H(2318)83

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

APR 25 1983

EYVON MENDENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

CRATON LIDDELL, et al., Plaintiffs, v. BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, et al., Defendants.	Cause No. 72-100C(4) PREFILING CIRCULATION REQUIREMENTS WAIVED BY H(2278)83

DEFENDANT PARKWAY SCHOOL DISTRICT'S
MEMORANDUM IN SUPPORT OF THE SETTLEMENT AGREEMENT

I.

Introduction

The Parkway School District ("Parkway") and nineteen other defendants (the "Settling Defendants") have reached an agreement with the Caldwell plaintiffs (including NAACP), the Liddell plaintiffs and the Board of Education of the City of St. Louis ("City Board") (hereinafter collectively the "Settling Plaintiffs") to compromise and eventually dispose of the Settling Plaintiffs' claims against the Settling Defendants. These parties now seek the Court's approval of the Settlement Agreement as required by Rule 23(e), Fed. R. Civ. P.

Parkway is the largest school district in St. Louis County. Under the terms of the Settlement Agreement it will accept approximately 3,200 transfer students in the next five

years to achieve its Plan Ratio of 16.98%. This is half again as many transfers as any other single district will take under the Plan and approximately 20% of all the transfers under the Plan. Consequently, Parkway will receive the largest portion of the funds to be paid by the State as reimbursement of the Settling Defendants' per pupil costs of educating students who transfer from the City of St. Louis schools pursuant to the Settlement Agreement.

The State of Missouri has characterized the financing provisions of the Settlement Agreement as a plan to permit "double dipping" by the Settling Defendants, and an attempt by the Settling Defendants "to become wealthy as a result of their participation in this agreement." As the probable recipient of the largest portion of the payments under attack by the State, Parkway is, undoubtedly, a principal target of these charges. Primarily for this reason, Parkway has filed this separate Memorandum to explain the financing provisions of the Settlement Agreement and their actual, as opposed to their alleged, purposes and effects.[1]

With regard to the other provisions of the Settlement Agreement, Parkway joins the county school districts in their

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[1]In addition, Parkway's administrators and attorneys played a substantial role in developing and drafting the financing section of the Settlement Agreement.

support of the settlement as expressed in the signatories Pre-Hearing Memorandum and Appendix B (Defendants' Proffer). The Settlement Agreement is a fair, reasonable and adequate compromise of the interdistrict claims which complies with the suggestions of the Eighth Circuit Court of Appeals in Liddell v. Board of Education, 677 F.2d 626 (8th Cir.) cert. denied, 51 U.S.L.W. 3258 (1982) and Adams v. United States, 620 F.2d 1277 (8th Cir.) cert. denied, 449 U. S. 826 (1980). Accordingly, Parkway requests the Court to enter an order approving the Settlement Agreement in the form as attached hereto as Exhibit A.

II

The Standard Of Approval Of
The Settlement Is Whether The
Terms Thereof Are Fair, Reasonable,
And Adequate To Protect The
Interests of Absent Class Members

The purpose of requiring Court approval of class action settlements "is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights." 7A Wright & Miller, Federal Practice and Procedure: Civil §1797 at 226. (Emphasis added). Consistent with this purpose, the decision to approve or disapprove the Settlement Agreement should be based upon whether the terms of the Settlement Agreement are fair, reasonable and adequate as they affect the members of the plaintiff classes. Grunin v. International House of Pancakes, 513 F.2d 114 (8th Cir. 1975), cert. denied,

423 U.S. 864; Boggess v. Hogan, 410 F. Supp. 433 (N.D. Ill. 1975); Seiffer v. Topsy's Intern., Inc., 70 F.R.D. 622 (D. Kan. 1976); Wainwright v. Kraftco Corp., 53 F.R.D. 78 (D. Ga. 1971).

Non-settling defendants, such as the State of Missouri in this case, have no standing to object to the fairness, reasonableness or adequacy of the Settlement Agreement, as such. Seiffer v. Topsy's Intern., Inc., supra; Philadelphia Electric Company v. Anaconda American Brass Company, 42 F.R.D. 324, 326 n. 1 (E.D. Pa. 1967); Wainwright v. Kraftco Corp., 53 F.R.D. 78 (D. Ga. 1971), 3 Newberg on Class Actions §5660b. Consequently, the State's objections merit consideration only insofar as they relate to the issue of whether it is appropriate to require the State, as the "primary constitutional wrongdoer" to make the payments required by the Agreement.

Non-parties to the case, such as Local 420 American Federation of Teachers, have no standing to object to any aspect of the Settlement Agreement, notwithstanding that the Settlement Agreement may have an effect which is of interest to them. Kusner v. First Pennsylvania Corp., 74 F.R.D. 606 (E.D.Pa. 1977), aff'd, 577 F.2d 726 (3rd Cir. 1978). See Memorandum in Opposition to St. Louis Teacher's Union Motion to Intervene (filed April 25, 1983).

Parkway employs approximately 1,100 teachers. As the largest school district in St. Louis County, it will also

likely be one of the districts most affected by the so-called affirmative action provisions of the Settlement Agreement. Since this is a school desegregation case--not an employment discrimination case--it is important to note that the faculty provisions of the Settlement Agreement are designed to encourage the transfer of black students to predominantly white suburban school districts. This section of the agreement was not intended to remedy alleged racial discrimination in employment. Nor was this section intended to alleviate the economic problems of teachers caught in the squeeze between declining student population and the taxpayers' reluctance or refusal to approve tax levies sufficient to adequately fund the operation of schools in certain districts.

The decision to accept or reject a proposed settlement is within the discretion of the Court. If the settlement is found to be fair, adequate and reasonable, it should be approved. However, the Court "cannot...modify the terms of a settlement proposal; it can only accept or reject the proposal as presented to it." Armstrong v. Board of School Directors, 471 F. Supp. 800, 804 (E. D. Wisc. 1979), aff'd., 616 F.2d 305 (7th Cir. 1980). See, also, Plummer v. Chemical Bank, 668 F.2d 554, 555 n.1 (2nd Cir. 1982); In re General Motors Engine Interchange Litigation, 594 F.2d 1106, 1125 n.4 (7th Cir. 1979); Alliance to End Repression v. City of Chicago, 91 F.R.D. 182 (N. D. Ill. 1981). Thus, if the Court were to conclude that the financing provisions (or any other provision) were

improper, then disapproval of the Settlement Agreement, not modification, would be the appropriate course of action.

III.

The Financing Provisions Of The Settlement Agreement Appropriately Burden The Parties Adjudicated As Constitutional Wrongdoers With The Costs of Remedying Their Constitutional Violations

The Settlement Agreement provides that each of the Settling Defendants shall, pursuant to Order of this Court, be reimbursed by the State of Missouri in an amount equal to its expenditures per pupil (computed as required under the applicable regulations of the State Board of Education) for each non-resident pupil who transfers to and attends school in a Settling Defendant's school district pursuant to the Settlement Agreement. The City Board, similarly, is to be reimbursed for its per pupil expenditures respecting students who transfer to the City schools pursuant to the Settlement Agreement. The State of Missouri has questioned both the power of this Court to impose on it the obligation to reimburse the Settling Defendants for their per pupil expenditures and the propriety of the level of reimbursement to the Settling Defendants.

A.

It has already been determined that this Court has the power to require the State to reimburse the Settling Defendants pursuant to the prior decisions in this litigation. The State has been found liable for the segregated condition of the Schools in the City of St. Louis. Liddell v. Board of Educ. of

City of St. Louis, 491 F. Supp. 351, 357 (E.D.Mo. 1980). The Settlement Agreement, in addition to constituting a compromise of claims asserted against the Settling Defendants, clearly constitutes "a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County" which the Eighth Circuit Court of Appeals explicitly recognized as a permissible technique of remedying the segregated condition of the City of St. Louis Schools. Adams v. United States, 620 F.2d 1277, 1296 (8th Cir. 1980). Obviously, a litigant, such as the State of Missouri, which has been adjudged to be responsible for illegal conduct leading to a particular result, can be compelled to pay the costs of correcting that result. Under the law of this case, the State's obligation to pay the costs of desegregating the schools in the City of St. Louis is not open to question. See Liddell v. Board of Education of the City of St. Louis, 677 F.2d 626, 641-42 (8th Cir. 1982).

B.

The philosophy which underlies the entire Settlement Agreement is that the voluntary transfer student will be treated in the same manner as a resident student in all respects--in academics, discipline, promotion, retention, extracurricular activities, and support services. The same philosophy forms the basis for the finance section.

However, since the transfer student will not bring with him the usual source of revenue for the suburban school

districts (i.e., increased local property taxes), the funds available to provide the same level and quality of education will be severely diluted unless the receiving district obtains additional money from some source. This is particularly true as applied to Parkway, which could receive up to 3,200 students in the next five years. To put the magnitude of Parkway's commitment into perspective, the number of transfers Parkway will accept is equal in size to the entire Ladue school district. Ten of 23 school districts in St. Louis County have fewer than 3,200 students and only 42 of the 527 school districts in the State of Missouri (including Parkway) have as many as 3,200 students in their entire system.

The Ladue School District realizes over $10.3 million in local tax revenues which it expends annually to educate its students. See Missouri State Board of Education, 1981-82 Report of the Public Schools, ("Annual Report"), 136. Parkway, of course, will not realize a penny of additional tax revenues when it absorbs over 3,200 non-resident transfer students.

Parkway has an excellent and well-deserved reputation as one of the finest public school systems in the State. The quality of education offered by Parkway is unquestionably high. It is Parkway's intention in fulfilling its responsibilities under the Settlement Agreement to provide the same high quality of education not only to its resident students but also to the 3,200 transfer students whom it is to receive under the Plan.

In sharp contrast to the City school district and most rural school districts in the State, Parkway finances 82% of its expenditures through local property taxes. The City Board, on the other hand, finances 36% of its expenditures through local property taxes. Thus, Parkway will have to provide the same high quality of education for a large group of students who, without a court order, otherwise bring with them no funds to pay for the cost of the education they will receive. Viewed in this light, the State's charges that districts such as Parkway are "making money," "double-dipping" and raiding the state treasury at the expense of school districts elsewhere in Missouri are completely unfounded.

The formula selected for use in the Settlement Agreement is based upon the same allocation of costs all school districts use in their annual report to the State Board of Education. See Parkway Exhibits B and C, Annual Secretary of the Board Report (Form FD-5). The formula is very similar to that used by the State itself, pursuant to state statutes, when computing the tuition to be charged for individual students who transfer to a district for reasons other than as a part of desegregation plan.

The State has characterized the proposed formula as a fiscal incentive which will permit the receiving districts to "make money," which will be a "windfall" and which will allow them "to become wealthy as a result of their participation in

this Agreement." H(2259)83 at 8, 9-10. Aside from the obvious hyperbole in this statement, it is incorrect in every particular.

The payments to receiving districts are not "fiscal incentives." This inaccurate and unfortunate term is perhaps a vestige of the 12(a) Voluntary Plan. The districts need no financial incentive to accept transfer students under the Settlement Agreement. Their incentive comes from the protection against litigation for a period of at least five years and the contractual assurance the Plaintiffs will not seek dissolution of the district in the event the litigation is renewed. What the districts seek financially, and what the Settlement Agreement provides, is reimbursement of their cost per pupil for students who otherwise do not add directly or indirectly to the revenues needed to finance their education.

The reimbursement to Parkway of its cost per pupil is not going to be a "windfall," "double-dipping" or any other pejorative term the State may choose. Parkway and other St. Louis suburban school districts already receive far less state aid as a percentage of their revenues than most other districts in the state. Indeed, the State is the principal source of operating revenues for some rural school districts which receive in excess of 60% of their total cost per pupil from state

aid.[2] The formula is an attempt, based upon the State's own reporting requirements and other formulas used to reimburse districts for the cost of educating transfer students, to provide an administratively efficient and fair way of using a single method to meet the variety of conditions found in 23 individual school districts.

C.

The Settlement Agreement provides for the receiving district to be paid its cost per pupil in two separate payments. Initially, the cost per pupil is to be computed in the manner set forth in the Annual Secretary of the Board Report to the State Board of Education (Form FD-5) (Parkway Exhibit C). After computing the cost per pupil, the amount allocable to receipt of all forms of state aid and trust fund allocations (e.g., Proposition C sales tax revenue) is deducted. The State

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[2]The state paid more than 60% of the cost per pupil in the 1981-82 school year in the following 34 counties: Berry (65.86), Bollinger (66.76), Butler (65.20), Carter (67.56), Cass (62.42), Cedar (64.74), Christian (71.57), Crawford (67.43), Dallas (67.50), Dent (63.97), Douglas (64.84), Dunklin (63.85), Hickory (60.40), Howell (69.27), Jefferson (61.21), Laclede (62.75), Lawrence (68.51), Lewis (60.35), Newton (68.16), Oregon (69.22), Ozark (65.54), Pemiscot (61.38), Phelps (64.46), Polk (67.41), Pulaski (65.90), Ripley (70.55), St. Clair (60.63), Shannon (71.82), Stone (60.52), Texas (70.87), Washington (61.08), Wayne (71.57), Webster (68.56), and Wright (70.86). The St. Louis County School Districts received 28.97% of their total revenues from state aid. Parkway received 16.89% of its total revenues from state aid. On a statewide basis, all forms of state aid accounted for 45.78% of the total funds expended for education. Parkway Exhibit A (Missouri State Board of Education, 1981-82 Report of the Public Schools at 122-138).

will pay in the manner called for by §X.B.1 payments essentially attributable to what would otherwise be the local share of the cost per pupil raised by property tax revenues. State aid and trust fund revenues will be paid in the usual manner with the transfer student being included as a resident student for all purposes.

The computation of the cost per pupil includes all costs for instruction and support services minus all pupil transportation and food service costs. Transportation costs are not included because these relate only to transportation of resident students. A separate section of the Settlement Agreement deals with transportation of transfer students, including financing. Food service costs are not included because that function is self-supporting.

An examination of the FD-5 Report (Parkway Exhibit C) also shows that certain other costs are excluded from the computation. For example, receiving districts will not receive reimbursement for the cost of facilities acquisition and construction, debt service, adult/continuing education, or community services programs.[3] All of the excluded costs comprise approximately 20% of Parkway's annual expenditures. Parkway Exhibit B.

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[3]However, if a district is required to reopen a closed school as a result of receiving transfers under the Agreement, it could recover those one-time extraordinary costs. These costs would not include any additional costs incurred in hiring personnel. §X.B.3, page X-2.

This method of computing the cost per pupil reimbursement under the Settlement Agreement is comparable to that presently in effect for ordinary transfer tuition students. Section 167.131 RSMo. 1978 requires districts not maintaining a high school to pay tuition for its students attending a high school in an enjoining district. Section 167.131.2 provides that the tuition charge shall be

> the pupil cost of maintaining the high school attended. The cost of maintaining the high school attended shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements.
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> * * *
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> Per pupil cost of the school attended shall be determined by dividing the cost of maintaining the high school by the average daily high school attendance.

It is apparent from a comparison of this formula with that in the Settlement Agreement that the latter in fact calls for a smaller cost per pupil reimbursement than allowed by the statute. For example, debt service can be included in the cost per pupil under §167.131.2, but is excluded under the formula in the Settlement Agreement. See Parkway Exhibit D (Suggested Worksheet for Determination of Tuition Charges under §167.131.2.

The State contends that only the incremental cost of educating the transfer student is a fair and reasonable way of reimbursing the receiving district. A similar argument was

rejected by the Missouri Court of Appeals in Warrensburg School District R. VI v. Johnson County School District R. VII, 624 S.W.2d 170 (Mo. App. 1981). In that case, Johnson County sent high school students to Warrensburg High School. The districts could not agree upon the tuition to be charged and, pursuant to §167.131.2, the dispute was submitted to the State Board of Education to fix the proper per pupil cost. The receiving district sued the sending district for reimbursement pursuant to the terms of the formula as computed by the State Board of Education. On appeal from an adverse judgment, the sending district contended that only the direct instructional cost should have been allowed in computing the per pupil cost under the statute. Thus, for example, Johnson County contended that such items as salaries for board employees and support staff, insurance premiums, health services costs and the like were not properly attributable to the cost per pupil of educating the high school students which they sent to Warrensburg. This position was rejected by the Court, which stated:

> It is beyond cavil that a high school does not operate in a vacuum with only teachers and students. The high school was operated by the Warrensburg School District, which in common with all districts, requires a board of education with the proper officers and support personnel to operate a high school. That district was also required to hold elections. Certainly the district would be expected to carry insurance for which it would pay premiums and maintain some health service which would require funding. All of these activities incurred costs which are apart from the primary expense of teachers,

> but were directly appropriate to the operation of the high school and enabled the Warrensburg district to carry out its mission of teaching high school students.

Id. at 173.

In accordance with the general philosophy of the Settlement Agreement, the finance section also provides that a transfer student shall be treated as a resident student for the purposes of computing and receiving revenue from all forms of state aid and trust fund allocations. It is fair to allow the receiving district to treat these students as residents for these purposes because the formulas which determine the amount of revenue from these sources are based upon various types of pupil head counts, such as total enrollment or membership, average daily attendance or eligible pupils. Although the share of the cost per pupil which is to be funded through these revenues is deducted under §X.B.1, the receiving district recovers these payments in the normal manner and amounts in the same fashion as it receives state aid and trust fund allocations now.

Thus, the Agreement contains the potential for significant savings in state aid with an increased potential at the end of five years or the expiration of the other options contained in Paragraph X.B.2. For example, the City Board presently receives approximately $1,100 per student in state aid while Parkway receives approximately $300 per student in state aid. When a city student transfers to Parkway, Parkway will

count that student as a resident and therefore receive only $300 for that student towards reimbursing its per pupil cost. If the City Board chooses the first option as the sending district incentive, those payments will cease after the 1987-88 school year or the duration of any extension of the stay under §XII. Thus, there will be an additional savings of about $550 per student after the first five years.

D.

The State's position that the receiving district should be paid only its incremental costs of educating the transfer students has superficial appeal. Yet there is no commonly agreed upon definition of what those incremental costs are or how they could be identified. Certainly, the State has made no attempt to identify such costs in the ordinary transfer tuition student situation. It is probably true that it would cost little, if any, more to educate one additional student or 25 additional students or 50 additional students in a school district the size of Parkway. However, the Agreement does not call for Parkway to accept only one additional student or 25 additional students or 50 additional students. Parkway will accept up to 3,200 additional students in the next five years alone.

Furthermore, the State's rationale ignores educational realities in favor of a narrow, textbook cost accounting approach. There might be no incremental cost in teachers' salaries to increase class size from 20 to 25 students. But how

can one measure the loss of effectiveness that teacher will experience as a result of increasing the class size by 25%? How much more time will the same administrator or the same reading teacher or the same guidance counselor or the same nurse or the same secretary have to spend to support the education of the additional children who will be received under the Plan? These are costs that undeniably will be incurred under the Settlement Agreement which are simply not susceptible of measurement or quantification. Parkway intends to provide each of its students, resident and transfer, with the same level and quality of service it now provides. It does not view the transfer students it is to receive as "incremental" students entitled to an "incremental" education. These students are, and will be, Parkway students entitled to the full instructional and support services available to every student in the district.

Rule 23(e) requires that the settlement be fair, adequate and reasonable. The formula contained in the Settlement Agreement for reimbursement of the receiving districts meets all of these requirements. Within the limits of administrative manageability, it identifies costs associated with the education of students on a per pupil basis in accordance with accepted methods used by the State and all school districts in the state for many years. In the absence of a finding of liability, it is only fair that Parkway residents not be required

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to bear the financial burden of educating 3,200 additional students. Parkway will provide these students with a high quality public school education at a cost far less than what it takes now to educate them in the schools in North St. Louis. The formula proposed in the Settlement Agreement should be approved.

IV

This Court Has The Authority To Enter The Ancillary Orders Essential To The Implementation Of The Settlement Agreement And Those Orders Are An Appropriate Means To Eradicate The Branch And Root Of The Segregated Educational System In The City Of St. Louis

The Settlement Agreement contemplates the entry of the following ancillary orders:[4]

(1) An Order staying this litigation as to the Settling Defendants for a period of five (5) years;

(2) An Order requiring the State of Missouri to reimburse each receiving district for its per pupil expenditures pursuant to the terms of the Settlement Agreement;

(3) An Order allocating, as between the State of Missouri and the City Board, the responsibility to pay

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[4]The Settlement Agreement does not contemplate the entry of a consent decree incorporating its provisions. Instead, the parties have agreed to a contractual arrangement which is subject to judicial enforcement by means of an order of specific performance. See §XII.B.

for the costs of implimenting certain programs to upgrade the quality of education available in the City schools;

(4) An Order imposing a school tax rate in the City of St. Louis sufficient to enable the City Board to pay its share of the costs of implimenting the "quality of education" program and continuing to operate the City public school system.

The portions of the Settlement Agreement which require the imposition of these orders have come under attack from various quarters as being unreasonable and outside the power of this Court. For the reasons set forth below, Parkway submits that these aspects of the Settlement Agreement are fair and reasonable, within the power of this Court, and essential to compromise reached by the parties.

A. The Stay of Litigation

It is an inherent power of a federal district court to control the course of litigation pending before it. This includes the power to impose a stay on litigation pending before the court for appropriate reasons. Dellinger v. Mitchell, 422 F.2d 782 (D.C.Cir. 1971); Nelson v. Grooms, 307 F.2d 76 (5th Cir. 1962); Aetna State Bank v. Attheimer, 430 F.2d 750 (7th Cir. 1970).

In this litigation the stay is the result of a compromise between the Settling Defendants' position that the

Settlement Agreement should establish a voluntary system of student transfers and terminate this litigation as to the Settling Defendants, and the Settling Plaintiffs' position that the Settlement Agreement should embody a plan of mandatory student transfers. The stay of litigation permits the Settling Parties to implement a plan of voluntary student transfers, while preserving the possibility that if the voluntary plan does not meet specified ratios, the Settling Plaintiffs may seek the imposition of a mandatory plan of transfer, upon proof of the Settling Defendants' alleged constitutional violations.

The stay, therefore, forms an essential element of the Settlement Agreement. Without it, the Settling Parties could not have come to terms. The stay to be imposed by the Court is, on its face, a neutral order. It neither affords nor denies any party relief. It merely postpones the day of reckoning for all parties, should the Settlement Agreement fail to result in sufficient interdistrict transfers.

There is, of course, a strong public policy favoring voluntary resolution of litigation through settlement. Armstrong v. Board of School Directors, 616 F.2d 305, 312 (7th Cir. 1980). Parkway submits that, in furtherance of this policy, it is appropriate for this Court to exercise its power to control this litigation and enter the stay contemplated by the Settlement Agreement.

B. Reimbursement of the Per Pupil Expenditures For Transferring Students

The authority of the Court to Order the State to reimburse the signatories for their per pupil costs of educating transfer students is addressed supra at 6-7.

C. Allocation of the Costs of the Program to Improve the Quality of Education in the City's Schools

The City Board has developed a detailed program to improve the quality of education offered in the City's schools. Parkway recognizes the City Board's need to improve the quality of education offerred in its schools. Parkway is not, however, in a position to evaluate the fairness, reasonableness, and adequacy of the detailed program developed by the City Board. Similarly, because Parkway is not familiar with whatever evidence may be in the possession or control of the City Board regarding the relationships between the quality of education presently available in the City Schools and the constitutional violations which have been found to have occurred in this case, Parkway is unable to comment on the appropriate apportionment of the costs of these programs as between the City Board and the State. Parkway notes, however, that the Settlement Agreement is not contingent upon the manner in which the financial burdens of this aspect of the Settlement Agreement are allocated as between the State and the City Board. So long as the Court finds these programs to be fair, reasonable and adequate, and provides for their funding by some combination of State and

City Board resources, the Settlement Agreement will be satisfied.

There should be no doubt about this Court's power to enter an order directing the State and/or the City Board to pay for the costs of implementing the programs. Liddell v. Board of Education of the City of St. Louis, 677 F.2d 626, 641-42 (8th Cir. 1982). The City Board is the only school district defendant in this case which has been found liable for segregating the schools in the City of St. Louis. Adams v. United States, supra at 1284-1291. To the extent the quality education and other provivions of the Settlement Agreement are a remedy for that liability, the City Board can be ordered to pay its share of the cost.

D. Imposition of a Tax Rate Upon The City of St. Louis School District

The parties to the Settlement Agreement have recognized that, given the present financial condition of the City Board, the City Board may lack sufficient funds to pay its portion of the costs of implementing the quality of education programs, as determined by this Court. Should the Court find that this is the case, the Settlement Agreement contemplates that the Court may order the City Board to levy additional property taxes within the City of St. Louis. The City of St. Louis has questioned the power of the Court to do so. H(2234)83.

There is substantial legal precedent for the Court's power to require the City Board to levy taxes in order to fund

programs designed to remedy past discriminatory conduct by the City Board. In United States v. State of Missouri, 515 F.2d 1365 (8th Cir.), cert. denied, 420 U.S. 951 (1975), the Eighth Circuit affirmed in principle the District Court's power to impose a tax rate on the newly consolidated Ferguson-Florissant School District. The purpose of the levy in that case was simply to assure that the new district could operate in a solvent financial condition. It was not, as the levy in this case would be, related to specific programs necessary to remedy the effects of past discriminatory conduct. In Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964), the school board had declined to levy any taxes and had closed the district's public schools. The Court found that these actions had been taken with discriminatory intent. The remedy prescribed by the District Court included, among other matters, a court imposed tax levy. The Supreme Court affirmed the District Court's finding that its powers to remedy unconstitutional discrimination were sufficiently broad that it could, if warranted by the circumstances of the case, impose a tax levy on a school district to enable the district to be operated without discrimination.

Here, the Settling Plaintiffs maintain that the quality of education programs contemplated by the Settlement Agreement are essential to remedy the effects of past discrimination. This Court and the Court of Appeals have mandated that

the City Board develop and implement quality education programs. Adams v. United States, 620 F.2d 1277 (8th Cir. 1980); Liddell v. Board of Education, 491 F.Supp. 351, 353 (E.D.Mo. 1980); Liddell v. Board of Education of the City of St. Louis, 677 F. 2d 626 (8th Cir. 1982). So long as the Court finds the programs contemplated by the Settlement Agreement to be in furtherence of these mandates and that, absent a court order, the City Board will be unable to pay the costs assessed against it for these programs, there is clearly ample support for this Court's power to impose the necessary property tax levy.

V.

Conclusion

For the foregoing reasons, Parkway School District requests this Court to enter its Order approving the Settlement Agreement in the form attached hereto as Exhibit A and to enter the ancillary stay and funding orders necessary to implement the Settlement Agreement.

THOMPSON & MITCHELL

By _____

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, to all counsel of record on this 25th day of April, 1983.

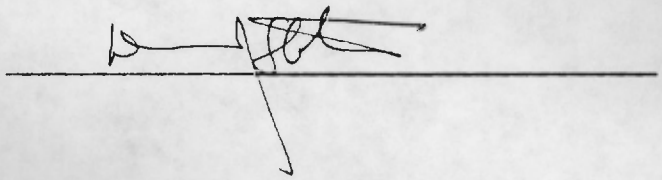

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, a minor, etc., et al.,	)	
Plaintiffs,	)	
v.	)	Cause No. 72-100C(4)
BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, et al.,	)	
Defendants.	)	

ORDER

Pursuant to Rule 23(e) Fed. R. Civ. P., and after consideration of the terms and conditions of the Settlement Agreement H(2217) and those oral and written comments on and objections to the Settlement Agreement which have been submitted by interested parties and persons and entered in the record of this case, the Court finds that the Settlement Agreement constitutes a fair, reasonable and adequate compromise of the claims asserted in this case by the Liddell and Caldwell classes and the Board of Education of the City of St. Louis against the Affton School District, the Bayless School District, the Brentwood School District, the Clayton School District, the Ferguson Reorganized R-2 School District, the Hancock Place School District, the Hazelwood School District, the Jennings School District, the Kirkwood School District, the School District of the City of Ladue, the Lindbergh School District, the Maplewood-Richmond Heights School District, the

Normandy School District, the Parkway School District, the Pattonville School District, the Ritenour School District, the Riverview Gardens School District, the Valley Park School District, the Webster Groves School District and the Wellston School District.

WHEREFORE, the Settlement Agreement is hereby approved.

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United States District Judge