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

COREY H., LATRICIA H., ANDREW B., and JASON E., by their parents and next friends, SHIRLEY P., BEVERLY H., SHARON B., and STEPHEN E., on behalf of a class of similarly situated persons,	)	
Plaintiff,	)	No. 92 C 3409
v.	)	Judge Robert W. Gettleman
THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, and THE ILLINOIS STATE BOARD OF EDUCATION,	)	
Defendants.	)	

ORDER

In what could be seen as an attempt to get a head start on the anticipated request by plaintiffs and the Monitor to extend the current September 2010 termination date of the Settlement Agreement, the Board of Education of the City of Chicago (also known as the Chicago Public Schools, or "CPS") has filed three motions in this, what was hoped to be the final year of the post-decree period of court supervision. For the reasons discussed below, with one exception all three motions are denied.[1]

[1]The court originally set these motions for a hearing on October 5, 2009. Although the court was prepared to rule on the motions on that date, the parties agreed to engage in informal settlement discussions, and the court decided to delay ruling on the motions to allow that process to proceed. Those discussions continued on November 2, 2009, and are continuing. On November 2, counsel for CPS requested that the court rule on the first of the motions discussed below in an effort to assist the parties in resolving at least some of the issues under discussion. The court stated that it would review the pending motions, and agrees that ruling on them now will not impede the settlement discussions and may advance the resolution of many of the remaining issues.

I. CPS' Motion to Approve Twenty-Nine Education Connection Exit Reports and Deem the Schools To Have Successfully Completed the Program (the "Approval Motion").

This motion fails for a number of reasons, the foremost of which is untimeliness. As pointed out by the Monitor and plaintiffs in their responses, the Monitor's authority to review reports that have been submitted by the schools subject to CPS's own monitoring was confirmed by this court in the appeal of the Monitor's decisions in 2005 and 2006. The court's ruling of March 7, 2007, (Docket No. 488), held:

> The court reaffirms the Monitor's authority to review reports that have been submitted by the schools and reviewed by CPS and found to be in compliance. The court notes that CPS has agreed that compliance for the Education Connection schools consists of meeting 85% of the goals of the nine benchmarks and substantial compliance with the ten LRE indicators as set forth in the monitor's decision of November 1999. In addition, the Monitor has the authority under the settlement agreement with CPS to require supplemental information and compliance activities.

Further, the court held in its order of November 30, 2007 (Docket No. 537):

> The Monitor has broad discretion to "take any reasonable steps necessary to ensure compliance with" the settlement agreement (settlement agreement ¶76).
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> . . .
>
> Plaintiffs have requested an additional clarification that the Monitor has final review and approval authority over all program compliance reports (exit reports), including requiring supplemental information and the implementation of activities. The court grants this request as being clearly encompassed by the settlement agreement.

CPS did not appeal these orders, and they became final years ago.

In addition, the voluminous materials submitted by the parties in connection with this and the other motions demonstrate that the information sought by the Monitor in connection with the schools in question is reasonable and contemplated by this court's decisions and paragraph 76 of

the Settlement Agreement. To be sure, there is always room to disagree about any particular item identified by the Monitor for correction or supplementation, and the court does not question the good faith of the individual school personnel, CPS, plaintiffs' counsel and the Monitor in dealing with these difficult and numerous issues. The court is convinced, however, that the additional information sought by the Monitor falls within her discretion in ensuring compliance with CPS's obligations under the Settlement Agreement, and that with reasonably more effort the parties should be able to complete this process and exit the schools in question.

The court will not force the issue, however, by "approving" the 29 schools' exit reports. This is the job of the Monitor and the parties, as repeatedly held by this court. The Approval Motion is denied.

II. CPS Motion Requesting Court Monitor to Develop Approval Rubric/Standards for Phase II LRE Plans and Program Completion Reviews (the " Rubric Motion").

The substance of this motion has been the subject of numerous conversations held in chambers among the court and the parties. Now that CPS has chosen to formally request a "rubric," the court has a fuller understanding of what it is CPS seeks, but no greater understanding of why it seeks it. It appears that CPS desires to have a "cookie cutter" type of form that each school could fill out for its Phase II and "exit" or "program completion" reports. While this approach might be appropriate in some other type of setting, it would be inappropriate in the context of enforcing the Settlement Agreement in this case, in which each school must develop an LRE plan and report in detail how it has met that plan before exiting the Education Connection Program. This is precisely what the Monitor has been enforcing over the years in which the Settlement Agreement has been under court supervision, with input from plaintiffs and CPS. The result has been a "template" that addresses compliance with the Benchmarks and the

LRE Indicators, a process that is still open to improvement and modification with the collaboration and cooperation of all interested parties.

To the extent that CPS is unhappy with the current "template" or "rubric," its unhappiness stems as much from the Monitor's enforcement of obvious deficiencies in some of the reports as the template itself. As pointed out in the briefing of this motion, some of these deficiencies are "technical," such as missing signatures, numbers that do not compute properly, dates that have already passed and the like. In a system as diverse and massive as CPS, it not surprising that such problems arise; the correction of these problems before approving either Phase II or completion reports is precisely the job that this court contemplated to be within the Monitor's responsibility. The more substantive problems, such as whether Education Connection money was being properly spent under the terms of the Settlement Agreement, are equally within the Monitor's responsibility and discretion. Again, there is certainly room for disagreement about any particular decision, but those disagreements have little or nothing to do with the so-called "rubric" used by the Monitor to approve the report in question. The Rubric Motion is denied.

III. CPS's Motion for Clarification of Court's April 10, 2009 Order (the "Clarification Motion).

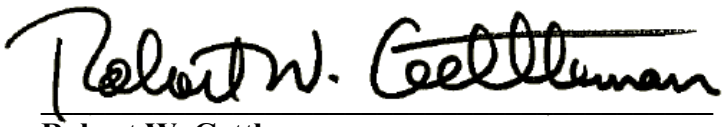
CPS purportedly seeks "clarification" of the court's April 10, 2009, "decision not to approve the Pilot Phase II proposal" that was intended to more quickly exit schools from the Education Connection Program. First, in that order the court directed the parties to provide certain materials in the hope of reaching an agreed solution to speeding up the approval process - - an effort that was not brought to a definitive conclusion. In any event, the court has made it perfectly clear that absent consent by the parties and approval by the court to modify the

Settlement Agreement[2], the pilot program would violate the terms of the that Agreement, particularly paragraphs 38 and 39, which require that each school engage in a period of at least two years in implementing the LRE plan. This temporal requirement was confirmed in the November 30, 2007 order (Docket No. 537, ¶4(b)), and the July 2008 stipulation describing the Education Connection Program. (Docket No. 575 at pp. 9-10.)

The Clarification Motion is denied in part and granted in part, to the extent that as currently proposed the Pilot Phase II program is not approved.

SO ORDERED.

ENTER: November 4, 2009



Robert W. Gettleman
United States District Judge

[2]The parties and the court should be mindful that the Settlement Agreement was entered in this class action only after a public fairness hearing, and should not be altered absent compelling reasons.