

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA

Filed 10/15/63

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE BOARD OF PUBLIC INSTRUCTION)
OF BAY COUNTY, FLORIDA; CHARLES)
COLLINS, President, and BUDDY)
McLEMORE, T. P. HANEY, JAMES M.)
MOWAT, CRAWFORD MOSLEY, Members)
of the Board of Public Instruction)
of Bay County, Florida; and EARL)
COCHRAN, Superintendent of Public)
Instruction of Bay County,)
Florida,)
)
Defendants.)
)

CIVIL ACTION NO. 569

C O M P L A I N T

The United States, as a claim against the Board of Public Instruction of Bay County, Florida, Charles Collins, Buddy McLemore, T. P. Haney, James M. Mowat, Crawford Mosley and Earl Cochran, alleges:

1. This is an action for specific performance of certain written assurances made and given on behalf of the Board of Public Instruction of Bay County, Florida, to the plaintiff. This action is also to protect the interest of the United States that members and civilian employees of its Armed Forces and their dependents be not unconstitutionally discriminated against on account of race or color in the use and enjoyment of educational facilities which have been built and are being maintained and operated with the use of funds of the United States under the provisions of P.L. 815 and P.L. 874, 81st Cong. (Chapters 13 and 19 of Title 20 U.S.C.), with

the resultant detriment to their service and morale.

2. This Court has jurisdiction of this action under Section 1345 of Title 28 United States Code.

3. The Board of Public Instruction of Bay County, Florida (hereafter referred to as the Board), is an agency of the State of Florida and is responsible, under the laws of Florida, for the operation of public schools within the County. The principal office of the Board is located in Panama City.

4. Charles Collins is President and Buddy McLemore, T. P. Haney, James M. Mowat and Crawford Mosley are members of the Board and each resides in Bay County, Florida.

5. Earl Cochran is Superintendent of Public Instruction of Bay County and is responsible for the administration of the public schools of the County under the general supervision of the Board. He resides in Bay County.

6. The plaintiff maintains Tyndall Air Force Base in Bay County, Florida, as a part of its national defense establishment. Tyndall Air Force Base, an Air Defense Command installation, is the headquarters of the 73rd Air Division and the 4756th Air Defense Wing. Its primary mission is to provide training for pilots in advanced interception fighter aircraft.

7. Tyndall Air Force Base is located on property owned by the plaintiff in Bay County, Florida, approximately 10 miles from Panama City, Florida.

8. There are approximately 5,000 military personnel and approximately 600 civilians stationed or employed at Tyndall Air Force Base. Of these, approximately 250 military personnel and approximately 40 civilian personnel are Negroes.

9. The plaintiff has constructed approximately 1,200 family housing units on Tyndall Air Force Base. These units, which are owned and maintained by the plaintiff, have been constructed so that servicemen who are stationed at Tyndall Air Force Base may live together with their families. The housing units are assigned to the officers and airmen stationed at the Base without regard to their race or color.

10. Plaintiff operates an elementary school on Tyndall Air Force Base for the education of children of elementary school age residing on the Base. Plaintiff operates no educational facilities for junior high or high school age children residing either on or off the Base, nor for elementary age children residing off the Base.

11. The defendants maintain and operate 27 public schools in Bay County for the education of the children of Bay County, including dependents of members and civilian employees of the Armed Services.

12. Under the provisions of Chapter 13 of Title 20 of the United States Code, the Commissioner of Education has approved and the plaintiff has paid to the Board during the period from 1951 to the present time a total of \$2,058,013 for the maintenance and operation of its schools. These grants were approved and the payments made on account of the Board providing public education for the dependents of the military personnel and civilian employees of the plaintiff, and the proceeds have been used by the Board to defray the general cost of maintaining and operating its public schools. A tabulation of the grants paid and the number of dependents on whose account they were paid, for each year since 1951, is set forth in Appendix A to this complaint.

13. Under the provisions of Chapter 19 of Title 20, United States Code, the United States Commissioner of Education has approved and the plaintiff has paid or agreed to pay grants in the total amount of \$918,939.98 during the period from 1950 to the present time for the construction and improvement of the schools under the operating jurisdiction of the Board. A tabulation of the funds paid or approved by the plaintiff to the Board on individual construction projects appears as Appendix B to this complaint.

14. The plaintiff has paid \$165,392.98 to the defendant Board for the construction of Cherry Street Elementary School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This payment represented the entire cost of the construction. The project was completed on October 14, 1953.

15. The plaintiff has paid \$47,234.00 to the defendant Board for an addition to Bay High School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This project was completed on July 29, 1954, at a total cost of \$71,002.40.

16. The plaintiff has paid \$43,986.00 to the defendant Board for an addition to Springfield Elementary School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This project was completed on July 29, 1954 at a total cost of \$44,985.76.

17. The plaintiff has paid \$73,664.00 to the defendant Board for an addition to Glenwood Elementary School under

a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This project was completed on July 29, 1954 at a total cost of \$74,662.16.

18. The plaintiff has paid \$19,186.00 to the defendant Board for an addition to Hiland Park Elementary School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This project was completed on July 29, 1954 at a total cost of \$19,586.00.

19. The plaintiff has paid \$19,845.00 to the defendant Board for an addition to Lynn Haven Elementary School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This payment represented the entire cost of constructing the addition. The project was completed on July 29, 1954.

20. The plaintiff has paid \$77,238.00 to the defendant Board for an addition to Jinks Junior High School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This payment represented the entire cost of constructing the addition. The project was completed on July 29, 1954.

21. The plaintiff has paid \$410,410.00 to the defendant Board for the construction of Mowat Junior High School under a grant applied for by the Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. This project was completed on August 22, 1960 at a total cost of \$527,921.28.

22. In connection with each of its applications for a grant under Chapter 19 of Title 20, United States Code, as referred to in paragraphs 13 through 21, the Board gave written assurance, as required by 20 U.S.C. 636, that the school facilities of the Board "will be available to the children for whose education contributions are provided ... on the same terms, in accordance with the laws of the State in which applicant is situated, as they are available to other children in applicant's school district."

23. At all times herein mentioned it has been and is the policy and practice of the defendants, in operating the public schools under their jurisdiction, to segregate Negro students in separate schools maintained and operated solely for students who are of the Negro race.

24. It has been and is the practice of the defendants, pursuant to the policy described in the preceding paragraph, to reject applications filed on behalf of children of Negro personnel stationed or employed at Tyndall Air Force Base to transfer from a school attended exclusively by Negroes to a school attended by white children.

25. The defendants have failed and are failing to make the public school facilities under their jurisdiction available to Negro dependents of military personnel and civilian employees of the plaintiff upon the same terms as such facilities are available to white children.

26. The Board has failed and is now failing and refusing to perform each of its assurances referred to and described in paragraph 22.

27. On March 26, 1963, a representative of the Department of Health, Education and Welfare, and a representative of the Department of Justice conferred with the

defendants in the office of the Board of Public Instruction for Bay County in Panama City, Florida, regarding assignments by the defendants of dependent children of members and personnel of Tyndall Air Force Base to particular schools in Bay County. In this conference the defendants promised that such children would be assigned to particular schools in accordance with the provisions of the Pupil Assignment Law of the State of Florida and without regard to the race or color of any such child. This promise was confirmed in a letter of March 27, 1963 from Earl Cochran to the Department of Justice and to the Department of Health, Education and Welfare, a copy of which letter is attached to this complaint as Appendix C.

28. Since the promise made to the representatives of the plaintiff, as described in paragraph 27, the defendants have failed and refused to change their policy and practice of assigning Negro and white children to separate schools, as described in paragraph 23, and have continued to violate their written assurances described in paragraph 22.

29. The acts and conduct of the defendants herein alleged violate the Fourteenth Amendment to the Constitution and impose an undue and unreasonable burden upon the plaintiff in the exercise of its power to raise and support armies and to provide for the national defense.

30. The acts and conduct of the defendants cause immediate and irreparable injury to the plaintiff, consisting of the unavailability of a suitable education for the dependents of the plaintiff's personnel at Tyndall Air Force Base, and the consequent impairment of the service and morale of the military and civilian personnel of the Base and the impairment of rights owing to the plaintiff under the Constitution and

laws of the United States and under the written assurances given to the plaintiff as hereinabove set forth.

31. The plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that the Court enter an order enjoining the defendants, their successors in office, agents, employees, and all persons in active concert or participation with them, from segregating or discriminating against, among, or between, upon the basis of race or color, any dependents of the members or employees of the Armed Services of the plaintiff in the operation of the public schools of Bay County.

Plaintiff further prays that the defendants be ordered to pay the costs of this action, and for such other relief as the interests of justice may require.

UNITED STATE OF AMERICA,
Plaintiff,

By:

BURKE MARSHALL
Assistant Attorney General

CLINTON N. ASHMORE
United States Attorney

ST. JOHN BARRETT, Attorney
Department of Justice

DAVID H. MARLIN, Attorney
Department of Justice

APPENDIX A

FEDERAL PAYMENTS MADE TO BAY COUNTY BOARD OF PUBLIC INSTRUCTION, PANAMA CITY, FLORIDA, FOR CURRENT OPERATING EXPENSES OF SCHOOLS UNDER PUBLIC LAW 874 AND THE NUMBER OF FEDERALLY CONNECTED CHILDREN BY CATEGORY COUNTED FOR PAYMENT FOR FISCAL YEARS 1951 THROUGH 1963

Fiscal Year	Number of Children Counted for Payment			Federal Payment
	"A" Category <u>1/</u>	"B" Category <u>2/</u>	"E" Category <u>3/</u>	
(1)	(2)	(3)	(4)	(5)
1951	--	1,042	28	\$ 23,661
1952	283	1,103	189	66,804
1953	324	1,135	73	41,852
1954	345	1,113	--	74,636
1955	345	1,113	--	78,334
1956	397	1,360	--	107,573
1957	--	1,793	--	117,754
1958	--	2,409	--	165,525
1959	301	2,242	--	215,361
1960	436	2,327	--	261,086
1961	434	2,425	--	279,559
1962	405	2,500	--	297,486
1963 (Est.)	427	2,625	--	328,382
Total	3,697	23,187	290	\$ 2,058,013

- 1/ Children who live on Federal property with a parent employed on Federal property.
- 2/ Children who live on Federal property or with a parent employed on Federal property, but not both.
- 3/ Children for whom entitlement was increased by the amount of State aid for which the school district was not yet eligible (State aid lag). This provision was eliminated by Public Law 248, effective July 1, 1954.

APPENDIX B

SCHOOL CONSTRUCTION PROJECTS APPROVED UNDER PUBLIC LAW 815 FOR BAY COUNTY BOARD OF PUBLIC INSTRUCTION, PANAMA CITY, BAY COUNTY FLORIDA, INCLUDING APPLICATION PERIODS, PROJECT NUMBERS, DATES OF PROJECT APPROVAL, FEDERAL AND LOCAL FUNDS EXPENDED AND TOTAL PROJECT COSTS FOR FISCAL 1951 THROUGH 1963

Application Period	Project Number	Date Project Approved	Federal Funds	Local Funds	Total Cost
(1)	(2)	(3)	(4)	(5)	(6)
1950-52	51-C-3A	November 20, 1952	\$ 165,392.98	\$ --	\$ 165,392.98
1950-52	51-C-3C	August 27, 1953	47,234.00	23,768.40	71,002.40
1950-52	51-C-3D	August 27, 1953	43,986.00	999.76	44,985.76
1950-52	51-C-3E	November 4, 1953	73,664.00	998.16	74,662.16
1950-52	51-C-3F	August 27, 1953	19,186.00	400.00	19,586.00
1950-52	51-C-3J	August 27, 1953	19,845.00	--	19,845.00
1950-52	51-C-3K	August 27, 1953	77,238.00	--	77,238.00
1950-52	51-C-N-X	February 7, 1955	<u>1/</u> 61,984.00	--	61,984.00
1957-59	59-C-3A9	August 18, 1958	410,410.00	117,511.28	527,921.28
	Total		\$ 918,939.98	\$143,677.60	\$ 1,062,617.58

1/ Reimbursement payment.

APPENDIX C

THE BOARD OF PUBLIC INSTRUCTION

For The County of Bay

P. O. Drawer 820

Panama City, Florida

Office of
EARL COCHRAN
Secretary and Superintendent
Telephone SU 5-4676

March 27, 1963

Board Members:

CHARLES COLLINS,
Chairman
Panama City Beach,
Florida
T. P. HANEY,
Vice-Chmn.
Panama City, Florida
BUDDY McLEMORE,
Panama City, Florida
CRAWFORD MOSLEY,
Panama City, Florida
JAMES M. MOWAT
Lynn Haven, Florida

Department of Justice
Department of Health and Welfare
Washington, D. C.

Gentlemen:

The purpose of this letter is to summarize our conclusions resulting from a joint meeting between the Board of Public Instruction of Bay County Florida, and representatives from your respective Departments, Honorable Harold Horowitz and Honorable St. John Barrett.

We are cognizant of duties under the Florida Pupil Assignment Law which law recognizes that no child can be assigned to any school in the county, solely on account of that child's race, creed, or color.

We do not intend in the future, to depart from the requirements of Florida law, particularly the Florida Pupil Assignment Law, in this matter nor have in the past.

We sincerely appreciate your consideration in sending very able and considerate representatives to our county for the purpose of this conference. We hope for continued cooperation between us, consistent with our duties and responsibilities to all the citizens of our county.

Sincerely,

Earl Cochran
County Superintendent

EC/p