

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 80 C 5124
	)	
BOARD OF EDUCATION OF THE	)	
CITY OF CHICAGO,	)	Hon. Milton I. Shadur
	)	
Defendant.	)	

ORDER

This Court has considered the United States' Motion for a Stay Pending Appeal, its Memorandum and Supplemental Memorandum in support of its Motion, its Report submitted pursuant to the Court's June 30, 1983 Order (the "Order"), the oral arguments of counsel for the parties on July 19 and July 22, 1983, the Memorandum In Opposition To Certain Aspects Of The United States' Motion For A Stay Pending Appeal filed by the Board of Education of the City of Chicago ("Board") and all other aspects of the full record in this litigation to date. During the proceedings on July 19 and 22, this Court has stated reasons for denial of a stay (except as provided in a partial stay order entered contemporaneously with this order), but it wishes to make the following findings of fact to categorize its reasons in terms of the criteria regularly applied to granting or denial of stays:

1. Board will suffer irreparable harm if a stay is granted. Moneys in the Secretary of Education's Discretionary Fund and in other subaccounts in the Special Programs and Populations Account are currently available to the Secretary of Education to provide desegregation assistance to Board. If a stay is granted, the United States has confirmed those moneys would be expended by the United States and thus rendered permanently unavailable to Board. Any additional delay by the United States in seeking to make other sources of funding available either to Board or to intended or potential grantees ("Grantees") under the various subaccounts in the Special Programs and Populations Account would further substantially reduce the possibility that the United States could meet its obligations to Board from moneys appropriated for federal fiscal year 1983.

2. There has been no showing of irreparable (or indeed any material) harm to the United States if a stay is denied.

3. Grantees will not suffer irreparable harm because Board has brought and this Court has granted today a motion which will allow the Secretary to fund Grantees in those amounts necessary to enable Grantees to operate at present levels up to September 30, 1983. Harm to Grantees is further reduced by Board's motion for an expedited appeal, which was granted by the United States Court of Appeals for the Seventh Circuit on July 22, 1983. In any

event, the harm to Grantees has been caused by the actions taken by the United States -- the party seeking the stay -- because of its failure to comply with the Order.

4. After full consideration of the relative hardships that would result from granting or denying the motion of the United States for a stay, the Court determines that the balance of hardships weighs heavily in favor of denying the motion.

5. Denial of the stay would not disserve the public interest under the circumstances. Instead the public interest, particularly the interest of children attending the Chicago Public Schools whom Board's student desegregation plan is designed to benefit, would be furthered by denying the United States' motion. To the extent other public interests are involved that might be deemed impacted by the Order, such interests have been impacted adversely by the United States' own actions (see Finding 3).

6. For the reasons stated in earlier oral opinions of this Court on June 30, July 19, and July 22, and in the Findings of Fact and Conclusions of Law entered June 30, 1983, this Court remains of the view the Order was and is correct. However this Court is not prepared to find there is no substantial likelihood the United States will prevail on the merits of its appeal of the Order, because this Court views the United States' position as an arguable one (though not correct or ultimately persuasive).

Based on these findings of fact and the record of this proceeding to date, it is hereby ORDERED that except to the extent provided in the order entered contemporaneously with this order, the United States' Motion for a Stay Pending Appeal is hereby denied.

ENTER:

  
U.S. DISTRICT COURT JUDGE

DATED: *July 26, 1983*