NO. X07 CV 89-4026240-S	:	SUPERIOR COURT
MILO SHEFF, ET AL.	:	COMPLEX LITIGATION DOCKET
VS.	:	AT HARTFORD
WILLIAM A. O'NEILL, ET AL.	:	FEBRUARY 22, 2010

MEMORANDUM OF DECISION

I

On July 9, 1996, our Supreme Court declared: "The uncontested evidence of the severe racial and ethnic isolation of Hartford's schoolchildren demonstrates that the state has failed to fulfill its affirmative constitutional obligation to provide all of the state's schoolchildren with a substantially equal educational opportunity. Much like the substantially unequal access to fiscal resources that we found constitutionally unacceptable in *Horton I* [*Horton* v. *Meskill*, 172 Conn. 615, 376 A.2d 359 (1977)], the disparity in access to an unsegregated educational environment in this case arises out of state action and inaction that, prima facie, violates the plaintiffs' constitutional rights, although that segregation has occurred de facto rather than de jure." *Sheff* v. *O'Neill*, 238 Conn. 1, 39-40, 678 A.2d 1267 (1996).

Acknowledging the separation of powers doctrine, the court rejected the idea of an evidentiary hearing on potential remedies before the trial court or further appellate argument.

Id., 45. "In light of the complexities of developing a legislative program that would respond to the constitutional deprivation that the plaintiffs had established, we concluded, in *Horton I*, that further judicial intervention should be stayed to afford the General Assembly an opportunity to take appropriate legislative action. . . . Prudence and sensitivity to the constitutional authority of coordinate branches of government counsel the same caution in this case. . . . We direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas. We are confident that with energy and good will, appropriate remedies can be found and implemented in time to make a difference before another generation of children suffers the consequences of a segregated public school education." (Citation omitted; internal quotation marks omitted.) Id., 45-46. In reversing the judgment of the trial court and remanding the case, the court directed the Superior Court "to retain jurisdiction in accordance with this opinion." Id., 47.

This case returns to court yet again.[1] On December 9, 2009, as amended on December 11, 2009, the plaintiffs moved this court to find a material breach[2] of the most recent stipulation

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[1] On March 6, 1998, the plaintiffs first returned to court seeking further judicial involvement, but, the court, *Aurigemma, J.*, found that the plaintiffs had returned to court too soon. See *Sheff* v. *O'Neill*, 45 Conn. Sup. 630, 667, 733 A.2d 925 (1999) ("[t]he legislative and executive branches should have a realistic opportunity to implement their remedial programs before further court intervention"). Then, after a three week hearing before Judge Aurigemma in December of 2000, the parties entered into an agreement (the 2003 stipulation) covering the 2003-2004 through 2006-2007 school years. The 2003 stipulation was approved by Judge Aurigemma as an order in this case on March 12, 2003. The plaintiffs sought judicial intervention in August, 2004 and, on June 15, 2005, the parties filed a stipulation concerning magnet school enrollments for the 2003-2006 school years together with projected enrollments for certain schools under construction. On August 31, 2006, the city of Hartford sought to intervene in this matter and, after argument, this court granted the motion on January 4, 2007.

Prior to the expiration of the 2003 stipulation on June 30, 2007, the plaintiffs, the city and the state defendants entered into negotiations for a second phase stipulation. The discussions resulted in a new stipulation and order, dated May 29, 2007, covering the period through June 30, 2012. The agreement was signed by the plaintiffs, but not by the state defendants. With the expiration of the 2003 stipulation on June 30, 2007 and the lack of approval of a new agreement, the plaintiffs once again sought judicial involvement by filing a motion for order to enforce judgment on July 5, 2007. A hearing commenced on November 6, 2007, but the parties entered into a new agreement dated April 4, 2008 (the April stipulation). On June 11, 2008, this court approved the April stipulation concerning the second phase of a "timetable for reasonable progress in reducing racial, ethnic, and economic isolation in the Hartford Public Schools until June 30, 2013." Paragraph II.B.1 of the April stipulation stated the goals of the parties: "to increase the number of Hartford-resident minority students in a reduced-isolation educational setting, and to move toward meeting demand of Hartford-resident minority students seeking placement in such settings" noting that the goal would be attained if by the 2012-2013 school year (year 5), "at least 80% of the demand for a reduced-isolation setting is met." Paragraph II.C.5 set forth the interim performance benchmark for the 2009-2010 school year (year 2) that provided "27% of Hartford-resident minority students shall be in a reduced-isolation educational setting."

[2] Section IV.C, "Material Breach and Enforcement," in relevant part, states: "1. The following failures shall be considered matters of material breach by the State . . . . b. Significant failure to meet each interim performance benchmark identified in Part II.C.5 of this Stipulation. A

(the April stipulation) arguing that the defendant, the state of Connecticut (state), failed to attain the 2009-2010 school year goal of 27 percent of Hartford-resident minority students enrolled in a reduced-isolation setting. Specifically, the plaintiffs argue that the 521 Hartford-resident minority students attending Naylor School in Hartford are not in a reduced-isolation setting meeting the desegregation standard of 75 percent[3] and the state should not have included them in their calculations to determine if the interim benchmark had been met. Hence, the plaintiffs argue that the actual percentage of Hartford-resident minority students deemed to be in a reduced-isolation setting for the current school year is 24.9 percent rather than 27.3 percent as claimed by the state. The parties filed a stipulation of facts, dated January 4, 2010 (January stipulation of facts), and this court heard argument on the plaintiffs' corrected motion on January 7, 2010.

'significant failure' shall be deemed to have occurred for a given year if performance for that year, as calculated pursuant to Part II.C.5 of this Stipulation, falls short by more than one percentage point of the annual benchmark for that year, as identified in Part II.C.5 of this Stipulation."

[3] Paragraph I.J. states: "The Desegregation Standard shall be the lesser of the Sheff Region's aggregate minority percentage enrollment plus thirty percentage points or seventy-five percent (75%). The Desegregation Standard shall be calculated for each year of the Stipulation based on that year's aggregate minority percentage enrollment figures but in no event shall it exceed seventy-five percent (75%)."

II

A.

Additional facts, set forth in the January stipulation of facts, are important to resolve this dispute and some are reproduced herein:

"1. The October 2009 Sheff region aggregate minority enrollment percentage is 45.7%. This percentage calculation is based on a total Hartford-resident minority student enrollment of approximately 21,713.

"2. Under the [April] Stipulation and Order, the desegregation standard for school year 2009-2010 is 75%.

"3. Open Choice is among those programs that the State has employed to reduce racial, ethnic and economic isolation.

"4. Until the 2009-2010 application year, Open Choice has been directed at permitting Hartford-resident students to attend public schools in nearby towns.

"5. Hartford-resident minority students enrolled in Hartford-area suburban schools through Open Choice are automatically deemed to be in a reduced isolation setting by operation of the April 4, 2008, Stipulation and Order. More than 60% of the Hartford-area suburban schools participating in Open Choice have non-minority student populations in excess of 80%.

"6. In May 2008, the State created the Regional School Choice Office to support the collaborative effort between the State and various stakeholders to support Sheff initiatives and programming to reduce racial, ethnic and economic isolation.

"7. The State Board of Education contracted with the Capitol Regional Education Council (CREC), by agreement dated May 29, 2008, to collaborate with the Regional School Choice Office and implement some of the responsibilities of the April 4, 2008 Stipulation and Order.

"8. The 2009-2010 Common Application and Schools of Choice Catalog were produced by CREC, in consultation with representatives from the State Department of Education, Hartford Public Schools, and the plaintiffs, pursuant to the May 2008 contract agreement between CREC and the State Board of Education.

"9. The 2009-2010 Common Application and Schools of Choice Catalog describe Open Choice as a program that allows Hartford students to attend public schools in nearby suburban towns and suburban students to attend public schools in Hartford, at no cost to the student. The Open Choice program that allows a suburban student to attend a Hartford public school is commonly referred to as Reverse Choice. New Haven Public Schools have operated Open Choice in this manner for several years.

"10. For the 2009-2010 school year, 1,065 suburban students timely applied to attend a Hartford public school through the Open Choice program.

. . . .

"15. The State authorized the allocation of a maximum of 75 seats in Hartford Public Schools for purposes of Reverse Choice for the 2009-2010 school year, the funding of which was based on unexpended Choice money that could not be allocated given that the number of

funded suburban seats statewide exceeded actual enrollment and the funds could not be reappropriated for other Sheff purposes without express legislative authority.

"16. Hartford Public Schools allocated seats in Naylor School as one of the Hartford schools participating in Reverse Choice. Naylor School is located in Hartford near the Wethersfield border.

"17. Naylor School in Hartford, the only Reverse Open Choice Hartford School included in the interim benchmark figures, is operating pursuant to an Enrollment Management Plan ("EMP") approved by the State Department of Education on November 24, 2009. Hartford Public Schools submitted the EMP in accordance with the EMP template prior to November 13, 2009, upon notice to Naylor from the State that the State intended to include Naylor's enrollment figures in the interim benchmark calculation. Hartford Public Schools received verbal and written notice that its EMP had been accepted. The initial acceptance notice, dated December 10, 2009, was reissued on December 30, 2009, to clarify that acceptance of the EMP applied to Hartford Sheff-related programming and was not limited to Hartford magnet schools.

"18. For 2009-2010, Naylor enrolled 665 students-134 non-minority students (20%) and 531 minority students (80%).

"19. Eleven of the 665 Naylor students are non-Hartford-resident students and were enrolled in Naylor through the Reverse Open Choice program. Ten of the 11 non-Hartford resident students are minority."

B.

The plaintiffs argue that Naylor students cannot be deemed to be in a reduced-isolation setting for three reasons:

(a) Paragraph II.C.5.c[4] of the April stipulation allowing a 5 percent increase to the 75 percent desegregation standard does not apply to Naylor "because the 521 Hartford minority students are not enrolled at Naylor *through the Open Choice program* under paragraphs I.K.2 and II.C.5.c; rather the 11 non-Hartford-resident students are;"

(b) Naylor's program "does not qualify as a voluntary interdistrict program under paragraph I.F[5] because 90.9% of the transfer students are minority and therefore such transfers do not 'contribute to the reduction of racial and ethnic isolation;'"

(c) Even if Naylor's program qualified "as a voluntary interdistrict program under paragraph I.F, the increase of 5 percentage points to the 75% limit does not apply . . . because

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[4] Paragraph II.C.5.c states: "Hartford-resident minority students who are enrolled in a Voluntary Interdistrict Program that does not provide a reduced-isolation setting will be included in any interim performance benchmark calculation or goal calculation during the term of this Stipulation only if (1) the school is operating pursuant to an approved Enrollment Management Plan pursuant to Part IV.A. below, and (2) the minority enrollment in such school does not exceed the Desegregation Standard by more than 5%. In no case shall any Voluntary Interdistrict Program be included within this exception for more than two of the five years of this Stipulation."

[5] Paragraph I. F states: "Open Choice is a voluntary interdistrict transfer program that allows students to transfer between Hartford and the suburban school districts when such transfers contribute to the reduction of racial and ethnic isolation."

paragraph II.C.5.c applies only to schools operating under an approved Enrollment Management Plan pursuant to paragraph IV.A" and that paragraph does not apply to Open Choice.

The state and the city of Hartford disagree. In its objection to the plaintiffs' motion,[6] the state argues that the Reverse Choice program utilized at Naylor School is consistent with the April stipulation's stated goals. It notes that Open Choice falls within the voluntary interdistrict programs as defined in paragraph I.A and that Open Choice is one of the "instruments employed under this Stipulation to reduce racial, ethnic, and economic isolation." Unlike the plaintiffs, it asserts that paragraph II.C.5.c applies because Naylor's enrollment is within the 80 percent desegregation standard and because it is operating pursuant to an approved enrollment management plan. It argues that paragraph II.C.5.c was designed to cover the schools that were not immediately compliant and reflected the reality that it takes time – at least a couple of years–to meet the 75 percent desegregation standard. Indeed, the state notes that this is exactly what occurred with most of the Hartford-host magnet schools. They initially opened with suburban enrollment of mostly minority students, but the non-minority student enrollment increased over time and thus, for the 2009-2010 school year, eight of ten Hartford host magnet schools were included in the benchmark figures. (See January stipulations of fact, paragraph

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[6] The state filed its objection to the plaintiff's corrected motion for material breach of stipulation on January 7, 2010. Neither the plaintiffs nor the city of Hartford, which noted its objection to the plaintiffs' motion at the hearing, chose to file responsive memoranda.

[para.] 21.) As a new participant in the Reverse Choice program, Naylor appears to be following that same pattern.

The parties, of course, differ as to the meaning of the phrase "an approved Enrollment Management Plan pursuant to Part IV.A" used in paragraph II.C.5.c. The state also rejects the plaintiffs' third argument that paragraph II.C.5.c does not apply to the Open Choice program because it is not mentioned; the state argues that paragraph IV.A is not so limiting and, moreover, paragraph IV.A.3 provides a "catch all" provision. The state also maintains that the plaintiffs' argument that the Hartford-resident minority students are not enrolled through an Open Choice plan ignores other provisions of the April stipulation and the overall intent of the parties to "increase the number of Hartford-resident minority students in a reduced-isolation educational setting" through voluntary interdistrict programs that include Open Choice and thus Reverse Choice.

Finally, the state disagrees with the plaintiffs' second argument that the Naylor program does not qualify as a voluntary interdistrict program because 90.9 percent of the transfer students are minority and therefore it does not meet the requirement of paragraph I.F that the transfers "contribute to the reduction of racial and ethnic isolation." The 90.9 percent figure translates to just ten students; in the 2009-2010 school year, Naylor has 134 non-minority students (20 percent) and 531 minority students (80 percent). (January stipulations of fact, paras.18 and 19.) The state argues that consistent with the integration patterns of the Hartford-host magnets,

discussed above, Naylor will follow the same pattern, which inevitably requires time especially in light of the demographics of the first ring of towns surrounding Hartford.[7]

III

"A stipulated judgment is not a judicial determination of any litigated right. . . . It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. . . . The essence of the judgment is that the parties to the litigation have voluntarily entered into an agreement setting their dispute or disputes at rest and that, upon this agreement, the court has entered judgment conforming to the terms of the agreement." (Citations omitted; internal quotation marks omitted.) *Gillis* v. *Gillis*, 214 Conn. 336, 339-40, 572 A.2d 323 (1990). "Although ordinarily the question of contract interpretation,

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[7] Paragraph I.I states that the "Sheff Region: As defined in the original complaint . . . includes the school districts of Avon, Bloomfield, Canton, East Granby, East Hartford, East Windsor, Ellington, Farmington, Glastonbury, Granby, Hartford, Manchester, Newington, Rocky Hill, Simsbury, South Windsor, Suffield, Vernon, West Hartford, Wethersfield, Windsor, and Windsor Locks." The first ring of towns around Hartford geographically include Bloomfield, Windsor, Newington, East Hartford, West Hartford and Wethersfield.

During the hearing before this court in November, 2007, the plaintiffs called Jack Dougherty, associate professor of educational studies at Trinity College. Dougherty discussed a report, "Missing the Goal: A Visual Guide to Sheff vs. O'Neill School Desegregation June 2007," that compiled data obtained from state sources about the school districts in the *Sheff* region and beyond. The report compared minority population by school district for the 1988-1989 and 2006-2007 school years and showed that each district's minority population, except for Hartford and Bloomfield, had at least doubled in those years. For example, Windsor's minority population increased from 31 percent in 1988-1989 to 66 percent in 2006-2007. Windsor's school district hosted thirteen Open Choice students in the 2006-2007 school year making up three-tenths of one percent of its total enrollment. In Bloomfield, the minority population increased from 74 percent in 1988-1989 to 95 percent in 2006-2007, but the report does not state how many Open Choice students attended Bloomfield's schools.

being a question of the parties' intent, is a question of fact . . . [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law." (Internal quotation marks omitted.) *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 495, 746 A.2d 1277 (2000). "Our case law, however, does not set forth a test by which to determine whether contract language is sufficiently definite to warrant its review as a question of law rather than as a question of fact." Id., 496.

"A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity. . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) Id., 498. "The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so." (Internal quotation marks omitted.) *Detels* v. *Detels*, 79 Conn. App. 467, 472, 830 A.2d 381 (2003).

A.

This dispute concerns the definiteness of the language of the April stipulation as it applies generally to the use of Reverse Choice in the Hartford public school system, and specifically, to the counting of Hartford-resident minority students attending Naylor School toward the interim performance benchmark for the 2009-2010 school year. The parties established that 27 percent of Hartford-resident minority students shall be in a reduced-isolation educational setting for the 2009-2010 school year pursuant to paragraph II.C.5.a.2. Paragraph II.C.5.c allows "Hartford-resident minority students who are enrolled in a Voluntary Interdistrict Program that does not provide a reduced-isolation setting [to] be included in any interim performance benchmark calculation or goal calculation during the term of this Stipulation only if (1) the school is operating pursuant to an approved Enrollment Management Plan pursuant to Part IV.A below, and (2) the minority enrollment in such school does not exceed the Desegregation Standard by more than 5%."

In paragraph I.A of the April stipulation, voluntary interdistrict programs are defined as "instruments employed under this Stipulation to reduce racial, ethnic, and economic isolation" and specifically include Open Choice. "Open Choice is among those programs that the State has employed to reduce racial, ethnic and economic isolation." (January stipulations of fact, para. 3.) In turn, Open Choice is defined in paragraph I.F as "a voluntary interdistrict program that allows students to transfer between Hartford and the suburban school districts when such

transfers contribute to the reduction of racial and ethnic isolation."[8] This definition permits the transfer of students both into and out of the Hartford public school system.[9] The parties also stipulate that Reverse Choice, although not specifically mentioned in the April stipulation,[10] is part of the Open Choice program. (January stipulations of fact, para. 9.) Thus, Reverse Choice, or the transfer of suburban students into the Hartford public schools, is part of Open Choice and is, therefore, a voluntary interdistrict program.

According to paragraph I.K, a reduced-isolation setting "refers to an educational setting with reduced racial, ethnic, and economic isolation." This term is further defined in subparagraph one and two: "1. An Interdistrict Magnet School, State Technical School, Regional

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[8] Unlike other paragraphs of the April stipulation including, but not limited to, paragraphs I.A, I.G, I.K, II.B, II.C.1-5, II.D, paragraph I.F's definition of "Open Choice" is the only definition that did not mention economic isolation. Interestingly, the parties use the phrase "racial, ethnic and economic isolation" in paragraph three of the January stipulations of fact.

[9] The court notes "[u]ntil the 2009-2010 application year, Open Choice has been directed at permitting Hartford-resident students to attend public schools in nearby towns." (January stipulations of fact, para. 4.) For the present school year,"1065 suburban students timely applied to attend a Hartford public school through the Open Choice program." (Id., para. 10.) "The State authorized the allocation of a maximum of 75 seats in Hartford Public Schools for purposes of Reverse Choice for the 2009-2010 school year." (Id., para. 15.)

[10] Whether the failure to discuss or to include Reverse Choice in the April stipulation was intentional or an oversight or, to a lesser degree, whether the omission of the word "economic" from the phrase in paragraph I.F was intentional or again, an oversight, ambiguity exists within the April stipulation. See *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, supra, 252 Conn. 498 ("any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms" [internal quotation marks omitted]).

Vocational Agriculture Center, or Charter School shall be deemed to provide a reduced-isolation setting if its enrollment is such that the percentage of minority students in the school does not exceed the Desegregation Standard. 2. A school that enrolls Hartford-resident minority students through the Open Choice program shall be deemed to provide a reduced-isolation setting." Thus, schools that participate in Open Choice are deemed reduced-isolation settings if they enroll Hartford-resident minority students regardless of the minority population.

By the express language of the April stipulation, a school, like Naylor, that participates in Reverse Choice as an Open Choice program should be deemed to provide a reduced-isolation setting because I.K.2 does not take into account minority population. However, Hartford-resident minority students attending Naylor are not enrolled through the Open Choice program as I.K.2 requires nor are they transfer students under I.F.

At the end of oral argument on January 7, 2010, plaintiffs' counsel indicated that Hartford-resident minority students at Naylor could be counted toward the interim benchmark only if Naylor met the 75 percent desegregation standard, not the 80 percent desegregation standard.[11] Such an interpretation is not supported by language of the April stipulation or its underlying intent. Under paragraph II.C.5.c, Hartford-resident minority students enrolled in a voluntary interdistrict program that does not provide a reduced-isolation setting will be included in any interim performance benchmark calculation if the school operates under an enrollment

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[11] Plaintiffs' counsel stated, "[W]e wouldn't be here if [Naylor] met the seventy-five percent number."

management plan pursuant to Part IV.A and the minority enrollment in the school does not exceed 80 percent. Hartford-resident minority students enrolled at Naylor may not be enrolled *through* Open Choice, but are enrolled *in* a voluntary interdistrict program–Reverse Choice as part of the Open Choice program. It is undisputed that Naylor does not currently provide a reduced-isolation setting. Therefore, the Hartford-resident minority students enrolled at Naylor should be included in the benchmark calculation if it has an enrollment management plan pursuant to Part IV.A and its minority enrollment does not exceed 80 percent. Naylor undisputedly has an enrollment management plan and its minority enrollment does not exceed 80 percent.[12]

Nevertheless, the plaintiffs argue that Part IV.A does not apply to a Reverse Choice school. A review of Part IV.A indicates that none of the three subparagraphs specifically mentions Open Choice or Reverse Choice. Subparagraph one prescribes enrollment management plans for existing magnet schools not meeting the desegregation standard and subparagraph two concerns enrollment management plans for new interdistrict magnet schools, charter schools, regional vocational schools, agricultural centers or state technical schools not meeting the desegregation standard in their second year of operation. Subparagraph three is, however, more general and, while it does not mention any particular school, it provides that

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[12] For the present school year, Naylor School enrolled a total of 665 students which includes eleven transfer students: 134 non-minority (20 percent) and 531 minority students (80 percent); and ten of the eleven transfer students were minority students. (January stipulation of facts, paras. 18 and 19.)

"[t]he State is responsible for overseeing the development, implementation, and effectiveness of each Enrollment Management Plan. The Enrollment Management Plan shall be directed toward compliance with the Desegregation Standard within the period specified in such Plan approved by the State." Thus, although it does not mention a particular voluntary interdistrict program, subparagraph three sets forth requirements of general applicability for all enrollment management plans. Hence, a Reverse Choice school, like a magnet school, that does not meet the desegregation standard must operate under an enrollment management plan pursuant to Part IV.A, in addition to other requirements, and must comply with the dictates of the state concerning the "development, implementation, and effectiveness" of said plan or the enrollment management plan must "be directed toward compliance with the Desegregation Standard within the period specified in such Plan." The fact that Reverse Choice is not specifically listed does not mean that Part IV.A does not apply; subparagraph three sets forth the requirements for all enrollment management plans. Indeed, if simply moved to the beginning and renumbered as subparagraph one, it would be patently clear. This court finds that Part IV.A applies to a Reverse Choice school.

Additionally, as previously stated, Reverse Choice is not specifically mentioned in the April stipulation, but its role as part of the Open Choice program is not questioned. As noted by the state, Reverse Choice is provided for in the comprehensive plan and, in fact, is provided for

in General Statutes §10-266aa (c).[13] With the strong demand to attend Hartford public schools as evidenced by the 1065 suburban students applying[14]; (January stipulations of fact, para. 10); the Reverse Choice program will likely be essential in reducing racial, ethnic and economic isolation in the Hartford schools.[15]

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[13] Section 10-266aa, in relevant part, provides: "b) There is established, within available appropriations, an interdistrict public school attendance program. The purpose of the program shall be to: (1) Improve academic achievement; (2) reduce racial, ethnic and economic isolation or preserve racial and ethnic balance; and (3) provide a choice of educational programs for students enrolled in the public schools. The Department of Education shall provide oversight for the program, including the setting of reasonable limits for the transportation of students participating in the program, and may provide for the incremental expansion of the program for the school year commencing in 2000 for each town required to participate in the program pursuant to subsection (c) of this section.

"(c) The program shall be phased in as provided in this subsection. (1) For the school year commencing in 1998, and for each school year thereafter, the program shall be in operation in the Hartford, New Haven and Bridgeport regions. The Hartford program shall operate as a continuation of the program described in section 10-266j. Students who reside in Hartford, New Haven or Bridgeport may attend school in another school district in the region and students who reside in such other school districts may attend school in Hartford, New Haven or Bridgeport . . . ."

[14] The state noted in its objection to the plaintiffs' motion that during the 2007 hearing before this court, the plaintiffs' expert, Dr. Gerald Stevens, agreed that the *Sheff* remedy would be more effective if the Hartford school system is healthy.

[15] At oral argument on January 7, 2010, counsel for the state argued: "Using Reverse Choice, including Naylor, even at these early stages, creates an opportunity for the state to demonstrate that with time, a voluntary regional school district system can work, and offer the benefits of a reduced isolation setting to both Hartford and suburban students.

"Denying the state this tool creates a situation in which aside from the 3500 or so Hartford students who are in magnet schools, or charter schools or the [vocational-technical] schools, approximately 18,000 minority [students] who are in Hartford, with a demand for desegregated settings can only have this opportunity if they leave Hartford under traditional open choice to go to the surrounding suburban districts.

Furthermore, more than 60 percent of the Hartford-area suburban schools participating in Open Choice have non-minority student populations in excess of 80 percent. (Id., para. 5.) Therefore, Naylor, with 134 non-minority students, or 20 percent of its student body, might be far more diverse than a suburban school.

B.

"A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Internal quotation marks omitted.) *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, supra, 252 Conn. 498. There is no question here about the overall intention and good faith of all parties to meet the mandates of our Supreme Court's directive. It is clear from the April stipulation and the January stipulations of

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"A failure to count Naylor, even and especially at this stage, puts forth the message that the Hartford public schools have no worth as a viable option for obtaining a quality education.

"It makes no sense to argue, as the plaintiffs must, that two minority students attending an Avon public school make that an integrated setting for purposes of meeting the [desegregation] standard.

"But two white students attending the Naylor School in Hartford do not create an integrated setting for the same purpose. We're not saying that we count all the kids in the suburban school[s]. We're saying, though, that those Hartford minority students should be counted for purposes of being in an integrated setting.

"And so, plaintiff's argument eventually boils down to a statement that a minority student coming from a suburban town into Hartford somehow isn't as good to count as a non-minority student coming from the same town, thus making this case solely fixated on race and not on economic or ethnic isolation."

fact that "the parties have a mutual interest in reducing the racial, ethnic, and economic isolation of students in the Hartford Public Schools."

Yet, it is also clear that the April stipulation did not explicitly mention the term Reverse Choice or how Hartford-resident minority students in Reverse Choice should be counted toward the interim goal. As noted earlier, it could be argued that pursuant to the paragraph I.F definition of Open Choice that Naylor is deemed a reduced-isolation setting regardless of its minority student population and, therefore, all of Naylor's Hartford-resident minority students should be counted to the goal. It could also be asserted that no Hartford-resident minority students in a school that participates in Reverse Choice should be counted toward the interim goal because the April stipulation does not expressly provide for it. Thus, ambiguity exists in the April stipulation. See *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, supra, 252 Conn. 498.

The state attempted to resolve the confusion concerning Reverse Choice more than one year ago, but to no avail. The January stipulations of fact, extrinsic factual evidence to the April stipulation, assist in determining the intent of the parties. See *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, supra, 252 Conn. 495; see also *TIE Communications, Inc.* v. *Kopp*, 218 Conn. 281, 288-89, 589 A.2d 329 (1991) (evidence, also called parol evidence, cannot be utilized to vary or contradict terms of integrated agreement, but may be admitted to explain ambiguities or to add missing term to agreement that indicates on its face that it does not set forth complete agreement). Those January stipulations of fact, submitted by agreement of the

parties for the sole purpose of resolving this dispute, indicate that Reverse Choice, a program authorized by statute, is clearly a part of the Open Choice program and one of the "programs employed by the State to reduce racial, ethnic and economic isolation." Further, Naylor School is "one of the Hartford schools participating in Reverse Choice." Finally, as noted in the January stipulation of facts and confirmed by the letter, dated February 25, 2009, attached to the January stipulation of facts, the plaintiffs took no position on Reverse Choice other than to raise funding issues. This evidence resolves the ambiguities in the contract by clearly demonstrating the parties' intent to include Reverse Choice as an appropriate voluntary interdistrict program as part of the Open Choice program. As such, Naylor School qualifies as providing a reduced-isolation setting pursuant to paragraph I.K.2. Further, paragraph II.C.5.c evinces the parties understanding, through their experience with the Hartford-host magnet schools, that a few years are needed to commence and operate a program that will meet the 75 percent desegregation standard. Paragraph II.C.5.c appropriately applies to the 521 Hartford-resident minority students attending Naylor School and they were properly counted toward the interim benchmark.[16]

IV.

For the above reasons, this court denies the plaintiffs' corrected motion for material breach of the April stipulation and sustains the state's objection thereto.

Berger

Berger, J.

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[16] The court notes that the interim period is expiring and issues remain as to the changing demographics of the region; see footnote 7; and the ambiguities in the April stipulation.