

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

H(2320)U
FILED

APR 25 1983

EYVON MENDENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

CRATON LIDDELL, et al.,)
)
Plaintiffs,)
)
v.)
)
THE BOARD OF EDUCATION OF)
THE CITY OF ST. LOUIS,)
STATE OF MISSOURI, et al.,)
)
Defendants.)

No. 72-100C(4)

MEHLVILLE SCHOOL DISTRICT R-9 WITNESS LIST, EXHIBIT LIST,
AND BRIEF IN SUPPORT OF ITS POSITION ON THE PROPOSED
SETTLEMENT AGREEMENT

Comes Now the Mehlville School District R-9, and in response to this Court's order H(2278)83, submits its witness list, exhibit list, and brief in support of its position on the proposed Settlement Agreement.

WITNESS LIST

The following witnesses may be called at the April 28, 1983 hearing:

1. Dr. Thomas L. Blades. Dr. Blades is Superintendent of the Mehlville School District R-9, and may testify concerning the financial implications and student distribution implications of the District's participation in the Settlement Agreement.

2. Dr. Darrell L. Holley. Dr. Holley is the Assistant Superintendent (Business) of the Mehlville School District R-9. His testimony will be directed to the details of the specific financial implications of the proposed Settlement Agreement upon the Mehlville School District R-9.

EXHIBIT LIST

The Mehlville School District R-9 may introduce the

following exhibits into evidence at the April 28, 1983 hearing:

1. Map of St. Louis County Districts.
2. Mehlville School District policy: "Teacher - Reduction".
3. Projected capital costs for reopening Forder Elementary School.
4. Projected personnel costs, ancillary expenses, and in-service training expenses resulting from participation in the proposed Settlement Agreement.

MEMORANDUM AND BRIEF

On April 4, 1983 the "Mehlville School District's Report to the Court" was filed in response to the submission of the March 30, 1983 proposed Settlement Agreement. Because of ambiguities and uncertainties in four particular areas of concern to the District, its acceptance was conditioned upon certain understandings and conditions described in H(2243)83. This filing is directed toward those four areas.

I. It is pointed out in H(2243)83, that this District has Fifty-six (56) non-tenured teachers on "lay-off", whose reinstatement rights are governed by a duly-enacted policy of the Board of Education of the Mehlville School District (Exhibit 2). That policy provides, inter alia, that

j. Each teacher placed on involuntary leave shall be reinstated in inverse order of his/her placement on leave of absence, subject to District needs.

Section VI of the proposed Settlement Agreement contemplates an affirmative action hiring policy for school district faculty. Paragraph H of that Section provides that:

Nothing herein shall require a district to violate any provisions of Missouri law and, in particular, the Missouri Teacher Tenure Act, as amended, applicable to both six director and Metropolitan school districts; provided however, in filling vacant teacher positions, districts shall use to the extent required and at their request, desegregation funds as may be ordered by the Court and received by the districts because of their participation in this settlement agreement to fill such vacant positions through new hires of blacks to meet the annual goal set forth in Paragraph E.

It appears to this District that there is a serious conflict between that provision of the proposed Settlement Agreement, and the reinstatement rights conferred upon RIF'd teachers under the District's reinstatement policy (Exhibit 2).

Under the proposed Settlement Agreement, this District's annual "target" will be approximately Three Hundred and Fifty (350) voluntary transfer students, leading toward a plan ratio of 15.32%. It is therefore inevitable that additional teaching staff will be required to serve these new students. It is also inevitable that there will be a conflict between the affirmative action hiring requirements under the proposed Settlement Agreement, on the one hand, and the reinstatement rights of the District's RIF'd teachers under the "Teacher - Reduction" policy of the District, on the other hand. Thus, the enthusiastic participation of this District in the Settlement Agreement is likely to result in a Hobson's Choice each time it becomes necessary to employ a teacher to serve voluntary transfer students. In the interests of certainty, economy, and an end to this portion of the litigation, this Court should clarify the ambiguity resulting from these conflicting interests.

II. If the Court approves the Settlement Agreement, and this District participates in that Agreement, it will do so in

good faith and will make every effort to meet its plan ratio. However, the Settlement Agreement itself contains provisions which contemplate that certain districts may not achieve their plan ratio. In particular, the provisions of Section XII, relating to "the monitor", will operate only as to those districts which fail to achieve their plan ratio.

Section XII (F) (2) provides, inter alia, that:

The monitor shall make an investigation and positive recommendation...(Emphasis Added).

Section XII (3)(C) provides that the monitor shall:

C. Make recommendations as to steps to be taken by parties to assist the district in meeting its plan ratio in the time period which the Monitor believes is necessary for the district to reach its plan ratio. These recommendations shall be consistent with the obligations contained in Sections II and III of this Agreement.

During the negotiations leading up to the filing of the proposed Settlement Agreement, this District believed that the Agreement would contain provisions specifically precluding the monitor from recommending the voluntary or involuntary transfer of suburban school district students into the City of St. Louis, in order to "...assist the district in meeting its plan ratio..." At one point during the parties' negotiations, the proposed Settlement Agreement contained specific language precluding such a recommendation by the monitor. However, in the final draft, and at the insistence of certain of the parties, that provision was withdrawn, with what this District believes to be the tacit understanding that the language of the Settlement Agreement as finally submitted to the Court would be interpreted (at the appropriate time) to preclude such a recommendation. However,

this District believes that the Agreement, as presently worded, is susceptible of a variety of interpretations touching upon the monitor's ability to recommend interdistrict bussing of suburban school district students. One of this District's objectives in agreeing to participate in this Settlement Agreement has been the desire for a relative degree of certainty in the interpretation of its rights and obligations, but as the Agreement is presently worded, that objective has not been satisfied. Given the demographics of the student population of St. Louis/St. Louis County, and the geography of St. Louis County (which places certain majority - white suburban school districts at a disadvantage in achieving their plan ratio) it is likely that the monitor will be required to perform its function at the end of the five years of the plan. The monitor's report and recommendations will be of vital interest to the parties, the community, and the Court, and the monitor should not be required to resolve the conflicting viewpoints of the parties, as to the scope of the monitor's authority, five years after the Settlement Agreement begins to be implemented.

III. The cost of the Settlement Agreement, and the availability of funds to pay that cost, are matters of vital concern to all of the parties. A substantial portion of every school district's budget is supported by funds from the State of Missouri, a not-inexhaustible source of those funds. The State has already partially addressed its concern over the financial implications of the plan (H(2259)83), and the unmistakable inference to be drawn from that response is that other "normal"

funds used to support school districts will probably be diminished on account of the cost of implementing and operating the Settlement Agreement. This District does not believe that it would be in the best interests of any student in the St. Louis/St. Louis County area to attend substandard integrated schools, where the substandard condition is the direct result of increased class sizes, deteriorating facilities, and diminished support services caused by the general lack of funds directly resulting from the increased cost of the Settlement Agreement.

The Mehlville School District anticipates at least the following additional costs rising exclusively out of its participation in the Settlement Agreement:

A. Projected Capital Costs for Re-opening Forder Elementary School. Because of declining enrollment, the Mehlville School District has closed at least three elementary schools since 1981. The District's eight presently-operating elementary schools have adequate open-classroom space for approximately Four Hundred (400) additional students. If the District meets its annual target of approximately Three Hundred and Fifty (350) voluntary transfer students for the first two years of plan operation, it will be necessary to re-open one of its previously-closed elementary schools. Based on geographic location and physical condition, the school of choice is Forder Elementary School. The "one-time extraordinary costs" (Section X, paragraph 3) associated with re-opening that school are as follows:

Equipment and Instructional Materials	\$92,580.00
Roof Repairs	33,800.00
Remedial Building Code and Fire Code Compliance Work	35,000.00
TOTAL	<u>\$161,380.00</u>

The above-described re-opening costs are best-judgment approximations based on equipment and improvement costs at estimate 1984 prices.

B. Student/Teacher Recruitment Expense, and In-Service Multi-Racial Educational Training. Section X (3) contains provisions for incentive payments to participating districts for the costs of student recruitment, and other costs associated with participation in the Settlement Agreement.

To administer the influx of voluntary transfer students, and to implement the affirmative action provisions of the Settlement Agreement, the Mehlville School District anticipates hiring a full-time high-level administrator, with adequate support staff to perform the necessary clerical duties associated with student recruitment, placement, and counseling, and teacher recruitment and placement. The estimated cost of such full- and part-time personnel, and associated expenses, will be \$93,840.00 per year during the entire life-of-operation of the Settlement Agreement (Exhibit 4).

Staff instruction in multi-racial educational techniques will be an essential concomitant of success of the Settlement Agreement. In addition, it is highly desirable that workshops and community involvement for parents of voluntary interdistrict transfer students be conducted on a regular basis. The cost of such training and workshops is estimated at \$7,500.00 per year, with a further estimate of approximately three years of implementation. The total cost of such in-service training and community involvement is therefore approximately \$22,500.00.

IV. The final area of concern addressed by the Mehlville School District in its report to the Court, H(2243)83, concerns the failure of the Agreement to provide any mechanism for termination or modification. In this regard, and considering the present state of the law concerning such Settlement Agreements, the failure of the Agreement to address that issue has already created marked differences in the parties' perceptions of the duration of their rights and obligations. H(2249)83; H(2264)83; H(2250)83; Caldwell Plaintiff's Report to the Court, filed March 30, 1983.

At the outset, the Mehlville School District notes that the proposed Settlement Agreement is not a "consent decree" as that phrase is used by the Courts in characterizing the resolution of school desegregation cases. It is, rather, a contract between the parties to resolve their dispute, and like all settlements is subject to the approval of the Court. As a contract (and not a settlement decree) it contains elements which are both legal and equitable in nature. As they relate to concerns expressed by the Mehlville School District in its report to the court H(2243)83, those legal and equitable elements are understood to be interpreted as follows:

A. The parties have contracted for a five-year endeavor to attempt to achieve a specified student plan ratio, and an affirmative action goal. Contractual remedies for failure to achieve the plan ratio or affirmative action goal are set out in the Settlement Agreement, and are not subject to modification by the Court.

B. The equitable powers of the Court are nowhere addressed

in the Settlement Agreement. In particular, the Settlement Agreement contains no provisions for termination or modification of the parties' rights and obligations following the expiration of the clearly-defined contractual period. Counsel has been unable to locate any case in which such agreements have been construed to run in perpetuity. This District believes that the Court retains equitable jurisdiction over the implementation of the Settlement Agreement, subject to the limitations on the Court's authority arising out of the specific contractual obligations of the parties contained within the four corners of the Settlement Agreement. More specifically, this District construes the Settlement Agreement, and this Court's equitable jurisdiction over that Agreement, as follows:

1. The rights and obligations of the parties during the first five years of the Agreement are not subject to modification, but are enforceable through the mechanism described in the Settlement Agreement. In particular, the rights and obligations of the parties are specifically enforceable during the first five years of plan implementation.

2. The "stay" provisions of Section XII are contractual in nature, and not subject to modification by the Court. In particular, limitation on Plaintiffs' remedy described in Section XII (E) (2) and Section XII (F) (6) are contractual in nature, and may not be modified by the Court.

3. At the expiration of the five-year "stay" period contemplated by the Agreement, and subject to the contractual limitations agreed upon by the parties, the Court may modify the Settlement Agreement on a showing that the decree is no longer

equitable (FR Civ. P. Rule 60 (b)), or upon a showing of changed circumstances. United States v. Swift 286 U.S. 106 (1932); Stotts v. Memphis Fire Department 679 F2d 541 (6th Cir., 1982); Philadelphia Welfare Rights Organization v. Shapp 602 F2d 1114 (3rd Cir., 1979).

CONCLUSION

In the "Signatories' Pre-Hearing Memorandum" (filed with the Court on April 25, 1983) those signatories note that:

One school district -- University City -- rejected the Agreement (H(2259)83), and two school districts -- Mehlville and Rockwood -- imposed conditions which are unacceptable to the signatories of the Agreement and are inconsistent with the Agreement in Principle ...(at p. 10)

The Mehlville School District takes strong exception to that characterization of the four issues described in this brief.

Firstly, none of the four issues is "inconsistent with the Agreement in Principle"; additionally, the detailed Settlement Agreement itself fails to directly address these four issues. This Defendant challenges the signatories to point out any provision of the Agreement in Principle, or of the detailed Settlement Agreement, which is inconsistent with the questions raised in this Defendant's brief.

Secondly, this Defendant has difficulty understanding why the issues raised in this brief are "...unacceptable to the signatories of the Agreement..."

A. Based on information available to the Mehlville School District, that District is the only one of the St. Louis County Districts which has RIF'd a substantial number of non-tenured teachers, whose reinstatement rights will inevitably conflict

with the affirmative action requirements of the Settlement Agreement. Since the Agreement contains a latent ambiguity, this Court should declare the respective rights of the potentially conflicting interests, to provide guidance for the parties in advance of further litigation.

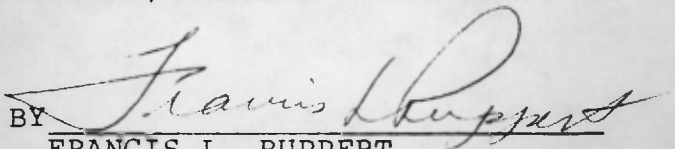
B. The parties have, by contract, conferred certain authority upon the monitor. This District believes that the scope of the monitor's authority is ambiguous, an ambiguity which can be easily resolved by the signatories' present declaration of their interpretation of the monitor's authority vis-a-vis mandatory or voluntary cross-district bussing.

C. One of the most serious defects in the Settlement Agreement is its failure to provide for termination or modification of the rights and obligations of the parties. In that context, the Settlement Agreement itself fails to even indirectly address the future status of those parties which fail to achieve their plan ratio. The signatories have apparently determined to leave the question of whether or not the decree is modifiable to some future court action; this Defendant believes that it is imperative that the issue of the Agreement's modification be resolved today.

Respectfully submitted.

RUPPERT, WESTHUS & BENJAMIN

BY


FRANCIS L. RUPPERT
Attorney for Mehlville School
District R-9
8000 Bonhomme, Suite 201
Clayton, MO 63105
721-4333

CERTIFICATE OF SERVICE

I certify that copies of the foregoing were mailed, postage prepaid, to the following attorneys of record on this 25 day of April, 1983, or as shortly thereafter as may be required to receive and affix the appropriate court designation.

Francis L. Ruppert co

Mr. Joseph McDuffie
408 Olive Street #715
St. Louis, MO 63102

Mr. Michael J. Hoare
314 N. Broadway, Suite 1010
St. Louis, MO 63102

Mr. Craig M. Crenshaw, Jr.
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Mr. Robert H. Dierker, Jr.
Assistant City Counselor
314 City Hall
St. Louis, MO 63103

Mr. Kenneth C. Brostron
714 Locust Street
St. Louis, MO 63101

Mr. Larry R. Marshall
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102

Mr. Raymond J. Morganstern
7733 Forsyth, Suite 2162
Clayton, MO 63105

Ms. Shulamith Simon
100 North Broadway
St. Louis, MO 63102

Mr. Anthony J. Sestric
1015 Locust Street #601
St. Louis, MO 63101

Mr. Bertram W. Tremayne, Jr.
120 S. Central #540
St. Louis, MO 63105

Mr. George Bude
130 S. Bemiston #405
St. Louis, MO 63105

Mr. Darold E. Crotzer Jr.
230 S. Bemiston #1010
St. Louis, MO 63105

Mr. Kenneth V. Byrne
11 S. Meramec #1400
St. Louis, MO 63105

Mr. John Gianoulakis
411 N. Seventh Street
St. Louis, MO 63101

Mr. Donald J. Stohr
One Mercantile Center, #3400
St. Louis, MO 63101

Mr. Edward E. Murphy Jr.
120 S. Central #938
St. Louis, MO 63105

Mr. Robert G. McClintock
705 Olive Street #722
St. Louis, MO 63101

Mr. Robert W. Copeland
130 S. Bemiston #600
St. Louis, MO 63105

Mr. Robert P. Baine Jr.
225 S. Meramec Avenue
St. Louis, MO 63105

Mr. Henry D. Menghini
314 N. Broadway 16th Floor
St. Louis, MO 63102

Mr. Richard H. Ulrich
11 S. Meramec #1350
St. Louis, MO 63105

Mr. Frank Susman
7711 Carondelet
St. Louis, MO 63105

TEACHER - REDUCTION

If the Board of Education determines it necessary to reduce the number of teachers due to program elimination or reduction, or to reduce the number of teachers in a given subject area, field or program, or eliminate or consolidate positions, the primary consideration will be the preservation of the best possible educational program for children and youth.

Missouri statutes, section 162.124, enables the Board of Education to place on leave of absence as many teachers, permanent and probationary, as may be necessary because of a decrease in pupil enrollment, school district reorganization or financial condition of the school district.

- I. In placing teachers on leave, the Board of Education shall be governed by the following provisions:
 - a. No permanent teacher shall be placed on leave of absence while probationary teachers are retained in positions for which a permanent teacher is qualified;
 - b. Permanent teachers shall be retained on the basis of merit within the field of specialization;
 - c. Permanent teachers shall be reinstated to the positions from which they have been given leaves of absence, or if not available, to positions requiring like training and experience, or to other positions in the school system for which they are qualified by training and experience;
 - d. No appointment of new teachers shall be made while there are available permanent teachers on unrequested leave of absence who are properly qualified to fill such vacancies;
 - e. A teacher placed on leave of absence may engage in teaching or another occupation during the period of such leave;
 - f. The leave of absence shall not impair the tenure of a teacher;
 - g. The leave of absence shall continue for a period of not more than three years unless extended by the Board.
- II. After following guidelines required by the Tenure Law, the following additions would be considered in staff reduction:
 - a. Personnel reductions should be made in consideration of all eligible teachers in the district. Reduction of staff, then, should be made on a district-wide basis rather than building by building.

b. Factors to be considered in staff reduction:

No priority listing is intended. Various combinations of factors related to needs of district and qualifications of the individual teacher will establish priority. NOTE: "Teacher Rating Scale" adopted July 12, 1932, will determine which teachers will be involved in staff reductions. Teachers with the lowest number of points shall be placed on unrequested leave of absence.

- (1) Areas of competence indicated by certification, the individual's grade level or departmental preference, and experience.
 - (2) Seniority. Defined as the length of full-time contracted employment in the District which begins with the date the employee first reports to work not including an interruption of service because of resignation, separation, or leaves of absence. Seniority among all teachers with the same starting date shall be determined by the date the employee's original contract was first approved by the Board of Education.
 - (3) Quality of performance. In determining the professional competency or efficiency of a permanent or probationary teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district as they pertain to his or her instructional abilities.
 - (4) Skills in the areas of instructional needs of the district.
 - (5) If all above factors are reasonably equal, seniority shall become the determining factor for retention.
- c. Should staff reduction reach a point where permanent teachers must be placed on leave, Part II Guidelines should apply to that process.
- d. A teacher on unrequested leave of absence shall be offered re-employment provided he or she is certificated for and is experienced in the vacancy. The Board of Education shall reserve the right to waive the experience requirement.
- e. A teacher who has been placed on unrequested leave of absence shall, if desired, have priority on the substitute list.
- f. The fact that a teacher is placed on unrequested leave of absence shall not result in the loss of status or credit for previous years of service. Upon return to the school district the teacher shall be given credit for all previous years of service when placed on the salary schedule and shall retain all years toward tenure and district seniority.
- g. The fact that a teacher is placed on unrequested leave of absence shall not result in the loss of credit toward tenure. Upon return to the school district the credit toward tenure previously earned shall be assumed.

- h. The accumulated sick leave of any teacher placed on unrequested leave of absence shall not be cancelled but shall remain credited to the teacher. However, additional sick leave will not be accumulated while on leave of absence. If the teacher desires, he/she may be reimbursed at the given rate for unused accumulated sick days during the time he/she is on involuntary leave.
- i. Teachers placed on involuntary leave shall be entitled to the same insurance benefits as all other teachers in the district, subject to payment of the premiums.
- j. Each teacher placed on involuntary leave shall be reinstated in inverse order of his/her placement on leave of absence, subject to district needs.

ITEM V

TEACHER RATING SCALE

Teacher Number: _____

Grade Level: Elementary

Junior High

Senior High

Certification: _____

Teacher reduction shall be determined by utilizing the Mehlville School District Teacher Reduction Policy with the administration of the following point system described below. Teachers with the lowest number of points shall be placed on unrequested leave of absence.

	<u>TOTAL</u>	<u>CATEGORY</u> <u>WEIGHTS</u>	
<u>CATEGORY I - TEACHER EVALUATION</u>			
A. Each year rated Satisfactory	() X	10	_____
B. Each year rated Above Average	() X	20	_____
C. Each year rated Meritorious	() X	25	_____

NOTE: Rating for only the school years of 1980-81 and 1981-82. (2 years only)

CATEGORY II - PREPARATION

A. Each channel on Salary Schedule	() X	3	_____
NOTE: Maximum of four (4)			

CATEGORY III - TEACHING EXPERIENCE

A. Each year under contract in the Mehlville School District.	() X	2	_____
B. Each year under contract outside the Mehlville School District, not to exceed five (5) years.	() X	1	_____

Grand Total _____

Policy Adopted 4/11/77

Amended: 7/12/82

* * * * *

TEACHER - REDUCTION

If the Board of Education determines it necessary to reduce the number of teachers due to program elimination or reduction, or to reduce the number of teachers in a given subject area, field or program, or eliminate or consolidate positions, the primary consideration will be the preservation of the best possible educational program for children and youth.

Missouri statutes, section 163.124, enables the Board of Education to place on leave of absence as many teachers, permanent and probationary, as may be necessary because of a decrease in pupil enrollment, school district reorganization or financial condition of the school district.

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- II. After following guidelines required by the Tenure Law, the following additions would be considered in staff reduction:
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Grand Total _____

Policy Adopted 4/11/77

Amended: 7/12/82

PROJECTED CAPITAL COSTS FOR REOPENING FORDER ELEMENTARY SCHOOL

12	Teacher Desks @ \$280.00	\$ 3,360.00
12	Teacher Chairs @ \$80.00	960.00
12	Four drawer file cabinets @ \$200.00	2,400.00
325	Student Desks @ \$60.00	19,500.00
375	Student Chairs @ \$26.00	9,750.00
24	Classroom Tables @ \$54.00	1,296.00
25	Cafeteria Tables @ \$80.00	2,000.00
150	Cafeteria Chairs @ \$19.00	2,850.00
30	Bookcases, 3 shelf @ \$200.00	6,000.00
3	16MM Projector @ \$552.00	1,656.00
4	Color T.V. @ \$660.00	2,640.00
1	Video Recorder	1,100.00
7	Filmstrip Viewers @ \$60.00	420.00
12	Headset (8 earphones) @ \$93.00	1,116.00
14	Record Players @ \$97.00	1,358.00
2	Overhead Projectors @ \$143.00	286.00
1	Opaque Projector	520.00
1	Hoffman Reader	500.00
1	Primary Typewriter	300.00
1	Selectric Typewriter (Secretary)	800.00
1	Manual Typewriter	300.00
1	Copy Machine	3,495.00
1	Duplicating Machine	800.00
1	Mimeo Machine	3,000.00
1	Calculator w/ tape	128.00
1	Spirit Master Machine	425.00
12	Library Shelving @ \$200.00	2,400.00
	Overhaul P.A. and Clock System	5,000.00
12	Sets of Encyclopedias @ \$358.00	4,296.00
12	Globes @ \$74.00	880.00
24	Am./World Maps @ \$131.00	3,144.00
1	Nystrom Map Kit	1,500.00
	Library Books for Grades K-6	8,000.00
10	Microscopes @ \$40.00	400.00

TOTAL

\$92,580.00

PROJECTED PERSONNEL COSTS, ANCILLARY EXPENSES, AND
IN-SERVICE TRAINING EXPENSES

Personnel and Ancillary Expenses

1	Coordinator (Student/Teacher Recruitment)	\$35,000.00
1	Secretary	10,000.00
1	Fringe Benefit	1,070.00
1	Guidance	24,000.00
1	Fringe Benefit	1,070.00
	Ancillary Personnel at \$75 per day	12,000.00
	Sub secretary help	5,000.00
	Recruitment budget - travel	5,000.00
	Tests/Scoring @ \$1.00 per child	500.00
	Brochure Development	200.00

Total Personnel and Ancillary Expenses	\$93,840.00
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In-Service Training Expenses

Administrative/Board of Education Workshop	\$ 3,500.00
Staff Workshops and Parent Workshops	4,000.00

Total In-Service Training Expenses (per year - estimated need of 3 years)	\$7,500.00
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