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United States District Court, N.D. Illinois.

PEOPLE WHO CARE, et al., Plaintiffs,

v.

ROCKFORD BOARD OF EDUCATION SCHOOL
DISTRICT # 205, et al., Defendants.

No. 89 C 20168. | June 19, 1990.

Attorneys and Law Firms

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Education.

Opinion

MEMORANDUM OPINION AND ORDER

ROSZKOWSKI, District Judge.

*1 This action comes before the Court on plaintiffs’ motion for an order directing defendants’ compliance with the supplemental funding obligation of the Interim Agreed Order dated July 7, 1989. For the reasons set forth in the opinion below, this Court grants in part and denies in part plaintiffs’ motion for an order directing compliance. Further, this Court holds that defendants have satisfied their obligations under ¶ III(C)(8) of the Interim Agreed Order. Finally, this Court orders the parties to bear their own respective costs and attorney’s fees.

I. BACKGROUND

This case centers around allegations that the Rockford Board of Education School District # 205 is maintaining a segregated school district which discriminates on the basis of race in the provision of educational and related services. The catalyst for this lawsuit appears to have been the announcement of a reorganization plan under

which certain schools would be closed and/or consolidated. Following some lengthy negotiations between the parties, this Court entered an Interim Agreed Order on July 7, 1989, directing specific and enumerated conduct on the part of the school board. Paragraph III(C)(8) of the Interim Agreed Order mandates that the school board:

[p]rovide supplemental educational programs in the Southwest Quadrant to alleviate the effects of racial concentration and economic and educational disadvantage.

a. From unrestricted District funds and in addition to any other funds which the District is required to target upon low-income or educationally disadvantaged students, such as Federal Chapter 1 and Federal and State funds for early childhood education, the Board of Education shall fund the supplemental educational programs provided herein.... Such programs shall be funded for the 1989–90 school year at a level no less than 1.25 million dollars. Such funds shall be budgeted and expended by the Rockford Board of Education according to said Reorganization Plan and this Agreed Order.

b. The District will immediately undertake a planning process to determine what particular programs will best serve the purposes of this subsection in 1989–90.

c. Consideration shall be given to the following supplemental programs:

- 1. class size reduction.
- 2. provision of preschool education in addition to that already funded by Federal and State funds.
- 3. Equipment and resources to offset the inequities created by parent gifts to schools in higher-income neighborhoods.

Interim Agreed Order, ¶ III(C)(8) (July 7, 1989).

In satisfaction of the provisions of ¶ III(C)(8) of the Interim Agreed Order, the School Board itemized compliance expenditures in the amount of \$1,540,040.65—\$290,040.65 above the required \$1.25 million. In response, the plaintiffs have challenged three of the claimed expenditures: (1) \$135,000.00 claimed by the School Board for planning process staff, supplies, consultants, travel and supplemental materials; (2) \$62,296.00 claimed by the School Board for additional enrichment time for art/music/PE in Southwest Quadrant (deletion of non-supplemental portion); and (3) \$295,713.00 for bus transportation costs for student transportation for alternative programs. The Court will

discuss each of plaintiff's contested expenditures separately.

II. DISCUSSION

*2 This Court clearly has the authority to enter an order directing compliance with a prior order of the Court and this Court's authority to enter such an order is not contested by the parties. Little decisional law is available to aid the Court in determining the validity of each of the specific claims contained in plaintiffs' motion for compliance. Therefore, few citations to case will be found in the instant opinion.

A. Planning Process Expenditures

With respect to planning process expenditures, plaintiffs request two distinct holdings from this Court. First, the plaintiffs request this Court to state, as a blanket generalization, that expenditures which are required by the Interim Agreed Order, other than those required in ¶ III(C)(8) are ineligible to be counted towards ¶ III(C)(8) compliance. Second, the plaintiffs request that this Court negate the planning process expenditures for purposes of ¶ III(C)(8) compliance.

Some brief observations on the intent and framework of the Interim Agreed Order are warranted. The parties structured the Interim Agreed Order to provide for some short-term as well as long-term progress in negating the effects of alleged discrimination in the Rockford School District. To this end, the Interim Agreed Order provides that certain schools in the Southwest Quadrant remain open despite being targeted for closure pursuant to the Reorganization Plan. In addition, the Interim Agreed Order provides that certain remedial steps be taken during the 1989-90 school year to help ameliorate the effects of alleged past discrimination. To this end, the Interim Agreed Order provided for a planning process directed specifically towards the 1989-90 school year which has now ended. Further, the Interim Agreed Order provided for a comprehensive long-term planning process which would result in specific recommendations for long-term amelioration.

The School Board evidently undertook the short-term planning process¹ and now seeks to include those expenditures towards its obligations under ¶ III(C)(8). As set forth in plaintiffs' Attachment 1, the amount now claimed by the School Board is \$135,000.00. It is unclear to the Court at this time whether the \$135,000.00 claimed by the School Board is the cumulative amount expended on both the 1989-90 school year and multi-year comprehensive planning processes, or whether this

amount includes only those monies expended on the 1989-90 school year planning process. It is this Court's intention to allow the school board to claim an amount equal to the amount expended on the planning process for the 1989-90 school year *only*. While plaintiff's might foster some expectation that administrative costs will not be included in ¶ III(C)(8) supplemental educational funds, this Court is of the view that administrative costs are routinely included as part of the overall annual "educational" budget, and that administrative costs *should* be reflected as a part of the provision of educational services. Clearly, administrative costs were anticipated by the Interim Agreed Order as ¶ III(C)(8)(b) directs the District to "immediately undertake a planning process to determine what particular programs will best serve the purposes of this subsection in 1989-90."

*3 Had the School Board approached this Court with a figure for the cost of administration of the planning process which the Court considered exorbitant and which flaunted the letter and spirit of the Interim Agreed Order, this Court would have taken a dim view of the expenditures and likely have granted plaintiffs' motion. However, the expenditure of \$135,000.00 viewed in light of a total mandated expenditure of \$1.25 million only results in administrative expenditures equal to 10.8%. This percentage drops even lower if we use the total expenditures figure contained in this Order for the total amount of eligible expenditures. Taking the total calculated by this Court to be eligible expenses, \$1,434,375.29,² this Court calculates that the administrative costs are somewhere in the range of 9.41% of the total amount expended. This figure for administrative cost appears to this Court to be entirely reasonable under the circumstances. In fact, administrative costs which are held to under 10% of a budget would be considered a reasonable figure in any private business enterprise.

For these reasons, this Court allows the expenditure of \$135,000.00 for planning process staff, supplies, consultants, travel and supplemental materials to be included in the eligible expenditures under ¶ III(C)(8) of the Interim Agreed Order.

B. Art/Music/PE Enrichment Time

Defendants have implemented a program, outlined for this Court in the District's Fourth Progress Report, under which additional art, music and physical education programs are provided to students in the Southwest Quadrant. Plaintiffs argue that additional art, music and physical education programs were also provided for non-Southwest Quadrant schools and, therefore, only the differential between what was provided to the Southwest Quadrant schools and that provided for the non-Southwest Quadrant schools ought to be eligible for inclusion under

¶ III(C)(8) of the Interim Agreed Order.

This Court agrees with plaintiffs' logic in this regard. If, hypothetically, the School Board had provided Southwest Quadrant schools and non-Southwest Quadrant schools with exactly the same additional programs and services, the differential between the services and programs provided for Southwest Quadrant schools and all other schools would remain the same. No progress towards narrowing or eliminating the gap between the schools contained in the different geographic areas would have been accomplished—and it is the gap which essentially defines any alleged discriminatory effect on schools in the Southwest Quadrant. For this reason, plaintiffs' logic is compelling.

Defendants respond to plaintiffs' motion regarding additional enrichment instruction by characterizing plaintiffs' argument as political rather than legal. This Court, however, would characterize defendants' argument as theoretical rather than practical. In theory, defendants have provided \$62,296.00 of additional enrichment instruction as per the Interim Agreed Order. However, defendants have at the same time lessened the ameliorative effect on the Southwest Quadrant by adding additional like programs to the rest of the district. Therefore, practically, the gap between the Southwest Quadrant and the rest of the district has not been closed by \$62,296.00. Rather, it has been closed only by the difference between the additional Southwest Quadrant expenditures and the expenditures throughout the rest of the district. This, by the Court's own calculation, amounts to a net eligible expenditure for additional enrichment instruction of \$30,559.00.

*4 For the reasons discussed above, this Court holds that the amount of \$30,559.00 is eligible for inclusion in the monies ordered to be expended pursuant to ¶ III(C)(8) of the Interim Agreed Order. To this extent, plaintiffs' motion is granted.

C. Transportation Costs

The School Board has listed as an eligible supplemental educational program under ¶ III(C)(8) monies spent to bus students to the alternative program sites at Washington, Lathrop, King and Barbour schools. Plaintiffs challenge the School Board's inclusion of the \$295,713.00 item arguing that this expenditure of monies for transportation is being used to bus non-minority students and students from geographic locations outside the Southwest Quadrant and is therefore outside the scope of a "supplemental educational program" for purposes of effectuating ¶ III(C)(8) of the Interim Agreed Order.

On its face, plaintiffs' argument is somewhat alluring. Clearly, the monies expended here are being used to bus

students who are neither educationally, economically or socially disadvantaged. Equally as clear, ¶ III(C)(8) was intended to benefit economically, educationally and socially disadvantaged students—particularly those schooling in the Southwest Quadrant. Leaving aside the arguments of the parties in their continuing verbal volleyball match, it is relatively easy to recognize that the programs which are truly at issue here are the alternative programs now being housed at the Washington, Lathrop, King and Barbour schools. The housing of these alternative programs in the Southwest Quadrant is no small step in efforts to alleviate the burden of busing falling solely on Southwest Quadrant students. It must be kept in mind, however, that as far as this Court is concerned, the housing of alternative programs in the Southwest Quadrant is a "supplemental educational program" for the Southwest Quadrant and this Court so holds.

The last step is to determine how much, if any, of the transportation costs qualify under ¶ III(C)(8) of the Interim Agreed Order. This Court believes that the proper measure of what is eligible under ¶ III(C)(8) is the difference between what the transportation costs would have been had the program been housed elsewhere in the District where a greater number of students who are involved in the alternative programs are in school, thus reducing or obviating the necessity for transportation costs, and the actual transportation costs of the program as it is currently housed in the Southwest Quadrant. This differential would provide a number which reflects the *additional* costs of housing the alternative programs in the Southwest Quadrant (with their attendant benefit to the students of that geographic area). These additional costs are, in this Court's view, an accurate partial representation of the financial impact of housing the alternative programs at these Southwest Quadrant schools.³

It would be difficult, though probably not impossible, for this Court to engage in a precise calculation of the exact dollar amount which would result from the formula laid out above. This Court does not have the statistical data available, nor does this Court care to engage the School Board in the task of finding and providing that information to the Court.⁴ Roughly speculating, this Court is comfortable suggesting that 75% of the transportation costs incurred as a result of the housing of the alternative programs at Washington, Lathrop, King and Barbour schools are "new" transportation costs⁵ necessitated by situating those programs at these schools.⁶ The Court, therefore, will allow the defendants to claim 75% of the total transportation costs listed in subpart (7) of Exhibit C to the Fourth Progress Report. The defendants listed as \$295,713.00 as eligible; 75% of that figure equals \$221,784.75. The Court will accept the amount of \$221,784.75 as eligible under ¶ III(C)(8) of the Interim Agreed Order towards the School Board's obligation to provide \$1.25 million in supplemental education funding.

CCCONCLUSION

III. COMPLIANCE WITH INTERIM AGREED ORDER

*5 Using simple arithmetic, this Court finds that all the eligible expenses for supplemental educational funding under ¶ III(C)(8) of the Interim Agreed Order total \$1,434,375.29. The School Board undertook an obligation to provide a minimum of \$1.25 million in supplemental educational funding. It is this Court’s view that that obligation has been met, the School Board having spent an additional \$184,375.29 over and above what was required under the Interim Agreed Order.⁷ Plaintiffs’ motion for compliance is, therefore, denied with prejudice.

In evaluating defendants’ request for the assessment of attorney’s fees, this Court is of the opinion that plaintiffs’ motion was not frivolous or spurious. The motion for compliance raised genuine issues of interpretation and this Court is not disposed to assess attorney’s fees in such a situation. Therefore, fees and costs associated with plaintiffs’ motion for compliance are to be borne by the respective parties.

For the reasons set forth in the opinion above, this Court denies plaintiffs’ motion for compliance with ¶ III(C)(8) of the Interim Agreed Order with prejudice, and makes the following specific findings: (1) that \$135,000.00 in planning process costs for the 1989–90 school year are eligible expenditures; (2) that \$30,559.00 of the claimed \$62,296.00 for additional enrichment time for art, music and physical education is an eligible expenditure; (3) that \$221,784.75 of the claimed \$295,713.00 for transportation costs for the alternative programs at Washington, Lathrop, King and Barbour schools is an eligible expenditure; and (4) that costs and attorney’s fees with respect to the bringing of this motion are to be borne by the respective parties.

Personnel	\$ 586,831.54
Materials & Equipment	\$ 122,463.00
Planning Process (Admin.)	\$ 135,000.00
Add’l Enrichment Time	\$ 30,559.00
Staff Development (Not Yet Spent)	\$ 50,000.00
Curriculum, Equipment & Supplies (Not Yet Spent)	\$ 287,737.00
Bus Transportation	\$ 221,784.75
TOTAL ELIGIBLE EXPENDITURES	\$ 1,434,375.29

Footnotes

¹ There is certainly no evidence to the contrary and plaintiffs do not contest that the short-term planning process took place. Instead, plaintiffs merely argue that the monies expended in that regard are not eligible to be counted towards ¶ III(C)(8) compliance.

² The Court’s total eligible expenditures equal \$1,434,375.29. That figure is broken down as follows:

Personnel	\$
Materials & Equipment	\$
Planning Process (Admin.)	\$
Add’l Enrichment Time	\$
Staff Development (Not Yet Spent)	\$
Curriculum, Equipment & Supplies (Not Yet Spent)	\$
Bus Transportation	\$
TOTAL ELIGIBLE EXPENDITURES	\$

³ The Court represents these costs as an “accurate *partial* representation” because there were and are additional costs which were incurred by the School Board in setting up the alternative programs at these four Southwest Quadrant schools. For example, there were undoubtedly costs for physical and/or structural changes to the buildings, set-up costs, etc. Transportation for students to attend the programs is only one of the costs and, hence, referred to by this Court as a “partial” cost.

⁴ In order for the precise calculation to be made, this Court would likely have to be in possession of the following information: the

number of students involved in the respective programs, where those students are currently living, where those students are currently in school, where the alternative programs were housed (or would have been housed), where the particular alternative program is currently housed, mileage differentials for the particular program sites, and possibly even bus routing information.

5 In other words, roughly 25% of the \$295,713.00, or \$73,928.25 would have been spent by the district transporting students to alternative program sites had those sites not been housed in the Southwest Quadrant.

6 However, even assuming that 75% is on the high side of the spectrum, according to this Court's calculations, the percentage figure would have to drop to under 11.63% for the total expenditures under ¶ III(C)(8) to have fallen below the \$1.25 million mark mandated by the Interim Agreed Order. It is difficult, if not impossible, for this Court to fathom that the extensive busing necessitated by housing the alternative programs in the Southwest Quadrant would have resulted in a differential in transportation costs of under 11.63%. If this was the case, and the School Board was only spending an additional \$34,391.42 to bus students to the Southwest Quadrant, common sense would dictate that a majority of the students in the alternative programs are living and/or being schooled in the Southwest Quadrant. This is contrary to the Court's understanding of the demographics of the alternative programs in the District.

7 *See infra* notes 5–6 and accompanying text, however, for an understanding that the transportation calculation was merely an approximation. The excess expenditure figure of \$184,375.29, therefore, is likewise approximated.