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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PARENTS INVOLVED IN  
COMMUNITY SCHOOLS, a  
Washington nonprofit corporation,

Appellant,

v.

SEATTLE SCHOOL DISTRICT  
NO. 1, a political subdivision of the  
State of Washington, et al.,

Appellees.

No. 01-35450

APPELLANT'S UNOPPOSED  
MOTION TO EXPEDITE  
HEARING OF APPEAL

BACKGROUND

This is an unopposed motion to expedite the Court's hearing of this appeal.

In a suit filed in the United States District Court for the Western District of Washington on July 18, 2000, appellant Parents Involved in Community Schools ("PICS") challenged appellee Seattle School District's ("the School District's") procedure for assigning students to its high schools. See Complaint for Declaratory, Injunctive, and Other Relief, D. Ct. DN 1. PICS alleged that the School District's race-based student assignment procedure violates the Equal Protection Clause of the Fourteenth

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Amendment, Title VI of the federal Civil Rights Act of 1964, and the Washington Civil Rights Act, RCW 49.60.400, and sought declaratory and injunctive relief. On April 6, 2001, the trial court issued its Order rejecting PICS' motions for summary judgment on those state and federal claims and granting the School District's motions for summary judgment.

On May 1, 2001, PICS filed its notice of appeal of the April 6 Order. PICS – with the support of the School District – now requests that this Court expedite this appeal so that it may be resolved before student assignments are made for the 2002-03 school year. Preparation of the District Court transcript is complete and both parties are prepared to follow the proposed briefing schedule set forth below.

#### DISCUSSION

If expedited review is not granted in this case, another round of student assignments will be made under the School District's contested plan. If school choice and assignment patterns remain consistent, race will serve as the primary factor in as many as 300 initial high school assignments for the 2002-03 school year. See Plaintiff's Memorandum Supporting Plaintiff's Cross-Motion for Partial Summary Judgment on the State Law Claim and Opposing Defendants' Motion Therefor at 4, February 12, 2001, D. Ct. DN 50. If, as PICS contends, this practice violates state and federal law, students seeking assignment to Seattle's public high schools will suffer irreparable injury if this court does not issue its decision by April 2002.<sup>1</sup>

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<sup>1</sup> In a filing to the trial court, the School District acknowledged the need for a rapid resolution to this case. In particular, the School District explained that the administrative burdens of student assignment required the dispute to be resolved by April:

Motions to expedite appeals to the Ninth Circuit “will be granted upon a showing of good cause.” 9th Cir. R. 27-12. In the context of Rule 27-12, “[g]ood cause includes, but is not limited to, situations in which ... in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot.” Id.

There is good cause to expedite the resolution of this dispute. The appellant argues that the School District’s assignment of students to public high schools on the basis of race violates the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and RCW 49.60.400. Such allegations of irreparable, widespread harms are the very sort that expedited appeals are intended to address. See 9th Cir. R. 27-12.

District court rulings involving public school assignments and allegations of unconstitutional or illegal state action often merit expedited treatment on appeal. See, e.g., Kelly v. Guinn, 456 F.2d 100, 104 (9<sup>th</sup> Cir. 1972) (expedited appeal granted in school desegregation case); Hoots v. Pennsylvania, 651 F.2d 177 (3d Cir. 1981) (permitting expedited appeal of school district merger); U.S. v. Missouri, 515 F.2d 1365 (8<sup>th</sup> Cir. 1975) (expedited appeal of school desegregation order); U.S. v. Texas Educ. Agency, 467 F.2d 848, 875 (5<sup>th</sup> Cir. 1972) (ordering expedition of any

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The school assignment process for the 2001-02 school year begins in February, when students and their parents begin submitting their choices. The actual assignment of elementary students occurs in April, and of middle and high school students in May. In order to have this process run effectively, and not upset student/parent expectations, a ruling on the merits, either by way of preliminary injunction or trial is necessary by April 2001.

Joint Status Report (Defendants’ Statement) at 2, Sept. 1, 2000, D. Ct. DN 11.

appeals of school desegregation order so as to avoid disruption of coming school year); U.S. v. Bd. of Trustees of Crosby Indep. Sch. Dist., 424 F.2d 625 (5<sup>th</sup> Cir. 1970) (expedited appeal of deferral of desegregation order permitted).

In U.S. v. Hinds County School Board, 417 F.2d 852, 857 (5<sup>th</sup> Cir. 1969), the Fifth Circuit permitted expedited appeals of desegregation cases, noting that:

fundamental constitutional rights of many persons would be jeopardized, if not lost, if this Court routinely calendared this case for briefing and argument in the regular course. Before we could ever hear it, the opening of the school year September 1969-1970 would have gone by.

The widespread and irreparable harms alleged in PICS' complaint warrant expedited consideration by this court. When the School District makes assignments under its race-based plan, students suffer deprivations of constitutional rights. Assignment decisions, once made and implemented, cannot be undone easily. (It was for this reason that the parties requested and received an expedited discovery and motion schedule from the trial court. See Joint Status Report, D. Ct. DN 11.) In numerous cases, forced assignments based on race require that students travel much further to school than they would have to if permitted to attend their preferred schools. These assignments place students in weaker, less desirable schools because of their races. Such hardships have compelled many families to take their children out of Seattle's public schools, either by moving outside the School District's boundaries or by placing their children in parochial or other private schools.

The School District has already used the contested assignment policy to make high school assignments for the freshman class of the 2001-02

school year. Assignments for the freshman class of 2002-03 will take place according to a process that must be in place by April 2002. See Joint Status Report (Defendants' Statement) at 2, D. Ct. DN 11. Unless this appeal is expedited, the Ninth Circuit will not have an opportunity to rule on the legality of the Seattle School District's assignment plan until after that deadline has passed.

For these reasons, the appellant – with the appellees' approval – requests that the Court expedite this appeal, scheduling oral argument for November of 2001 so that the Court may consider and rule on the legality of the student assignment plan before the School District begins its next round of assignment decisions in April of 2002.

Appellant PICS proposes the following schedule:

Appellant's opening brief due:	July 17, 2001
Appellees' reply brief due:	August 17, 2001
Appellant's response due:	September 2, 2001
Oral argument:	November 2001

DATED this 16<sup>th</sup> day of May, 2001.

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