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United States District Court, E.D. Missouri, Eastern Division.

Craton LIDDELL, et al., Plaintiffs,
v.
The BOARD OF EDUCATION OF the CITY OF ST. LOUIS, MISSOURI, et al., Defendants.

No. 72–100 C(5). | Sept. 4, 1991.

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**Opinion**

***MEMORANDUM OPINION***

LIMBAUGH, District Judge.

***1** A new Judge is to be assigned to this case. Accordingly, some reflections may be in order:

The business of public education, almost as much as religion and politics, produces unparalleled emotion in our citizens. To our credit everyone recognizes the need for education but to our dismay disagrees on how best to provide and pay for it.

And so, across the nation we hear and read these comments:

We live only two blocks from this school, why can't my child go there?

Neighborhood schools are the only answer; busing doesn't work.

Some of these children travel two hours to and from school.

Let's go back to the one-room school. It was good enough for me.

If that teacher disciplines my daughter, I'll sue him.

I am for "in loco parentis".

Don't you dare take away my child's first amendment rights.

School board members are incompetent.

The federal government should pay for everything.

When will they emphasize academics and de-emphasize athletics?

If the Board, the Superintendent and the principals would work with the teachers, everything would be all right.

In addition to the problems illustrated by these comments, shifts in population have caused much dissention. These shifts first occurred in rural areas. The small country school was closed and large districts were formed by consolidation. Even today it is not uncommon for farm youngsters to be bussed 25 miles to school, one-way. Some parents' rancor because of school closings and consolidation is still apparent fifteen or twenty years after the fact.

In some urban areas where there have been population shifts, the same type of consolidation is demanded. Thus, with a declining St. Louis city population, schools have closed. In fact, there were about 150 schools in the city seven or eight years ago. Today, the number approximates 100. Few are happy when a school is shuttered.

Professional educators in St. Louis and other urban areas wrestle with the same problems as do those in less populated places. Thus, except for some difficulties peculiar to a certain district, the business of education is the same everywhere.

The system is under fire today in addition because of result comparisons. Some studies suggest the educational endeavors of other nations is more successful than ours. Solutions vary depending on which expert or concerned parent is consulted.

Some school systems, of which St. Louis is one, have another complicating factor. They and others have been declared by the courts to be constitutional violators of the rights of minority students. Their programs and funds, therefore, must also be directed to absolving the violations. Accordingly, the Board of Education for the City of St. Louis not only addresses the regular business of providing quality education for its students, but does so in an attempt to redress its constitutional violations as well. This case, then, is one of the mediums for the Board's endeavors.

***2** The case is 19–½ years old. It was first assigned when filed in 1972 to the late Judge James Meredith who had it for nine years. Judge William L. Hungate thereafter handled the case for four years and this judge has now presided over it for 6–$^{1}/_{2\ \text{years.}}$

The issue of fault was tried and retried by Judge Meredith with the Court of Appeals ultimately holding that both the Board of Education for the City of St. Louis and the State of Missouri were wrongdoers. In the simplest of terms, the Appellate Court ordered the Board and the State to atone for their policy of segregating black students in the school system, and directed the Board to integrate the schools and the State to help pay for the cost of doing so.

Judge Meredith first began to fashion an integration remedy and Judge Hungate extended the scope of the remedy.

Gigantic problems arose in the school desegregation process. The city population dwindled. Many white city residents moved to the suburbs. Residential segregation developed with blacks living almost exclusively in the north city and whites in the south city. A narrow corridor with a substantial racial mix separated the north and the south. Although the city black and white population was almost the same, most blacks went to public schools and less than half the whites did. The remainder attended private or parochial schools. The lack of unanimity of the school board members and respected staff leadership exacerbated the problems.

Part of the remedy fashioned by Judge Hungate involved St. Louis County School Districts. These districts early on were populated primarily by white students and were situated in mainly white residential areas.

Twenty-four of these districts elected voluntarily to become parties to the case. They were not ever adjudged to be wrongdoers, but nevertheless consented to accept city black student transfers for a five-year period, somewhat on an exploratory basis.

At the same time, magnet schools were to be developed and located in the city. Presumably, these schools were to

be so educationally attractive that county based white students and city whites attending private schools would be drawn to them. Hopefully, blacks would be transferred to white county schools and county and city whites to magnet schools in the city, resulting in a more acceptable mix.

Given the population shifts, the number of white city students attending private schools and other contributing factors, under the best of circumstances there would be regular integrated schools in the city, integrated magnet schools and many segregated schools attended only or mainly by black students. Nonetheless, that scenario would more nearly achieve general school desegregation.

The Appellate court ordered certain standards to be met in implementing the desegregation plan. Again, in simplistic and incomplete fashion, the following is a resume of those standards:

While class size in non-integrated elementary and middle schools had been reduced from 35 students per one teacher in 1984 to 24 to one in 1986, the ratio was to be 20 to one by 1987–88 and maintained at that ratio. Pupil/teacher ratios in the high schools and integrated elementary and middle schools were to be reduced to AAA standards.

***3** A goal was set for 15,000 black students from the city to be voluntarily transferred to suburban school districts over a five-year period. Transfers were to be made on a formula basis with a goal set of transfer students approximating 25% of each school population.

A goal of 14,000 students was set for magnet school enrollment consisting of 8,000 in intradistrict magnets and 6,000 (city and county students) in the interdistrict magnets.

Remedial and compensatory programs, along with part-time integrative programs were to be offered in non-integrated schools.

School facilities were to be brought to constitutional standards with the State paying one-half of capital improvement costs of the integrated, non-integrated and intra-district magnet schools.

When this Judge entered the case February 1, 1985, the main objective was to implement school desegregation and the plans initiated by my trial court predecessors and those mandated by the Appellate court.

One of the most formidable problems was what to do with the deplorable physical school facilities. After hearings and extensive investigation and planning a somewhat complex order was entered September 3, 1987 to bring the physical school facilities to constitutional standards.

Although many elections during the past 25 years had been investigated by the School Board to raise funds for capital improvements, not one had been successful. The Board had never included in its operating budget any sinking or other fund for on-going physical improvements. Thus, the original 150 schools over a period of 30 years lapsed into a severe state of deterioration.

About $156,000,000.00, excluding equipment, was determined to be the cost for regular and magnet school improvements with the State on a one-time basis paying in excess of half of the cost and the School Board the balance.

From the inception, it was known that a capital project of this magnitude involving 100 schools carried out over a five to seven year time span would spawn monumental logistic problems. Schools would close for repairs and students would be displaced some of whom would return after renovation, and others not.

Part of a school would remain open while the other portion would be closed while the work was accomplished. Again, more displacement of students.

In addition, cost overruns and the cost of work ordered by the Board in excess of that needed to meet constitutional standards, were found to be substantial.

Finally, the unknown cost of asbestos abatement has now been addressed and these expenditures are equally substantial.

The original 1987 bleak financial outlook for the School Board has improved as an enlightened community recently passed a $131,000,000.00 bond issue, the proceeds of which will enable the Board to meet its share of these total costs. The Court has just ordered the State to pay its share of asbestos abatement and determined all other capital costs could be bourn by the Board.

***4** A report just filed by the Court's amicus group and made after extensive study concludes all capital improvements should be completed by June 1995.

The next area of concentration by this Court has involved the voluntary interdistrict transfer plan and its implementation. At this stage all but two districts have met their formula requirements and many have achieved the 25% goal. This means that the student population of a receiving county school district is composed of 25% black students. That percentage includes district resident blacks and black children transferred under the plan from the city.

While the program has been successful the ultimate goal

of a transfer of 15,000 students may not be attainable. At the present, perhaps 11,000 to 12,000 transfer students are involved. Black families have moved to the county and their children are attending county schools. As stated, those children plus the ones transferred make up the 25% goal. It is conceivable therefore the present number of youngsters transferred may not increase.

The excellent work of the Voluntary Interdistrict Coordinating Council (VICC) and its director and the cooperation of the school districts and their professional staffs have contributed to the success of the program. The Court is convinced that the Boards of many of the county school districts and the superintendents and staff and teachers have performed yeoman service to make the endeavor succeed.

Certainly, incidents of violence or unruliness have been present, but flagrant episodes are at a minimum. Obviously, most students are trying to make the program work as well.

Studies are underway to gauge the success of the educational effort on the transfer student. These results are yet to be completed, but should be forthcoming soon.

At this stage, the transfer program must be reevaluated. It began as a voluntary effort on a five-year basis. It has been in effect almost eight years and is simply in limbo.

If the program were to terminate immediately, it would not conclude completely until eleven more years as the receiving schools have agreed to accept the existing students. Thus, for illustration, if the program were to stop, while a school would not accept students in the first grade, it would continue to receive students already enrolled in grades 2 through 12 and so on each year thereafter.

After 12 years, the 11,000 youngsters now transferred would need to be absorbed back into the city schools. With a current enrollment approximating 42,000 could the system infuse 11,000 students in the next eleven years? And, too, would this be resegregation?

The physical plant expansion of the county districts also complicates the problem. With the infusion of 11,000 students from the city into the county districts, physical plant expansion has been mandated. Thus, on a one-time funding program by the State, millions of dollars have been paid to various districts to increase their physical facilities to accommodate a student population increased by transfer students.

***5** If the program stops, do the county districts enjoy the windfall of these structures? Or, if the student population in the county districts drops, do the added school structures become a liability rather than a windfall?

Finally, the obligation of the State in this area must be accomplished at some point. Most of the transportation costs of busing the children from the city to the county schools have been paid for by the State. Those costs are huge. The State in redressing its fault cannot be required to pay forever. Although the State was a constitutional violator and the violation was unconscionable, its funds allocated for education must be used in proper fashion for paying for the education of all its eligible citizens. Thus, in the long haul, the ultimate burden must be that of the St. Louis City School District.

An interim solution must be found. The Board, the State, the County School Districts, the plaintiffs and other interested parties must find common ground for a long range interdistrict transfer plan. The plan should encompass the duties of the parties and when they are to be fulfilled. Resegregation must be avoided. Without this type of solution, the St. Louis City School District cannot achieve unitary status. That status perhaps, can be the ultimate result of the plan. This should be desirable, for the law and society demands that a school district stand on its own all the while meeting its constitutional obligations.

The long range magnet program still needs complete implementation. This court appointed three experts to propose a plan sometime ago. After extensive investigation and hearings, a program was developed and ordered. Some of the schools are in full operation. For illustration, Central High School has been physically refurbished and is now meeting its needs as a performing arts high school. The leadership there is excellent, racial quotas have been met and enrollment is full.

O'Fallon High School, with an impressive physical plant has been converted from a vocational education high school to a dynamic science magnet. It too, is ready to meet the magnet challenge. All other magnets, except two, are in place or soon will be.

The so-called Gateway Magnet and Science Center magnet need to be planned, located, built and activated. These schools, called for by the long range plan, can be role models. This Court has already determined that a portion of the Pruitt–Igoe site is a desirable location for the Gateway magnet. The use of this site can cause an area, portions of which have deteriorated, to be refurbished. It is near housing developments populated by interested families. It is supported by the St. Louis Association of Community Organizations and the City. It is adjacent to fire and police stations and is accessible to traveled streets. Moreover, assuming environmental problems are not overburdensome, acquisition costs of the land should be negligible.

A combination of programs promoted by the Boards of

the Science Center and the Missouri Botanical Gardens will result in additional primary and middle school science education. Although land acquisition is now underway and governance issues in dispute, the general theme of these schools has been agreed on. The potential for this endeavor is enormous and the resultant educational experience for black and white children monumental. It can be a spectacular model. Without in anyway compromising the excellent abilities of the City School System, the main purpose of aligning these magnets with the Science Center and the Botanical Gardens is to have the benefit of their remarkable expertise. Accordingly, it would seem the governance problems should be resolved with the two philanthropic institutions having the most say. The superb leadership of all interested parties should allow quick and good solutions in this area.

***6** While the magnet school can help achieve a measure of desegregation for the reasons set out by the courts, as well as the educators, a further benefit is possible.

Even as suggested, in the best scenario, there will still be segregated schools in St. Louis for the reasons mentioned. An extraordinary magnet school and program can set the example of what the best educational effort can provide in a given discipline. This can filter down to a segregated school, so that it can work to achieve what the magnet role model recommends. When it is determined to be helpful, every school can attempt to emulate the fine program of the magnet. The desired result can be a better over-all school system. Obviously, the professional educators will work to achieve this goal.

The greater St. Louis vocational education program is now underway. Throughout the nation interest in vocational education has peaked and is now waning. When first addressed by this Court, the program was good but too extensive for the demand.

Four schools offered many and diverse courses. The capacity of all four exceeded 4,000 students when the enrollment was slightly more than half that amount. One school was ordered to be closed and hearings resulted in the need for curtailing the program even more.

After additional hearings and appeals, it was the Court's decision to allow the City Board and the Special School District to operate independent vocational educational curriculum. This did not solidify and the last order granted the Special School District the opportunity to oversee the entire project.

Efforts are underway and should be implemented to establish a part of the physical program within the St. Louis City confines. Even though city student demand for vocational education is modest, some physical school facility should be available in the city to meet even the limited demand.

The Metropolitan Coordinating Committee and its able director are overseeing the total vocational educational program and the Court's future monitoring should be minimal, absent extraordinary problems.

In the early years budget problems were enormous. Neither the City Board nor the State were able to resolve amicably acceptable budgets. Annual budget decisions were made by the trial court after much input and hearings. Appeals were taken and final determinations establishing an annual budget involving millions of dollars were ultimately made. Sometime, the budget would be set by the appellate court two years after the school year for which the budget was established had passed. This was an intolerable situation and proved that the court system was the wrong vehicle to handle this type of dispute.

After many long hours of discussion by representatives of the State, the City Board, the Court's financial advisor and his assistant and after much give and take by the parties, the system has now been streamlined.

Budget guidelines are in place. Fiscal policies have been established. Spending needs and available funding are now categorized to the extent that for the first time in ten years, the parties can resolve most of their budgetary disputes well ahead of the school year involved. In fact, the various school budgets for the coming year are in place and the Board knows what funds it has, when they are available and how they are to be spent. How pleasant to have evolved to this state from such former chaotic times. The Court salutes the present Interim Superintendent and staff, State financial representatives and the Court's financial advisor and his assistant for bringing about this momentous business achievement.

***7** Under the provisions of the settlement plans, three committees were established to aid the Court in addition to those previously referred to. The Desegregation Monitoring and Advisory Committee (DMAC), Magnet Review Committee (MRC) and the Committee for Quality Education (CQ) all had executive directors and working committee members. Much of the work of each overlapped and it appeared advisable to combine these groups into one large committee.

Accordingly, the Education Monitoring and Advisory Committee (EMAC) was established with a new executive director. Some staff members of the former committees remained and an excellent group of committee members composed of black, white, male, female, parent, teacher, city and county resident persons was formed. The former three committees were abolished and the new streamlined committee serves an important function in monitoring for the Court, virtually the entire

desegregation effort.

The cost of the school desegregation program as well as the regular cost of operating the St. Louis City Schools has posed monumental problems. In times of local, state and national belt tightening, the business of education has felt keenly the demand for a more spartan existence. The Court sometime ago concluded there were ways to establish a more frugal educational experience. The court-ordered Price Waterhouse study provided the impetus for better fiscal management.

Every school board and its staff across the country is now engaged in fiscal restraints. It is not easy to streamline by cutting costs, and eliminating jobs and still provide good educational services. Nonetheless, the Court is convinced that the Board and the Interim Superintendent are facing these difficult chores and have the system headed in the right direction. Today the school system, for the most part, is operating on a sound financial basis.

Thus with the passing of the Judicial reins, much has been done to accomplish school desegregation and much remains to be done. The final implementation of the building program and long range magnet endeavor must be addressed. The enactment of a long term conclusive student interdistrict transfer program is imperative.

And, finally, what else, if anything, needs to be achieved by the City Board to attain unitary status? The very word "unitary" is elusive. No one including the courts has decided what it means, and therefore, no one knows when and if it is ever achieved.

One would assume that a school board of education, presumed by law in most respects to be autonomous, when faced with a court order to desegregate its schools, has achieved unitary status when it can operate its system independently. That is, the Board can provide a good education for its students in a desegregated environment on its own.

When the State has paid its share of the building program, asbestos abatement and magnet implementation and when a long term student transfer program is enacted with funding, the State should have met its constitutional obligations. At that stage other than providing traditional funding required by law, the State would no longer be involved in the St. Louis School desegregation effort and the Board of Education should then be a position to run its schools on its own, independent of other entities and have, therefore, brought about a unitary status. Obviously, this may be an over simplification of the case, but perhaps not.

***8** In any event at some point the Court must withdraw. Constitutional decisions have been made and are now being implemented. Unfortunately, the trial courts and the appellate courts, under the guise of constitutional redress have been making educational decisions, as well. We are and always have been ill-equipped to do so. It is time to return the business of education to the professional educators. To be sure, they, like good politicians, will respond adequately to their constituency.

The St. Louis City Board of Education now has good leadership and its members are working reasonably well with each other. The management staff under the able direction of interim Superintendent Dr. David Mahan is performing quite well. The community, as evidenced by the passage of the recent bond issue, is supportive of the school effort. Superb assistance by Civic Progress and its Educational Committee has been and continues to be available. Soon, it will be time to let the board and its staff run its program by itself.

In leaving this case the Court reminds itself that staff is everything. I am indebted to Dr. Susan Uchitelle, the capable and tireless director of the Voluntarily Interdistrict Coordinating Council; to Dr. Ralph Beacham, the sensible and able Director of the Metropolitan Coordinating Committee which oversees vocational education; to Dr. James Dixon II, the ever watchful and contributing Director of the Education Monitoring Advisory Committee; to those financial stalwarts on whom I have relied so heavily, Dr. Warren M. Brown and Dr. Jay Moody, the Court's financial advisors;, to the Court's Amicus, Shulamith Simon who always gets to the nub of the issue; to Tracey Litz, my law clerk who has a profound understanding of what is happening and how best to cope with it, and to my secretary, Lynn Norman, who keeps us all on track.

As originally suggested, this is not an order binding on the parties, or my successor. What is said herein are only reflections and should be treated in that vein.

It is time for a new face, fresh ideas and innovations. My successor is well-equipped to provide the leadership this case needs. If the parties, the attorneys and those involved with this lawsuit give the new Judge the same cooperation and case support as afforded me, workable solutions will be forthcoming quickly.