

IN THE UNITED STATES COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CHEYNEY STATE COLLEGE FACULTY

and

E. SONNY HARRIS
328 Elder Avenue
Yeadon, Pennsylvania 19050

and

ARTHUR M. BAGLEY
124 W. Lafayette Street
West Chester, Pennsylvania 19380

and

ERNEST BERRY
401 W. Johnson Street
Philadelphia, Pennsylvania 19144

PLAINTIFFS I
individually and on
behalf of others
similarly situated

and

WILL TATE
1250 Providence Road
Secane, Pennsylvania 19018

and

DIANA TRACEY
210 W. Chester Road
West Chester, Pennsylvania 19380

and

EUGENE JONES
Route 5 Box 29-A
State College Road
Dover, Delaware 19901

CIVIL ACTION

FILED

SEP 23 1980

MICHAEL E. MUNZ, Clerk
By *MA* Dep. Clerk

NO: 80-3679

JACQUELINE SHEPPARD
6125 Washington Avenue
Philadelphia, Pennsylvania 19143
Plaintiffs II, individually
and on behalf of others
similarly situated

and

HENRY C. DAILEY
4247 Locust Street
Apartment 714
Philadelphia, Pennsylvania 19104

and

DORIAN G. JACKSON
7009 Emlen Street
Philadelphia, Pennsylvania 19150

and

LEATRICE J. BENNET
1206 Trinett Avenue
Sharon Hill, Pennsylvania 19079

and

WILLIAM ROSENTHAL
159 W. Townway
West Chester, Pennsylvania 19380
Plaintiffs III, individually
and on behalf of others
similarly situated

and

JEFFREY K. HART
541 North 58th Street
Philadelphia, Pennsylvania
individually and as President
of the Student Government
Cooperative Association, Inc.
on behalf of others similarly
situated,
Plaintiff IV

and

CHARLES GAMBLE
3138 Wilt Street
Philadelphia, Pennsylvania 19121

and

STACEY SHIELDS
6221 Jefferson Street
Philadelphia, Pennsylvania 19151

and

SYLVIA WHITE
1701 North Peach Street
Philadelphia, Pennsylvania 19131

and

VERNON MONTAGUE
941 N. Belmont
Philadelphia, Pennsylvania 19104
Plaintiffs V, individually
and on behalf of others
similarly situated

and

LISA FORDHAM
14 Saint James Place
Bridgeton, N.J. 08302

and

DENNIS RUCKER
530 S. 57th Street
Philadelphia, Pennsylvania 19143
Plaintiff VI, individually
and on behalf of others
similarly situated

and

CHRISTOPHER HAMMON
1511 Clifton Avenue
Sharon Hill, Pennsylvania 19079

and

NATHAN L. GADSON
520 E. Miner Street
West Chester, Penna. 19380
Plaintiffs VII, individually:
and on behalf of others
similarly situated

ELISHA B. MORRIS
8637 Thouron Avenue
Philadelphia, Penna. 19150

and

CARLA ROBERTSON
929 Stoval Place
Chester, Penna. 19013
Plaintiffs VIII,
individually and on behalf
of others similarly
situated

and

EDWARD SMITH
1202 S. 58th Street
Philadelphia, Penna. 19143
Plaintiff IX
individually and on behalf
of others similarly situated

and

DENISE SCRUGGS
1614 North 16th Street
Philadelphia, Penna. 19132
Plaintiff X, individually
and on behalf of others
similarly situated

VS.

SHIRLEY HUFSTEDLER, SECRETARY
U.S. Department of Education
400 Maryland Avenue
Washington, D.C. 20202

and

DEWEY DODDS, DIRECTOR
Office of Civil Rights
U.S. Department of Education
3535 Market Street
Philadelphia, Penna
Defendants I

and

ROBERT G. SCANLON, SECRETARY
Pennsylvania Department of Educ.
Box 911
Harrisburg, Pennsylvania

CLAYTON L. SOMMERS
Commissioners of Higher Education
Commonwealth of Pennsylvania
P.O. Box 911
Harrisburg, Penna.
Defendant II

and

BOARD OF STATE COLLEGES AND
UNIVERSITY DIRECTORS
COMMONWEALTH OF PENNSYLVANIA
Defendant III

and

BOARD OF TRUSTEES OF
CHEYNEY STATE COLLEGE
Cheyney, Pennsylvania 19319
Defendant IV

and

WADE WILSON, PRESIDENT
Cheyney State College
Cheyney, Pennsylvania 19319
Defendant V

AMENDED
COMPLAINT

COUNT I

NATURE OF ACTION

1. This action is brought by faculty, alumni, students, and prospective students of Cheyney State College for declaratory relief and to enjoin defendants from operating a dual and de jure segregated system of higher education and to compel defendants, forthwith, to develop and implement a constitutionally sound plan for remedying past inequities. Action and omissions by defendants, as alleged herein, are under color of state law and the rules, regulations, customs and usages of the Commonwealth of Pennsylvania.

Actions and omissions herein alleged are violative of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq, the U.S. Constitution and the laws of the United States of America and of the Commonwealth of Pennsylvania and Executive Order No. 12232.

2. This action is brought to redress the deprivation of rights protected by 42 USC 1981, 1983 and 2000d and the rights protected under state law. (24 P.S § 2510-301 et seq).

JURISDICTION:

3. This court has jurisdiction pursuant to 28 USC 1331, 1343(4) 136, 2201 and 2202; 5 USC 702-704 and the ancillary and pendent jurisdiction over state claims.

4. The amount in controversy exceeds ten thousand dollars (\$10,000.00).

PARTIES:

5. Plaintiff, Cheyney State College Faculty is an Ad Hoc Committee composed of members of the faculty of Cheyney State College.

6. E. Sonny Harris is an Associate Professor, Arthur M. Bagley is a Professor, and Ernest Berry is an Associate Professor at Cheyney State College. Collectively these plaintiffs are referred to as Plaintiffs I. Plaintiffs I are presently tenured faculty members who are alumni of Cheyney State College. Plaintiffs I are citizens and taxpayers of the United States and reside within the jurisdiction of the U.S. Court for the Eastern District of Pennsylvania. Plaintiffs I bring this action on behalf of themselves and on behalf of others similarly situated.

7. Will Tate is an Associate Professor, Diana Tracey is a Professor, Ernest Jones is an Associate Professor and Jacqueline Sheppard is an Associate Professor at Cheyney State College. Collectively those plaintiffs are referred to as Plaintiffs II. Plaintiffs II are presently tenured faculty members, are citizens and taxpayers of the United States. Plaintiffs II bring this action on behalf of themselves and on behalf of others similarly situated.

8. Henry C. Dailey is an Associate Professor, Dorian G. Jackson is an Assistant Professor, Leatrice J. Bennett is an Associate Professor William Rosenthal is a Professor at Cheyney State College. Collectively these plaintiffs are referred to as Plaintiffs III. Plaintiffs III are presently tenured faculty members who have been notified of losing their positions at Cheyney State College due to retrenchment of faculty. Plaintiffs III bring this action on behalf of themselves and on behalf of others similarly situated.

9. Jeffrey K. Hart is a Junior-Student at Cheyney State College and the duly elected President of the Student Government Cooperative Association, Inc. The Student Government Cooperative Association, Inc. is the recognized body of student representatives at Cheyney State College. Individually and in his elected capacity of President, plaintiff is referred to as Plaintiffs IV. Plaintiffs IV bring this action on behalf of themselves and on behalf of others similarly situated.

10. Charles Gamble is a Senior student, Stacey Shields is a Senior student, Sylvia White is a Senior student and Vernon Montague is a Senior student at Cheyney State College. Collectively these plaintiffs are referred to as Plaintiffs V. Plaintiffs V bring this action on behalf of themselves and on behalf of everyone similarly situated.

11. Lisa Fordham is a Junior student, Dennis Rucker is a Junior at Cheyney State College. Collectively these plaintiffs are referred to as Plaintiffs VI. Plaintiffs VI bring this action on behalf of themselves and on behalf of everyone similarly situated.

12. Christopher Hammon is a Sophomore student. Nathan L. Godson is a Sophomore student at Cheyney State College. Collectively these plaintiffs are referred to as Plaintiffs VII. Plaintiffs VII bring this action on behalf of themselves and on behalf of others similarly situated.

13. Elisha B. Morris is a Freshman student, Carla Robertson is a Freshman student at Cheyney State College. Collectively these plaintiffs are referred to as plaintiffs VIII. Plaintiffs VIII bring this action on behalf of themselves and on behalf of others similarly situated.

14. Edward Smith is a graduate student at Cheyney State College. These plaintiffs are referred to as Plaintiffs IX. Plaintiff brings this action on behalf of himself and on behalf of others similarly situated.

15. Denise Scruggs is a student who went to Penn State University due to the unavailability of certain courses at Cheyney State College.

This plaintiff is referred to as plaintiff X. Plaintiff brings this action on behalf of herself and on behalf of others similarly situated.

16. Shirley Hufstedler, is the chief educational administrator for the United States of America and is charged with the duty of dispersing federal educational funds in a non-discriminatory manner and enforcing desegregation in the Pennsylvania system of higher education. Dewey Dodds is the director of the office of Civil Rights of the U.S. Department of Education for Region III. He is responsible for investigating for compliance and enforcing the federal requirement in Region III which includes Pennsylvania. Collectively these defendant are referred to as Defendant I.

17. Robert G. Scanlon, is the Chief educational administrator for the Commonwealth of Pennsylvania and is charged with the duty of enforcing the educational requirements of the law of the Commonwealth of Pennsylvania. Clayton L. Sommers is the administrator of the Commonwealth's Higher Education System. Collectively these defendants are referred to as Defendant II.

18. The Board of State College and University Directors, Defendant III, is established under 24 P.S. 20-2001 et seq. and is charged with the duty planning and coordinating the development of the system of state colleges and university. Defendant III establishes fiscal, personnel and educational policy, coordinates the development of curricula, develops rules for faculty appointments and other functions. Defendant III is composed of 15 persons appointed by the Governor.

19. Board of Trustees of Cheyney State College, Defendant IV, has general direction and control of the property, and management of Cheyney State College. Powers and duties of the Board of Trustees of Cheyney State College include:

- (a) Subject to the approval of the Governor, to elect a president, who shall, subject to the authority of the board, administer the institution;

(b) On nomination by the president from time to time, to appoint such officers and employees as may be necessary;

(c) To fix the salaries of its employees in conformity with the standards established by the Executive Board;

(d) Subject to the approval of the Secretary of Education to make such by-laws, rules and regulations for the management of the institution as it may deem advisable.

20. Wade Wilson, President of Cheyney State College, Defendant V, is the Chief administrative officer with primary responsibility for the implementation of programs and policies at Cheyney State College.

CLASS ACTION ALLEGATIONS

21. The class which plaintiffs represent is composed of faculty and students who are presently at Cheyney State College and those faculty and students who may in the future attend or teach at Cheyney State College. The class also includes those students who would otherwise attend Cheyney State College but for the discriminatory acts or omissions herein alleged. All members of the class are or might be adversely affected by the practices complained of herein.

22. There are common questions of law and fact. These common questions predominate over any questions effecting only individual members of this class. These persons are so numerous that the joinder of all persons is impractical. A common relief is sought. The interests of said class are adequately represented by plaintiffs.

Defendants have acted or refused to act on grounds generally applicable to the class. Under the aforesaid circumstances, the common interests of the class are such that any interest of the individual members of the class is completely outweighed by the desirability of concentrating the controversy in a single forum and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

BACKGROUND:

23. Defendants I and II operate and administer the system of higher education in Pennsylvania which includes all institutions in the state which receive public funds, such as colleges, universities, profession schools, and community colleges. Additionally, Defendants I and II administer the state college and university system which includes the following:

Bloomsbury State College
California State College
Cheyney State College
Clarion State College
East Stroudsburg State College
Edinboro State College
Indiana University of Pennsylvania
Kutztown State College
Mansfield State College
Millersville State College
Slippery Rock State College
Shippensburg State College
West Chester State College

24. Cheyney State College was founded in 1837 and is the oldest traditionally black institution of education in the United States.

25. In 1969, the U.S. Department of Health, Education and Welfare, the predecessor to Defendant I, made a determination that the system of higher education in Pennsylvania was operated on a dual basis,

segregated by race. Pursuant to said determination, the Pennsylvania Department of Education was directed to and did submit a plan for desegregating its education system. Said plan was disapproved by Defendant I in 1969. Despite its stated disapproval, Defendant I took no action to bring about desegregation in Pennsylvania's system of higher education, as was its duty to do.

26. In October, 1970, an action was brought in the U.S. District Court for the District of Columbia by various class action plaintiffs against Defendant I (Adams v. Richardson, 356 F. Supp. 92 1973) where plaintiffs therein prevailed in compelling Defendant I to initiate investigative and enforcement proceeding under Title VI of the Civil Rights Act of 1964. Plaintiffs in that case were elementary, secondary and college students and taxpayers. Defendants were U.S. Department of Education and Welfare, the predecessor of U.S. Department of Education.

27. In June, 1974 the representative of the Commonwealth of Pennsylvania, Defendant II, submitted a document to Defendant I entitled Pennsylvania Department of Education Revised Plan for Equal Opportunity In the State Colleges and University. Said document purports to be pursuant to the Adams decision, hereinbefore mentioned. Said document shall hereinafter be referred to as the "1974 PLAN".

28. By Court Order in Adams, issued April 1977 Defendant I was directed to reject plans similar to 1974 PLAN and to issue specific guidelines for states systems of higher education to follow in developing plans for desegregation. As a result Defendant I issued such guidelines in February, 1978.

SPECIFIC ALLEGATIONS

29. Defendant I has not taken any action since 1974 to investigate or to terminate the unconstitutionally segregative acts and omissions of Defendants II and III. Instead, Defendants I, II and III have attempted to justify their failure to develop or implement a constitutional plan by claiming that "negotiations" are underway. Even if said alleged "negotiations" have taken place, they have been ongoing for more than six years without result.

30. Guidelines and criteria imposed and published by Defendant I, as related to the case at bar, include inter alia, the following:

- a) Where there has been past de jure segregation, states are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination.
- b) The problem of integrating higher education must be dealt with on a statewide rather than a school by school basis.
- c) Criteria recognize the unique importance of the traditionally black colleges in meeting the educational needs of black students.
- d) The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education

31. The elements announced in 1978 (Federal Register Vol. 43 No. 22) required for a disestablishment of the dual system must

- a). Define the mission of each institution within the state system on a basis other than race.

- b). Specify steps taken to strengthen the role of traditionally black institutions in the state system.
- c). Commit the state to take specific steps to eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions.
- d). Commit the state to give priority consideration to placing any new undergraduate, graduate, or professional degree programs, courses of study, etc. which may be proposed at traditionally black institutions, consistent with their missions.
- e). Commit the state to withhold approval of any changes in the state system or of any institutions that may have the effect of thwarting the achievement of its desegregation goals.
- f). Commit the state to advise the Office of Civil Rights of proposed major changes in the mission or character of any institution within the state system which directly or indirectly affect the achievement of its desegregation goals prior to then formal adoption.
- g). Specify timetables for sequential implementation of the actions necessary to achieve those goals as soon as possible but no later than five years, unless compelling justification for a longer period for compliance is provided to and accepted by the Department.

h. Commit the state and all its involved agencies and subdivisions to specific measures for achievement of the above objectives.

32. On August 8, 1980, the President of the United States issued an Executive Order (No. 12232, 45 Fed. Reg. 53437) entitled strengthening of Black Colleges and Universities, which is incorporated herein by reference. Said Executive Order directs, inter alia, that Defendant I provide the relief prayed for in this Complaint.

33. Pennsylvania "1974 PLAN" is intrinsically defective because it is not comprehensive in that it excludes community colleges, the land grant institutions, and publicly subsidized universities and professional schools. The "1974 PLAN" fails to meet the lawful requirements of desegregation.

34. Although the 1974 PLAN purports to establish an Office of Equal Opportunity within the organization of Defendant II to monitor progress and tabulate result, no such monitoring has taken place and no results have been published.

35. At all times material to these allegations, Defendants I, II, III, IV and V, jointly and severally, by act or omission, have violated the rights of plaintiffs. These violations include, but are not limited to;

- a. Unconstitutionally discriminatory effects of formula budgeting and the full time equivalent concept. Such budgeting process fosters and continues the deprivations at Cheyney State College.
- b. Failure and refusal to establish basic degree programs at Cheyney State College as are offered at other institutions.
- c. Failure and refusal to provide adequate faculty and resources for new programs implemented at Cheyney State College.
- d. Maintaining disproportionate numbers of faculty by race. Of a total of 4,750 teachers in the state system 331 are black (7%). More than half

that number are at Cheyney State College.

e. Imposing the burden of desegregation upon Cheyney State College.

f. Approving and implementing duplicate programs at white insitutions.

g. Rendering Cheyney State College unable to compete with other institutions of higher learning in Cheyney's service area.

h. Failing and refusing to meet any of the guidelines and criteria announced by U.S. Department of Education

i. Failing and refusing to implement programs that are likely to increase minority enrollment.

36. Defendants I through V have violated the rights of plaintiffs as protected by 42 USC 1981.

COUNT II

37. Paragraphs 1-35 are incorporated by reference as though fully set forth.

38. Defendants I through V have violated the rights of plaintiffs as protected by 42 USC 1983. COUNT III

39. Paragraphs 1-38 are incorporated herein by reference as though fully set forth herein.

40. Defendants I through V have violated the rights of plaintiffs as protected by 42 USC 2000d.

WHEREFORE, plaintiffs pray that the Court enter an Order.

a) Declaring that the Commonwealth System of Higher Education is operated on a dual and

and segregated basis by race.

b) Ordering the U.S. Department of Education to undertake enforcement proceedings pursuant to Title VI of the Civil Rights Act of 1964.

c) Ordering the Pennsylvania Department of Education to develop and implement a constitutional plan of assuring equal opportunity in higher education.

d) Enjoining the Pennsylvania Department of Education from any act whatsoever in contravention to the guidelines and criteria hereinbefore set forth.

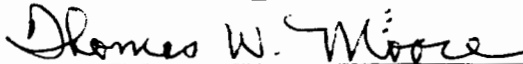
e) Enjoining the Board of Trustees of Cheyney State College and Wade Wilson, President of Cheyney State College from any acts whatsoever toward terminating laying off or discharging any faculty member in the class of Plaintiffs III.

f). Awarding attorneys fees and costs to plaintiff.

g). Granting such other relief as is deemed just and proper.

RESPECTFULLY SUBMITTED,


ROLAND J. ATKINS, ESQUIRE
Counsel for Plaintiff


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