DOCKET NO. LND CV-17-5045066-S : SUPERIOR COURT

MILO SHEFF, ET AL. : LAND USE LITIGATION DOCKET

V. : AT HARTFORD

WILLIAM A. O'NEILL, ET AL. : AUGUST 7, 2017

FILED

MEMORANDUM OF DECISION

I

It has been twenty-one years since our Supreme Court remanded this matter to the Superior Court. With minor exceptions, the parties have engaged in constructive and positive negotiations culminating in several stipulated agreements. The most recent stipulation ended on June 30, 2017, and the parties have been unable to reach a further agreement. On May 30, 2017,[1] the plaintiffs filed a motion for order seeking further implementation of the Supreme Court's 1996 decision and a motion for a temporary injunction pending resolution of the motion for order.[2] In this latter motion, the plaintiffs seek to extend the terms of the last stipulation until a

---

[1] The present docket number is the continuation of Docket No. LND CV-89-4026240-S. The parties originally filed the motion for temporary injunction and the motion for order in this earlier docket number on May 30, 2017. After the present docket number, Docket No. LND 17-5045066-S, was assigned, this court ordered the plaintiffs to refile their motions in the new docket number. The plaintiffs refiled these pleadings on June 6, 2017.

[2] These motions unfortunately suggest that the voluntary efforts to reach agreements between the parties appear to be at an end despite the parties' recognition "that efforts will need to continue beyond June 30, 2017, to reduce further racial, ethnic, and economic isolation in the Hartford Public Schools" in their most recent stipulation. The stipulation is attached to the plaintiffs' motion for order as exhibit A or may be found at pleading # 412.00, in Docket No. LND CV-89-4026240-S.

Mailed to OCR, Wes Horton, Esq, Marta Stone, Esq., Dennis Parker, Esq., Ross Deuel, Esq., Angel Harris, Esq., AAG Ralph Urban, AAG Darren Cunningham, + Howard Rifkin, Esq. 8/7/17 ab/co.

hearing on the motion for order is held. The defendants filed a memorandum of law in opposition on June 9, 2017. On June 14, 2017, through June 16, 2017, this court held an evidentiary hearing on the motion for temporary injunction. After the evidentiary hearing ended and the parties presented closing arguments on June 16, 2017, this court granted the motion for temporary injunction on the record and stated that this memorandum of decision would follow.

II

"The standard for granting a temporary injunction is well settled. In general, a court may, in its discretion, exercise its equitable power to order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law. . . . A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. . . . The plaintiff seeking injunctive relief bears the burden of proving facts which will establish irreparable harm as a result of that violation. . . . Moreover, [t]he extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm." (Citations omitted; internal quotation marks omitted.) *Aqleh* v. *Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97-98, 10 A.3d 498 (2010). "The purpose of a temporary injunction is to [maintain] the status quo while the rights of the parties are being determined, while a permanent injunction effects a final

determination of [those] rights." (Internal quotation marks omitted.) *Bozrah* v. *Chmurynski*, 303 Conn. 676, 682, 36 A.3d 210 (2012).

III

In the Supreme Court's 1996 decision in this case, the court held that "article eighth, § 1, as informed by article first, § 20 [of the Connecticut constitution], requires the legislature to take affirmative responsibility to remedy segregation in our public schools regardless of whether that segregation has occurred de jure or de facto." *Sheff* v. *O'Neill*, 238 Conn. 1, 30, 678 A.2d 1267 (1996). In so holding, it reaffirmed its conclusion in *Horton* v. *Meskill*, 172 Conn. 615, 376 A.2d 359 (1977), that "the state has an affirmative constitutional obligation to provide all public schoolchildren with a substantially equal educational opportunity." *Sheff* v. *O'Neill*, supra, 25. It took this premise a step further and concluded "that the existence of extreme racial and ethnic isolation in the public school system deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial measures." Id., 25-26. In deferring to the legislature to take appropriate action, the court stated: "In staying our hand, we do not wish to be misunderstood about the urgency of finding an appropriate remedy for the plight of Hartford's public schoolchildren. Every passing day denies these children their constitutional right to a substantially equal educational opportunity. Every passing day shortchanges these children in their ability to learn to contribute to their own well-being and to that of this state and nation. We direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas. We are confident that with energy and good will, appropriate remedies can be found and implemented in time to make a difference

before another generation of children suffers the consequences of a segregated public school education." Id., 46.

With energy and good will, the parties have accomplished much voluntarily[3] over these past twenty-one years. Through stipulated agreements, they have created a system which

---

[3] In 1999, the parties returned to court for a determination on whether the state was in compliance with the Supreme Court's mandate. The court, *Aurigemma, J.*, discussed voluntary desegregation efforts: "The rapid rate of desegregation that the plaintiffs seek can only be accomplished through a mandatory reassignment plan. Based on the evidence presented at the hearing, this court finds that voluntary plans are generally superior to mandatory ones because they promote integration of more lasting duration with a minimum of opposition and disruption. This has been recognized by courts in other jurisdictions: 'A key to the success of the [Buffalo desegregation] plan is the fact that for the most part, the integration of the schools has been achieved by voluntary means. Through the use of innovative educational techniques, the need for fixed assignments and mandatory busing of students has been kept to a minimum. There has been no disruption of the schools, no violence, and no massive "white flight" of majority students from the City. Instead, the City schools have improved through the use of these [voluntary] programs, and the proportion of majority to minority students has remained steady, even as the population of the City has decreased.' *Arthur* v. *Nicest*, 547 F. Sup. 468, 470-472 (W.D.N.Y. 1982).

"Voluntary integration plans make particular sense in situations where, as here, the past segregation was de facto and not de jure. A Pennsylvania court approved a school district's voluntary plan as a response to a finding of de facto segregation over the objections of the plaintiffs, who wanted a plan with mandatory components. The court concluded that, because 'the School District of Philadelphia became segregated by action of the people on a voluntary basis by their selection of their neighborhood residence, [i]t does not seem inappropriate . . . to attempt to achieve desegregation by the equally voluntary action of the people in the selection of the schools their children will attend.' *Pennsylvania Human Relations Commission* v. *School District of Philadelphia*, 30 Pa. Commw. 644, 647, 374 A.2d 1014 (1977), aff'd, 480 Pa. 398, 390 A.2d 1238 (1978)." *Sheff* v. *O'Neill*, 45 Conn. Supp. 630, 666, 733 A.2d 925 (1999).

In the current case, these voluntary efforts are all the more important as the stakeholders are more than the minority students of the city of Hartford. See *Sheff* v. *O'Neill*, supra, 238 Conn. 44 ("Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. . . . So it not just that their future depends on the State, the state's future depends on them." [Internal quotation marks omitted.]).

encompassed the construction and operation of over forty magnet schools administered by Hartford, Bloomfield and East Hartford public schools, the Capital Region Education Council (CREC), and Goodwin College. Exhibit [exh.] 500. A total of 18,950 students attended these programs as of October 1, 2016. Exh. 504. Additionally, the open choice program has approximately 2300 students attending 135 schools in 27 different school districts. Exh. 2, p. 16. Students are also able to attend five technical high schools. Exh. 2, pp. 50-52.

In § III.A.1 of the current stipulation, the parties agreed to a goal of 47.5 percent of Hartford-resident minority students attending schools in a reduced isolation setting for the 2016-17 school year.[4] In § II.A.3, the parties agreed that the threshold for a magnet school to be considered a reduced isolation setting would be "that the percentage of enrolled students who are identified as any part Black/African American, or any part Hispanic, does not exceed 75 [percent] of the schools total enrollment."[5] As an amendment to the stipulation of December 13, 2013, the current stipulation additionally provided for the continuation of the regional school choice office (RSCO) in the state department of education to implement the voluntary desegregation efforts[6] with a representative of the plaintiffs at the RSCO. The RSCO's

---

[4] This goal appears to have been attained as 49 percent of Hartford-resident minority students are in a reduced isolation setting according to evidence produced by the plaintiffs. Exh. 3.

[5] Thus, for purposes of the stipulation, all other students, including those identifying as white, American Indian or Alaskan, Asian, or Native Hawaiian, are counted toward the other 25 percent of the reduced isolation standard.

[6] This may be found at § IV.A in pleading # 407.00, in Docket No. LND CV-89-4026240-S.

responsibilities include administering the lottery, marketing plans, research and other related matters.

The state now unilaterally seeks to change the definition of what constitutes a reduced isolation setting from 75 percent to 80 percent for certain schools for two interrelated reasons. The first concerns the changing demographics of the Hartford region. The area's diversity has increased greatly since 1992–the year used as the evidentiary basis in the original decision. Exhs. 502-503. Additionally, student population has decreased. Exh. 7. The state argues that the greater diversity impacts the RSCO lottery in terms of being able to offer seats to the other 25 percent of students needed to constitute a reduced isolation setting. The state is concerned that certain magnet schools cannot now or will not in the future be able to meet the 75 percent standard. Indeed, five schools exceeded this standard as of October 1, 2016. Exh. 504. The 2017-18 RSCO lottery projections indicate that eight schools will not be compliant. Exh. 500. Excluding Capital Community College Magnet Academy which will be phased out, the state asserts that all but one magnet school–Capital Preparatory Magnet–would meet the 80 percent standard. Exh. 500.

Not all Hartford-resident minority students are able to attend programs considered to be reduced isolations settings. Of 21,462 total Hartford-resident minority students, 9878 attend programs considered to be reduced isolation settings.[7] Exh. 3. Evidence was introduced that

[7] Using just these numbers results in 46 percent of the Hartford-resident minority students attending programs that are reduced isolation settings, but the cooperative grant percentage of 3 percent is added for a 49 percent overall figure. Exh. 3.

indicates that 3600 Hartford-resident minority students remain on the waitlist after the first round of the RSCO lottery for the 2017-18 school year.[8] Exh. 505.

The second interrelated reason for which the state seeks to increase the reduced isolation standard is that certain magnet schools have empty seats. Hartford-resident minority students that are not in a reduced isolation setting attend Hartford public schools. The state maintains that raising the reduced isolation standard will allow perhaps as many as 1165 Hartford public school students to be placed in the magnet schools. Exh. 500. It is noted, however, that under the current standard as many as 673 Hartford students might be enrolled. Exh. 500.

As all agree, the RSCO lottery system is extraordinarily complex and subject to a great number of variables. Two such variables concern the cap on funding for each school and the estimated physical capacity of each school. For example, Classical Magnet School, a Hartford-host magnet school, has a cap for the 2017-18 school year at 663 students, a capacity of 707 students, but had an enrollment of 560 students as of October 1, 2016. Exh. 500. Similarly, Reggio Magnet of the Arts, a CREC magnet school, has a cap at 455 students, a capacity of 516 students, but an enrollment of 437 students. Exh. 500.

The state argues that the modified standard will only be used for the twelve specific schools that currently do not meet the standard or are at 73 percent and below. Exh. 500. Nevertheless, five of the twelve schools meet the standard and six of the schools that do not meet

---

[8] The plaintiffs' evidence indicates 3798 Hartford-resident students are on the waitlist for magnet schools and open choice, but the table does not indicate whether these students are minority students, which may account for the difference. Exh. 5.

the standard only miss it by a few students.[9] Exh. 500.

Both sides presented statistical evidence on the lottery system and the ability to place more students in those empty seats.[10] As of March 3, 2017, lottery applications over the last four years are level remaining in the area of 19,000 to 20,000. Exh. 4. For the 2017-18 school year, the RSCO received 19,456 applications including 7168 from students who are not considered to be minority and 12,288 from Black/African American and Hispanic students with 5685 of those from Hartford and 6603 from the suburbs.[11] Exh. 4. Offers were made to 28 percent of the applicants: 1994 to Hartford-resident students for magnet school placement, 343 to open choice, 2815 to suburban students for magnet schools and 193 for open choice. Exh. 5. According to the plaintiffs, the waitlist includes 3798 Hartford-resident students and 10,271 suburban students.[12] Exh. 5.

Glen Peterson, division director overseeing the RSCO and the Sheff office in the state department of education, testified that placing students at the current standard is difficult, but not impossible. Both sides presented testimony and argued their proposals to solve this problem to the court. The parties inability to reach a mutually agreeable resolution of this problem is perhaps a result of a breakdown in communication between the parties to a degree that has not

---

[9] The projected enrollment data for the 2017-18 school year in exhibit 500 is consistent with the waitlist data after the first round of the RSCO lottery contained in exhibit 505.

[10] Exhibit 504 seems to indicate that certain compliant schools could place more Hartford-resident minority students, but perhaps this is not the case due to the financial caps.

[11] Exhibit 5 contains slightly different numbers.

[12] See footnote 8.

existed in prior years. There is no indication that the parties worked together, as they have in the past, to determine whether certain lottery sorts or different proposals such as those testified to by Timothy J. Sullivan, Jr., assistant superintendent for operations at CREC,[13] Jeron T. Campbell, former chief data and accountability officer for Hartford public schools, and Peterson could indeed produce more placements at the current standard.

This case is unlike any other pending before the Connecticut judiciary. Under the mandate for the Superior Court to retain jurisdiction since 1996, this court has met with the parties numerous times over the past decade. Their relationship and past successes are illustrated by their many agreements. Peterson's testimony for the state is not unsubstantial[14] and the placement of all students who seek a seat in magnet schools is a laudable goal, but it does not justify a change in the standard. While one can only compliment the parties' past joint efforts, there is alarmingly no real evidence or an indication of a plan for the future[15] and certainly no agreement with respect to it.

"Racial and ethnic segregation has a pervasive and invidious impact on schools, whether the segregation results from intentional conduct or from unorchestrated demographic factors."

---

[13] As of July 1, 2017, Sullivan is superintendent of the CREC magnet schools.

[14] The court was impressed with each witness and their respective contributions to the desegregation efforts. They are all knowledgeable, experienced and desirous of seeking the optimum resolution of this situation for the Hartford region. While none were qualified as experts, each had vast experience and familiarity with the desegregation efforts.

[15] Since at least 2007, the parties have been aware of the problems related to the changing demographics of the region.

Sheff v. *O'Neill*, supra, 238 Conn. 33-34. The state's request to change the reduced isolation standard seems to be unintentional and in reaction to these unorchestrated demographic factors.[16] Nevertheless, "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Brown* v. *Board of Education*, 347 U.S. 483, 495, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

At a minimum, the goal here is to meet demand for Hartford-resident minority students to attend school in a reduced isolation setting. There are 3600 Hartford-resident minority students on the waitlist. Exh. 505. As counsel for the city succinctly pointed out, this fall several thousand Hartford students will be attending school in a segregated setting.

"[T]he elimination of racial isolation in the schools promotes the attainment of equal educational opportunity and is beneficial to all students, both black and white. . . . Our state constitution . . . imposes on the state an affirmative obligation to respond to such segregation."[17]

---

[16] It is, however, a slippery slope. If we can place more students at a reduced isolation standard of 80 percent, why not even more at 85 percent and so on? Under that argument, there will always be more students who would benefit from the placement in the empty seats.

[17] The court also stated: "It is crucial for a democratic society to provide all of its schoolchildren with fair access to an unsegregated education. As the United States Supreme Court has eloquently observed, a sound education 'is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.' *Brown* v. *Board of Education*, [347 U.S. 483, 493, 74 S. Ct. 636, 98 L. Ed. 873 (1954)]. 'The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance. . . . We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government . . . and as the primary vehicle for transmitting the values on

(Citation omitted; internal quotation marks omitted.) *Sheff* v. *O'Neill*, supra, 238 Conn. 34. The empty seats cannot simply be filled without recognizing the mandates of *Brown* and *Sheff*. Additionally, the state's attempt to retrench from current standards to achieve a reduced isolation setting for Hartford-resident minority students cannot be sanctioned even if it might have some temporal positive benefit. Further isolation–particularly, without any defined plan for the future–constitutes irreparable harm for which there is no adequate remedy at law. Furthermore, equity cannot favor more segregation, especially in light of the 1996 Supreme Court decision which directs a reduction in racial and ethnic isolation.

Having found that the plaintiffs have met their burden under Connecticut law; see *Aqleh* v. *Cadlerock Joint Venture II, L.P.*, supra, 299 Conn. 97-98; this court orders that the 75 percent reduced isolation standard will remain in effect while the state continues to conduct its lotteries for next year and until further order of this court. See *Bozrah* v. *Chmurynski*, supra, 303 Conn. 682. Additionally, the provisions that apply to the current application and lottery process as well as the management and administration provisions, including the RSCO office, will remain in effect until further order of the court. See id.

---

which our society rests. . . . And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists. . . . [E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.' *Plyler* v. *Doe*, [457 U.S. 202, 221, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)]." Id., 43-44.

Berger

Berger, J.