H(2309)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,	)	No. 72-100C(4)
	)	
vs.	)	
	)	
THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,	)	Exempt from Prefiling Circulation Requirements of H(881)82, pursuant to H(2278)83, April 8, 1983
	)	
Defendants.	)	

JOINT WITNESS LIST, EXHIBIT LIST AND BRIEF OF MAPLEWOOD-RICHMOND HEIGHTS SCHOOL DISTRICT AND SCHOOL DISTRICT OF RIVERVIEW GARDENS IN SUPPORT OF PROPOSED SETTLEMENT AGREEMENT H(2217)83

Come now Maplewood-Richmond Heights School District ("M-RH") and School District of Riverview Gardens ("Riverview") and for their compliance with Order of this Court, H(2278)83, filed April 8, 1983, submit the following in support of the proposed Settlement Agreement filed in this cause, H(2217)83, on March 30, 1983:

1. List of witnesses the parties herein expect to call at the hearing April 28, 1983.

2. List of exhibits the parties herein intend to offer at the hearing April 28, 1983.

3. Brief, containing authorities.

In addition to the above, these parties also join with other St. Louis County School Districts in submitting a joint list of witnesses, exhibits and a brief to be filed simultaneously herewith.

The Ferguson Reorganized School District R-2 ("Ferguson") is not joining in this pleading because of its unique procedural status in the case at this time, but the parties hereto are authorized to report to the Court that the contents of this pleading have been reviewed by counsel for Ferguson and that the positions stated are consistent with the position Ferguson would take if it participated in the "fairness" hearing.

M-RH AND RIVERVIEW LIST OF PROPOSED WITNESSES

Dr. Edwin J. Benton - Superintendent, School District of Riverview Gardens

Fred W. Lanigan, Ph.D. - Superintendent, Maplewood-Richmond Heights School District

M-RH AND RIVERVIEW LIST OF EXHIBITS

M-RH:

A. M-RH Desegregation Plan (Intradistrict) dated March 1, 1975

B. Compliance letter received from Department of Health, Education, and Welfare dated March 24, 1975

C. Summary of Statistics indicating current student and teacher racial composition

D. March, 1983 M-RH Newsletter

Riverview:

A. Defendant Riverview - A --- Excerpts from minutes of Board of Education of August 30, 1954

B. Defendant Riverview - B --- Excerpts from minutes of Board of Education of August 16, 1955

C. Defendant Riverview - C --- The Desegregation of All-Black Schools That Existed in St. Louis County Prior to 1954, Wright, J. (St. Louis University Ph.D. dissertation, 1978)

D. Defendant Riverview - D --- School District Policy No. 4900 adopted June 22, 1976

E. Defendant Riverview - E --- School District Policy No. 5900 adopted June 22, 1976

F. Defendant Riverview - F --- Conciliation Agreement entered into between School District of Riverview Gardens, EEOC and Patricia Crommett under date of November 22, 1976

G. Defendant Riverview - G --- Letter addressed to Riverview from Equal Employment Opportunity Commission under date of May 13, 1980 concerning Charge No. TSL4-1383

H. Defendant Riverview - H --- Report of the Urban Information Center of the University of Missouri to the Planning Department of St. Louis County, Missouri, under date of October 7, 1982

I. Defendant Riverview - I --- Letters from Superintendent of Schools of City of St. Louis addressed to Riverview Gardens under dates of October 15, 1980; February 9, 1981 (2); March 16, 1981; September 11, 1981; and September 28, 1981 concerning magnet school students

M-RH AND RIVERVIEW BRIEF
IN SUPPORT OF PROPOSED SETTLEMENT

This brief is submitted for the Court's consideration in connection with the hearing to be held April 28, 1983, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether a proposed settlement of the 12(c) liability aspects of this action should be approved by the Court as fair, reasonable and adequate. It is the position of the parties to this brief that the proposed Settlement Agreement [H(2217)83] meets all constitutional, statutory and other requirements and should be approved by this Court.

Since the parties to this brief are dealt with collectively together with the Ferguson District and in a separate category from other St. Louis County School Districts in the Settlement Agreement, these parties feel that it is appropriate that they submit a joint brief separate from the joint brief submitted by other St. Louis County School Districts in support of the proposed Settlement Agreements, in which these parties also join.

General Factual Background

The M-RH District was originally organized in 1876 when the City of St. Louis separated from the County of St. Louis. The District was established as Rural School District No. 3, Township 45, Range 6E, with three directors, and was changed to a six-director district on July 11, 1906. It adjoins the City of St. Louis on the southwest. The territorial boundaries of the District have remained substantially

the same since its inception in 1876. At the present time, the District maintains two elementary schools (grades K-4), two middle schools (grades K and 5-8), and one high school (grades 9-12). Its total student enrollment is 1498, 27.6% of which are members of the black race, not including kindergartens (if so included, the percentage of black students would be 28.97%). The District employs 126 teachers, of which 24 (19%) are black.

The School District of Riverview Gardens is located in St. Louis County, immediately north of and adjoining the City of St. Louis. It also adjoins the Hazelwood, Ferguson and Jennings School Districts. The District is a six-director school district of the State of Missouri organized in or about 1925 as a successor to a three-director district known as the Science Hill District No. 20, which goes back to at least 1910. In 1949, the former Moline School District merged with Riverview; and in 1957, a minor boundary adjustment was made between Riverview and the Jennings School District. In the current 1982-83 school year, Riverview operates a senior high school, a junior high school, and eight elementary schools. The student enrollment as of September 10, 1982 was:

Schools	Enrollment	Black	% Black
Senior High School	1,868	642	34
Junior High School	760	342	45
8 Elementary Schools	2,412	1,154	48
Totals	5,040	2,138	42

According to the 1980 U.S. Census, the overall population of the District is 47,591, of which 8,799, or 18.5%, are black residents.

The Ferguson District is located in the northwest part of St. Louis County. The present-day Ferguson District is the result of two major consolidations or mergers: About 1951, the original Ferguson and Florissant districts reorganized into a single district; and in June of 1975, the reorganized district was merged with the Berkley and Kinloch districts as a result of the order and decree of this Court in United States v. State of Missouri, 515 F.2d 1365 (8th Cir. 1975); cert. denied 423 U.S. 951 (1975). At the present time, the Ferguson District operates 17 elementary schools, 3 middle schools and 3 high schools. Of its 12,669 students, 40.5% are black.

Procedural Status of the Parties

The M-RH District was joined as a party defendant to this cause in H(337)81, and substantial discovery has been made both by and against it in preparation for a possible 12(c) liability hearing. However, on January 11, 1983, this District applied to the Court to join the 12(a) Voluntary Interdistrict Transfer Plan [H(1930)83] and this Court did in its Order H(1978)82, entered January 20, 1983, grant said application, and order that further proceedings in this cause be stayed as against such district, so long as it is participating in good faith with the Court's 12(a) Plan. Therefore, the M-RH District would not be subject to the presently scheduled 12(c) liability hearing, and before its liability for an interdistrict de-

segregation order could be determined, the 12(a) stay order would have to be lifted, possible further discovery had with regard to liability of M-RH, and a 12(c) liability hearing held. Its liability, therefore, would only be determined at some indefinite future date.

The Riverview District is a party defendant to this proceeding and is presently scheduled to participate in the upcoming 12(c) liability hearing with all discovery completed and closed. If the Settlement Agreement is not approved, Riverview would shortly thereafter go to trial on the issue of its interdistrict desegregation liability.

The Ferguson District has not yet been made a party defendant to this action. The Board of Education of the City of St. Louis ("City Board") and the Caldwell Plaintiffs both filed amended pleadings requesting relief against Ferguson on January 9, 1981 and January 16, 1981, respectively, and moved that it be made a party, but this Court refused to grant such relief initially [H(337)81, August 24, 1981]. Later, a hearing was ordered by this Court, H(969)82, May 13, 1982, on the status of Ferguson, and said hearing was held on June 21, 1982 and July 7, 1982, but no order has yet been entered joining the District. At this stage, the Ferguson District, therefore, would not be a participant in any 12(c) liability hearing scheduled by the Court, and its liability for an interdistrict desegregation order could only be determined after an order of the Court joining it as a party defendant, granting discovery with regard to liability issues and conducting a liability hearing. The time when such steps would be taken would be at some indefinite time in the future.

Provisions of the Settlement Agreement Which Particularly Affect These Districts

The Settlement Agreement deals with these three Districts in a separate category in Section IIA 2c ii (page II-3). It provides that these districts in which the black resident student enrollment exceeds twenty-five percent, but is less than fifty percent, are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligation. It is also provided that the continuing obligation of these districts shall be limited to cooperation in the recruitment process, to facilitate the transfer of white students enrolled in their districts to participating districts whose enrollment is greater than fifty percent black and to facilitate the transfer of black students in their district pursuant to intradistrict provisions. It is further provided that if black enrollment in any one of these districts should exceed fifty percent, then its black students would enjoy transfer rights in a manner similar to those districts which already exceed fifty percent in black enrollment, and the district would be subject to the two obligations applicable to such districts, namely, the establishment of such magnet programs as are designed to increase white student enrollment and to cooperate in the recruitment process to facilitate the transfer of black students enrolled in their districts to participating districts whose enrollment is less than twenty-five percent black (page II-2).

The intradistrict provisions of the Settlement Agreement which apply to these districts provides as follows (pages XI-1 and 2):

1. Districts operating under a plan established by Court order or agreement with any federal agency which addresses the elimination of racially identifiable schools shall not be affected so long as the Court order or agreement remains in effect or the District continues to follow the Court order or plan. (Ferguson and M-RH fall within this exception.)

2. Districts which have exceeded the plan goal (25% black) for the district, but have within the district individual schools with student ratios of more than 50% black, shall permit the black students attending those schools the same interdistrict transfer rights as are conferred upon black students attending majority black districts. (Riverview falls within this category.)

In summary, the effect of the Settlement Agreement on these three districts, if approved by the Court, would mean basically that each would receive final judgment that they have satisfied their pupil desegregation and faculty hiring obligations, and their obligations in the future would be to cooperate with recruitment and transfer programs under the Agreement, and in Riverview's case, to permit their black students attending majority black schools within the District to enjoy interdistrict transfer rights.

Justification for Approval of the Settlement Agreement Insofar as it Affects Ferguson, M-RH and Riverview

The factor which is uniformly considered the most important in determining the fairness of a proposed class action settlement is

the strength of the plaintiff's case, balanced against what is offered in settlement. Armstrong vs. Board of School Directors, 616 F2d 305, 314 (7th Cir. 1980); Grunin vs. International House of Pancakes, 513 F.2d 114, 124 (8th Cir.); cert. den. 423 U.S. 864 (1975); 6 Federal Procedure, Lawyers Edition §12:242.

The principal question for a decision as to whether the proposed Settlement Agreement is "fair, reasonable and adequate" insofar as it applies to the Ferguson, M-RH and Riverview Districts, therefore, is whether it provides relief for the members of the affected class appropriate to the reasonable expectation of relief that would be awarded as a result of a full liability hearing. It is submitted that such relief is provided in this agreement, even though it is somewhat minimal against these districts, because a reasonable expectation of result from a 12(c) liability hearing against these districts, whenever the same may be held, is that it is likely that no judicial relief would be awarded. The reason no relief would be awarded could be on the grounds either:

1. That said districts are not liable currently for segregative activities, or

2. That even if there is past segregative conduct to justify a finding of liability, nevertheless, under the present facts and circumstances, any relief greater than that awarded by the Settlement Agreement would not be appropriate because of the current situation with regard to minority enrollment and hiring activities.

The circumstances with regard to each separate district are herein analyzed:

Maplewood-Richmond Heights:

In response to the decision of the Supreme Court of the United States in Brown v. Board of Education in May of 1954, M-RH acted "with all deliberate speed" to desegregate its schools and eliminate all vestiges of segregation remaining therein. Commencing in 1955, M-RH admitted all resident black children of high school age who desired to attend and ceased its prior practice of providing tuition and transportation to such students who desired to attend high school programs in other districts. One exception to this policy was to allow (if it was their choice) the seniors attending other districts to continue to attend those districts in order to graduate with their class.

On March 1, 1975, M-RH submitted to the Office of Civil Rights, Department of Health, Education and Welfare an intradistrict desegregation plan. Said Plan reassigned attendance areas within M-RH for the purpose of maintaining the racial balance of students within the District in compliance with guidelines promulgated by the Office of Civil Rights. On March 24, 1975, the Office of Civil Rights issued a compliance letter. Said compliance letter reads, in pertinent part, as follows:

> "Based upon the facts previously stated, the implementation of the Desegregation Plan at the beginning of the 1975-76 school year, and barring any compliance conflicts in the reassignment of faculty and the assignment of students within school, the Office for Civil Rights has determined that the Maplewood-Richmond Heights School District has met its desegregation responsibilities under the standard outlined by Federal Judge John H. Pratt in his decision relative to Adam v. Richardson. Similarly, this office has determined that the District is, at this time, in compliance

with Title VI of the 1964 Civil Rights Act and the Departmental Regulations promulgated thereunder."

Since the inception of the Plan, M-RH has continued to implement said Plan with the monitoring thereof being done on an annual basis. As recently as 1982, the internal boundaries of school assignments were redrawn to assure continued implementation of the Plan.

On January 11, 1983, M-RH applied for participation in the "12(a)" Voluntary Plan, H(1930)83. This application was accepted by the Court on January 20, 1983, H(1978)83.

On a day-to-day basis, M-RH continues to provide its quality education programs to all students who reside within its boundaries in a non-discriminatory manner. M-RH's present racial composition of students and faculty, coupled with the creation and implementation of its own desegregation plan, afford a basis upon which M-RH is entitled to a final judgment that it has satisfied its pupil desegregation obligations and faculty affirmative action obligations.

Riverview Gardens:

In response to the decision of the Supreme Court of the United States in Brown v. Board of Education in May of 1954, Riverview acted "with all deliberate speed" to desegregate its schools and eliminate all vestiges of segregation remaining therein. Commencing in the fall of 1954, it admitted to its high school program all resident black children of high school age who desired to attend and ceased its prior practice of providing tuition and transportation to

such students who desired to attend high school programs in other districts. Commencing in the fall of 1955, Riverview ceased to operate its previously all-black elementary school as a regular school and enrolled all elementary age black pupils in the school serving the attendance area in which they resided. Since 1955, therefore, all black students of elementary or high school age attending public schools have been enrolled in the appropriate school within the Riverview District serving the attendance zone in which they reside. To the best knowledge and belief of Riverview, no resident black child of elementary or high school age has attended a public school outside of the District, unless it has been for special or vocational education.

From the 1954-55 year to the present time, Riverview has continued to provide its quality education program to all students resident within its District in a non-discriminatory manner. It has chosen to follow the "neighborhood school" concept by dividing its District into continuous, compact, and regularly-drawn areas which are served by its elementary schools. It has also instituted a junior high school program through the years and presently maintains a single junior high school as well as a single senior high school to serve the District. All schools being presently operated by Riverview serve members of both the black and white races.

Riverview for most of its history has employed members of the minority race in its schools. In 1976 a charge was filed with the U.S. Equal Employment Opportunity Commission that Riverview was discriminating against members of the black race in the employment of

teachers, but a Conciliation Agreement was reached with which Riverview complied over a five-year period, and said charge is no longer pending against the District.

In recent years, there has been a steadily increasing movement of black families into the Riverview District. According to the 1980 U.S. census, the total population of the Riverview District is 47,591, of which 8,799 are recorded as black citizens, or approximately 18.5%. In a school census conducted in September of 1982, it was determined that the student enrollment in the Riverview schools was 42% black.

Riverview has taken other formal steps to enhance its non-discriminatory position. In 1976 the Board adopted two express policies -- one directed to its employment practices, and the other to its treatment of its students and patrons -- prohibiting discrimintion based on race, among other things. The evidence will show that these policies have been scrupulously observed.

Although Riverview has chosen not to participate in the 12(a) voluntary plan, nevertheless, many of its white students have attended City magnet school programs, furthering desegregation in the City system.

Ferguson

The Ferguson District occupies a truly unique position among all the St. Louis County School Districts in that it has already undergone a Court-ordered desegregation process, has been released from active Court supervision [U.S. v. Missouri, No. 71-555C, (E.D. Mo. August 21, 1980)], and is operating its schools in compliance

with the desegregation plan approved by this Court. Its black student ratio has reached 40.5% and although it is not a party to the present interdistrict liability proceedings, it has voluntarily joined in the Agreement in Principle, H(2141)83, and the Settlement Agreement, H(2217)83, presently before the Court.

Legal Authorities

The M-RH and Riverview Districts, together with Ferguson, share with the other school districts of St. Louis County the legal position that they are not liable in this proceeding for the alleged condition of segregation in the public schools of the City of St. Louis and should not be subject to interdistrict liability in this cause. To this extent, these parties join in the joint submission of the other St. Louis County School Districts.

To the extent that Plaintiffs claim that there has been a failure to dismantle the previous dual system of education in these districts, M-RH and Riverview assert as a factual matter that this is not true. Both districts ceased their prior practice of sending black high school students out of the district for education shortly after the Brown decision and integrated their school systems. M-RH went further and adopted a formal desegregation plan in 1975 which received the approval of the Office of Civil Rights of the Department of Health, Education and Welfare. Riverview's integration occurred in a natural manner by in-migration to a point where its general population according to the 1980 U.S. Census is 18.5% black, and this District has never been subjected to an administrative investigation

or order with regard to desegregation of its schools. Having achieved a unitary status through voluntary action or natural movements, neither District should be subjected to further judicial intervention. The case is even stronger for the Ferguson District, where it has achieved unitary status following a Court-ordered desegregation plan.

In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), the United States Supreme Court said with regard to judicial intervention once unitary status has been achieved (402 U.S. 31-32):

> "At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be 'unitary' in the sense required by our decisions in Green and Alexander.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."

The Supreme Court referred to this earlier language from Swann in Pasadena City Board of Education v. Spangler, 427 U.S. 424, 96 S.Ct. 2697, 436, 49 L.Ed.2d 599 96 S.Ct. 2697 (1976), where it held that the district court, having established a racially neutral system of student assignment in the Pasadena school system by a 1970 desegregation order, could not require the school district to

rearrange its attendance zones annually so as to ensure perpetually a desirable racial mix in schools. In so holding, the Court declined to rule on whether a unitary system had been totally achieved. It was sufficient that the district court approved a plan designed to obtain racial neutrality in the attendance of students, and the initial implementation of the 1970 plan accomplished that objective.

Armour v. Nix, no. 16707 (N.D. Ga. 1979), affirmed, 446 U.S. 93, 100 S.Ct. 2146, 64 L.Ed. 2d 784 (1980), involved an issue of unitary status in the context of an Atlanta school desegregation case. In Armour, a three-judge district court found that integrated housing patterns did not exist in the Atlanta metropolitan area, and there was an interface between housing patterns and school population. However, this residential segregation was not the direct result of any government action, but was the product of a multitude of factors, including personal preferences and economic constraints. In reaching this conclusion, the court found that the defendant school districts had either been declared unitary or were operating under a court's final desegregation orders. Given this finding, the past history of segregation in those districts was no longer relevant to an inquiry into present-day constitutional violations. The court specifically noted that the plaintiffs in that case failed to establish any intent to discriminate on the part of any defendant school district during the years since the districts had been declared unitary or were operating under court-ordered plans.

The learning of the above cases is that having once achieved

unitary status, either through natural means, by compliance with administrative orders, or as a result of a formal judicial proceeding, the districts should not be subjected to further judicial scrutiny on a year-by-year basis to insure a balanced racial composition. Therefore, it is reasonable to anticipate that even in the event that a liability hearing were conducted in this case, the M-RH, Riverview and Ferguson Districts would not be found liable for desegregative relief at this time.

There is a further reason for finding that the Settlement Agreement is fair insofar as it affects these three Districts. That is for the reason that even assuming a finding of liability for past conduct of a segregative nature, the Court, in its equitable discretion, would in all likelihood not award any relief because of the present racial composition of these Districts. The Court of Appeals for the Eighth Circuit in an earlier appeal in this case emphasized the advantage of leaving undisturbed by judicial action these areas which have achieved a satisfactory level of integration. Adams v. United States, 620 F.2d 1277 (8th Cir. 1980). In the opinion, the 8th Circuit Court of Appeals quoted with approval testimony of Dr. Gary Orfield, who had testified at the trial that currently integrated schools should be left alone and every effort should be made to stabilize them for the foreseeable future (supra, p. 1293). The Court went on to hold that one of the options that could be adopted in a desegregation plan for the City of St. Louis would be to leave unchanged the boundary lines and assignment patterns for schools that are presently integrated and for this purpose, a school with a black enrollment of between 30% and 50%

should be considered to be integrated (supra, at 1296). Although the Court was there talking about individual schools, nevertheless, the concept of leaving judicially undisturbed districts such as M-RH, Riverview and Ferguson, which have achieved a satisfactory balance of black and white students in the 25% to 50% range, would seem to find approval of the Eighth Circuit Court of Appeals. Therefore, the provisions of the Settlement Agreement which award an immediate judgment in favor of these three districts with regard to desegregation and affirmative hiring liability would seem to be well within the range of judicial discretion in this case.

Conclusion

From the foregoing, it is urged by the parties herein that this Court approve the proposed Settlement Agreement, H(2217)83, as a fair, reasonable and adequate settlement of this class action proceeding pursuant to Rule 23(e) for the reasons that the provisions as they apply to these districts are appropriate in light of the possible finding of non-liability against these districts in a full liability hearing, and further, even assuming that liability is found, the little likelihood that relief would be awarded because of the current situation with regard to minority enrollment and faculty hirings.

The position of the parties herein is also supported by the reasons submitted in Joint Brief of the St. Louis County Suburban School Districts filed contemporaneously herewith.

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The undersigned hereby certifies that a copy of the above and fore-going was mailed this 25th day of April, 1983, by prepaid postage, 1st-Class U.S. Mail, to all attorneys of record.

_____