

To summarize: the District Court acted with complete propriety, committing no abuse of discretion in granting Whitaker's motion for a voluntary dismissal of its third-party cause of action. This being so, there remained not even an arguable jurisdictional footing for Kenrose's amended complaint against the third-party defendant, Kilodyne. The District Court, as a result, correctly granted Kilodyne's motion to dismiss Kenrose's amended complaint for lack of subject-matter jurisdiction.

Affirmed.



**UNITED STATES of America,  
Plaintiff-Appellant,**

v.

**The TEXAS EDUCATION AGENCY  
et al., Defendants,**

**Richardson Independent School District,  
Defendant-Appellee.**

**No. 74-3686.**

United States Court of Appeals,  
Fifth Circuit.

April 22, 1975.

A motion for supplemental relief asking desegregation of an all-black school in the defendant school district was denied by the United States District Court for the Northern District of Texas, at Dallas, William M. Taylor, Jr., Chief Judge, and the United States appealed. The Court of Appeals held that the district did not pass the strict scrutiny test of genuine nondiscrimination in the continued existence of a one-race school merely because the neighborhood had been promoted by an interracial

council as a preconceived and planned model community for black residents.

Order reversed and cause remanded with directions.

### **1. Schools and School Districts ⇌13**

United States Supreme Court decision requires courts to give close scrutiny to one-race and predominantly one-race schools located in districts with mixed population.

### **2. Schools and School Districts ⇌154**

In system with history of segregated schools, plan of conversion from dual to unitary system that permits continued existence of one-race schools places upon school authority the burden of showing that such assignments are genuinely nondiscriminatory, and school authorities must be able to satisfy court that the one-race composition is not result of present or past discrimination on their part.

### **3. Schools and School Districts ⇌13**

School district did not pass strict scrutiny test of genuine nondiscrimination in continued existence of one-race school merely because neighborhood had been promoted by interracial council as preconceived and planned model community for black residents where school in such neighborhood was employed as means to perpetuate segregated character of school system theretofore kept segregated by other means.

### **4. Schools and School Districts ⇌13**

Where school was employed as means to perpetuate segregated character of school system theretofore kept segregated by other means, and school district since 1970 had operated under order then issued that permitted school to continue as an all-black island and district had made no study of other alternatives, but district official testified that pairing or clustering school with one or more neighborhood white schools would present no problems of capacity and no transportation problem which could not be solved, elimination of racial-

ly segregated character of school was ordered.

Frank D. McCown, U. S. Atty., Dallas, Tex., Judy Wolf, Brian K. Landsberg, Dept. of Justice, Civ. Rights Div., App. Section, Washington, D. C., for plaintiff-appellant.

Henry D. Akin, Jr., Dallas, Tex., for defendant-appellee.

Appeal from the United States District Court for the Northern District of Texas.

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM:

The District Court denied a motion for supplemental relief filed by the United States asking that the Richardson (Texas) Independent School District be ordered to desegregate Hamilton Park Elementary School, the only all-black school in the district. The United States appeals. We reverse.

The school district includes the City of Richardson, a suburb of Dallas; Hamilton Park, an all-black subdivision located within the City of Dallas; and part of the City of Garland, another Dallas suburb. As of April 1974 the district had 32,319 students. Only a relatively small number—1,069—were black, approximately 3%. Of the black elementary students, 71%, or 367, attend Hamilton Park Elementary.

Hamilton Park Elementary had no white students when this case was tried in August 1974. It has never had a white student. The Board of Trustees does not project that under the present zoning system it will ever have a white student. It has never had a white principal. It did not have a white teacher until 1969. Of 25 other elementary schools in the system, 24 are all white or substantially all white.

[1-3] Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91

1. Previously, all the Negro elementary students in the district attended a single all-black school (no longer in existence). All the Negro

S.Ct. 1267, 28 L.Ed.2d 554 (1971), requires the courts to give close scrutiny to one-race and predominantly one-race schools located in districts with mixed population. In a system with a history of segregated schools—and the Richardson district has such a history—a plan of converting from dual to unitary system that permits the continued existence of one-race schools places upon the school authority the burden of showing that such assignments are genuinely non-discriminatory. The school authorities must be able to satisfy the court that the one-race composition is not the result of present or past discrimination on their part. 402 U.S. at 26, 91 S.Ct. at 1281, 28 L.Ed.2d at 572. The Richardson district urges that it passes this strict scrutiny test because while the Hamilton Park school was originally constructed in a single-race neighborhood, the character of the neighborhood is not the result of state action. The district correctly points out that, beginning around 1951, Hamilton Park was promoted by the Dallas Interracial Council as a preconceived and planned model community for black residents. In time it became the only substantial black neighborhood in the Richardson school district. The Board's argument, however, gives no recognition to other vital facts. Beginning with its initial opening in 1955, as a grade 1-12 school, the Hamilton Park school became the place of assignment for not merely the black students residing in Hamilton Park but those from all over the district. It was employed as a means to perpetrate the segregated character of a school system theretofore kept segregated by other means.<sup>1</sup> It continued in that role for ten years.

Negro students living more than two miles from the school were provided transportation by the school district, without regard to the proximity of white schools to their residences.

Between 1955 and 1963 Hamilton Park school was expanded by the addition of

high school students were bussed to an all-black high school in Dallas.

more classrooms pursuant to seven different contracts. All the classrooms were occupied by black scholastics. While more and more black students were assigned to the growing facility in Hamilton Park, the district was constructing more white elementary schools<sup>2</sup> with white students assigned to them on a geographic basis. No whites were assigned to Hamilton Park school.

In 1965 the district adopted a desegregation plan based on a geographic zone system. Hamilton Park was made into a zone, and has continued to be maintained as such, with knowledge that not a single white student resided therein.

In 1969 the senior high portion of Hamilton Park school was closed and thereafter Negro high school students were bussed to other high schools in the district.

In 1970 the United States filed a suit challenging the segregated character of the Richardson system. The court approved the government's proposal that the junior high portion of Hamilton Park school be closed and the Hamilton Park zone divided into three parts for purposes of assigning black junior high students to three other junior high schools in the district. This meant that Hamilton Park school would be a facility for elementary students only. The court denied the government's proposal that Hamilton Park Elementary be paired, three grades per school, with a predominantly white elementary school in the adjacent district, Stults Road Elementary, approximately three miles and 15 minutes' driving time away.

In the same order the court directed desegregation of staff and faculty, construction of buildings to promote desegregation, and creation of a biracial advisory committee.

Since 1970 Hamilton Park Elementary has continued to serve students residing within the Hamilton Park zone. It has

continued to be 100% black. All but one of the district's 25 other elementary schools have been virtually all white. Three other elementary schools are in adjacent zones, none more than approximately three miles from Hamilton Park Elementary. A majority to minority transfer policy in effect since 1970 has produced a handful of black transfers out of Hamilton Park, no white transfers in.

Both before and after efforts to desegregate, the burden of movement out of their immediate neighborhoods to other schools has been placed entirely upon the black citizenry. Before zoning, Negro students were transported as necessary to keep them in all-black schools. Since the 1969 closing of the high school grades at Hamilton Park school, and the 1970 order, black junior and senior high students must go out of the Hamilton Park neighborhood to schools in non-black neighborhoods.

[4] Since 1970 the district has operated under the order then issued that permitted Hamilton Park Elementary to continue as an all-black island. The district has made no study of other alternatives. Nevertheless, an official of the district testified when this case was heard in 1974 that pairing or clustering Hamilton Park Elementary with one or more of the nearby white schools would present no problems of capacity and would require some transportation but that the logistical problem could be solved.

The order of the District Court is reversed and the cause is remanded with directions that the racially segregated character of Hamilton Park Elementary be eliminated effective with the beginning of the 1975-76 school year. Within 60 days from the date of the mandate in this case the Richardson District shall file with the District Court for its consideration proposed arrangements to achieve the result required.

2. It had only one white elementary school in 1955.