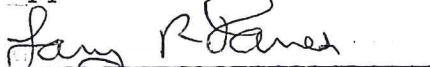
c. The probable length of the trial is two days.

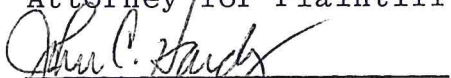
The case will be listed on the trial calender for the December Session to be tried when reached. It is ordered that this pretrial order may be modified at the trial of this action, or prior thereto to prevent manifest injustice, such modifications being made either on application of counsel for the parties or on motion of the Court.

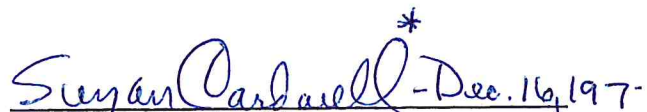

William Wayne Justice
United States District Judge

Dated: December 12, 1977

Approved as to Form:


Larry R. Daves
Attorney for Plaintiff


John Hardy
Attorney for Defendant


Suzan Cardwell
Attorney for Attorney General

* State has stipulated
to no facts.

APPENDIX
(a)

Stipulation of Uncontested Facts

The parties agree and stipulate that the following facts are not in dispute:

1. James Plyler is the superintendent of the Tyler Independent School District. He is charged with the duty of implementing on a day to day basis policies enacted by the Board of Trustees.

2. Robert Dobbs, Charles Childers, Carl Ross, Martin Edwards, Vernon Goss, Michael Breedlove, and Robert Randall are the duly elected members of the Board of Trustees of the Tyler Independent School District, a public school district.

3. In the capacity as Trustee, each trustee is charged with the development and implementation of policies concerning the Tyler Independent School District. The Board is responsible for the development and implementation of admission policies parameters of the law.

4. The trustees are sued in their official capacities.

5. Venue is proper in the Eastern District of Texas, Tyler Division.

6. The Tyler Independent School District is a public school district receiving federal funding, thereby making it subject to the provisions of 42 U.S.C. Section 2000 (d), Title VI of the Civil Rights Act of 1964.

7. Effective September 1, 1975, Section 21.031 Texas

Education Code provides for the admission of students into the school districts in the State of Texas. Such statute provided as follows:

- (a) All children who are citizens of the United States are legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.
- (b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.
- (c) The Board of Trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

8. Pursuant to Section 21.031, the defendant members of the Tyler I.S.D. Board of Trustees, on or about July 15, 1977, promulgated the following policy regarding the admission of students into the Tyler I.S.D.:

POLICY OF ILLEGAL ALIEN SCHOOL AGE CHILDREN

POLICY

The Tyler Independent School District shall enroll

qualified students who are citizens of the United States are legally admitted aliens, and who are residents of this school district, free of tuition charge. Illegal alien children may enroll and attend schools in the Tyler Independent School District by payment of full tuition fee.

A legally admitted alien is one who has documentation that he or she is legally in the United States, or a person who is in the process of securing documentation from the United States Immigration Service, and the Service will state that the person is being processed and will be admitted with proper documentation.

(c)

Witnesses for Plaintiff

1. Gilbert Cardenas
2. Robert Firestine
3. Marion Houstoun
4. Jose Cardenas
5. Hank Skelton

Witnesses for Defendant, Tyler Independent School District

1. Jim Plyler, Superintendent of Tyler Independent School Dist.
2. Wayne Kilgore, Assistant Superintendent of Tyler Independent School District.
3. Dick Lindsey, Business Manager for Tyler Independent School District.

Witnesses for Defendant, State of Texas Attorney General

(d)

List of qualifications of plaintiffs' experts witnesses

1. Gilbert Cardenas - Department of Sociology, University of Texas at Austin.

a. Education

PHD - Sociology From University of Notre Dame
B/A - Sociology California State University at Los Angeles - '69'
M/A - Sociology - University of Notre Dame '73'

b. Professional Associations

b. Professional Associations

1. Member of American Sociological Association
2. National Chairperson - National Association of Chicano Sociologists
3. National Chairperson American Sociological Association Caucus
4. Section Chairperson - Western Social Science Association Chicano Studies Section

c. Writings

- (1) Research Asst. - 1969-1970 United States - Mexico Border Studies Project.
- (2) Author of paper "U.S. Immigration Policy toward Mexico" presented at Pacific Coast Council on Latin American Studies in 1974.
- (3) Author of "Illegal Aliens and the Labor Force" presented at Measurement of Social Economic Data for Public Policy Conference - 1975

- (4) Author of paper " A Critique of Public Data on Mexican Immigration" for Annual Meeting of National Chicano Social Science Association in 1976.
- (5) Deputy Editor of Contemporary Sociology: A Journal of Reviews

2. Robert Firestine - Associate Professor of Political Economy U T, Dallas

a. Education

B/S - Economics at Rensselaer PolyTech Institute 1963.
B/M - Economics - Syracuse University - 1965
PHD - Economics - Syracuse University - 1971

b. Special Training

- (1) Public Finance
- (2) Educational Finance & Planning
- (3) Urban Regional Economics
- (4) Demographic Migration
- (5) Education in Urbanization in Middle East

c. Background

- (1) Associate Professor of Political Economy since September, 1975.
- (2) From February 1972-August 1975 worked for Educational Finance & Governance Center - Syracuse.
- (3) From September, 1970- January 1972 - Research Association in urban studies Bureau & Associate Professor of Economics at University of Florida - Gainesville.

d. Publications

- (1) Author of "Income and Wealth in a Multivariate Classification of School Districts:" Journal of Education Finance III - Fall, 1977
- (2) Co-author of "Declining Enrollments and State Aid: Another Equity and Efficiency Problem" Journal of Education Finance I - Fall 1975.
- (3) Co-Author of "Use of School District Classification Approach in Estimating Regional Impacts of State Sales and Income Taxes" NorthEast Regional Science Review V, 1975.
- (4) Author of numerous articles involving school finance and series or reports on racial trends in public education.

3. Ms. Marion Houstoun - Associate Director of Center For Labor & Migration Studies at New Transcentury Foundation, Washington, D.C.

a. Education

B/A - William and Mary - Philosophy 1959 Phi Beta Kappa
Masters - Philosophy - University of North Carolina 1961
Working on PHD at Bryn Mawr in Philosophy

b. Publications

- Report
- (1) Co-authored and managed nationwide survey for study "The Characteristics and Role of Illegal Aliens in U.S. Labor Market: An Exporatory Study" March 1976.
 - (2) Briefed Domestic Council Committee on Illegal Aliens and participated in various conferences.
 - (3) Supervised survey work and assisted in design in writing of 3 volume study Illegal Aliens : Final Report Outlining Rationale for and Preliminary Design of a Study of the Magnitude, Distribution, Flow, Characteristics, and Impacts of Illegal Aliens in the United States
 - (4) Co-Author "A New Immigration and the Presumptions of Social Policy: A Commentary" Department of Labor May, 1975.
 - (5) "Illegal Aliens: An annotated Bibliography of Recent and Related Literature on the Subject: 1968-1975" Department of Justice: 1975.

4. Jose Cardenas - Executive Director of RDRA, San Antonio

a. Education

B/A - U T at Austin
Masters - Our Lady of the Lake, San Antonio
PHD - U T at Austin

b. Professional Associations

- (1) National Education Task Force
- (2) Bilingual Childrens Television
- (3) Childrens Television Workshop
- (4) Educational Testing Service
- (5) Advisory Board for U.T.S.
- (6) Advisory Board for Hearst Task Force Bilingual Project
- (7) Madonna Neighborhood Center, San Antonio
- (8) CoChairman Task Force on Education with National Urban Coalition
- (9) Education Committee Chairman, San Antonio Urban Coalition
- (10) Board of Directors Southwest Counsel for Bilingual Education
- (11) Texas Education Agency Commissioner's Advisory Committee on Bilingual Education.

c. Writings

- (1) Co-author of Incompatabilities
- (2) Author of "Bilingual Education Segregation and a Third Alternative which appeared in Inequality in Education and published by Center for Law and Education at Harvard University.
- (3) Crisis in School Finance - Reprint of Series of articles which appeared daily in San Antonio Light

(b)

Contentions of Parties

Contentions of Plaintiffs

Plaintiffs contend that the Board of Trustees of the Tyler Independent School District upon the recommendation of the superintendent promulgated an admissions policy on July 21, 1977 based upon Section 21.031 of the Texas Education Code. Plaintiffs basically contend that the policy of the local district, as well as the statute upon which it is based, violate the 14th Amendment to the United States Constitution, Title VI of the Civil Rights Act of 1964, and deprives plaintiffs of rights protected by 42 U.S.C. Section 1983.

It is plaintiffs' contention that poor, undocumented children residing within the local district are deprived of any education whatsoever by virtue of their poverty and that promulgation of Section 21.031 of the Texas Education Code has been pre-empted by the Immigration and Nationality Act; and that the local school board policy likewise invades an area reserved exclusively to the federal government by virtue of the supremacy clause.

Plaintiffs also contend that they are entitled to the protection of the 14th Amendment to the United States Constitution; that by reason of defendant's disparate treatment of plaintiff on

account of plaintiffs' poverty, alienage and/or status that strict scrutiny of the purported state interest in promulgating the tuition policy is mandated.

Finally, it is plaintiffs' contention that abstention is inappropriate.

(e)

Contested Issues of Fact

In addition to all issues raised in the pleadings and at the hearing for preliminary injunctive relief, plaintiffs and defendants suggest that the following issues of fact remain contested:

(1) Whether the United States by virtue of its immigration policy has encouraged the flow of illegal immigrants during periods of relative prosperous economic times as a source of cheap labor.

(2) Whether the local school district have suffered incremental costs in educating plaintiffs and if so the amount of those incremental costs.

(3) Whether promulgation of the local policy and state statute has been pre-empted by Congressional action.

(4) Whether passage of the local policy and the state statute have a deterrent effect upon immigration from Mexico into Texas.

(5) Whether the maintenance of a tuition-free policy by the local district is occasioned by local problems of sufficient magnitude as to justify promulgation of Section 21.031.

(6) Whether undocumented children are a suspect class.

(7) Whether the local school district policy on admitting school age children is administered in a discriminatory manner.

(8) Whether the local school district has singled out any class of children based on national origin for denial of public education.

(9) Whether the local school district requires any documentation from children with Spanish surnames that it does not require from any other students or prospective students.

(10) Whether or not Tyler Independent School District by and through any of its administrators actually makes any documentation of a student's status as being legal or illegal within the United States.

Conclusions of Law

(1) Whether plaintiffs are entitled to protection of the 14th Amendment equal protection clause.

(2) Whether abstention is appropriate.

(3) Whether Congress in passage of the Immigration and Naturalization Act has demonstrated a complete ouster of state power with regard to the education of children of aliens.

(4) Whether the challenged statute and policy constitute discrimination on the basis of wealth.

(5) Whether the challenged statute as implemented by the Tyler Independent School District denies to plaintiffs the equal protection of the laws.

(6) Whether the court should extend the preliminary injunction previously entered into a permanent injunction.

(7) Whether plaintiffs are entitled to costs of court and a reasonable attorney fee pursuant to 42 USC Section 1988.

(8) Whether or not the policy implemented by the Tyler Independent School District denies to plaintiffs equal protection of the laws if the plaintiffs are found to be entitled to equal protection of the laws.