

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOYCE MARIE MOORE, ET AL.,

CIVIL ACTION

NO. 65-15556

VERSUS

JUDGE LEMELLE

TANGIPAHOA PARISH SCHOOL BOARD, ET AL.

MAGISTRATE SHUSHAN

PLAINTIFFS' MEMORANDUM
IN SUPPORT MOTION FOR FURTHER RELIEF

It is within the court's authority to establish hiring goals at as part of a desegregation plan. See Tasby v. Wright, 713 F.2d 90, 99 (5th Cir. 1983) *citing* United States v. Montgomery Board of Education, 395 U.S. 225, 233, 89 S.Ct. 1670, 1674, 23 L.Ed.2d 263 (1969) (approving district court faculty desegregation plan that established numerical goals). The court Order in R. Doc. 866 at 2-4, specifying goals and hiring procedures, came after hearings and proceedings that clearly established violation of orders regarding hiring of minorities and established a pattern and practice of hiring that had not only reduced greatly the presence of Black teachers in the Tangipahoa Parish School System but also reduced the presence of principals, supervisors, and administrators. See also, N.C. State Bd. of Educ. v. Swann, 402 U.S. 43, 46, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971) (noting that consideration of race was one tool absolutely essential to remedying segregation). The defendants seek to exempt Hammond

High School from the court-ordered hiring procedure remedy and plaintiffs object.

II.

Record Document 866 is not complex. It requires the defendant to hire a qualified Black applicant as the principal of Hammond High School unless the Superintendent recommends a non-black applicant who is more qualified. The Superintendent has articulated nothing but subjective, ad hoc and unsubstantiated generalities that have nothing to do with better qualifications. What he has done is nothing more than a deliberate effort to water down and circumvent compliance with the orders of this court. Here we go again with another obvious effort of school officials attempting to impose a preselected choice and deny a more qualified Black applicant. The situation before the court is precisely the circumstance that the order was designed to prevent. The Superintendent has not articulated anything concerning the qualifications of Chad Troxclair that would allow an exception to hiring the Black applicant pursuant to R. Doc. 866.

This is a matter of grave importance. No Black person has ever been appointed as Principal of Hammond High School. Racial discrimination in employment and violation of a court order implemented to remedy such discrimination is irreparable harm on

its face. The Superintendent and school board are engaged in an act of open defiance. They have chosen to ignore plaintiffs, the Compliance Officer¹, the Desegregation Implementation Officer, the Personnel Review Committee, and the express terms of the orders of this court. Plaintiffs urge the court to enforce its orders and to hold expeditious proceedings to resolve this matter. Plaintiffs further urge the court to order the defendants to hire the highly qualified Black applicant who applied for the position.

The Superintendent is apparently encouraged by the long proceedings required to resolve the Alden Foster matter. However, it was the probing and extensive review of hiring practices in the Alden Foster matter that led to R. Doc. 866 and the hiring procedures therein. This court directed the Tangipahoa Parish School System to reverse the longstanding diminished presence of Black principals, supervisors, and administrators. Until their diminished presence is restored, qualified Black persons must be

¹ The behavior of the defendants is squarely at odds with the duties of its Compliance Officer who is responsible for ensuring compliance with all orders and mandates issued by the court in this matter. Moore v. Tangipahoa Parish Sch. Bd., CIV.A. 65-15556, 2008 WL 1930501 (E.D. La. Apr. 30, 2008). The defendant themselves lobbied for the court to create desegregation implementation officer position, but the Superintendent and school board did not even consult her in making the decision to select the white candidate.

hired, limited only by the hiring of a genuinely more qualified non-Black applicant.

The Black applicant in this instance is not only qualified. Her credentials are exceptional. Mildred Johnson, an African-American, is acceptable as a supervisor so long as she chooses a career path in special education. Her outstanding record and impeccable credentials as a teacher and administrator, however, have no weight when it comes to her application to become the first Black Principal at Hammond High School, a place where she previously served as an assistant principal. The defendants today filed a deceptive report showing some recent hiring of Black persons into administrative positions that were forced by the orders of this court. They have not reached the goals set by the court to remedy some 45 years of discriminatory conduct. They now seek to present this short-term, minimal response as a justification to close the door of the principalship at Hammond High School to an exceptional Black applicant. Furthermore, the statistical report is deceptive in that it presents events out of context. Defendants attempt to camouflage the fact that most of the positions are not new hires but simply shifting people around. Further, the defendants omit to inform the court of the relationship and impact of these hiring of Black supervisors have

on the goals that the defendants themselves set in certain categories that the court adopted in R. Doc. 866.

What the defendants suggest is outrageous. Of course a high percentage of recent hires are Black. That was the purpose and intent of the court's order in R. Doc. 866, to reverse the trend of eliminating Black supervisors and principals. These results, however, happened only after the court ordered a process of procedure that forced a more equitable review. Defendants' have no cause to pat themselves on the back for this brief interlude of hiring qualified blacks after some 45 years of discriminatory conduct in the opposite direction.

II.

Plaintiffs are also concerned at the blatant effort to use the remedy for racial discrimination as a pretext to discriminate against an outstanding Black applicant. In his letter, dated July 8, 2010, the Superintendent says:

...Mr. Troxclair's appointment will serve to place a white person in the principal's position at a racially identifiable black school in furtherance of the new school desegregation plan. See Paragraph 15, Order Record 876.

Apparently the Superintendent did not read paragraph 15 of the court order very carefully:

15. School system administrative personnel, principals and assistant principals of schools, and certified personnel who are paid salary for employment related services that are for at least nine months (except classroom teachers) shall be recommended for appointment by the superintendent of schools subject to the concurrence of the school board, whose concurrence shall not be unreasonably withheld. **Employment or appointment of such personnel shall be based upon criteria approved by the court for the hiring and/or appointment of supervisory/administrative personnel in Order (Doc. No. 866).**

Principal and assistant principal appointments shall be made without regard to the racial make-up of the student body of a school.

[**Bold** emphasis in the original]. These provisions specifically prohibit what the Superintendent admits to doing. Hiring must be in accord with R. Doc. 866 and the appointment of principals was to be made without regard to the racial make-up of the student body of the school.

Chad Troxclair is not entitled to any advantage because he is white. The purpose of the court order is to eliminate the unfair advantage of being white and, further, to eliminate the historic racially discriminatory disadvantage imposed upon Black applicants. On the face of her credentials, Mildred Johnson is clearly more qualified than Chad Troxclair. It would indeed be a travesty of justice if the Superintendent is allowed to successfully cite Troxclair's whiteness as a substantial factor to deny a clearly more qualified Black applicant the equal opportunity that the court order was intended to provide. The

defendants in this instance have taken action that perpetuates the racial discrimination of the past, the exact opposite of what the court ordered them to do.

Plaintiffs urge the court to make clear that its orders mean what they say. The defendants should not be allowed to use ad hoc subjective pronouncements which have absolutely nothing to do with qualifications as a pretext to circumvent the orders of this court. The orders of this court were intended to remove the invisible white-only sign that hovers over the principal's office at Hammond High School.

III.

As they did recently in the case of Alden Foster, the Black applicant who applied for the position of head coach at Amite High School, school officials are going all out to try and justify the unjustifiable, rejecting an outstanding Black applicant in favor of an obviously less-qualified white applicant. The subjective understanding of the Superintendent and school board as to the meaning of qualifications and determining superior qualifications is suspect on its face. It is plaintiffs understanding that the current white chief academic officer, Melissa Stilley, was selected only after the State Board of Education waived compliance with qualifications, overlooking Dr. Lynell Higgenbotham, a black applicant who fully certified

and held a Ph.D. The Superintendent, Mark Kolwe, had no qualification or experience whatsoever in education. Apparently, he was selected after obtaining some kind of waiver of qualifications.

While there is nothing inherently wrong with allowing decision makers to base decisions on subjective criteria, subjective evaluations involving white supervisors provide a ready mechanism for racial discrimination. See, Carter v. Three Springs Residential Treatment, 132 F.3d 635, 644 (11th Cir. 1998). The defendants not only engaged in ad hoc subjective evaluation, they execute a very expansive and strange meaning to their definition of "qualifications" when applied to white applicants, which, quite apparently, is very different from the term as applied to Black applicants. Indeed, "more qualified" as used by the Superintendent and Tangipahoa Parish School officials appears to be a trick phrase subject to ad hoc manipulation based on subjective whims of the moment. These decisions regarding the appointment of Chad Troxclair as Principal of Hammond High School occur in the context of a longstanding and very recent history of racial discrimination in employment. The defendants have the burden of proving to the court, by "clear and convincing," evidence that the decision to reject Mildred Johnson was not a continuation of the longstanding exclusion of qualified Black

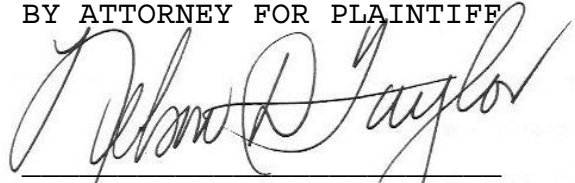
applicants from certain supervisory positions. The reasons set forth in the Superintendent's letters articulate a violation of the court order entered as a remedy for racial discriminatory employment practices. What he says is insufficient on its face as a justification for the action taken .

CONCLUSION

Justice delayed is justice denied. There are no complex facts here that warrant a prolonged delay. This court has previously informed the defendants that it "cannot continue to allow the Tangipahoa School Board's interpretation of "all deliberate speed" to further eschew the attainment of a unitary school system." Moore v. Tangipahoa Parish Sch. Bd., CIV.A. 65-15556, 2008 WL 1930501 (E.D. La. Apr. 30, 2008). Mildred Johnson is entitled to be appointed as Principal at Hammond High School and she is entitled NOW. She was the consensus choice of the evaluations under R. Doc. 866. There should be no prolonged delay in her assuming the position. She is well qualified and, even if there were no R. Doc. 866, she stands heads and shoulders above the white selectee in terms of credentials and qualifications. Mildred Johnson should not be denied one moment longer because of the color of her skin. In the interest of fundamental fairness, plaintiffs urge expeditious consideration of this matter—and after due proceedings require the defendants

to appoint Mildred Johnson as the Principal of Hammond High School and to grant such additional remedies as to the court appears just and proper under the circumstances.

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CERTIFICATE

I hereby certify that, on this day, July 23, 2010, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system which gives notice of filing to all counsel of record.

