

1985 WL 2227

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United States District Court, N.D. Illinois, Eastern
Division.

UNITED STATES OF AMERICA, Plaintiff,
v.
BOARD OF EDUCATION OF THE CITY OF
CHICAGO, Defendant.

No. 80 C 5124.
|
August 6, 1985.

MEMORANDUM ORDER

MARVIN E. ASPEN, District Judge:

***1** For the following reasons, the United States' motion to modify this Court's injunctive order of June 4, 1985, is granted in part and denied in part.

1. Title IV. The Court orders the release of \$5 million of the restrained FY 1984 Title IV funds. Along with the \$3 million of unrestrained, unspent FY 1985 funds, this amount comes close to the \$8.3792 million the United States sought to have released. This amount will also safely take care of competing Title IV grantees beyond September 30, 1985. At the same time, while this amount releases more than hoped for by the Board, it leaves restrained a 'cushion' above what the Board estimates as its entitlement in its merits brief in case we reach a higher result. Although we seriously doubt that the Board's fine array of legal talent has underestimated the Board's entitlement, (such that its likelihood of success beyond its estimate has significantly diminished), we appreciate the concerns expressed in its responsive memorandum. We would like to retain the maximum amount of flexibility in ultimately fashioning a remedial order. So long as our current release takes care of other grantees at least through September 30, the prudent course is to maintain flexibility by continuing to restrain some amount above what the Board has estimated is its due. As we emphasized in our June 4, 1985 opinion, we wish to preserve our ability to decide this case as soon as

practicable on its merits and then release funds, rather than play this periodic game of guessing on the Board's chances of prevailing on the merits. Accordingly, we do not anticipate receiving other motions to release funds before a merits decision, unless an unforeseen emergency occurs. In sum, we order the release of \$5 million of FY 1984 Title IV funds, leaving \$15.948 million under restraint.

2. Follow-Through. The same analysis applies here. If we release another \$2.4423 million of Follow-Through funds, \$4 million remains restrained, which gives the Board a \$1 million 'cushion' above its claim of entitlement to \$3 million. We think it extremely unlikely that the Board can succeed in claiming more than the \$4 million now left under restraint.

3. Discretionary Funds. For similar reasons, we order released an additional \$4 million in the FY 1984 Discretionary Fund outside of the \$5.8 million of the so-called 'truly discretionary' funds. This leaves \$2.2 million of these funds under continued restraint. This release further ameliorates the problems of the NDN grantees expressed in the United States' original motion to vacate, yet adequately provides a 'cushion' for the Board's total Discretionary Fund request of \$5 million, when combined with the money still restrained in 'truly discretionary' accounts.

Finally, we turn to the controversial \$1.55 million for the NIE Chapter 1 assessment, which the United States seeks to fund from the \$5.8 million of 'truly discretionary' funds. We agree with the Board that much of the factual basis for the government's request, the 'Mary Kennedy affidavits,' contains inadmissible hearsay and legal conclusions. However, we do not doubt and the Board does not expressly dispute the gist of those affidavits, i.e., the funding crisis experienced by that program. Accordingly, we will release \$800,000 of the \$5.8 million, which should come from funds other than those allocated to the unsolicited grants competition. This release preserves the \$5 million which the Board seeks. Along with the \$269,203 which the United States admits was available to it, the release gives the government 2/3 of its request. We are told that this interim release will tide the program over at least through August, by which time a decision on the merits could make more funds available, in the probable event that the Board does not recover the full \$5 million.

***2** Regardless of whether the merits are resolved as we anticipate by August 31, we do not expect further motions by the government to release funds. The 'crisis' which is the subject matter of the instant motion, in our view,

should have been anticipated by the government. Future crises of similar crisis will be viewed with disfavor by the Court at this stage of the proceedings. We do not now, of course, rule on further availability funds for the Chapter 1 assessment, especially since we hope that a merits decision will render such a motion for further release unnecessary.

4. Conclusion. For the foregoing reasons, the Court lifts the current restraint as to (a) \$5 million of the FY 1984 Title IV funds, (b) \$2.4423 of Follow-Through funds; (c) \$4 million of Discretionary Funds outside of the \$5.8

million 'truly discretionary' funds; and (d) \$0.8 million of the 'truly discretionary' funds, which must be spent on the Chapter 1 assessment. All other funds shall remain under restraint until we decide the merits, unless a genuine emergency arises in the interim. It is so ordered.

All Citations

Not Reported in F.Supp., 1985 WL 2227