

1990 WL 515176
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United States District Court, W.D. Missouri, Western Division.

Kalima JENKINS, et al., Plaintiffs,
v.
STATE OF MISSOURI, et al., Defendants.

No. 77-0420-CV-W-4.

|
June 26, 1990.

ORDER

RUSSELL G. CLARK, District Judge.

*1 Before the Court is plaintiffs' motion for Year VI program and budget modifications and KCMSD's motion for approval of desegregation plan for 1990-91. Subsequently the parties filed a joint stipulation regarding certain issues in the KCMSD's and plaintiffs' motions. On April 23, 1990, the Court entered an order in accordance with the stipulations. Subsequently the State filed a memorandum on the remaining Year VI budget issues and the KCMSD and plaintiffs filed a joint response to the State's memorandum. The State filed a reply memorandum and the KCMSD and plaintiffs filed a joint response. Plaintiffs' motion for Year VI program and budget modifications and the KCMSD's motion for approval of desegregation plan for 1990-91 will be granted as set forth below.

AAA

In its order of July 25, 1988, this Court approved a 1990-91 AAA budget of \$6,574,673, with the KCMSD solely responsible for \$1,963,535. *Jenkins v. State of Missouri*, Order of July 25, 1988, at 21-24 (W.D.Mo.1988). The KCMSD seeks a slightly reduced 1990-91 AAA budget of \$6,569,389. In addition, the KCMSD proposes to use one of the Court-approved counselors to provide counseling services at Delano and the Teenage-Parent Center, two of the KCMSD's special schools. The State argues that the time has come for the KCMSD to solely bear the costs of maintaining AAA status. The KCMSD counters that the achievement and retention of AAA status is a proper desegregation expense. In addition, the KCMSD states that its operating budget is not sufficient to meet the requirements of AAA status. The retention of AAA status is a proper desegregation expense. *Liddell v. Board of Education of City of St. Louis*, 758 F.2d 290, 294 (8th Cir.1985); *Liddell v. State of Missouri*, 731 F.2d 1294, 1318 (8th Cir.), *cert. denied*, 469 U.S. 816 (1984); *Jenkins*, Order of July 25, 1988, at 24; *id.*, Order of July 6, 1987, at 10. Therefore, the Court will approve a AAA budget of \$6,569,389 in 1990-91 with the KCMSD solely responsible for \$3,111,035. In addition, the Court will approve the use of one counselor to provide counseling services at two of the KCMSD's special schools.

Reduction in Class Size

The Court previously approved a reduction in class size budget of \$8,787,191 for 1990-91 stating that "[i]f student enrollments justify additional funding for ... 1990-91, KCMSD may move the Court for such funding." *Id.*, Order of July 25, 1988, at 8. The KCMSD has determined that it can meet the Court-ordered class sizes with fewer teachers than the Court approved in the July 25, 1988, order, resulting in a 1990-91 budget request of \$4,683,986. The KCMSD seeks to eliminate 31 approved positions at the elementary level, 38.5 positions at the middle school level and 72.5 positions at the high school

level. The State does not oppose the KCMSD's budget request. Therefore, the Court will approve a reduction in class size budget of \$4,683,986 for 1990–91 with the KCMSD solely responsible for \$3,512,990 pursuant to the Court's order of July 5, 1989. *Id.*, Order of July 5, 1989, at 6–8.

Full-Day Kindergarten

The Court previously approved a full-day kindergarten budget of \$1,773,185 for 1990–91 stating that “[i]f student enrollments justify increased or decreased funding for ... 1990–91, the Court will make an appropriate modification.” *Id.*, Order of July 25, 1988, at 14. The KCMSD has not requested a modification of the previously approved budget for 1990–91. The State does not oppose the full-day kindergarten budget request. Therefore, the Court will approve a full-day kindergarten budget of \$1,773,185 for 1990–91 with the KCMSD responsible for \$443,296 of that budget.

1986–87 Magnet Schools

Previously the Court refused to approve the KCMSD's 1990–91 budget for the 1986–87 magnets because the budget did not properly delineate between base operating costs and incremental magnet costs. *Id.*, Order of July 5, 1989, at 3–4; *id.*, Order of July 25, 1988, at 20–21. The KCMSD now seeks approval of a 1990–91 1986–87 magnet budget of \$15,694,833 with \$10,385,602 of this budget deemed a desegregation expense allocated 100% to the KCMSD.

*2 In 1988–89 and 1989–90 the Court approved total 1986–87 magnet budgets as a desegregation expense and subsequently allowed the State a credit in the amount of base costs necessary to operate a traditional program at each school against the amount of their total desegregation obligation for 1988–89 and 1990–91, respectively, because base costs for the 1986–87 magnets are not a proper desegregation expense and the KCMSD should be solely liable for such costs out of its operating budget. *Id.*, Order of October 18, 1989, at 2–3; *id.*, Order of November 2, 1989, at 4–5; *id.*, Order of January 23, 1990, at 1–6. The State argues that the Court should approve only the 1986–87 magnet school incremental costs as a desegregation expense in 1990–91 with the base costs of these schools included in the KCMSD's 1990–91 operating budget. However, on February 1, 1990, this Court entered an order which suspended and stayed the Court's orders of October 18, 1989, November 2, 1989, and January 23, 1990. Therefore, the Court finds that the proposed budget of \$15,694,833 for 1990–91 is reasonable and will approve such budget as a desegregation expense with \$10,385,602 allocated 100% to the KCMSD. If the February 1, 1990, stay is subsequently lifted, the State shall be allowed a credit in the amount of the base costs necessary to operate a traditional program at each school against the amount of their total desegregation obligation for 1990–91.

Base Budgets

The KCMSD requests a 1990–91 budget for base budgets for New Paseo Middle School, Lincoln Middle School, New West Elementary, New Gladstone Elementary, Middle School I, Middle School II and Elementary III. In 1990–91 the KCMSD will also be opening four additional elementary magnet schools but is not requesting base budget funding for these schools because it is closing four traditional elementary schools in 1990–91. The State argues that the time has come to no longer fund the base budget magnets as a separate desegregation expense, but instead treat them like the schools under the LRMP. The Court has previously approved base budget components as a desegregation expense. *Id.*, Order of July 5, 1989, at 4; *id.*, Order of July 25, 1988, at 18–19. The base budget component is a proper desegregation expense because the district would not have been required to open and operate these new magnets but for the Court-ordered LRMP. The State offers no basis to the Court to revise the prior rulings regarding the base budget component. The State appears to be attempting to relitigate the issue of costs avoided elsewhere, which was addressed by this Court in its order of May 24, 1989. Therefore, the Court will approve the base budget component of \$15,358,428 as a desegregation expense with the KCMSD's obligation totaling \$3,839,607. However, the State will be allowed a credit for the amount of costs avoided elsewhere as addressed by the Court in its order of May 24, 1989. The Court directs the KCMSD to submit the amount of costs avoided elsewhere for 1990–91 as soon as they are available.

Security

*3 The maintenance plan approved by the Court as part of its September 15, 1987, order provides \$170,022 for 1990–91 and 1991–92 to upgrade the KCMSD security program. The KCMSD now proposes to increase the security budget to \$224,752 in 1990–91 and \$428,339 in 1991–92 to continue the reorganization of the KCMSD security department as thefts become more costly as a result of the influx of educational equipment from the desegregation programs. The KCMSD argues that the proposal will provide a critical link in the recruiting effort and enable the KCMSD to protect more effectively the equipment that has been purchased in furtherance of the desegregation plan. The KCMSD’s original proposal requested desegregation funds for ten additional site-based security guards, one new manager of site-based security officers, one new investigator and five additional patrol officer dispatchers. The KCMSD also proposed to extend the contracts of all sixteen site-based security guards from ten months to twelve months. The DMC took no exception to the ten additional site-based security guards and one new investigator, but did take exception to one new manager of site-based security officers and five additional patrol officer dispatchers. DMC Minutes of March 19, 1990, at 10. The DMC determined that the non-site-based security initiatives proposed by the KCMSD were “too staff intensive,” and urged the KCMSD “to develop a more cost-effective and efficient proposal which addresses internal security as well as external.” *Id.* In response, the KCMSD eliminated the site-based manager position from the proposal, but retained the dispatchers “because of their importance to the District’s effort to combat property losses.” KCMSD’s Motion for Approval of Desegregation Plan for 1990–91 at 27. The State responds that security is a maintenance function which is not a proper desegregation expense. The KCMSD counters that proper security makes the KCMSD schools more desegregatively attractive and that much of the property the KCMSD is trying to protect is needed to carry out the desegregation plan.

The Court recognizes that security has become an important issue in the KCMSD. *See* Declaration of William M. Threatt, Jr., at ¶ 7. Proper security is vital to the desegregative attractiveness of the KCMSD. *See id.* at ¶ 8. During the 1988–89 school year alone there were 926 incidents reported to the KCMSD security department resulting in losses totaling \$221,958. KCMSD’s 1990–91 Year VI Desegregation Plan at 136. A large portion of the KCMSD’s losses are attributable to electronic equipment purchased to implement the desegregation plan. Declaration of William M. Threatt, Jr., at ¶ 6. The Court has previously stated: “The Court recognizes that the security needs of the KCMSD ... have changed dramatically as a result of the desegregation plan. It would be illogical for the Court to order implementation of a desegregation plan calling for new and renovated facilities containing new equipment, supplies and furniture without adequate security to protect such investments.” *Jenkins*, Order of March 30, 1989, at 2–3. In the March 30, 1989, order the Court granted the KCMSD’s request to recognize summer security expenses as desegregation expenses. Therefore, the Court finds that the KCMSD’s request for security funds is a proper desegregation expense. However, the Court will not approve the KCMSD’s request for five additional patrol officer dispatchers to which the DMC took exception. The KCMSD shall file a proposed budget for security for 1990–91 and 1991–92 deleting the five additional patrol officer dispatchers on or before July 13, 1990.

Desegregation Monitoring Committee

*4 As this Court has stated many times before, the DMC is an arm of the Court and has shown itself to be an effective and impartial group committed to achieving the goals outlined in this Court’s desegregation plan. *See, e.g., id.*, Order of July 5, 1989, at 26; *id.*, Order of July 25, 1988, at 5. The Court cannot over emphasize the importance of the DMC to the Court and the desegregation plan. The Court will approve a DMC budget of \$416,655 for 1990–91. The Court will approve a per diem budget component totaling \$116,300, which consists of an increase in compensable hours to 225 hours for the general chairperson, 188 hours for committee chairpersons and 163 hours for committee members. Such an increase is warranted, as the DMC members spend many hours on DMC matters for which they are not compensated. *See* Attachment A. A research budget of \$54,200 and an operating budget of \$35,000 will be approved. The Court will approve a staff compensation budget of \$211,155, which includes a six percent salary increase for the executive secretary and administrative assistant, addition of benefits for the administrative assistant and the addition of two evaluators to the staff to assist with the day-to-day program monitoring and general assessment of the implementation of the plan. The Court will also approve a carryover of the balances of the fiscal year 1990 accounts to the 1991 fiscal year, which will result in a credit to the State and the KCMSD against their respective share of the funding.

Conclusion

The budgets approved previously in this order shall be allocated 25% to the KCMSD and 75% to the State, unless otherwise provided, with joint and several liability.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for Year VI program and budget modifications is granted as set forth in this order; and it is further

ORDERED that the KCMSD's motion for approval of desegregation plan for 1990-91 is granted as set forth in this order; and it is further

ORDERED that the DMC's budget request is granted as set forth in this order; and it is further

ORDERED that the KCMSD shall file a proposed security component budget for 1990-91 and 1991-92 on or before July 13, 1990; and it is further

ORDERED that the KCMSD shall submit the amount of costs avoided elsewhere for 1990-91 as soon as they are available.

PER DIEM REPORT—AS OF 4/30/90					

	HOURS	HOURS			PROJECTED
MEMBER	COMPENSATED	UNCOMPENSATED	TOTAL	HRS. REMAINING	YR. END HOURS
		(as of 4/30/90)	(1st 10 mos.)	(where compensation	
				is available)	

Eubanks	180	72.75	252.75	-0-	318.9				
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Oglesby	47	-0-	47	103	56.4				
Perez	66.75	-0-	66.75	63.25	80.1				
Stanton	68.75	-0-	68.75	61.25	80.1				
Kraft	150	12.50	162.50	-0-	195				
Jordan	99.25	-0-	99.25	30.75	119.15				
Bixby	114.75	-0-	114.75	15.25	144.25				
Sancho	150	28.25	178.25	-0-	226.80				
Neal	95	-0-	95	35	114				
Cozad	49.25	-0-	49.25	80.75	59.1				
DiCapo	119.75	-0-	119.75	30.25	153.3				
James	130	9.25	139.25	-0-	167.1				
Holland	58	-0-	58	73	72				
TOTALS	1,328.50	122.75	1,451.25	491.50	1,799.2				

All Citations

Not Reported in F.Supp., 1990 WL 515176

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