

Motion for Partial Summary Judgment Filed Against State of New Jersey in Pending School Segregation Case

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Gary S. Stein
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The Plaintiffs in the pending school segregation case against the State of New Jersey filed a Motion for Partial Summary Judgment today on the issue of liability, asking the Superior Court in Mercer County to rule based on undisputed facts that the existing levels of racial segregation in New Jersey's public schools violate provisions of the New Jersey Constitution and New Jersey Statutes as a matter of law, eliminating the necessity of a trial on the question of liability. The Motion is returnable on October 25, 2019.

The Complaint in the segregation case was initially filed on May 17, 2018, on the 64th anniversary of the United States Supreme Court's Decision in *Brown v. Board of Education*. It alleges that persistent segregation has violated the constitutional rights of hundreds of thousands of New Jersey students. The lawsuit contends that "...because educational opportunity is, as a result, undermined for students in schools that are often characterized by intense poverty and social isolation in numerous, well-documented ways, these segregative state laws, policies, and practices deny an alarming number of Black and Latino students the benefits of a thorough and efficient education."

The complaint also states that all pupils, "including White students," are harmed by "homogeneous learning and social environments" that "produce a two-way system of racial stereotyping, stigma, fear, and hostility that obscures individuality and denies all concerned the recognized benefits of diversity in education."

After several months of settlement negotiations, Plaintiffs returned to court this past April and informed the court that settlement negotiations had broken down and no longer were productive. After

additional communication between the parties, Plaintiffs filed an Amended Complaint on August 2, 2019, and the State filed its Answer to that Complaint on August 22, 2019.

The announcement of the Motion's filing was made by Retired Supreme Court Justice Gary S. Stein, president of the New Jersey Coalition for Diverse and Inclusive Schools, Inc., the nonprofit corporation that has been coordinating the filing and litigation proceedings on behalf of Plaintiffs. Plaintiffs include the Latino Action Network, NAACP New Jersey State Conference, the Latino Coalition, United Methodist Church of New Jersey, Urban League of Essex County, and nine children of various racial backgrounds, and are represented by Lawrence S. Lustberg of Gibbons P.C. in Newark, and by Michael S. Stein and Roger Plawker of Pashman Stein Walder Hayden in Hackensack.

Justice Stein noted, "The Answer to the Plaintiffs' Amended Complaint, filed by the State in August 2019, has essentially admitted to the major allegations about the extent of racial segregation in the State's public schools." The specific factual allegations and data concerning New Jersey's public school segregation that no longer are disputed are set forth in the Statement of Undisputed Material Facts that is being filed in support of Plaintiffs' Motion.

"Because of those admissions," added Justice Stein, "Plaintiffs' counsel is arguing to the Court that there is no need for a trial on the issue of liability, and that the Court should rule as a matter of law that the intense levels of racial segregation in New Jersey's public schools violate the New Jersey Constitution, as well as New Jersey Statutes."

Stein continued, "A ruling in the Plaintiffs' favor would eliminate the need for a trial on the issue of liability, and would focus the balance of the litigation on the issue of how to undo the high levels of racial segregation and fulfill the New Jersey Constitution's requirements to maintain non-segregated schools."

Among the facts conceded by the State are that about one-fourth of all Black public school students in New Jersey attended schools in the 2016–17 school year that were populated by more than 99% non-White students and an additional 24.5% of Black public school students that year attended schools that were between 90 and 99% non-White.

Similarly, the State has admitted that in that school year, about 14% of Latino public school students attended schools that were at least 99% non-White and another 30% of Latino students attended schools that were between 90 and 99% non-White.

Stein observed, "The data in the Amended Complaint admitted by the State demonstrate that 23 school districts in the State's 8 most populated counties have student populations that are over 89% non-White. Other districts in these same counties have student populations that are overwhelmingly White. Those data cover districts in Essex, Passaic, Hudson, Union, Mercer, Middlesex, Camden, and Monmouth Counties. The data admitted to by the State include severe socioeconomic segregation, as well as racial segregation. The data also demonstrate that the extreme racial segregation throughout the State includes charter schools, as well as traditional public schools. We look forward to a Court ruling

that these segregated schools are unconstitutional, so that the parties can further litigate the question of how to remedy the constitutional violation.”

A copy of the Motion and supporting documents are available **HERE**.

