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

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	No. 80 CV 5124
BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendants.	)	Judge Charles P. Kocoras

NOTICE OF MOTION

TO: Ruth M. Moscovitch
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PLEASE TAKE NOTICE that on **October 27, 2004** at **9:30 a.m.**, plaintiff United States shall appear before the Honorable Chief Judge Kocoras, or before such other Judge sitting in his place and stead, at the United States District Court for the Northern District of Illinois, 219 South

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Dearborn Street, Chicago, Illinois, and then and there present the attached **MOTION OF UNITED STATES TO ENFORCE PROVISIONS OF THE MODIFIED CONSENT DECREE**, a copy of which is attached and hereby served upon you.

Dated at Washington, D.C. this 12 day of October, 2004.

Respectfully submitted,

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MOTION OF UNITED STATES TO ENFORCE PROVISIONS OF THE MODIFIED CONSENT DECREE

After extensive negotiations,[1] the United States hereby moves to enforce certain obligations of the Modified Consent Decree against Defendant Chicago Public Schools ("CPS"). In support of this motion, Plaintiff states as follows.

1. On March 1, 2004, this Court approved the jointly proposed Modified Consent Decree and expressed its intent to review the case at the end of the 2005-06 school year to determine if dismissal would be appropriate at that time.

2. Appendix D of the Modified Consent Decree established deadlines to ensure implementation of certain changes required by the Modified Consent Decree in time for the 2004-05 school year. Given the limited duration of the Modified Consent Decree, full and timely compliance with its deadlines is critical.

3. Deadlines for certain obligations enumerated in the Modified Consent Decree passed on April 1, 2004, May, 1, 2004, June 1, 2004, July 1, 2004, and August 1, 2004, yet the CPS failed

[1] The United States continues to attempt to resolve other outstanding obligations of the Modified Consent Decree with the CPS.

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to fulfill several of these obligations in a timely and/or complete manner as explained herein.

4. Items 14 and 15 of Appendix D require the CPS to report the schools available for majority-to-minority ("M-to-M") transfers by July 1 of each school year and to publicize the availability of M-to-M transfers by August 1 of each school year. Under the M-to-M policy, minority students may transfer from schools that are less than 40% white to schools that are more than 40% white, and white students may transfer from schools that are more than 40% white to schools that are less than 40% white.

5. The CPS' obligation to offer M-to-M transfers is not new. Under the 1982 Student Assignment Plan, which preceded the Modified Consent Decree, students had "the right to transfer" on "a majority-to-minority basis." See Student Assignment Plan at 190-91. The Modified Consent Decree merely continues this obligation, yet the CPS has recently taken the position that it need not provide M-to-M transfer opportunities until the 2005-06 school year. There is nothing in the Modified Consent Decree to support this erroneous interpretation, and the CPS' obligation should be enforced pursuant to the terms set forth in paragraphs 6 and 7 below.

6. The CPS has informed the United States that no M-to-M transfer opportunities will be available for minority students this school year or next school year because the schools with enrollments that are *over 50%*[2] *white* have no seats available and any seats that become available will go to No Child Left Behind ("NCLB") transfers. This is impossible to verify, since the CPS has not provided the entire analysis of open enrollment transfers required by item 13 of Appendix D. But even more significantly, the CPS admittedly is permitting 801 white open enrollment transfer students to fill seats in the over 50% white schools. The Modified Consent Decree requires the CPS to take

[2] The United States notes that the proper frame of reference for M-to-M transfer opportunities for minority students are schools with enrollments that exceed 40% white, not 50%.

steps to redress any negative impact that open enrollment transfers are having on desegregation in a receiving or sending school and therefore requires the CPS to deny open enrollment transfers that take seats away from M-to-M transfers. See Modified Decree ¶ I(E)(2)(a).

The CPS' M-to-M study discloses that *at least* 658 of the 801 white open enrollment transfer students at the schools referred to above take up seats that should be prioritized for M-to-M transfers.[3] In addition, there are approximately 117 white open enrollment transfer students at Hitch, Sutherland, and Twain (which were not included in the M-to-M study), who are taking up seats that should be prioritized for M-to-M transfers as well. These combined 775 seats (based on the limited information thus far provided) should be used for M-to-M transfers or desegregative NCLB transfers.

7. Since the school year has already commenced, the United States does not seek an order requiring the immediate return of these students to their zoned neighborhood schools. However, the CPS should be ordered to offer some seats at these schools for M-to-M transfers or desegregative NCLB transfers this year. While the CPS contends that there is no space available at the over 50% white schools, this argument rings hollow: these schools somehow are managing to make space available for the 801 white open enrollment transfers. For this school year, the CPS should identify any available seats at the over 40% white schools and publish the availability of these seats for M-to-M transfers and/or desegregative NCLB transfers by no later than November 1, 2004, so that students can voluntarily transfer during this school year. Next school year, the CPS should be required to adhere to the requirements of the Modified Consent Decree and disallow all open enrollment transfers

[3] The 143 white open enrollment transfers at Columbus and Beard were subtracted from the 801 figure because without these 143 transfers, the percentage of white enrollment at these two schools would not be over 40% in which case M-to-M transfers by minority students would not be an option. At the under 40% white schools, M-to-M transfers would be an option for white students who transfer from a school that is over 40% white.

that impede desegregation, including those that take seats away from M-to-M transfers, and should include these newly available seats when it publicizes the availability of M-to-M and/or desegregative NCLB transfers.

8. Item 37 of Appendix D requires the CPS to "[r]eview/update/publish the guidelines for allocating deseg[regation] funds, approving programs for which the funds are used, and monitoring how such funds are used at each school" by April 1, 2004. The May 27, 2004 desegregation funding guidelines fail to "ensure that the amount of desegregation funds allocated to the magnet cluster schools each year does not exceed the amount of desegregation funds allocated to (1) magnet schools and programs and specialized schools, or (2) compensatory and supplemental programs for that year," as paragraph V(B(1)(d) of the Modified Consent Decree requires. The Addendum submitted by the CPS on October 1, 2004, continues to ignore this latter requirement. The Addendum also fails to include language explaining that when allocating desegregation funds for *compensatory* programs, priority must go to "schools that do not receive funding for compensatory, supplemental or magnet programs, including clusters." Modified Decree ¶ V(B)(1)(b). The CPS must produce revised guidelines that comply with all terms of the Modified Consent Decree.

9. Even more problematic are the proposed allocations of the desegregation funds. The CPS proposes to provide approximately $40.1 million to magnet clusters, approximately $42.3 million to magnet schools, magnet programs, and specialized schools, and only $9.2 million to compensatory programs. The amount allocated for magnet clusters violates paragraph V(B(1)(d) of the Modified Consent Decree by exceeding the amount allocated to compensatory programs by over $30 million.

The CPS should be enjoined from spending more than one third of the desegregation budget on magnet clusters and should produce a revised desegregation budget for this school year that complies with paragraph V(B(1)(d) of the Modified Consent Decree. The funds freed up by reducing

the desegregation funding for magnet clusters to a compliant level should be reallocated to compensatory programs, magnet schools/programs, or specialized schools consistent with the Modified Consent Decree. In deciding which magnet clusters to remove from this year's desegregation budget, the CPS should begin by removing magnet clusters that are not racially identifiable such as: Belding, Blaine, Boone, Budlong, Byrne, Clay, Dore, Grissom, Graham, Gray, Grimes, Hale, Kinzie, Solomon, and Stevenson. See Modified Decree ¶ V(B)(1)(d).

10. The CPS must ensure that future desegregation budgets comply with all of the terms of the Modified Consent Decree, especially the limits imposed on magnet clusters. To the extent the May 24, 2004 desegregation funding guidelines allow schools that are not currently implementing choice programs to submit proposals in the spring of 2005, the CPS must ensure that if it funds any proposals for magnet clusters, it does not fund them in a manner that violates the Modified Consent Decree.

11. The United States has attempted to obtain compliance with the obligations outlined in paragraphs 4 through 10 above, but its efforts have been unsuccessful.

WHEREFORE, for the reasons set forth above Plaintiff United States respectfully requests that the Court grant this Motion and order the CPS to comply with the obligations set forth above in the manner prescribed in paragraphs 7-10 and by no later than November 1, 2004, so that the requisite changes take effect during this school year.

Respectfully submitted,

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DATED: October 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of October 2004, I served a copy of United States' Motion to Enforce Provisions of the Modified Consent Decree via regular mail and facsimile upon the following counsel of record:

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