

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 80 C 5124
)
BOARD OF EDUCATION OF)
THE CITY OF CHICAGO,)
)
 Defendant.)

O R D E R

This Court has considered the Petition filed by the Board of Education of the City of Chicago ("Board") and its Motion for Declaratory and Injunctive Relief, the full record in this litigation to date, and the hearings held and evidence received on June 1, 7, 8, 22 and 27, 1983. In accordance with and in implementation of the Findings of Fact and Conclusions of Law entered by this Court contemporaneously with this Order, 1/ it is hereby ORDERED, ADJUDGED AND DECREED:

1. This Court declares the liability, rights and obligations of the parties as follows:

(a) This Court's September 24, 1980 Consent Decree, and particularly Section 15.1, is a binding and enforceable obligation of the United States, its agencies and officers, both as a settlement agreement among the parties and as an order of this Court.

1/ All terms defined in the Findings and Conclusions shall have the same meaning when used in this Order.

(b) Under Section 15.1 the Executive Branch of the United States is now required to take every affirmative step within its legal authority to seek to "find and provide" desegregation funding to Board, until funding adequate for full implementation of the Plan has been provided.

(c) More specifically, the obligation of the United States pursuant to Section 15.1 requires that the Executive Branch take the following affirmative steps:

(1) identify all funds that are currently appropriated and can be used to provide desegregation assistance to Board without any further congressional action;

(2) identify all funds that are currently appropriated for purposes other than desegregation assistance to local educational agencies but that are within the same budget account as desegregation assistance funds, so they could be provided to Board by giving notice to Congress that the funds are being reprogrammed, but without any congressional action;

(3) identify all "excess" funds currently appropriated for budget accounts that do not include desegregation assistance in the Department of Education or any other agency that has authority to provide financial desegregation assistance, but that could be reallocated through congressional action to

budget accounts allowing desegregation assistance; 2/

(4) identify any available legislative initiatives to the extent that such initiatives would provide financial desegregation assistance specifically to Board;

(5) to the extent funds are or become available, provide financial desegregation assistance to Board in an amount that, together with funds provided from Board and other sources, is adequate for full implementation of the Plan; 3/

(6) cooperate with Board so as to fulfill any administrative requirements, and remove any administrative obstacles, that bear upon providing general support for the Plan; and

(7) take any steps available within its lawful authority to promote the use of funds provided to the State of Illinois under ECIA for desegregation

2/ "Excess" funds include any allocated funds the agency has determined it will not expend for the purpose for which they were appropriated, but instead will seek to rescind, allow to lapse or seek to reallocate to other budget accounts.

3/ If several sources of funds that are available to draw upon are more than adequate in the aggregate for full implementation, it is within the discretion of the United States to determine which of those sources to draw upon: funds identified under Subparagraph 1(c)(1), or funds obtained through reprogramming, reappropriation or new legislation pursuant to the possibilities identified under Subparagraphs 1(c)(2) through 1(c)(4), or funds obtained from any other possible source.

assistance to Board.

(d) Funds are currently available in the Discretionary Fund and in the Special Programs and Populations Fund, in amounts exceeding \$15 million, that could be provided by the Secretary of Education to Board for desegregation assistance.

(e) Because the United States has failed to provide formerly and presently available desegregation funding to Board, has taken virtually no affirmative steps to find and provide such funding and has indeed taken affirmative steps to minimize and eliminate available sources of such funding, the United States has violated and continues to violate the agreement between the parties and the order of this Court embodied in the Consent Decree.

(f) Under the Consent Decree the obligations of the United States concerning funding extend for a five-year period. Because the United States has not effectively begun to meet its funding obligations before now, that five-year period shall begin with school year 1983-84 rather than when the Plan was first implemented.

(g) For purposes of Section 15.1 and of Subparagraph 1(c)(5) of this Order, the amount of funding adequate for full implementation of the Plan on an annual basis includes the following:

- (1) \$56.9 million in incremental desegregation expenditures budgeted by Board for school year

1982-83;

(2) \$14.6 million, which is the amount of additional incremental expenditures required by Board to achieve the necessary threshold level of funding for Educational Components in predominantly minority schools, as identified by Board in Part II of the Plan (filed April 29, 1981); 4/ and

(3) such additional amounts as may hereafter be determined by this Court, pursuant to Board's contentions described in Subparagraph 1(h) of this Order. 5/

(h) Board contends the following additional amounts are necessary for adequate full implementation of the Plan:

(1) expenditures for ongoing Board resources that have been wholly or substantially devoted to, or redirected for the purpose of, implementing the Plan (such as in the reassessment of all EMH students in the school system); 6/

(2) approximately \$163 million over the next five

4/ This amount includes the \$10 million in additional incremental desegregation expenditures budgeted by the Board for school year 1983-84.

5/ This provision does not constitute a determination as to the validity or invalidity of those contentions, a subject that remains for future determination by this Court.

6/ Expenditures devoted to the EMH aspect of such desegregation implementation was \$4.6 million in school year 1982-83 and will be the same amount in 1983-84.

to seven years for improving the physical conditions in predominantly minority schools to ensure a safe, clean and attractive environment in all such schools;

(3) amounts necessary to implement new desegregation measures adopted in Board's 1983 Annual Desegregation Review, including two new magnet schools, certain magnet and specialty programs, and measures to relieve over-capacity enrollments in predominantly minority schools; and

(4) amounts necessary for educational remedies in predominantly minority schools and integrated/desegregated schools, such as staff development at all levels, implementation of the Effective Schools Program, a summer school program for students achieving substantially below grade level and other programs.

(i) Both the Plan and the further evidence presented to this Court indicate Board is making every good faith effort to find and provide funding adequate for full implementation of the Plan. Nonetheless Board does not have resources adequate for the full implementation of the Plan, and in particular does not have the \$14.6 million described in Subparagraph 1(g)(2).

(j) This Court recognizes the costs of the Plan must be borne by Board and the United States (and potentially third parties) in amounts or proportions yet to be finally

determined. That determination will depend upon various factors, including the total funding adequate for full implementation of the Plan and the resources that can be provided by Board, the United States and other parties. At this time the amount to be borne by the United States is, at a minimum, the portion of funding adequate for full implementation of the Plan that Board cannot provide, to the extent such funding is available to, or can be made available by, the United States.

(k) At this stage, considering the minimum level of funding for full Plan implementation that will be adequate for school year 1983-84, the amount of funds available (and potentially available) to the United States and Board, the levels of funding previously provided by the United States to desegregating school boards, and an equitable allocation of costs among the parties, this Court determines the obligation of the United States for funding the Plan in school year 1983-84 is not less than \$14.6 million. Further obligations of the United States for such funding in school year 1983-84 will be determined after a further hearing concerning Board's contentions described in Subparagraph 1(h) and after the United States has reported to this Court pursuant to Paragraph 2 as to the amount of funds available.

2. For the reasons stated in Paragraph 1, the United States is directed to undertake immediately an active and

affirmative program of making every good faith effort to find and provide for school year 1983-84 (a) the \$14.6 million referred to in Subparagraph 1(k) and (b) such further level of funding as may be determined by this Court. As n.3 reflects, the particular form and details of the affirmative program, as well as the ultimate sources of the funding, are within the discretion of the United States, except that the program shall include the elements described below. On or before July 11, 1983 the United States is directed to formulate and submit to this Court the form and details of the affirmative program, with a clear designation of the persons responsible for leading and coordinating the program. It shall seek to implement that program within four weeks thereafter and shall submit weekly reports to this Court detailing its efforts and progress, the final report being due August 8, 1983. That affirmative program shall be designed to meet the obligations of the United States as defined in Paragraph 1 and shall specifically include each of the following efforts, to the extent necessary to meet those obligations:

(a) efforts to provide to Board the \$8.98 million that remains unobligated and available for local desegregation assistance in the Secretary of Education's Discretionary Fund;

(b) efforts to provide to the Board the \$52.058 million that remains unobligated and available for local desegregation assistance in the Department of Education's

Special Programs and Populations Fund;

(c) efforts to secure congressional consent for the reallocation of excess funds from the Department of Education's Guaranteed Student Loan Program into the Secretary's Discretionary Fund or another fund from which general support may be provided for implementation of the Plan;

(d) efforts to identify other available monies, or to reprogram or reallocate other excess monies, so that such funds may be provided as general support for the Plan;

(e) support of legislative initiatives that would provide desegregation funding to school districts that have entered into Consent Decrees that have been construed by courts to require efforts to provide such funding by the United States;

(f) efforts to eliminate any potential conflict between the obligations of the United States to Board and the Secretary of Education's intention to aid the grantees and projects that the Department of Education had contemplated funding from the Discretionary Fund and the Special Programs and Populations Fund, by attempting to fund such other grantees and projects from other sources; and

(g) cooperation with Board to identify all aspects of Board's desegregation activities that are or could be eligible for funding under Title IV.

That affirmative program, because it is the responsibility of the United States, shall not be limited to the Department of Education, but shall also include the Department of Justice, the Office of Management and Budget, and any other personnel or agencies of the United States whose participation is necessary for the program to be successful.

3. While the United States is carrying out its obligations to Board for school year 1983-84 as provided in Paragraph 2, it is necessary to protect Board against the obligation or expenditure by the United States of monies available for providing desegregation funding to Board. Accordingly this Court's June 8, 1983 Order preserving the status quo is further extended and modified as follows:

(a) Until August 10, 1983 the United States and its agent the Secretary of Education are directed to refrain from expending, or taking any further action to obligate in any way, funds appropriated by Congress for the Secretary of Education's Discretionary Fund for fiscal years 1983 and 1984, and for certain other programs 1/ in the Department of Education's Special Programs and Populations Account for fiscal year 1983 and 1984, except as provided in the following subparagraphs.

(b) This Order does not apply to the \$10.725 million

1/ Title IV, Women's Educational Equity, Follow-Through, Aid to the Virgin Islands and Territorial Teacher Training.

appropriated to the Discretionary Fund for fiscal year 1983 that is mandated by Congress, pursuant to 28 U.S.C. §3851(b), to be expended for three specific programs, or to fiscal year 1984 funds the use of which is similarly mandated by Congress.

(c) This Order does not apply to unobligated Discretionary Funds in the amount of \$50,000 that were exempted from the June 8 Order.

(d) This Order does not apply to Discretionary Funds in the amount of \$9.059 million that were obligated by the Department of Education prior to the close of business on June 8, 1983, consisting of \$7.687 million for the National Diffusion Network and \$1.364 million for technology continuations, secondary school recognition and the National Commission on Excellence in Education.

(e) Funds in the five programs listed in n.7 may be obligated and expended by the Secretary of Education in amounts that are necessary to enable all intended fiscal year 1983 grantees in those programs to operate at present levels up to August 15, 1983. No funds restrained by this Order may be obligated or expended for operations after August 15, and the Secretary of Education shall insure that the provision of funds until August 15 is accomplished so that it does not give rise to an obligation or claim for future funding. All such grantees shall first be required to extend their fiscal year 1982

projects (if any) to the extent that they have funds remaining for that purpose. 8/ In the aggregate the amounts obligated and expended by the Secretary of Education pursuant to this subparagraph shall not exceed 11.5% of the fiscal year 1983 appropriation for the Special Programs and Populations Fund, which is \$5.989 million.

4. There are various funds appropriated to the Department of Education for purposes other than desegregation, including the Guaranteed Student Loan Fund, that (a) are in excess of the amounts that are or will be needed for those purposes in this fiscal year and (b) potentially can be used by the United States to fulfill its obligations under the Consent Decree for school year 1983-84 and the following four years of implementation of the Board's Plan. To ensure to the greatest extent possible that such excess funds are not disposed of or otherwise rendered unavailable, the Executive Branch of the United States is directed to undertake an affirmative program to preserve the availability of such excess funds in the amount of \$250 million. Both the form and details of that affirmative program shall be

8/ By August 1 the United States shall submit a written report to the Court documenting that the amount provided to each grantee was reduced by the amount the grantee estimated would remain unexpended from its fiscal year 1982 grant under that program. Such amounts of remaining fiscal year 1982 funds shall be verified by the Department of Education from the final reports submitted by such grantees on or about September 30, 1983.

determined by the Executive Branch in its discretion except in the following respects (which shall be part of the program in any event):

(a) withdrawal of any pending proposal for the rescission by Congress of the appropriations for the excess funds, to the extent of \$250 million;

(b) affirmative efforts by the Executive Branch to preserve the availability of excess funds in that amount; and

(c) such actions and legislative initiatives by the Executive Branch as are appropriate to set aside \$250 million of excess funds in a reserve or escrow fund earmarked for potential use for fulfillment of the United States' obligations under the Consent Decree during the next five-year period. 9/

5. For the reasons stated in Conclusion 17, this preliminary injunction order is issued without Board's giving of security.

6. These proceedings are scheduled for further hearing at 2 p.m. August 10, 1983, for further consideration of the level of funding adequate for full implementation of the Plan, and

9/ This Court will enter a further order concerning the terms and conditions of the escrow fund after further facts have been supplied it in that respect.

[14]

other matters as appropriate.

A handwritten signature in cursive script, reading "Milton I. Shadur". The signature is written in dark ink and is positioned above a horizontal line.

Milton I. Shadur
United States District Judge

Date: June 30, 1983