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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

RECEIVED

MAY 16 1994

PARENTS FOR QUALITY EDUCATION)
WITH INTEGRATION, INC., et al.,)
)
Plaintiffs,)
)
v.)
)
FORT WAYNE COMMUNITY SCHOOLS)
CORPORATION, et al.,)
)
Defendants.)

At _____ M
GERALDINE J. CROCKETT, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

Civil No. 86cv0325AS

GERALDINE J. CROCKETT, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
94 MAY 17 PM 3:00

FILED

CONSENT DECREE
AND ORDER OF FINAL JUDGMENT

Plaintiffs, State Defendants and, for the limited purposes recited in paragraph 6, the Fort Wayne Community Schools Corporation, hereby agree to and the Court, based on that agreement and its own findings following the hearing on May 17, 1994, hereby enters this Consent Decree and Order of Final Judgment (hereinafter "Consent Decree").

I. BACKGROUND

1. Plaintiffs initiated this action on September 5, 1986 when they filed a Complaint alleging that defendants maintained an unlawfully segregated school system and demanding declaratory and injunctive relief. Specifically, the Complaint alleged that on May 17, 1954, defendants operated a racially dual public school system in Fort Wayne, Indiana. The Complaint further alleged that, subsequent to May 17, 1954, defendants failed to dismantle the dual system and acted or failed to act in such a way that the alleged conditions of segregation in the Fort Wayne public schools were maintained and exacerbated. The

Complaint sought a judgment, among other types of relief:

(a) declaring that defendants and their predecessors "created, maintained, and continue to perpetuate a racially dual structure of public education" in violation of federal and state law; (b) enjoining defendants from future unlawful conduct; and (c) requiring defendants to "develop and implement an equitable plan of desegregation which will . . . remove all vestiges of prior discrimination from the Fort Wayne Community Schools."

2. This action was brought as a class action by a not-for-profit corporation, Parents for Quality Education With Integration, Inc., and 22 named minor plaintiffs and their parents (or persons standing *in loco parentis*), on their own behalf and on behalf of all other children and their parents who currently attend or who will in the future attend the public schools of Fort Wayne Community Schools Corporation. The class was certified by the Court on November 15, 1988, and consists of two subclasses: the first comprised of all such black children and their parents; and the second comprised of all such white children and their parents (hereinafter "plaintiffs").

3. Originally, the defendants in this action consisted of two groups: (a) the Fort Wayne Community Schools Corporation, its Superintendent of Schools, and individual members of its Board of School Trustees (collectively referred to hereinafter as "FWCS Defendants"); and (b) the State of Indiana, the Governor of the State of Indiana, the Attorney General of the State of Indiana, the State Superintendent of Public Instruction

of the State of Indiana (who also serves as Chair of the Indiana State Board of Education), members of the Indiana State Board of Education, and the Indiana Department of Education (collectively referred to hereinafter as "State Defendants"). Following a settlement between plaintiffs and FWCS Defendants, and a fairness hearing on December 14, 1989, the Court approved the settlement agreement and entered it as a consent decree in an opinion reported as Parents for Quality Education With Integration, Inc. v. Fort Wayne Community Schools Corp., 728 F. Supp. 1373 (N.D. Ind. 1990). All claims against the FWCS Defendants were dismissed with prejudice. Thereafter, plaintiffs proceeded on their claims against State Defendants.

4. This Court has jurisdiction over the subject matter of this action and over the parties, as determined by the Court's June 22, 1987 order, granting in part and denying in part the motion of State Defendants to dismiss. See Parents for Quality Education With Integration, Inc. v. Fort Wayne Community Schools Corp., 662 F. Supp. 1475 (N.D. Ind. 1987). Venue is proper before this Court. On October 23, 1992, the United States Court of Appeals for the Seventh Circuit affirmed the district court's denial of State Defendants' motion for summary judgment and held that plaintiffs' suit was not barred by the Eleventh Amendment. Parents for Quality Education With Education, Inc. v. Indiana, 977 F.2d 1207 (7th Cir. 1992).

5. Plaintiffs and State Defendants have conducted extensive discovery, including numerous interrogatories,

documents requests, requests for admission, and depositions. In addition, these parties, at the direction of the Court and with the guidance of Magistrate Judge Roger Cosbey, have engaged in a lengthy stipulation process. The FWCS Defendants participated in similar discovery before their settlement with plaintiffs and their resulting dismissal from this case. They also assisted in the stipulation process before that dismissal and, thereafter, counsel for the Fort Wayne Community Schools Corporation assisted plaintiffs and State Defendants with that process at the Court's request.

6. The parties to this Consent Decree are plaintiffs, State Defendants, and, only for purposes of ensuring the performance of the obligations stated in paragraphs 12(c), 13 and 15 of this Consent Decree, the Fort Wayne Community Schools Corporation. Through a combination of the previous settlement between plaintiffs and FWCS Defendants and the settlement between plaintiffs and State Defendants, as reflected in this Consent Decree, all claims in this case (except for plaintiffs' claims for attorneys' fees against State Defendants) are resolved with the entry of this Consent Decree.

7. At the direction of the Court and with the assistance of Magistrate Judge Roger Cosbey, who this Court appointed to preside over settlement negotiations, the parties to this Consent Decree have sought to reach a fair and equitable settlement of their differences and to avoid the divisiveness and cost of litigating the claims asserted by plaintiffs.

8. On February 5, 1994, counsel (through Magistrate Judge Cosbey) notified the Court of a possible settlement and the Court thereafter set a hearing for February 11, 1994. At the February 11, 1994 hearing, the parties notified the Court of the terms of the proposed settlement, submitted those terms to the Court in writing, and asked that the Court give preliminary approval to the proposed settlement. By order dated February 24, 1994, the Court preliminarily approved the proposed settlement. At the hearing on February 11, 1994, the Court also directed the parties to submit a proposed form of notice to the class of plaintiffs of that proposed settlement, present a tentative schedule for giving such notice, and suggest a schedule for conducting other appropriate proceedings with regard to the proposed settlement. On March 18, 1994, the Court issued an order setting a hearing on the fairness and adequacy of the proposed settlement, approved the proposed notice submitted by the parties, and adopted the schedule for such notice and proceedings that the parties had submitted jointly on March 11, 1994. By an order dated April 8, 1994, the Court modified the date for publication of the notice to the Plaintiff Class.

9. Pursuant to the Court's order of March 18, 1994, notice to the class (attached as Exhibit "A") and the full text of the proposed settlement agreement were published in the following newspapers published in the Fort Wayne area: *The News-Sentinel* (April 2, 1994); *Frost Illustrated* (April 6-12, 1994); and *The Journal Gazette* (April 4, 1994) (attached as Exhibit

"B"). The published notice set forth procedures governing the filing of comments with the Court and participation by members of the class of plaintiffs and the public in the May 17, 1994 hearing on the fairness and adequacy of the proposed settlement, as embodied in this Consent Decree. In addition, the Fort Wayne Community Schools Corporation cooperated with plaintiffs by making copies of the currently proposed settlement and the 1990 Consent Decree (embodying the terms of the settlement between plaintiffs and FWCS Defendants) available for inspection during regular school hours at the Lester L. Grile Administrative Center of the Fort Wayne Community Schools Corporation and in the principal's office of each public school operated by the Fort Wayne Community Schools Corporation. In addition, the proposed settlement was available for inspection in Fort Wayne at the Office of the Clerk of the United States District Court for the Northern District of Indiana, the Old Fort YMCA and the East Wayne Street Center. Plaintiffs and their attorneys also appeared before or spoke on the telephone to numerous leaders and officials of area civic, religious, and business organizations regarding the proposed settlement, including: Arts United; Associated Churches of Fort Wayne and Allen County; The Greater Fort Wayne Chamber of Commerce; The Fort Wayne Journal-Gazette; Indiana/Purdue University at Fort Wayne; Lincoln National Corporation; Lincoln Life Improved Housing; Fort Wayne branch of the National Association for the Advancement of Colored People; Navistar International; FWCS PTA Council; Southern Heights

Baptist Church; Fort Wayne Urban League; and the office of Fort Wayne Mayor Paul Helmke.

10. On May 17, 1994, the Court convened a hearing in Fort Wayne for the purpose of determining the fairness, adequacy and reasonableness of the proposed settlement to the Plaintiff Class. Pursuant to the procedures set forth in the Court's March 18, 1994 order and in the notice to the class of plaintiffs, a total of 11 class members, individual citizens and organizations submitted written comments on the fairness and adequacy of the proposed settlement. Several persons made oral presentations regarding those issues at the hearing on May 17, 1994.

11. State Defendants have denied and continue to deny that they or their predecessors have committed any wrongdoing or that they (and all persons and entities whose actions or inactions allegedly provide a basis for liability on the part of the State of Indiana, its agencies, officers or representatives or any of their predecessors) have caused racial isolation, disparities in achievement among students, or any other effect of discrimination to exist in the public schools operated by the Fort Wayne Community Schools Corporation. Nothing in these findings or in the Consent Decree shall constitute an admission of liability or wrongdoing on the part of the State of Indiana, the Governor of the State of Indiana, the Attorney General of the State of Indiana, the State Superintendent of Public Instruction of Indiana, the Chair of the Indiana State Board of Education,

members of the Indiana State Board of Education, the Indiana Department of Education, or any of their predecessors (which includes all persons and entities whose actions or inactions allegedly provide a basis for liability on the part of the State of Indiana, its agencies, officers, or representatives or any of their predecessors), nor shall any portion of this Consent Decree or any of the facts alleged in plaintiffs' Complaint be deemed evidence of any wrongdoing, cumulatively or otherwise, in these or in any other proceedings against State Defendants, their predecessors, or successors.

II. TERMS OF THE CONSENT DECREE

The following are the terms of this Consent Decree and constitute the order of this Court:

12. State Defendants shall make six payments to the Fort Wayne Community Schools Corporation totalling \$12.9 million, one payment during each of the next six school years, beginning with the 1994-95 school year. The following conditions shall apply to these payments:

a. The schedule for such payments shall be as follows: \$900,000 for the school year 1994-95; \$2.4 million for the school year 1995-96; \$2.4 million for the school year 1996-97; \$2.4 million for the school year 1997-98; \$2.4 million for the school year 1998-99; and \$2.4 million for the school year 1999-2000.

b. Each annual payment shall be made in quarterly installments.

c. The funds made available under this Consent Decree shall be used by the Fort Wayne Community Schools Corporation for the following purposes only: new preschool programs for 3 and 4 year-olds; additional full day kindergartens; additional initiation of reading programs in the early grades that have proved effective, such as Success For All; and initiation of additional professional development programs designed primarily to enhance the capacity of teachers and staff to provide effective teaching for minority and low-income children. The purpose of all these uses is to enhance the effectiveness of schools in ensuring equality of opportunity and in promoting higher achievement.

13. The Fort Wayne Community Schools Corporation shall: (a) in accordance with section 14(b)(iii) of the Settlement Agreement between plaintiffs and FWCS Defendants, continue through the end of the 1999-2000 school year its annual contribution to the Educational Improvement Fund from its authorized racial balance fund levy (currently yielding approximately \$450,000 per year); and (b) extend the time and functions of the monitor and the Educational Improvement Committee established pursuant to the settlement between plaintiffs and FWCS Defendants until the end of the 1999-2000 school year.

14. With the entry of this Consent Decree, the claims asserted against State Defendants by plaintiffs in this action are dismissed with prejudice. The settlement and dismissal of

all claims by plaintiffs resolves all claims in the Litigation and issues between plaintiffs and State Defendants (and each of them) based on or relating to alleged racial segregation and discrimination in the public schools operated by the Fort Wayne Community Schools Corporation and any alleged past and future effects of alleged racial segregation and discrimination in the public schools operated by the Fort Wayne Community Schools Corporation, whether based on action or inaction, at any time prior to the date of this Consent Decree. For purposes of this paragraph, the term "the Litigation" means the action styled Parents for Quality Education With Integration, Inc. v. Fort Wayne Community Schools Corp., et al., Civil No. 86cv0325AS.

15. With the entry of this Consent Decree, the Court recognizes that by the signature on the Settlement Agreement by its authorized representative on February 14, 1994, the Fort Wayne Community Schools Corporation has released, acquitted, and forever discharged State Defendants (and each of them) from all claims, actions, causes of action, and liabilities that might have been asserted in any fashion arising out of this case, whether by action for contribution, indemnification or otherwise, based on or in any way relating to alleged racial segregation and discrimination in the public schools operated by the Fort Wayne Community Schools Corporation, any alleged past and future effects of alleged racial segregation and discrimination in the public schools operated by the Fort Wayne Community Schools Corporation, whether based on action or inaction at any time

prior to the date of this Consent Decree, and any claims based on or in any way relating to the costs incurred or actions undertaken by the Fort Wayne Community Schools Corporation as a result of or in connection with the implementation of the Fort Wayne Community Schools Corporation's settlements with the Office for Civil Rights of the United States Department of Education and with plaintiffs in this case, any consent decrees relating to those settlements, the obligations that the Fort Wayne Community Schools Corporation promised to perform in this Consent Decree or the Settlement Agreement with plaintiffs and State Defendants signed on February 14, 1994 by an authorized representative of the Fort Wayne Community Schools Corporation, or any other undertaking or cost incurred to alleviate alleged racial segregation or racial imbalance in the Fort Wayne Community Schools. The Court finds that the release executed by the authorized representative of the Fort Wayne Community Schools Corporation is valid and binding on the Fort Wayne Community Schools Corporation; any predecessors and any successors. For purposes of this paragraph and paragraph 14 of this Consent Decree, the term "State Defendants" includes all former, current and future Governors of the State of Indiana, Attorneys General of the State of Indiana, State Superintendents of Public Instruction for the State of Indiana, and members of the Indiana State Board of Education or any predecessor body; the State of Indiana, the Indiana Department of Education, the Indiana State Board of Education, and all individuals or entities acting on

behalf of any of the foregoing or their predecessors; and all persons and entities whose actions or inactions allegedly provide a basis for liability on the part of the State of Indiana (including its agencies, officers and representatives).

16. To the extent that issues about the integrity, implementation, or interpretation of this Consent Decree arise, plaintiffs, State Defendants and the Fort Wayne Community Schools Corporation will seek to address such issues jointly and in a cooperative manner. The parties will use their best efforts to assure full implementation of this Consent Decree.

17. Plaintiffs are eligible to apply for an award of attorneys' fees and recoverable costs, but plaintiffs may not seek a sum for all attorneys' fees and costs greater than \$1.1 million. State Defendants will not be liable for any further award of fees and costs, however incurred, including monitoring costs, except: (a) fees and costs incurred in the litigation of the fee application should that become necessary; and (b) fees and costs incurred in any necessary proceeding by plaintiffs to enforce this Consent Decree against State Defendants in which plaintiffs prevail.

18. The obligations of State Defendants and the Fort Wayne Community Schools Corporation, as embodied in this Consent Decree, shall not in any event, in whole or in part, be construed as or deemed to be evidence of an admission of liability or wrongdoing by State Defendants or the Fort Wayne Community Schools Corporation or their predecessors.

III. APPROVAL OF SETTLEMENT AND DISMISSALS

This Court finds that the terms of the settlement, as reflected in this Consent Decree, are fair, adequate and reasonable. The settlement is a fair, adequate, and reasonable resolution of the allegations by plaintiffs against State Defendants, the State of Indiana, the Governor of the State of Indiana, the Attorney General of the State of Indiana, the State Superintendent of Public Instruction of the State of Indiana (who also serves as the Chair of the Indiana State Board of Education), members of the Indiana State Board of Education, and the Indiana Department of Education.

Accordingly, it is hereby ordered, adjudged and decreed that the settlement as embodied in this Consent Decree is adopted, approved and shall be implemented; that the action brought by plaintiffs against the State of Indiana, the Governor of the State of Indiana, the Attorney General of the State of Indiana, the State Superintendent of Public Instruction of the State of Indiana (who also serves as the Chair of the Indiana State Board of Education), members of the Indiana State Board of Education, and the Indiana Department of Education is DISMISSED WITH PREJUDICE, and jurisdiction will be retained during the term of the Consent Decree to assure its implementation, and such jurisdiction will be terminated by the Court upon the fulfillment by the parties of the obligations contained in Section II of this Consent Decree.

IT IS SO ORDERED.

Dated May 17, 1994.

S/ ALLEN SHARP

CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPROVED:

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