

**STATE OF INDIANA  
CIVIL RIGHTS COMMISSION**

**DOCKET NO. EDno96020179**

**SUSAN SANCHEZ, and  
JOSEPH GEARY;**

Complainants,

v.

**SCHOOL CITY OF HAMMOND,  
Respondent.**

FILE DATED

OCT 03 2007

Indiana State Civil Rights Commission

~~FILE DATED~~

~~SEP 21 2007~~

~~Indiana State Civil Rights Commission~~

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On December 11, 2006, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision"). On December 27, 2006, Complainants, Susan Sanchez ("Sanchez") and Joseph Geary ("Geary") (collectively "Complainants"), filed Complainants' Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On March 9, 2007, Complainants filed Complainants filed Brief In Support Of Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. On March 12, 2007, Respondent, School City of Hammond ("SCH"), filed Respondent's Brief In Support Of Administrative Law Judge's Proposed Findings Of Fact, And Conclusions Of Law And Order, And Opposition To The Complainants' Objections To Proposed Findings Of Fact And Conclusions Of Law And Order. On August 10, 2007, Complainants filed Complainants' Brief On The Impact Of The United States Supreme Court Decision: *Parents Involved In Community Schools v. Seattle School District No. 1, Et. Al.*, The "School Assignment By Race" Case. Also on August 10, 2007, SCH filed its Supplement To Respondent's Brief In Support Of Administrative Law Judge's Proposed Findings Of Fact, And Conclusions Of Law And Order, And Opposition To The

Complainants' Objections To Proposed Findings Of Fact And Conclusions Of Law And Order. On August 22, 2007, the parties filed their Stipulation Regarding Exhibits.

Alpha Blackburn, the Chairperson of the ICRC presided over oral argument on Complainants' Objections on August 24, 2007. Commissioners Barry Baynard, David C. Carter (the Vice-Chairperson), Tehiji G. Crenshaw, John E. Garcia, and Steven A. Ramos was also present. Commissioner Charles D. Gidney was absent. Complainants were represented by counsel, Michael C. Healy, Esq., ICRC Staff Counsel.. SCH was represented by counsel, Marsha Volk Bugalla, Esq. of the Indianapolis firm of LOCKE REYNOLDS LLP. Arguments of counsel were heard and the cause was taken under advisement.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.


1. Complainants have not met the burden of an objecting party to demonstrate an error that affected the result.

**IT IS, THEREFORE, ORDERED**

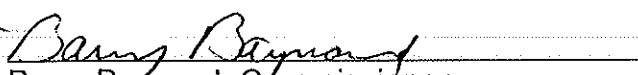
1. Complainants' Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

*03 October 2007*

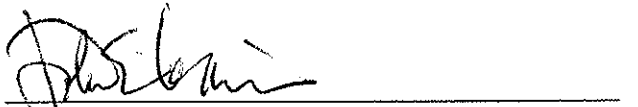
**INDIANA CIVIL RIGHTS COMMISSION** Dated: 21 September 2007

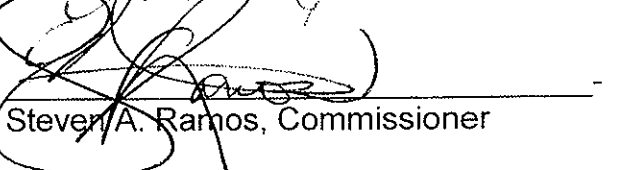
  
Alpha Blackburn, Chairman

  
David C. Carter, Vice-Chairperson

  
Barry Baynard, Commissioner

  
Tehiji G. Crenshaw, Commissioner

  
John E. Garcia, Commissioner

  
Steven A. Ramos, Commissioner

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School City of Hammond  
c/o Superintendent  
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Hammond, IN 46320

LOCKE REYNOLDS LLP  
BY: Marsha Volk Bugalla, Esq..  
Attorneys for Respondent School City of Hammond  
201 North Illinois Street, Suite 1000  
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and to be personally served on the following attorney of record:

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STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EDno96020179

SUSAN SANCHEZ, and  
JOSEPH GEARY;

Complainants,

FILE DATED

DEC 11 2006

VS.

Indiana State Civil Rights Commission

SCHOOL CITY OF HAMMOND,  
Respondent.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

A Hearing was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on June 19, 2006 in Louisville, Kentucky and June 21 and 22, 2006 in Hammond, Indiana. Complainants, Susan Sanchez ("Sanchez") and Joseph Geary ("Geary") (collectively "Complainants") were present on June 19 and were represented at all times by counsel, Michael C. Healy, Esq.; Staff Counsel with the ICRC. Respondent School City of Hammond ("SCH") was represented by counsel, Marsha Volk Bugalla, Esq. and Andrew A. Manna, Esq. of the Indianapolis firm of LOCKE REYNOLDS LLP. Also present on behalf of SCH, at all times, was James K. Whitaker ("Whitaker").

After an opening statement was made on behalf of Complainants, SCH reserved its opening statement until the opening of its case. Witnesses were sequestered and instructed not to discuss the case or their testimony until the Hearing was over. Complainants called Sanchez and Geary as witnesses. During the presentation of Complainants' case, Joint Exhibit A ("JX\_"), JXB, JXC, JXD, JXE, JXF, JXG, JXH, JXI, JXJ, JXK, JXL, JXM, JXN, JXO, JXP, JXR, JXS, JXT, JXU, JXV, and JXW were admitted

into evidence without objection; Complainant's Exhibit 1A ("CX\_"), CX1C, CX3, CX4, CX5, CX6, and CX7 were offered into evidence but not admitted; CX40, CX11. Respondent's Exhibit 1 ("RX-"), RX2, Complainant's Exhibit B ("CX\_"), CXC, CXD, CXE, CXF, RX3, and RX4 were admitted into evidence without objection and CXA was admitted into evidence over objection. After Complainants rested their case, SCH called the following witnesses to testify on its behalf: Dr. Gary Jones ("Dr. Jones"), Rebecca Ward ("Ward"), Gerald Mazur ("Mazur"), Janis Vance ("Vance"), Deborah White ("White"), Albertine Dent ("Dent"), Linda Lawson ("Lawson"), and Whitaker. During the presentation of SCH's case, CX9, CX10, CX11, CX12, CX13, CX14 and CX15 were admitted into evidence without objection. Complainants elected not to present any evidence in rebuttal and the parties waived closing argument. The ALJ took the cause under advisement and ordered the parties to file what they suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before September 22, 2006 and that briefs could be filed by the same date. This deadline was extended twice, eventually to October 16, 2006.

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On October 16, 2006, Complainants filed Complainants' [Suggested] Proposed Findings Of Fact, Conclusions Of Law And Order and Complainants' Post-Hearing Brief On The Issue Of Respondent's School Transfer By Race Policy. On October 17, 2006, SCH filed Defendant (*sic*) School City Of Hammond's [Suggested] Proposed Findings Of Fact And Conclusions Of Law and Defendant (*sic*) School City Of Hammond's Post-Hearing Brief.

On October 23, SCH filed its Objection To Complainants' Post-Hearing Brief And Attached Exhibit, in which SCH sought to strike an exhibit and to strike portions of Complainants' Brief referring to the Equal Protection Clause. At the end of a conference call with counsel in which arguments were heard, the ALJ sustained the objection as to the exhibit and overruled the objection as to the arguments.

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Having carefully considered the evidence and the arguments of counsel, and being duly advised in the premises, the ALJ proposes that ICRC enter the following findings of fact, conclusions of law, and order.

## FINDINGS OF FACT

1. The issues to be resolved are:

A. Liability: Whether the attendance/transfer policy (BP 5005-1 and AR 5005-2) of SCH in effect during the 1995-1996 school year violated the Indiana Civil Rights Law in that it was racially discriminatory. Was the policy and its implementing regulation intended to be permanent and indefinitely continue, not adequately reviewed during its existence by the Board/Administration of SCH, and other alternatives not considered by the Board?

B. Relief – If Complainants prevail on the liability issue, what relief should be awarded?

FOURTH PRE-HEARING ORDER ¶1 (June 12, 2006).

2. Geary is a male who resided, at all material times, in the state of Indiana.

3. Sanchez, Geary's mother, is a white female. Geary's father is Hispanic.

4. SCH has been, at all relevant times, the governing body of the public school system in Hammond, Indiana, operating schools from elementary through high school.

5. In the 1970s, SCH, like many school districts, faced a problem with the racial segregation of its schools. For example, some schools had 97% minority student while others had 4% minority student.

6. SCH has not, at any material time, provided transportation for students, with the exception of vocational school students and special education students.

7. In the mid-1970s, Whitaker, legal counsel for SCH, was approached by counsel for the National Association for the Advancement of Colored People ("NAACP"), who discussed with him their concerns with issues of racial segregation within SCH and other issues that could lead to litigation. Whitaker investigated the matter and concluded that action was appropriate to try to reduce the segregation within SCH.

8. Ultimately, in August of 1978, the local branch of the National Association for the Advancement of Colored People ("NAACP"), in conjunction with several families, filed a lawsuit in federal District Court, alleging that SCH was racially

segregated and other forms of racial discrimination not relevant to the issues to be resolved here.

9 SCH denied that it practiced any deliberate segregation, claiming that the segregation in some of its schools resulted from residential housing patterns or “white flight”.

10. In September of 1982, SCH adopted a policy on school attendance areas, BP 5005, in which the previous attendance districts were revised. The new districts and sub-districts were drawn so as to increase racial integration. This resulted in many students, both majority and minority, attending a school that was not the school nearest to their residence. RXB-1.1.

11. Also in September of 1982, SCH adopted its “Voluntary Open Enrollment Plan” (BP 5005-1), a bit of a misnomer, since the essence of this plan was to allow students to enroll in schools other than the ones assigned if, but only if, that enrollment increased integration. *Id.* The rule was that a majority student could transfer to a minority school or that a minority student could transfer to a majority school.

12. For purposes of the Voluntary Open Enrollment Plan, SCH borrowed the definitions of “minority” and “majority” from the United States Department of Education’s Office of Civil Rights. A particular school was identified as a “majority” school if the percentage of majority students exceeded the percentage of majority students in SCH as a whole. Similarly, a school was identified as a “minority” school if the percentage of minority students exceeded the percentage of minority students in SCH as a whole.

13. Before the adoption of these policies, SCH considered other alternatives then known to it. It rejected busing as too expensive and disruptive.

14. While the plan did not expressly state a date or a method for its termination, the fact is that it was reviewed annually pursuant to a practice in which all policies were annually reviewed.

15. The School Board met twice monthly and reviewed policies at every meeting pursuant to a schedule that had them reviewing all policies at least once a year, when new members joined the Board, when state or federal law required a change or addition or when requested by the Administration, legal counsel or a member of the Board

Implicitly, the School Board could have revised or rescinded any of its policies when reviewing them.

16. Prior to the academic year of 1995-1996, Complainants lived in several locations within the boundaries of SCH.

17. On or about October 2, 1995, Complainants moved to 4404 Torrence Avenue in Hammond, an address then in the attendance district for Clark Middle School.

18. During the 1995-1996 school year, Geary desired to transfer from Clark Middle School to Spohn Middle School.

19. Sanchez completed a transfer form dated February 20, 1996, asking that Geary be allowed to transfer from Clark Middle School to Spohn Middle School.

20. On this transfer request form, Sanchez listed Geary as "Hispanic". On previous documents, he had been listed as "white". This change was instituted by Sanchez, who apparently had interpreted a comment by a psychologist to mean that it was appropriate to identify a child as the same ethnicity as the child's father. There is no evidence that anyone associated with SCH had anything to do with this choice.

21. At that time, both BP 5005-1 and Administrative Regulation 5005-2 were in effect and those provisions prohibited a minority student, such as Geary, from transferring from a majority school (such as Clark) to a minority school (such as Spohn). As a result, the request was denied.

22. There is no evidence that SCH permitted a majority student to transfer from a minority school to a majority school. In fact, the only evidence pertaining to any specific majority student's transfer request is that a member of the School Board made requests to transfer her white children was denied because each would have been a transfer of a majority student from a minority school to a majority school.

23. The desegregation plan, and its associated policies and regulations, was rescinded in 2001.

24. Neither Sanchez nor Geary was excluded from equal opportunity because of national origin.

25. SCH adopted the policies that prevented the requested transfer long before the request was made, and did so to reduce racial segregation in its schools. It did so after



consideration of alternative solutions, and it reviewed the policy on a regular basis, and contemplated such review when it adopted the policies and regulations.

26. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

## CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Sanchez, Geary, and SCH are each a person as that term is defined in the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).
3. What constitutes an unlawful discriminatory practice is set out in the following subsection of the ICRL:

- (l) "Discriminatory practice" means:
  - (1) The exclusion of a person from equal opportunities because of race, ..., national origin, or ancestry;
  - ...
  - (3) The promotion of racial segregation or separation in any manner ....

Every discriminatory practice relating to ... education ... shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(l).

4. Complainants have not proven by a preponderance of the evidence that the denial of Complainants' request for a transfer in February of 1996 excluded either Sanchez or Geary from equal opportunities because of race or because of national origin or ancestry.
5. A public school that fails to act when its schools are racially identifiable, when such action is clearly warranted, might well be found to have engaged in "the promotion of racial segregation or separation in any matter" under IC 22-9-1-3(l)(3). Accordingly, a defense to a claim that school assignment was based, in part, on race is appropriate where as here, the assignment was made, or denied, pursuant to a plan previously adopted by the school, after considering other alternatives and the school contemplated,

and conducted, regular reviews to determine the continued advisability of the plan. Inasmuch as SCH has proven by a preponderance of the evidence that these elements were all present in this case, that defense applies in this case.

6. SCH did not commit an unlawful discriminatory practice against Sanchez or Geary.

7. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against said person. IC 22-9-1-6(m).

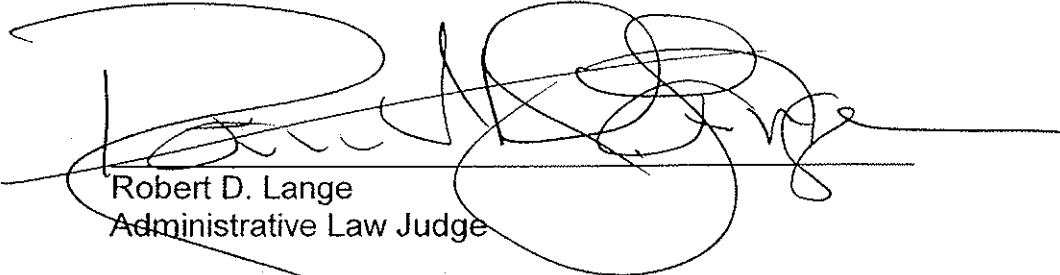
8. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

9. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

## ORDER

1. Complainants' complaint is **DISMISSED**, with prejudice.

Dated: 11 December 2006



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 11<sup>th</sup> day of December, 2006 on the following parties and attorneys of record:

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c/o Superintendent  
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LOCKE REYNOLDS LLP  
BY: Martha Volk Bugalla, Esq.; and Andrew A. Manna, Esq.  
Attorneys for Respondent School City of Hammond  
201 North Illinois Street, Suite 1000  
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Indianapolis, IN 46244-0961

and to be personally served this 11<sup>th</sup> day of December, 2006 on the following:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Attorney for Complainants Susan Sanchez and Joseph Geary  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

Indiana Civil Rights Commission  
c/o The Honorable Gregory Kellam Scott, Esq.; Director  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255