

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COREY H., LATRICIA H., ANDREW B., and)
JASON E., by their parents and next friends,)
SHIRLEY P., BEVERLY HL, SHARON B., and)
STEPHEN E., on behalf of a class of similarly)
situated persons,)

Plaintiff,)

v.)

THE BOARD OF EDUCATION OF THE CITY)
OF CHICAGO, and THE ILLINOIS STATE)
BOARD OF EDUCATION,)

Defendants.)

No. 92 C 3409

Judge Robert W. Gettleman

ORDER REGARDING CBE'S APPEAL OF ISBE'S 9th ANNUAL DISTRICT WIDE FINDINGS

In April 2010, defendant Chicago Board of Education ("CBE") appealed the Monitor's recommendation rejecting CBE's appeal from the 9th District Wide Findings ("DWFs") of the defendant Illinois State Board of Education ("ISBE"). Plaintiffs had also filed an appeal with the Monitor and the court concerning the 9th DWFs, but have since withdrawn that appeal. In connection with the appeals to the court from the Monitor's findings, the parties agreed to offer the submissions they had filed with the Monitor rather than re-briefing their respective objections to the 9th DWFs.

Shortly after plaintiffs and CBE lodged their appeal of the Monitor's findings regarding the 9th DWFs to the court, the parties began discussing a final settlement of this litigation, which discussions eventually led to settlement agreements terminating the ISBE's obligations under its original settlement agreement in the summer of 2011, and terminating CBE's obligations under its original settlement agreement in the summer of 2012. The parties thus agreed to suspend the

appeals from the Monitor's decision regarding the 9th DWFs. At the last status conference, however, in light of the fact that ISBE has since issued its 10th DWFs and is preparing to issue its 11th DWFs, CBE wished the court to rule on its appeal from the 9th DWFs because, according to CBE, certain issues would carry over from the 9th to the 10th and 11th DWFs. This order thus addresses CBE's appeal from the 9th DWFs. For the reasons stated below, the court rejects CBE's appeal in its entirety, and adopts the Monitor's recommendation (Doc. 672) filed on April 1, 2010.

CBE's First Objection - ISBE Calculation of Compliance or Non-Compliance

CBE's first, and apparently its primary, objection to the 9th DWFs contend that ISBE's calculation method of measuring noncompliance is improper because ISBE did not include non-reviewed findings or schools in determining the percentage of schools that were in compliance with the applicable Benchmark and Paragraph 19 Indicator.¹ CBE disclaims that it is requesting that the "non-applicable" schools be marked as compliant; rather, CBE requested that "the schools marked non-applicable be included in the denominator for calculating the non-compliance rate and not be eliminated from the calculation as ISBE did."

The court agrees with the Monitor (as well as with ISBE and plaintiffs on this point) that this issue was decided against CBE's position by the Monitor, and confirmed by the court, in 2008 in connection with the appeals of the "40 School approach" that was utilized for the 7th DWFs. (See, Docs. 555, 577.) Put simply, for the reasons expressed in the Monitor's April 1, 2010 recommendation, "schools for which a specific district-wide finding has not been reviewed

¹The term "Benchmark" and "Indicator," along with other terms of art in this order, are consistent with the definitions contained in the settlement agreements and previous orders and opinions of the court.

must be completely excluded from the calculation of compliance (or non-compliance) for that finding.” To include such schools in the denominator used by ISBE to calculate compliance or non-compliance would violate this directive as well as common sense. In addition, as noted by the Monitor, there appears to be an inconsistency with CBE’s current position to include schools that were not reviewed and its support, over plaintiffs strenuous objections, to the so-called “40 School approach” utilized in the 7th DWFs.

For these reasons, the court rejects CBE’s first objection.

CBE’s Second Objection - ISBE’s Alleged Change in Compliance Standards

CBE’s contention that ISBE has changed compliance standards for “brief visits,” based on ISBE’s response to CBE’s objections to ISBE in December 2009, is rejected. As the Monitor noted, and as ISBE informed CBE, ISBE is using “the 85% compliance rating for Benchmarks that need to be reviewed and the substantial compliance rating for Paragraph 19 Indicators that need to be reviewed, but does not recalculate Benchmarks and LRE Indicators for which the school was previously found in compliance.” (Doc. 672, p.8; emphasis in original.) CBE’s other objections are also specifically, and properly, addressed by the Monitor in her report (Id. at 9-11). As the Monitor points out, a number of changes have been made in the monitoring standards employed by ISBE, pursuant to orders by this court and the Monitor. These changes have been communicated to the parties and have generally met with approval and acceptance. CBE’s second ground for appeal is therefore rejected.

CBE's Third Ground for Appeal- ISBE's Alleged Subjective Method for Determining Findings

In one paragraph which omits any support or persuasive reasoning, CBE contends that “ISBE’s method for determining findings is subjective.” As noted by the Monitor and ISBE, there is nothing new in the approach utilized by ISBE for the 9th DWFs and this court has already held that, “CBE is estopped from complaining . . . about those methodologies and procedures, which were appealable long before the instant proceeding.” (Order, February 28, 2006, Doc. 388 at 6.) CBE’s third ground for appeal is therefore rejected.

CBE's Fourth Ground for Appeal - ISBE's Alleged Inconsistent Measurement of Finding #1B

CBE complains that, “[w]ithout an objective standard approach to determine what rises to the level of a districtwide finding, whether it is finding #1B or any of the other findings, the Ninth Districtwide Findings are flawed and invalid.” In Finding #1B, ISBE determines whether CPS provides students “with adequate supports and services when placed in less restrictive settings,” dividing the findings into three subsets: accommodations and modifications, academic interventions and behavioral intervention and supports.” CBE objects that it cannot remedy any of these findings identified by ISBE without more consistent and identifiable measurements.

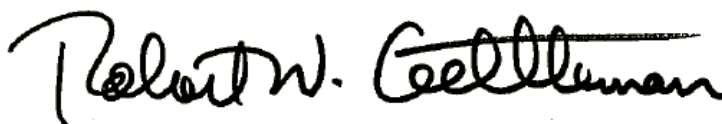
ISBE counters that its identification of the three subcategories mentioned above, along with other factors, was intended to “provide defined targets for school personnel and to facilitate remediation of the districtwide finding,” in connection with findings of systemic non-compliance. The Monitor’s rejection of CBE’s fourth objection, with which this court agrees, is based primarily on the fact that ISBE has “utilized a similar refocusing procedure for Finding #6 at the request of CPS” in connection with the 7th DWFs, from which CPS has not appealed.

Although the court rejects CPS's fourth objection to the 9th DWFs for the reasons stated by the Monitor, it notes that, as is the case with a number of CBE's objections, the door remains open for CBE to request further information from ISBE concerning any of the DWFs and to seek guidance and, if necessary, direction from the Monitor so that any findings of non-compliance may be identified and addressed by CBE with the goal of achieving as full compliance as possible by the time CBE's obligations under the Settlement Agreement terminate in 2012.

CONCLUSION

For the reasons stated above, the court rejects CBE's appeal of the Monitor's recommendation from the ISBE's 9th Annual DWFs, and adopts those recommendations. In addition, the court notes that, as raised by the Monitor in her recommendations (at 4 n.1), the number of schools being reviewed by ISBE in subsequent DWFs must be at a level sufficient to determine whether the entire district is to be found in compliance or non-compliance pursuant to the terms of the Settlement Agreement. This matter will be discussed at the hearing set for June 9, 2011, at 10:30 a.m.

ENTER: June 2, 2011



Robert W. Gittleman
United States District Judge