

Judge Rejects State's Effort to Avoid Responsibility for Racially Segregated Schools

On Friday, in a highly anticipated ruling in a statewide school desegregation case, New Jersey Superior Court Judge Robert Lougy rejected the argument by lawyers representing the state of New Jersey that the state cannot be held liable for persistent racial segregation in its public schools. The pre-trial ruling comes in the case, *Latino Action Network v. State*, filed in 2018 on behalf of plaintiffs Latino Action Network, the NAACP New Jersey State Conference, Latino Coalition, the Urban League of Essex County, the United Methodist Church of Greater New Jersey and nine students.

"The court agreed with us on two essential points," said attorney Lawrence Lustberg, who is lead counsel for the plaintiffs. "One, New Jersey's schools are deeply segregated by race, and two, the state has a constitutional obligation to address this urgent problem." He added that the court rejected most of the state's defenses and provides a clear path forward for plaintiffs to obtain a remedy on their core legal claims that the state has violated the rights of students to equal protection, attend desegregated schools, and receive a thorough and efficient education under the state's constitution.

"We are closely analyzing the opinion and will determine next steps in the case, including pursuing future trial or appeals and discussions with the state, after discussion with the clients and stakeholders involved in the case," stated Michael Stein, co-counsel for plaintiffs.

Gary Stein, former New Jersey Supreme Court justice who participated in many of the Court's school funding decisions and who serves as chair of the New Jersey Coalition for Diverse and Inclusive Schools, emphasized the importance of the trial court's conclusion that "50 years of funding litigation has done little to eliminate *de facto* segregation" and pointed out that there is no material dispute in the case that many school districts in New Jersey are severely segregated. But Stein also noted that the court could and should have acted more forcefully.

"The court could have gone further and issued specific findings on behalf of plaintiffs that required the state to come up with a remedy. The opinion is a reminder that embarrassing racial segregation in New Jersey schools has existed for far too long, and that New Jersey's courts must act with a much greater sense of urgency to vindicate the rights of all our schoolchildren."

Robert Kim, executive director of Education Law Center, emphasized the importance of the case to students in New Jersey and nationwide. "Nearly 70 years after *Brown v. Board*, schools in New Jersey and across the nation remain deeply segregated by race. This deprives them of the opportunity to learn in a diverse learning environment, which is critical not only for their development and education but for our democracy as a whole."

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Notable excerpts from the court's opinion:

“Plaintiffs allege with sufficient specificity that Defendants intentionally failed to exercise their constitutional obligations and authorities to remedy segregation. The problems of racially isolated districts persist, and Plaintiffs adequately allege that Defendants . . . have failed to take sufficient steps to remedy that segregation.” Page 68

“The Court finds that Defendants’ discussion of demographic trends among public school children in New Jersey does not , without more, constitute a defense to Plaintiffs’ constitutional claim. The Court agrees with Plaintiffs that Defendants argument rings of an “attitude of helplessness in the face of what [is] perceived to be inevitable.” Page 59

“That Plaintiffs have not established statewide infirmity does not diminish that they have demonstrated marked and persistent racial imbalance in numerous school districts across the State that Defendants’ actions, policies, programs, and inaction have failed to remedy.” Page 54

“Plaintiffs maintain that New Jersey’s schools are tragically – and embarrassingly – among the most segregated in the nation. That alleged condition, along with our Court’s prohibition of *de facto* segregation, makes New Jersey a logical choice for such historic claims.” Page 7

“Defendant’s application fails on both legal and factual grounds: their legal arguments in support of summary judgment are ultimately unpersuasive, and their own expert acknowledges that six percent of schools in the State are racially isolated, where a single race or ethnicity makes up 90% or more of a student body . . . while Plaintiffs have not demonstrated that the entire system is constitutionally repugnant, that shortcoming may be a question of scale, and Defendants fail to prove that they are entitled to judgment as a matter of law.” Page 39

“Defendants’ factual and legal criticisms of Plaintiffs’ theory are neither persuasive nor robust and do not persuade this Court that Plaintiffs’ claims are flawed.” Page 59

“[H]ome rule and neighborhood schools are not set in stone. They remain viable as long as they serve public policy; to the extent that they protect and prolong racial segregation, they are anathema to public policy. As the Court has further emphasized, home rule and neighborhood schools impose no obstacle to and do not dilute or diminish the Commissioner’s exercise of her obligation to fight segregation in public schools.” Page 72

On the NJ Supreme Court’s long history of civil rights cases affirming the state’s duty to fulfill its constitutional obligations: “Nothing in the intervening fifty-years has diminished either Defendants’ power or responsibility.” Page 57