

METROPOLITAN COUNTY BOARD OF EDUCATION
ET AL. *v.* KELLEY ET AL.

ON MOTION TO VACATE STAY

No. A-144. Decided August 20, 1981

The motion of Nashville, Tenn., school officials to vacate the Court of Appeals' stay, pending appeal to that court, of the District Court's order, which substantially modified its earlier school desegregation order, is denied. The changes in the prior order are of sufficient significance that they should be reviewed by an appellate court before they are implemented.

JUSTICE STEVENS.

Pursuant to the Rules of this Court, the motion of the Metropolitan Nashville Board of Education to vacate the stay entered by the United States Court of Appeals for the Sixth Circuit on August 19, 1981, has been referred to me for decision. The movants have persuaded me that I have jurisdiction to vacate the stay entered by the Court of Appeals, but for the following reasons I have decided not to do so.

The District Court order of April 17, 1981, that has been stayed by the Court of Appeals substantially modifies the desegregation order that had previously been in effect in Davidson County, Tenn. The plaintiffs filed an appeal from the April 17 order and, after hearing oral argument in connection with the plaintiffs' application for a stay, the Court of Appeals expressed the opinion that the changes in the prior order are of sufficient significance that they should be reviewed by an appellate court before they are implemented. I share that opinion.

Although, as the Board of Education has pointed out, the stay will cause significant expense and inconvenience to the community, because the interim order will affect 21 elementary schools, 6 middle schools and 3 high schools immediately, and also will have an impact on the permanent plan sched-

uled to go into effect in 1984, it seems to me that even greater inconvenience might result if the plan were to go into effect forthwith and be modified or set aside at a later date when the Court of Appeals reviews its merits. The Court of Appeals has greater familiarity with the case than it is possible for me to have in the brief time I have had to examine the papers that have been filed with me; for the purpose of my action I accept the correctness of that court's determination that there is a likelihood that plaintiffs will prevail on their appeal. If that be so, it seems to me that in the long run there will be less inconvenience and hardship to all parties if appellate review is had prior to the implementation of the interim order of the District Court. Accordingly, the motion of the Board of Education to vacate the stay is denied.