2016 WL 7971190
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United States District Court, S.D. Mississippi, Jackson Division.

UNITED STATES of America, Plaintiff
Cynthia Fletcher, et al., Plaintiffs-Intervenors
v.
STATE OF MISSISSIPPI, et al. (Simpson County School District), Defendants

CIVIL ACTION NO. 3:70-cv-4706-WHB-LRA
|
Previously J-4706 (L)
|
Signed 09/30/2016

**Attorneys and Law Firms**

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**OPINION AND ORDER**

William H. Barbour, Jr., UNITED STATES DISTRICT JUDGE

***1** This cause is before the Court on the Motion of Simpson County School District for Unitary Status. Having considered the pleadings, the testimony and other evidence presented during both the January 2014 Fairness Hearing and the May 2016 Fairness Hearing, the parties' pleadings including their post-hearing findings of fact and conclusions of law, as well as supporting and opposing authorities, the Court finds the Motion is well taken and should be granted.

**I. Background and Procedural History**

In July of 1970, the United States of America ("Government") filed a Complaint against several Mississippi school districts, including the Simpson County School District ("District"), alleging each had violated the Fourteenth Amendment to the United States Constitution by engaging in racial discrimination in their public school systems. On August 10, 1970, an Order ("1970 Order") was entered by which the District was enjoined from discriminating on the basis of race. See Mot. for Unitary Status ("Mot.") [Docket No. 65], Ex. 4. The Order provided a detailed plan regarding the actions the District was required to take to end discrimination in its public schools. The required actions related to: (1) desegregation of faculty and other staff; (2) majority to minority transfers; (3) transportation; (4) school construction; (5) attendance of out-of-district students; and (6) desegregation in the classroom and in extra-curricular activities. The 1970 Order also required the District to submit periodic reports to the Court that contained information regarding, inter alia: (1) the number of students, by race, enrolled in the District and in each public school therein; (2) the number of students, by race, enrolled in each classroom; (3) the number of teachers, by race, employed by the District and in each public school therein; and (4) the desegregation status of the transportation system and non-classroom facilities.

On June 4, 1982, with leave of Court, Cynthia Fletcher, Gloria Barnes, and David Barnes ("Intervenors"), who identified themselves as "minor ... students enrolled in the schools of the Simpson County School District", filed a class action Complaint in Intervention "on behalf of all present and future black children of school attendance age residing in Simpson County, Mississippi." See Opinion and Order [Docket No. 95], Ex. 1, ¶¶ 3-4.[1] In their Complaint, Intervenors alleged that, notwithstanding the 1970 Order, the District had continued to engage in racially discriminatory practices by permitting white students to attend schools outside of their designated school zones thereby creating a higher ratio of black to white students within certain zones. Id., Ex. 1 at ¶¶ 8, 11-14. Intervenors also alleged that the District continued to engage in discrimination with respect to, inter alia, employment decisions. Id., Ex. 1 at ¶¶ 15-17. Through their Complaint, Intervenors requested (1) injunctive relief requiring the District to "strictly comply with the zone school assignments" as required by the 1970 Order,

and (2) declaratory relief to "proscribe employment discrimination in all of its aspects and discrimination in the administration of discipline and in the operation of gifted and special education programs of the [District]." Id., Ex. 1. An Order certifying the Intervenor Class was entered on August 19, 1982. See id. at Ex. 2.

***2** On August 22, 1983, another Consent Order ("1983 Consent Order") was entered that again outlined procedures the District was required to take with regard to student transfers and employment practices. In October of 2005, on motion of the District, unitary status was declared in the areas of student body composition, transportation, extracurricular activities, and facilities. See Mot., Ex. 1 at 2-3. Unitary status was denied, however, in the areas of faculty and staff assignments. Id., Ex. 1 at 3. The decision of the district court regarding unitary status was affirmed on appeal. See United States v. Mississippi, 2006 WL 3821530, at *1 (5th Cir. Dec. 22, 2006).

On April 5, 2011, on joint motion of the Government and the District, and with no objection by Intervenors, a third Consent Decree was entered by the Court ("2011 Consent Decree"), which modified the obligations of the District with respect to faculty and staff hiring and assignment.[2] See Consent Decree [Docket No. 28]. The 2011 Consent Decree provided, in detail, the employment and reporting procedures the District was required to follow to obtain unitary status with respect to the remaining areas of faculty and staff assignments. Id. at 2-10. The Decree also provided:

> This Consent Decree sets forth in detail the areas to be addressed and the actions to be undertaken by the District. In other words, this Consent Decree represents "a roadmap to the end of judicial supervision" of the Simpson County School District. See NAACP v. Duval County Sch. Bd., 273 F.3d 960, 963 (11th Cir. 2001).
>
> The District may move for a declaration of complete unitary status no sooner than thirty (30) days after the United States receives the October 15, 2011 report. At that time, in the absence of a pending motion by the United States or private plaintiffs for further relief, or a ruling by this Court as to the District's noncompliance with this Consent Decree or federal law, the United States and private plaintiffs-intervenors shall not object to the District's motion.

Id. at 10-11.

On November 14, 2011, following the filing by the District of its October 15, 2011, biannual Report, the Government moved to enjoin the District from violating the 2011 Consent Decree, and to have the duration of that Decree extended. See Mot. for Further Relief [Docket No. 35]. The Court granted the Motion based on the admission by the District that it had not "completely satisfied the technical requirements for reporting information required by the 2011 Consent Decree." See Opinion and Order [Docket No. 48], 2. In so doing, the term of the Consent Decree was extended up to October 15, 2012. Id. at 3-4. The Court also indicated: "As provided in the April 5, 2011, Consent Decree, the District may move for a declaration of complete unitary status no sooner than thirty (30) days after the Government receives the October 15, 2012, report, which shall be compiled in accordance with Section II of the Consent Decree." Id. at 4.

After filing its October 15, 2012, Report, the District moved for unitary status. At that point, the Government did not object to the Motion. See Mot. at ¶ 12. Intervenors, however, objected to the Motion for Unitary Status by challenging whether the District had fully complied with the prior Court Orders regarding faculty assignment and employment. See Resp. [Docket No. 70], at ¶ 5. Intervenors also requested discovery and a hearing on the Motion. Id.

***3** After inviting additional briefing on the issues of standing and mootness, the Court entered an Opinion and Order finding, that because Intervenors' complaint had been certified as a class action, their claims were not moot and they continued to have standing in this case. See Opinion and Order [Docket No. 95], 6-7. The Court additionally found that Intervenors had not shown that discovery was warranted, and that a hearing on the Motion for Unitary Status should be scheduled. Id. at 15-16. An Agreed Order was later entered that governed, *inter alia*, the manner in which notice of the fairness hearing was to be published as well as the manner in which comments and/or objections were to be presented to the Court. See Order [Docket No. 106]. After notice of the fairness hearing on the Motion for Unitary Status was published, the Court received over five-hundred objections to the Motion, the majority of which contained overwhelmingly generic objections or simply the phase "I object". The Court gave little weight to these generic objections on the grounds it could not determine the basis for their having been made, i.e. whether the objections were relevant or otherwise pertained the issue of faculty and staff assignments that was before the Court. Any objector who included specific information in his or her objection, and who was present at the fairness hearing,

was permitted to testify.

A fairness hearing was held on January 8, and 10, 2014. After hearing the evidence, and considering the parties' pre– and post-hearing pleadings, the Court denied the Motion for Unitary Status. In so doing, the Court found that while the District had shown it had eliminated the vestiges of prior de jure segregation to the extent practicable with respect to employment decisions and faculty/staff assignments, it had not shown it had fully complied with prior desegregation orders for a reasonable amount of time. See Opinion and Order [Docket No. 196]. The Court then extended the term of the 2011 Consent Decree to include March 15, 2015. Id. The Motions of both the District and Intervenors for reconsideration were denied. See Opinion and Order [Docket No. 204]. The appeal taken by Intervenors from the Order denying the Motion for Unitary Status and the Order denying their Motion for Reconsideration was dismissed for lack of standing. United States v. Fletcher ex rel. Fletcher, 805 F.3d 596 (5th Cir. m2015).

In 2015, the District again moved for unitary status.[3] An Agreed Order was entered on February 24, 2016, that governed, *inter alia*, the manner in which notice of the fairness hearing was to be published as well as the manner in which comments and/or objections were to be presented to the Court. See Order [Docket No. 260]. After notice of the fairness hearing was published, the Court received approximately sixty-five objections to the Motion for Unitary Status, most of which again contained the same generic objections as were present in the 2014 Objections.

The fairness hearing was held on May 3 and 4, 2016. At the close of the hearing, the parties were permitted to file post-hearing briefs. Having considered the parties' pleadings as well as the testimony and evidence presented during the 2014 and 2016 Fairness Hearings, the Court now decides the Motion of the District for Unitary Status.

## II. Discussion

The United States Supreme Court has recognized that federal supervision of local school districts is intended to be a "temporary measure", the purpose of which is to "remedy past discrimination." Board of Educ. v. Dowell, 498 U.S., 237, 247–48, (1991). The duty of the federal courts in that regard is to ensure that any existing constitutional violations are remedied and, once remedied, "restore state and local authorities to the control of a school system that is [now] operating in compliance with the Constitution." Freeman v. Pitts, 503 U.S. 467, 489 (1992)(citing Milliken v. Bradley, 433 U.S. 267, 280–81 (1977)).[4] The duty of the local school district "is to take all steps necessary to eliminate the vestiges of the [previously-existing] unconstitutional *de jure* system." Freeman, 503 U.S. at 485. This duty is imposed on the local school districts "in order to ensure that the principal wrong of the [previously-existing] *de jure* system, [i.e.] the injuries and stigma inflicted upon the race disfavored by the violation, is no longer present." Id. Once the vestiges of the unconstitutional *de jure* system have been remedied, the local school district is said to be unitary in that it is no longer operating a dual or segregated system of education. "Courts have used the terms 'dual' to denote a school system which has engaged in intentional [discrimination on the basis of] race, and 'unitary' to describe a school system which has been brought into compliance with the command of the Constitution." Board of Ed. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237, 246 (1991). The United States Court of Appeals for the Fifth Circuit has held that the "ultimate inquiry in determining whether a school district is unitary is whether (1) the school district has complied in good faith with desegregation orders for a reasonable amount of time, and (2) the school district has eliminated the vestiges of prior de jure segregation to the extent practicable." Anderson v. School Bd. of Madison Cty., 517 F.3d 292, 297 (5th Cir. 2008)(internal citations omitted).

***4** When the matter of unitary status previously came before the Court, the Motion of the District seeking such status was denied on the grounds it had not complied with the provisions of the 2011 Consent Decree. Had it not been for the non-compliance, unitary status would have been granted. Specially, the Court found the failure of the District to submit proposed changes to questions in the Interview Guide and Assessment Forms to the Government and Intervenors before those changes were implemented violated the express provisions of the 2011 Consent Decree, which requires a 60-day notice period. See Order and Order [Docket No. 196], 10-11. Following the 2014 Fairness Hearing, the District immediately resumed use of Interview Guide and Assessment Forms as required by the Consent Decree.

Intervenors argue that the current Motion of the District

for Unitary Status should also be denied on the grounds that it has failed to comply with the 2011 Consent Decree. First, Intervenors argue that the District violated the Consent Decree by recommending Tom McAlpin ("McAlpin") for the position of Principal at the Achievement Center because he was not the highest qualified candidate for that position. The record shows that although the District initially recommended McAlpin based his being the only candidate with alternative school experience, and his nine years of experience at the Achievement Center itself, the District did not offer him the principal position. Instead, the position was offered, and accepted, by Dr. Roma Morris, who was the highest scoring candidate for that position. As the District did not offer McAlpin the principal position, it did not violate the 2011 Consent Decree. See 2011 Consent Decree, ¶ 10 ("The applicant with the highest overall rating shall be offered the position.").

Next, the Intervenors argue that the District violated the 2011 Consent Decree by (1) permitting administrators who had recommended an applicant to later interview, rate, and score that same applicant; and (2) by relying on undocumented negative information to disqualify applicants. The Intervenors, however, have not cited to any provision in the Consent Decree that prohibits the complained of actions. Indeed, the 2011 Consent Decree clearly provides that the District may decline to offer the highest rated applicant a position if it "received negative comments such as needing improvement or unacceptable performance" about that applicant. Id. at ¶ 11.

The Court has considered Intervenors' arguments and finds they do not suggest or establish that the District has failed to comply with the 2011 Consent Decree. Additionally, having considered the evidence and the pleadings, the Court finds the District has complied, in good faith, with the 2011 Consent Decree since January of 2014, when it resumed use of the required Interview Guide and Assessment Forms. Accordingly, the Court concludes that the District has demonstrated good faith compliance with the 2011 Consent Decree for a sufficiently reasonable amount time such as to warrant a finding of unitary status.

The Court next considers whether the District has eliminated the vestiges of prior de jure segregation to the extent practicable. As to this issue, "[a]lthough 'faculty and staff desegregation (is) ... an important aspect of the basic task of achieving a public school system wholly free from racial discrimination', a formerly segregated school system need not employ a faculty having a racial composition substantially equivalent to that of its student body in order to effectively desegregate its schools and attain unitary status." Fort Bend Indep. Sch. Dist. v. City of Stafford, 651 F.2d 1133, 1138 (5th Cir. 1981)(quoting United States v. Montgomery Cty. Bd. of Educ., 395 U.S. 225, 231-232 (1969)). Instead, the Court considers whether (1) "the district's current employment practices [are] non-discriminatory and in compliance with constitutional standards" and (2) "the adverse effects of any earlier, unlawful employment practices ... have been adequately remedied." Id. at 1140.

***5** The Court has listened to multiple objectors who complain about employment decisions made by the District. The Court has re-examined the testimony from 2014 Fairness Hearing and again finds there was no showing that any of the employment decisions about which the objectors complained were motivated by race for example:

Intervenors argue that the new position of Associate Superintendent was created and given to then-Deputy Superintendent Tom Duncan, white, without advertising this new position. The District explained that a new position had not been created—Duncan's old title of Deputy Superintendent was merely changed to Associate Superintendent. This objection is frivolous.

The old position of Deputy Superintendent then assumed the duties of Curriculum Director. That position was advertised, and applicant interviews were conducted. Debbie Davis, white, was hired to the position. The District submitted proof that Sturgeon Banyard, black, who also applied, had lower scores after the interviews than did Ms. Davis; had no experience with curriculum development; had bad records from other school districts including complaints of student abuse and embezzlement; and failed to include that he had been terminated by two other school districts on his application. This objection is without basis.

Intervenors complained about the position of Director of Counseling being given to Janice Skiffer, black, without accurately reporting the process. The proof showed that the position was advertised three times, and five candidates applied for the job. Of those candidates, Ms. Horne declined the interview; Rose Atkins had no counseling experience; Mr. Cothren had previously been asked to resign by the District; and Ms. Madden was not a certified counselor. Thus, no interviews were conducted because Skiffer was the only qualified candidate left. Additionally, the evidence showed that the Director of

Counseling position had been specifically created as a compromise, short-term job to allow Ms. Skiffer to reach retirement age and thereby offset her threats to sue the District. Perhaps the District was not completely open about the way it handled this matter, but it followed the process. Intervenors' complaint about this matter is, therefore, without merit.

Intervenors complained that Misty Hannah was allowed to attend the interview of her husband, Charles Hannah, white, for the position of assistant principal. Deloris McDonald, black, was also interviewed. The evidence showed that Ms. Hannah was in attendance for the sole purpose of taking notes for the interviewers. Perhaps it would have been better if someone else had been asked to take notes, but there was no showing that would have changed the outcome. The Court notes that this is a small school district and the administrative people, teachers, and other employees know each other. Intervenors' complaints in the matter are without merit.

Intervenors complained that Diedre Allan Clark was hired as Assistant Principal at the Mendenhall Junior High School, but was not a qualified administrator when she was interviewed. The position was held open until her certificate was issued by the State authorities. There was no complaint from the Intervenors that Clark was not otherwise qualified for the job or that someone else should have been hired. Intervenors' complaints about this matter are without merit.

***6** Intervenors complained that the District failed to provide full information regarding references in regard to Billy Brown, black, who applied for a position as math teacher and social studies teacher at the Achievement Center. The District claimed Mr. Brown was not hired because Janice Skiffer gave him a poor recommendation as his former principal. Intervenors presented the testimony of Ms. Skiffer who denied making such negative recommendation when she testified. The Court notes Ms. Skiffer's personal problems with the District after she made the negative recommendations regarding Mr. Brown, and must weigh her testimony regarding whether she gave the negative recommendation in favor of the District. Intervenors' complaint about this matter is without merit.

Intervenors complain that Jerry Fletcher, black, was not interviewed and/or hired as head football coach, and they were not provided full information. The District showed that Fletcher had earlier worked as head coach at the Junior High and had been fired because he had played an ineligible player. The Court finds this in itself is sufficient reason for the District to refuse to hire Fletcher. Intervenors' complaint about this matter is without merit.

Intervenors complained that Deloris McDonald, black, was not hired into an administrative internship position because her then principal, Janice Skiffer, had given her a bad recommendation. Skiffer testified, like she did in regard to Billy Brown, that she had not given Ms. McDonald a bad recommendation. As in the case of Mr. Brown and for the same reason, Ms. Skiffer's change of tune must be weighed in favor of the District. Intervenors' complaint about this matter is without merit.

After considering the testimony and evidence, the Court reaches the same conclusion with respect to the objectors that testified at the 2016 Fairness Hearing. For example, Callie Dantzler ("Dantzler") complained that she was removed from her coaching position with the high school basketball team. There is no evidence, however, that this decision was motivated by race. The evidence showed that it was the District that approached Dantzler and offered her a job as a special education teacher at Mendenhall High School. In addition to teaching for the District, Dantzler coached volleyball, softball, basketball, and track at the junior high school-level during the 2013-14 school year. During the 2014-15 school year, Dantzler agreed to coach girls basketball for the District at the high school level upon the "abrupt resignation" of the prior coach. Dantzler did not apply for the position of girls basketball coach/social studies teacher because she was unaware that position had been posted by the District. In addition, Dantzler was not qualified for the coaching position because she (1) did not have a PE endorsement as required to be able to teach the physical education period required for girls basketball during the school day, and (2) even if she had such endorsement, her federally-funded special education position would not permit her to teach the required physical education class.[5] Under these circumstances, i.e. the District hired Dantzler as a special education teacher and coach, but that she was not qualified to coach the girls' highschool basketball team because of her lack of certification and other existing job responsibilities, the Court finds the decision by the District to hire a qualified/PE-Certified teach and coach was not motivated by race.

After reviewing the testimony and evidence from the 2014 and 2016 Fairness Hearings, and finding that none of the employment decisions about which objectors complained in those hearings was shown to be racially-motivated, the Court finds the current employment practices of the District are non-discriminatory and, therefore, constitutional.

***7** The Court next considers whether the adverse effects of any earlier, unlawful employment practices have been adequately remedied. After reviewing the evidence and the semi-annual reports submitted by the District, the Court finds they have. For example, a comparison between the October 2010 Report and the March 2016 Report submitted by the District shows that the number of Black teachers has increased or remained steady over the past years, while the number of White teachers has declined. Compare October of 2010 Report [Docket No. 18] with March of 2016 [Docket No. 265] (showing that Magee Elementary had 3 Black and 44 White teachers in 2010, but had 12 Black and 28 White teachers in 2016); id. (showing that Magee Middle had 11 Black and 31 White teachers in 2010, but had 13 Black and 19 White teachers in 2016); id. (showing that Magee High had 3 Black and 36 White teachers in 2010, but had 10 Black and 22 White teachers in 2016). Additionally, there was evidence submitted to show that the District continues in its efforts (1) to recruit at historically black colleges and universities, (2) to advertise vacant positions through multiple sources and outlets, and (3) to participate at venues and activities that are geared to attracting diverse applicant pools. Thus, although the Court recognizes that there are fewer Black teachers than White in the District, there has been no showing that the existing discrepancy has resulted because of current race-based discrimination or because the District has not attempted, in good faith, to attract qualified Black applicants.

In sum, the Court finds the District has in good faith, and for a reasonable amount of time, complied with the 2011 Consent Decree entered by this Court. The Court additionally finds the District has eliminated the vestiges of prior de jure segregation to the extent practicable. Its Motion for Unitary Status will, therefore, be granted.

## III. Conclusion

Over the forty-four years that this case has been under federal court supervision, the Simpson County School District has changed from a segregated district with its black students assigned to all black schools and with all black teachers, to a district in which there are no traditional schools with all black children or with all black teachers. All schools are fully integrated both as to students, and as to teachers.

The sole complaints presented to the Court in the fairness hearings held in January of 2014 and May of 2016, were complaints from black applicants who were denied either jobs or promotions with the District. The hearings were, in some ways, more akin to forums for disgruntled applicants to present perceived race-based employment grievances against the District than evidentiary presentations on the relevant issues concerning desegregation of the school system. The objectors who have appeared before the Court now have a specifically available government agency, the Equal Employment Opportunity Commission, to hear their race-based employment disputes.

The Court finds the District has eliminated the last vestiges of school segregation. It should be released from further supervision by the Court and the Government and the burdensome expense thereof. The tremendous expense of complying can be better used by hiring more teachers. The complainants who have appeared before the Courts have a specifically available government agency, the Equal Employment Opportunity Commission, whose purpose is to hear employment disputes alleged to be based on race, an agency not available when this case was filed.

In researching this Opinion the Court found the following quote from the United States Court of Appeals for the Eleventh Circuit:

> [W]e conclude that the judgment [granting unitary status] is due to be affirmed. An affirmance implies that appellants have lost. In a meaningful way, however, that implication is not justified here. This judgment means that appellants have accomplished what they, decades ago, set out to do. They challenged a rigidly maintained, *de jure* system of school segregation and sued to bring it into compliance with the constitutional requirement of equal protection under the law. We say today that they have succeeded. If this judgment is counted as a loss for appellants, it is so because they have won.
>
> Furthermore, none should read more into this judgment than it contains. With its implementation, the [School District] may be out of the courthouse, but it is not out of the reach of the Constitution, the Bill of Rights, and the laws of this land. Nothing in this judgment authorizes conduct contrary to these laws. The Board, and the people of [Simpson] County who, in the end, govern their school system, must be aware that the door through which they leave the courthouse is not locked

behind them. They will undoubtedly find that this is so if they fail to maintain the unitary system we conclude exists today.

***8** N.A.A.C.P., Jacksonville Branch v. Duval Cty. Sch., 273 F.3d 960, 976–77 (11th Cir. 2001). The Court hereby adopts this opinion in it entirety.

## III. Conclusion

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Motion of Simpson County School District for Unitary Status [Docket No. 243] is hereby granted.

SO ORDERED this the 30th day of September, 2016.

**All Citations**

Not Reported in Fed. Supp., 2016 WL 7971190

Footnotes

1 Presumably, based on the administrative closing of this case, the record was transferred to the National Record Center to be archived. As neither the Complaint in Intervention, nor the Order by which the Intervenor Class was certified were available on the Electronic Court Docket, those pleadings were attached as exhibits to the Opinion and Order entered on September 26, 2013. See Opinion and Order [Docket No. 95].

2 The Government provided Intervenors' counsel, Suzanne Keys, with a copy of the proposed Consent Decree but, "despite numerous phone calls and emails to Ms. Keys over a three-week period, the parties were unable to obtain the [Intervenors'] position on the modified Consent Decree." See Joint Mot. [Docket No. 26], at 1 n.1.

3 The Motion for Unitary Status was initially held in abeyance pending a decision by the Fifth Circuit on Intervenors' appeal. See Order [Docket No. 248].

4 As fully explained by the Freeman Court:

> The authority of the court is invoked at the outset to remedy particular constitutional violations. In construing the remedial authority of the district courts, we have been guided by the principles that "judicial powers may be exercised only on the basis of a constitutional violation," and that "the nature of the violation determines the scope of the remedy." Swann v. Charlotte-Mecklenburg Br. of Edu., 402 U.S. 1, at 16 (1971). A remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation.
>
> We have said that the court's end purpose must be to remedy the violation and, in addition, to restore state and local authorities to the control of a school system that is operating in compliance with the Constitution. Milliken, 433 U.S. at 280–281 ("[T]he federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution").

Freeman, 503 U.S. at 489 (alterations in original).

5 While Dantzler coached the girls basketball team during the 2014-15 school year, the school had to arrange for another PE-certified instructor to teach the girls' basketball PE class.