

Opinion in Chambers

DAYTON BOARD OF EDUCATION v. BRINKMAN ET AL.

ON APPLICATION FOR STAY

No. A-212. Decided August 28, 1978

Application for stay, pending consideration of a petition for certiorari, of Court of Appeals' judgment and mandate ordering an extensive school desegregation plan continued in Dayton, Ohio, is denied to preserve the status quo of the school system during this Court's consideration of the petition. *Columbus Board of Education v. Penick*, ante, p. 1348, distinguished.

MR. JUSTICE STEWART, Circuit Justice.

The Dayton, Ohio, Board of Education requests that I stay execution of the judgment and mandate of the Court of Appeals for the Sixth Circuit in this case pending consideration by this Court of the Board's petition for certiorari. The judgment reversed the dismissal by the District Court of the plaintiffs' school desegregation suit, and ordered the extensive desegregation plan continued.

The applicant urges that this case be stayed because it raises many of the issues presented by *Columbus Board of Education v. Penick*, ante, p. 1348. MR. JUSTICE REHNQUIST stayed the mandate of the Sixth Circuit in that case on August 11, 1978. A crucial distinction between these cases leads me to believe that this application should be denied. Columbus had never been the subject of a school desegregation remedy; the Dayton system, by contrast, will enter its third year under the current plan on September 7. In *Columbus* the status quo was preserved by granting a stay; here it can be preserved only by denying one. To avoid disrupting the school system during our consideration of the case, the stay should be denied. This disposition, of course, does not reflect any view on the merits of the issues presented.

The application for a stay of the judgment and mandate of the Court of Appeals for the Sixth Circuit is denied.