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

UNITED STATES' MOTION FOR AN ORDER TO SHOW CAUSE REGARDING THE CHICAGO PUBLIC SCHOOLS' VIOLATIONS OF THIS COURT'S DECEMBER 7, 2004 ORDER AND PARAGRAPH V.B.1.c OF THE MODIFIED CONSENT DECREE AND FOR A FULL REMEDY OF THE CPS' 2004-05 DESEGREGATION FUNDING VIOLATIONS IN THE 2005-06 SCHOOL YEAR

Plaintiff United States respectfully moves this Court for an order directing the Defendant Chicago Public Schools ("CPS") to show cause why it should not be held in contempt for violating this Court's December 7, 2004 Order and paragraph V.B.1.c of the Modified Consent Decree ("MCD") through its 2004-05 and 2005-06 desegregation budgets. The United States also moves for a complete remedy of the CPS' 2004-05 desegregation funding violations in the 2005-06 school year. Given the start of school on September 6, 2005, the United States asks that the CPS be ordered to show cause regarding its violations of this Court's Order and the MCD and to produce a 2005-06 desegregation budget that fully complies with the MCD by September 1, 2005.

I. Background

In its Memorandum Opinion of December 7, 2004 ("Mem. Op."), this Court granted the United States' motion to enforce the provisions of the MCD regarding the CPS' desegregation budget and majority-to-minority ("M-to-M") transfers. In doing so, this Court rejected the CPS' rationale for analyzing spending of the desegregation funds and ordered the CPS to achieve some

degree of compliance with respect to its desegregation budget and M-to-M transfers by the second semester of the 2004-05 school year and full compliance in the 2005-06 school year. Mem. Op. at 4-8. The CPS filed status reports on December 22, 2004, and January 31, 2005, regarding its implementation of the Court's Order. On February 24, 2005, the United States notified the Court that the CPS had not fully implemented the Court's Order and moved for the appointment of a monitor for the remainder of the MCD. On March 3, 2005, the Court denied this motion, and the United States advised the Court that it would attempt to resolve its disputes about M-to-M transfers and the desegregation budget with the CPS, and would file for relief if needed.

Since that time, the parties have engaged in discussions and exchanged correspondence regarding M-to-M transfers and the desegregation budget. The parties agreed that the CPS will offer approximately 779 M-to-M seats for the 2005-06 school year at schools with over 40% white enrollment and will provide transportation to such schools "via existing CPS bus routes or through the provision of Chicago Transit Authority fare cards to a parent/guardian and the students (grades K-8)." CPS' Renewed Motion at 6. Despite their diligent efforts, the parties have not resolved their disputes regarding the desegregation budgets for the 2004-05 and 2005-06 school years.

The United States maintains that the CPS' reallocation of desegregation funds in the 2004-05 school year failed to comply with the Order of December 7, 2004. The United States also has discovered that other 2004-05 desegregation budget allocations violated paragraph V.B.1.c of the MCD because the CPS allocated desegregation funds for types of transportation not authorized by the MCD. Through letters dated August 1 and 19, 2005, the United States learned that the 2005-06 desegregation budget fails to remedy the CPS' 2004-05 funding violations and violates the December 7, 2004 Order and paragraph V.B.1.c of the MCD. Although the United States has yet to

receive sufficient information about the 2005-06 desegregation budget to determine whether it violates the MCD in additional ways, the United States is moving for relief now based on the violations identified to date because school starts on September 6, 2005.

II. Request for Relief

Based on the discussion below, the United States moves this Court for an order directing the CPS to:

1. Show cause by September 1, 2005, why it should not be held in contempt for violating the December 7, 2004 Order by reallocating insufficient desegregation funds in the 2004-05 school year;

2. Show cause by September 1, 2005, why it should not be held in contempt for violating the December 7, 2004 Order by failing to produce a compliant 2005-06 desegregation budget;

3. Show cause by September 1, 2005, why it should not be held in contempt for violating paragraph V.B.1.c of the MCD by allocating desegregation funds for unauthorized transportation;

4. Produce a 2005-06 desegregation budget that complies fully with paragraph V of the MCD by September 1, 2005; and

5. Fully remedy its desegregation funding violations from the 2004-05 school year by allocating an additional $17.8 million to compensatory programs in the 2005-06 desegregation budget due to the CPS' refusal to comply with the Court's directive to remedy these violations.

III. The CPS Should be Ordered to Show Cause Why it Should Not be Held in Contempt for Violating the December 7, 2004 Order by Failing to Reallocate Sufficient Desegregation Funds in the 2004-05 School Year

Last year, the United States moved for partial relief to address improper allocations of desegregation funds by the CPS in the 2004-05 school year. The 2004-05 desegregation budget

revealed that the CPS had allocated $40.1 million to magnet clusters and only $9.2 million to compensatory programs contrary to the provisions of paragraph V.B.1.d of the MCD, which prohibits the CPS from allocating more desegregation funds to magnet clusters than to compensatory programs in a given school year. The budget data also showed that the CPS allocated $1.7 million of the $9.2 million in compensatory program funds to non-racially identifiable schools, which are not authorized to receive such funds under paragraph V.B.1.b of the MCD. Recognizing the difficulty of reallocating funds mid-year, the United States moved for partial relief of these violations by requesting a reallocation of only $7.7 million of the $14.5 million in improper funds by second semester.[1] See U.S. Mot. to Enforce Provisions of MCD of Oct. 13, 2004, at 4-5.

The Court rejected the CPS' rationale that non-desegregation funds spent on compensatory programs should be counted as part of the compensatory portion of its desegregation budget, finding this argument "fundamentally at odds with the plain language of the decree." Mem. Op. at 6 (footnote omitted). The Court made clear that "[t]he money specified as 'desegregation funds' within the decree is the sole amount that can be taken into account when calculating parity of allocation." Id. The Court also concurred with the United States' interpretation of the MCD that "desegregation funds should not be used at" non-racially identifiable clusters or for compensatory programs at non-racially identifiable schools. Id. at 7. Because the parties and the amici used different racial enrollments in their filings, the Court ordered the CPS "to realistically appraise its

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[1] The CPS has since asserted that part of the $7.7 million actually went to racially identifiable schools such that only $6.6 million of the $7.7 million was improperly allocated. See CPS Status Report of Jan. 31, 2005 ("Status Report II") at 3. The United States, however, subsequently learned that $4.8 of the $9.2 million reported for compensatory programs actually went to transportation as explained below. See infra discussion regarding transportation at 6-7.

allocation of funds with respect to the current racial and ethnic make-up of its schools, consistent with the methodology expressed within the United States' briefs, and reallocate any amounts in accordance with the interpretation of the MCD expressed above" by second semester. Id. at 7-8.

Based on information provided in its status report of January 31, 2005, the CPS should have reallocated a total of $6.6 million of its desegregation funds to the racially identifiable schools: (a) the $5,425,026 in magnet cluster funds from the non-racially identifiable schools and (b) the $1,154,469 in compensatory funds from the non-racially identifiable schools. See Status Report II at 3 & Ex. B.[2] Instead the CPS reallocated only $725,000. Id. at 3-4. The $725,000 reallocation included $75,000 for three (3) vacant teacher positions and "$650,000 in desegregation budgeted school-based positions that are currently allocated to integrated magnet cluster and non-cluster/non-magnet integrated schools." Id. The CPS also represented that the $650,000 would be reallocated "to open 32 additional school-based positions . . . in 17 racially isolated schools that are currently not receiving any desegregation funds." Id. at 4.

Subsequent information provided by the CPS to the United States at the end of March

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[2] As we explained in our February 23, 2005 Motion of United States to Enforce Provisions of the Modified Consent Decree:

> If the cluster funds for Agassiz ($497,340) and New Field School ($112,585.53) are subtracted from the $6,034,951.53 figure from Ex. 11 of the United States' Reply, then the amount of improper cluster funds for non-racially identifiable schools is $5,425,026. If the $526,321 from the 8 racially identifiable schools in Ex. B of the CPS' second status report that received "compensatory" funds are subtracted from the $1,680,790 figure in Ex. 11 of the United States' Reply, then the amount of improper compensatory funds at non-racially identifiable schools is $1,154,469.

U.S. Mot. to Enforce of Feb. 23, 2005, at 4 n.4.

shows that the CPS reallocated funds for 86 teacher aides.[3] See E-mail from Sherri Thornton to Will Rhee of March 30, 2005 (6:22 PM) (Ex. A); Telephone Conference between CPS and United States of Mar. 31, 2005. Only 22 of the 86 teacher aide positions had been filled as of March 30, 2005, see Ex. A, such that most of the affected schools received no benefit last year. The exact salary for some of these 22 filled positions cannot be determined from Exhibit A, but if the average salary of each such position is used,[4] the CPS appears to have reallocated only $182,476 because 64 of the 82 positions remained vacant. See Estimated Reallocation of $182,476 for the 22 Filled Teacher Aide Positions (Ex. B). If one adds this $182,476 to the $75,000 reallocated for the three vacant positions, see Status Report II at 3, the CPS appears to have reallocated only $0.26 million in response to the December 7, 2004 Order. This amount is a far cry from the $6.6 million that the CPS' own information showed had been improperly given to non-racially identifiable schools. See id.

Information subsequently provided by the CPS to the United States also shows that $4.8 of the $9.2 million listed for compensatory programs was spent on transportation. See E-mail from Sherri Thornton to Will Rhee of March 30, 2005 (6:18 PM) (Ex. C) Attach. 1 at 3 (showing $9,217,746 for "Reported Original" and $4,818,818 for "Transportation"). Paragraph V of the MCD makes clear that the transportation part of the desegregation budget is distinct from the compensatory part and that the amount of funding for the compensatory part must at least equal the

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[3] Based on the CPS' representation that the "positions" funded at integrated magnet clusters were magnet theme teachers, the United States' understood that at least some of the reallocated positions at the racially identifiable schools also would be teachers.

[4] As Exhibit B shows, the average salary for the 22 filled positions was calculated by dividing the total funds reallocated (i.e., the "$ Reallocation" column) at a given school by the total number of filled and vacant positions (i.e., the "Grand Total" column).

amount for the magnet cluster part. Exhibit C further shows that although $4.4 of the $9.2 million was spent on compensatory "personnel," approximately $0.5 million of the $4.4 million was improperly spent on personnel at six integrated schools. See id.[5]

Thus, to comply with the Court's instruction to "reallocate any amounts in accordance with the interpretation of the MCD expressed above," Mem. Op. at 8, when $4.8 million in transportation funds had been improperly categorized as compensatory funds and $0.5 million in compensatory funds had been improperly given to integrated schools, the CPS should have reallocated $5.3 million to redress the improper portions of the $9.2 million originally reported for compensatory programs.[6] Adding this $5.3 million to the improper $5.4 million in magnet cluster funds acknowledged in the CPS' status report[7] shows that the CPS should have reallocated a total of $10.7 million to compensatory programs at racially isolated schools by the second semester of the 2004-05 school year to achieve at least a partial remedy of its violations. Instead, the CPS appears to have reallocated only $0.26 million for the three vacant positions identified in its Status Report and the 22 filled teacher aide positions listed in Exhibit B. Because a reallocation of only $0.26 million fails to comply with the December 7, 2004 Order or to remedy

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[5] The attachment to Exhibit C shows a total of $4,398,928 for "Personnel" and a total of $527,469 at the integrated schools of Christopher ($131,904), Marti ($35,273), Fleming Branch ($72,444), Prussing ($29,261), Rogers ($196,637), Sauganash ($32,927), and Smyser ($29,023).

[6] In its January 31, 2005 Status Report, the CPS represents that 8 schools identified by the United States as improperly receiving compensatory programs are actually racially identifiable schools and that their funding therefore should be subtracted from the $1.7 million alleged by the United States, leaving a total of only $1.1 million in improper funds. See Status Report II at 3 & Ex. B. Exhibit C, however, shows that $5.3 million of the $9.2 million was improperly allocated because $4.8 million went to transportation and $0.5 million in compensatory personnel went to ineligible schools. Thus, $5.3 million, not $1.1 million, should have been reallocated.

[7] See supra discussion of the $5,425,026 in improper magnet cluster funds at 5 and n. 2.

its violations, the CPS should be ordered to show cause why it not be held in contempt for violating this Order.

IV. The CPS Should be Ordered to Show Cause Why it Should Not be Held in Contempt for Violating the December 7, 2004 Order by Failing to Produce a Complaint Desegregation Budget for the 2005-06 School Year

For the 2005-06 school year, this Court ordered the CPS to "promulgate guidelines that provide for all of the obligations in ¶ V(B)(1)[8] and allocate the desegregation funds referenced within the MCD *without respect to other monies that may be spent on the activities described in that section of the decree.*" Mem. Op. at 8 (emphasis added). Hoping to resolve its funding-related disputes with the CPS, the United States began requesting information about the 2005-06 desegregation budget in March 2005. To this date, however, the United States has yet to receive desegregation budget information in a format that permits a complete assessment of the CPS' compliance with its funding obligations.[9] On July 1, 2005, the CPS provided the United States with only a draft aggregate desegregation budget for the 2005-06 school year, see FY06 Tentative Budget (Awaiting CPS Board Approval) Organized By Chart of Accounts' Object Value (dated June 30, 2005) (Ex. G), approximately three months after the April 6, 2005 date by which it had

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[8] The CPS has yet to publish revised guidelines even though it committed to doing so by May 15, 2005. See Letter from Jack Hagerty to Emily McCarthy of Apr. 20, 2005 (Ex. D) at 2. In its letter of August 19, 2005, the CPS states that it will publish revised guidelines on its website but provides no time-line for this. See Letter from Jack Hagerty to Emily McCarthy of August 19, 2005 (Ex. E) at 1.

[9] Last year, the CPS produced a report identifying "the total amount of desegregation funds allocated by program and by school" as paragraph V.B.2 requires. See E-mail from Sherri Thornton to Jeremiah Glassman of Aug. 10, 2004 (Ex. F). This report enabled the United States to assess whether the desegregation funds went to the appropriate schools and whether the amount of such funds spent on the four permissible programs (i.e., magnets, compensatory programs, magnet clusters, and transportation) complied with paragraph V. Although the United States requested a comparable report for the 2005-06 school year on August 3, 2005, it has yet to receive one.

promised to submit a more detailed budget. See E-mail from Sherri Thornton to Will Rhee of Apr. 4, 2005 (Ex. H) at 4. On August 19, 2005, the CPS produced a final 2005-06 desegregation budget of $103,231,746.[10] See Final Chicago Public Schools FY06 Desegregation Budget, CPS001168 (Ex. I). This budget represents that the "Category Totals" for (1) compensatory programs ($29,752,022), (2) magnet and speciality schools ($38,822,414), and (3) magnet clusters ($17,934,629) no longer give more funds to magnet clusters than to compensatory programs. See id.

The Category Totals do not comply with the December 7, 2004 Order because the CPS has counted at least $17.1 million in funds spent outside of the desegregation budget in the 2004-05 school year as desegregation funds for compensatory programs in the 2005-06 school year. In a telephone conference with the United States on March 31, 2005, the CPS proposed increasing the "desegregation funds" for compensatory programs by $17.1 million by moving $9.5 million in state Pre-Kindergarten funds, $6.5 million in state bilingual funds, and $1.1 million for After School Matters from outside the desegregation budget into the desegregation budget for the 2005-06 school year. The United States expressed disapproval because this recasting of funds violates the Court's instructions not to count money outside of the desegregation budget as part of the desegregation budget. See Mem. Op. at 6, 8. During a conference call between the parties on August 8, 2005, the CPS confirmed that this $17.1 million was outside the desegregation budget in the 2004-05 school year and was moved into the final 2005-06 desegregation budget. On August 19, 2005, the CPS identified 85 "previously non-desegregation budgeted" state Pre-K and state

[10] On August 1, 2005, the CPS produced a desegregation budget in a format that the United States was unable to analyze without further information. The August 19 budget was produced in response to the United States' request for further information.

bilingual positions that were moved into the 2005-06 desegregation budget via this $17.1 million as well "29 previously non-desegregation budgeted full day kindergarten programs" and four additional programs that were moved into the desegregation budget: gifted, international baccaleaureate ("IB"), advanced placement ("AP"), and selective enrollment. See Ex. E at 3-4. The amounts moved into the budget for these four programs and the 29 kindergarten positions are not disclosed but are in addition to the $17.1 million.

Instead of actually increasing the compensatory portion of the 2005-06 desegregation budget by reallocating desegregation funds from magnet clusters and non-racially identifiable schools to racially identifiable schools as the December 7, 2004 Order required, the CPS has simply moved more than $17.1 million from outside the desegregation budget into the desegregation budget. The rationale for moving these funds is the same as that rejected by this Court when the CPS argued that the total amounts spent on compensatory programs, rather than just the desegregation amounts spent on these programs, should be compared with the desegregation amounts spent on magnet clusters. See Mem. Op. at 6 (explaining that "[t]he money specified as 'desegregation funds' within the decree is the sole amount that can be taken into account when calculating parity of allocation"). Furthermore, if the $17.1 million is subtracted from the $29,752,022 reported for compensatory programs in Exhibit I, the amount of desegregation funds for compensatory programs is only $12,384,792. The actual amount allocated for compensatory programs is less than $12,384,792 because the amounts for the 29 kindergarten positions and the four additional programs moved into the 2005-06 desegregation budget are unknown at this time and have yet to be subtracted from this figure.[11] However low the final amount may be, it is

[11] It appears that the four additional gifted, IB, AP, and selective enrollment programs moved into the 2005-06 desegregation budget were moved in as "compensatory programs." See

already clear that the CPS has violated the December 7, 2004 by again allocating more desegregation funds to magnet clusters than compensatory programs because $12,384,792 is less than the $17,934,629 reported for magnet clusters in Exhibit I.

The Court's determination that compensatory programs funded outside of the desegregation budget, (i.e., those identified in paragraph V.A), cannot be counted toward the compensatory programs funded by the desegregation budget, (i.e., those identified in paragraph V.B.1.b), is consistent with not only the language and structure of the MCD, but also with one of its main goals: to compensate racially identifiable schools for the CPS' past segregation by providing them with something extra. There is nothing extra about the state Pre-Kindergarten, state bilingual, after-school, kindergarten, gifted, IB, AP, and selective enrollment positions that the CPS moved into this year's desegregation budget because both non-racially identifiable and racially identifiable schools receive these positions. See E-mail from Sherri Thornton to Jeremiah Glassman of March 1, 2005 (Ex. J) (listing such programs). In other words, the non-racially identifiable schools continue to receive these positions outside the desegregation budget, but the racially identifiable schools now receive such positions through the 2005-06 desegregation budget even though these schools would receive these positions if the desegregation budget did not exist. As a result, racially identifiable schools that are entitled to receive extra programming through the desegregation funds are being denied at least $17.1 million in extra programming this school year.

Paragraph V.B requires the CPS to maintain a locally funded desegregation budget for, inter alia, these extra programs that is "independent of" the roughly $300 million in non-desegregation funds that come from "other local, state, and federal funds," id. ¶ V.A, and were

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Ex. E at 3-4. If, however, these four programs were moved in as "magnet and speciality" schools, then the amounts of these four programs need not be subtracted from the $12,384,792.

spent on certain compensatory programs in the 2004-05 school year. See CPS Opp. to Mot. to U.S. Mot. to Enforce of Nov. 8, 2004, at 12 (referencing "in the neighborhood of $300 million . . . to provide early childhood/pre-Kindergarten programs, intense reading programs and supplemental after-school programs"). The *state* funds for the Pre-K and bilingual positions are clearly separate from the *"local funds"* that are to be allocated to the desegregation budget. MCD ¶ V.B. Moreover, by moving at least $17.1 million of this $300 million into the 2005-06 desegregation budget, the CPS has effectively supplanted desegregation funds with non-desegregation funds in violation of the December 7, Order. If this Order permitted such supplanting, the remedy provided thereunder would be meaningless because it would allow the CPS to do this school year exactly what the CPS was enjoined from doing last school year (i.e., counting non-desegregation funds as desegregation funds). This supplanting also contravenes the CPS' Budget Handbook, which states that "Desegregation positions must be used to supplement, not supplant, a school's staff." Budget Handbook for Schools Revised Dec. 2002 (Ex. K) at C-17.

For all of the above reasons, the CPS should be ordered to show cause why it should not be held in contempt for violating the December 7, 2004 Order with respect to its 2005-06 desegregation budget. At the show cause hearing, the CPS should fully explain its 2005-06 desegregation budget and the non-desegregation funds allocated for compensatory programs this year to show how, if at all, its funding decisions comply with the Order of December 7, 2004.

V. The CPS Should be Ordered to Show Cause Why It Should Not Be Held In Contempt for Violating Paragraph V.B.1.c of the MCD by Improperly Allocating Desegregation Transportation Funds

Paragraph V.B.1.c of the MCD clearly limits "desegregation funds for transportation" to

only (1) "magnet and specialized schools"[12] and (2) "M-to-M transfers."[13] Id. Transportation is the only aspect of the M-to-M program that can be funded through the desegregation budget under the MCD. Despite the MCD's clear language, the CPS has used and plans to use desegregation transportation funding for purposes not authorized by the MCD and has allocated desegregation funds to schools receiving M-to-M students for purposes other than M-to-M transportation.

In submissions dated March 23, 2005, and August 19, 2005, the CPS demonstrated that it has used and plans to use desegregation transportation funding for purposes not authorized by the MCD. See E-mail from Sherri Thornton to Will Rhee of Mar. 23, 2005 (Ex. L) at 1 and Attach. 2 (CPS School-by-School Breakdown of Desegregation Fund Transportation Fund Original Allocations of March 18, 2005); Chicago Public Schools Categories of Desegregation-Related Programs Within Schools, CPS 001404-1414 (Ex. M). Last year, the CPS allocated desegregation transportation funds for a variety of purposes not permitted by the MCD. See Ex. L at 1 & Attach. 2 (listing the "number of children transported by particular programmatic designation"). For example, Exhibit L shows that 1,623 homeless (column "XH"), 955 safety (column "XS"), and 247 open enrollment (column "OE") students received desegregation transportation funds. See id. Attach 2 at 16-17. For the upcoming school year, the CPS has budgeted a total of $1.4 million in desegregation transportation funds to 78 racially-identifiable schools despite the fact that these schools are neither "magnet or specialized schools" nor "M-to-M transfer" receiving schools.[14]

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[12]Current lists of CPS magnet schools, "Academically Advanced Programs," and "International Baccalaureate Programs" are available at http://www.cmp.cps.k12.il.us.

[13]A list of 2004-05 school year M-to-M transfer receiving schools is available at http://www.cps.k12.il.us/End_of_Year_Transfer_Program_Application.pdf.

[14] See Ex. M at CPS 1405-06, 1413-14 (identifying 78 non-magnet schools with "T" to denote receipt of transportation desegregation funds). The funding amounts for each of these

Because both the 2004-05 and 2005-06 transportation allocations are not limited to "transportation for magnet and specialized schools and for M-to-M transfers," the CPS is in violation of the MCD. MCD ¶ V.B.1.c. Accordingly, the CPS should show cause why it should not be held in contempt for violating paragraph V.B.1.c of the MCD in the 2004-05 school year and should be ordered to produce a 2005-06 desegregation budget with compliant transportation allocations by September 1, 2005.[15]

Furthermore, the CPS has allocated desegregation funds to M-to-M transfer receiving schools for purposes other than M-to-M transportation in violation of paragraph V.B.1.c. During the 2004-05 school year, the CPS allocated $261,228 in desegregation funds to Hitch Elementary School. See Ex. E at 2. Because Hitch is an over-40% white school that is neither a magnet nor a specialized school, the MCD limits Hitch to receiving desegregation funding only for M-to-M transportation. See MCD ¶ V.B; CPS Majority-to-Minority Transfer Study for the 2003-04 School Year (Ex. O) at 2 (stating that Hitch was 43.4% white). Nevertheless, the CPS has acknowledged that it used $162,228 for two teacher aide positions and two kindergarten teacher positions.[16] See

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schools are derived from the CPS project codes 5510 (Student Transportation) and 5520 (Carfare) and total $1.4 million. See Racially Identifiable Schools That Are Neither Magnet, Specialized, Nor M-to-M Receiving Schools and Were Allocated FY'06 Desegregation Transportation Budget Funds (Ex. N). Because the amounts reported by the CPS for Student Transportation ($14,434,000) and Carfare ($583,496) total the amount reported for "Transportation" in the Desegregation Budget ($15,017,496), the United States assumes that these two codes cover all transportation funds in the desegregation budget. See Ex. I (showing $15,017,496 for transportation).

[15]Although the CPS made a written commitment to produce an updated desegregation transportation breakdown to include student racial data by May 4, 2005, the United States still has not received this promised information. See Ex. H at 2-3.

[16] Hitch spent $99,000 for the transportation of 27 controlled enrollment transfer students and 27 voluntary transfer students in addition to two M-to-M transfer students. See Ex. E at 2. While the MCD does not authorize transportation for controlled enrollment students, see MCD ¶

Ex. E at 2 & Attach. CPS 1415. The CPS, therefore, should be ordered: (1) to show cause why it should not be held in contempt for providing Hitch with desegregation funds for purposes other than M-to-M transportation in the 2004-05 school year and (2) to produce a 2005-06 desegregation budget by September 1, 2005, demonstrating that any desegregation funds for schools accepting M-to-M students pay for only the transportation of the M-to-M students.

VI. The CPS Should Fully Remedy its 2004-05 Desegregation Funding Violations By Reallocating an Additional $17.8 Million to the 2005-06 Desegregation Budget

Given the CPS' refusal to comply with this Court's Order and the extent of the CPS' funding violations in the 2004-05 school year, the United States moves this Court for a full remedy of the CPS' violations. Complete relief would require the CPS to equalize the amounts of desegregation funding for magnet clusters and compensatory programs by reallocating at least $18.1[17] of the $40.1 million for magnet clusters to compensatory programs at racially identifiable schools. Subtracting from this $18.1 million the approximately $0.26 million that the CPS appears to have already reallocated last year, the CPS should be ordered to provide the remaining $17.8 million[18] for compensatory programs at racially identifiable schools that do not receive such funds.

V.B.1.c, the United States will not object to the funds for the 27 controlled enrollment transfers provided these transfers furthered desegregation in the CPS just as M-to-M transfers do.

[17] Exhibit A shows that CPS spent only $3.9 million in desegregation funds on compensatory programs at racially isolated schools in the 2004-05 school year because $4.8 of the $9.2 million reported for compensatory programs was actually spent on transportation, and $0.5 million of the $9.2 million was improperly given to integrated schools. Because the CPS spent $36.2 million more on magnet clusters, (which received $40.1 million), than it did on compensatory programs (which received $3.9 million), it would need to reallocate $18.1 million from magnet clusters to compensatory programs to equalize the amounts spent on each (i.e., $22 million).

[18] Given that the CPS appears to have already reallocated $0.26 million last year (i.e., $750,000 for the 3 vacant positions and the $182,476 for the 22 filled teacher aide positions), the amount left to be reallocated from the $18.1 million is $17.8 million.

This $17.8 million should be *in addition to* the annual desegregation funding required by the MCD in the 2005-06 school year and therefore cannot be used to replace the $17.1 million for State Pre-Kindergarten, State bilingual, and After School Matters that were improperly included in this year's desegregation budget.[19] The monetary calculations set forth above are further explained in the chart below.

Summary of Improper Funds and the Reallocation Needed to Achieve a Full Remedy[20]

"Compensatory Funds" Actually Spent On Transportation	$4.8 million
Compensatory Funds Improperly Given to Integrated Schools	$.5 million
Compensatory Programs Funded at Racially Identifiable Schools	$3.9 million
Total Desegregation Funds for Magnet Clusters	$40.1 million
Amount of Cluster Funds In Excess of Compensatory Funds	$36.2 million
Amount of Funds To Be Reallocated from Clusters to Compensatory Programs to Equalize Funding Amounts	$18.1 million
Amount Reallocated for 3 Vacant School-Based Positions and Estimated Amount Reallocated for 22 Teacher Aide Positions	$0.26 million
Amount Left to Be Reallocated to Remedy Funding Violations	$17.8 million

Conclusion

For the reasons given above, the CPS has violated the terms of the Court's December 7, 2004 Order and paragraph V.B.1.c of the MCD and should be ordered to show cause why it should not be held in contempt for these violations. Given the start of the school year on September 6,

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[19] As stated in the United States' filing on February 24, 2005, the United States believes that the CPS should provide full relief over the course of both the 2005-06 and 2006-07 school years because a year of the relief promised by the CPS was effectively denied to many schools in the 2004-05 school year. At this juncture, however, the United States seeks relief for the 2005-06 school year only because the Court indicated that it does not intend to consider whether the MCD will continue into the 2006-07 year until the proceedings to be held after the 2005-06 school year.

[20] All numbers are rounded to the nearest $ .1 million.

2005, and the difficulty of reallocating funds mid-year, the United States respectfully asks that the CPS be ordered to show cause by September 1, 2005. In light of the CPS' repeated violations, the United States respectfully moves for a full remedy of these violations through an additional allocation of $17.8 million for compensatory programs in the 2005-06 desegregation budget. Alternatively, the CPS should include half of the $17.8 million in the 2005-06 desegregation budget and the remaining half in the 2006-07 desegregation budget in addition to the full amount of desegregation funds required by the MCD. A proposed order is attached hereto.

Respectfully submitted,

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DATED: August 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August 2005, I served a copy of United States' Motion for Order to Show Cause Regarding the Chicago Public Schools' Violations of this Court's December 7, 2004 Order and Paragraph V.B.1.c of the Modified Consent Decree and for a Full Remedy of the CPS' 2004-05 Desegregation Funding Violations in the 2005-06 School Year via overnight mail upon the following counsel of record for the Chicago Public Schools and via first class mail and electronic mail upon the following counsel of record for the amici:

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