

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	90 C 7049	DATE	8/13/1998
CASE TITLE	EDWARD PALMER, et al vs. STALLINGS, etal		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input checked="" type="checkbox"/>	Status hearing held.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input checked="" type="checkbox"/>	This case is dismissed by agreement
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter agreed judgment order.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	COPY		Document Number	
<input type="checkbox"/> No notices required.		number of notices		
<input type="checkbox"/> Notices mailed by judge's staff.		date docketed	OCT 20 1998	
<input type="checkbox"/> Notified counsel by telephone.		docketing deputy initials		
<input checked="" type="checkbox"/> Docketing to mail notices.		date mailed notice	OCT 20 1998	214
<input type="checkbox"/> Mail AO 450 form.		mailing deputy initials	O 1998	
<input type="checkbox"/> Copy to judge/magistrate judge.				
DW	courtroom deputy's initials	Date/time received in central Clerk's Office		

1985 of the *Civil Rights Act of 1964*, 42 U.S.C. Sections 1981, 1983 and 1985. The district court (the "Court") dismissed 11 of the 12 counts in Plaintiffs' Second Amended Complaint, with prejudice, by its Memorandum Opinion and Order of August 30, 1991. The dismissed counts related to, among other things, the closing of a junior high school attendance center in the Village of University Park, Illinois (the "Deer Creek Closing") and alleged discriminatory student busing practices.

Count I survived the Court's order of August 30, 1991. This Count alleged that the at-large election scheme used to elect representatives to the Board of Education of Community Unit School District 201-U violated §2b of the *Voting Rights Act* (the "Voting Rights Claim"). After a hearing on June 28, 1993, the Court entered Findings of Fact, Conclusions of Law and a Judgment Order on July 27, 1993 finding that the at-large election scheme violated the *Voting Rights Act* and directing that a public meeting be convened at a location within the School District for comments on the proposed new voting district map. On September 21, 1993, a fairness hearing was conducted on the proposed map and the Court stayed the November 2, 1993 School Board Election. The map was approved by the Court on December 29, 1993.

Plaintiffs filed their notice of appeal on October 20, 1993, appealing the Court's dismissal of Counts III, IV, and IX of the Second Amended Complaint. A second notice of appeal was filed on January 27, 1994, the appeals were consolidated, and on February 3, 1995 the Seventh Circuit Court of Appeals issued its opinion reversing the dismissal of Counts III, IV, VI and IX

of the Second Amended Complaint and holding that Plaintiffs' claims should proceed against all of the individual Defendants.

The Plaintiffs filed their Third Amended Complaint on July 18, 1995 and on January 29, 1996 the trial court lifted a stay on discovery. Subsequent to the Court's order lifting the stay on discovery the parties have undertaken to compromise and settle the remaining claims. The parties have now reached an "Agreement in Principle" with respect to the issues of elementary school attendance zones, one-way busing, the Deer Creek Closing, dismissal of the individual Plaintiffs, attorneys' fees, damages and costs -- in short, all remaining issues. The agreement of the parties compromising, settling and determining the remaining issues is intended to be implemented with the entry of this order.

FINDINGS OF FACT

The Court hereby makes the following findings of fact as agreed and stipulated by the parties:

1. Plaintiffs Edward Palmer, Jerry Crockett, James Harris, Cynthia May Anderson, Willa Simmons, and Cheryl Mayfield, are citizens of the United States of African-American heritage and are residents of, and registered voters within, the Village of University Park, Illinois (the "Village"). Plaintiffs are parents of minor children who attend schools operated by the Board of Education of Community Unit School District 201-U.

2. Plaintiffs sue as individuals and as representatives of a class of African-American voters of the Village, who are parents of minor children attending school within Community Unit School District 201-U (the "District") within the meaning of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. Rule 23(b)(2).

3. The following individual Defendants are each members or former members, of the Board of Education of Community Unit School District 201-U (the "School Board"): Michael E. Stallings, John Ebner, Kenneth D. Schmitt, John W. Ritchie, Randall G. Farmer, Donna L. Swanstrom, and Peg Kallio.

4. Defendant Bruce Setchell is or has been the business manager of the School Board.

5. Defendant Jack Slaybaugh is the former superintendent of the District.

6. Jan Gould, Will County Clerk, has heretofore been dismissed from the action.

7. This matter was certified as a class action by the Court on August 14, 1991. The class certified is described as follows: all African-American citizens of the United States who are registered, or eligible, to vote and who reside within the geographic boundaries of (1) University Park or (2) Monee Township.

8. The School District is a body politic and corporate organized and existing pursuant to the *Illinois School Code*.

9. At all times relevant hereto, all of the individual Defendants acted under color of state law in that they acted in their official capacity as either School Board members or supervisory administrative officials of a duly authorized school board established pursuant to Illinois law.

10. The School District is a Community Unit District and includes within its boundaries all of Monee Township, most of Crete Township and an area commonly known as Crete Fractional.

11. Monee Township consists of the Village of University Park ("University Park"), the Village of Monee ("Monee"), a small portion of the village of Park Forest ("Park Forest"), and unincorporated lands.

12. Crete Township consists of the Village of Crete ("Crete") and unincorporated lands; Crete Fractional consists of unincorporated lands.

13. The racial composition of the students of the School District as of 1997-98 is 53.7% White, 38.7% Black, 7.6% other. Of the municipalities and unincorporated territories

making up the School District, University Park is the only area that is predominantly African-American.

14. Prior to implementation of this Agreed Judgment Order, the School District operated five elementary schools: Hickory Elementary located in University Park ("Hickory"), Crete Elementary located in Crete ("Crete Elementary"), Talala Elementary ("Talala") located in Park Forest, Monee Elementary located in Monee ("Monee Elementary"), and Balmoral Elementary ("Balmoral") located in unincorporated Crete Township.

15. Prior to 1987, the School District operated two (2) junior high schools, Hubbard Trail Junior High School ("Hubbard Trail") located in the predominantly Caucasian community of Crete, and Deer Creek Junior High School ("Deer Creek") located in the predominantly African-American community of University Park.

16. The School District has established, maintained and enforced attendance units, attendance policies and practices, and a one-way busing scheme which has had a disparate impact upon African-American students, which resulted in the following:

- a. Elementary schools located in the predominantly white areas of the District being racially integrated and the elementary school located in the predominantly African-American area of the District being racially segregated; and
- b. The closing of the Junior High School (Deer Creek) located in the predominantly African-American area of the District.

17. The School District had received complaints from the parents of African-American students regarding the attendance units, attendance policies and practices, and the one-way busing scheme referenced in paragraph 16.

18. The Plaintiffs maintain that the instances of disparate impact set forth in paragraph 16 are the result of intentional discrimination by the School District against African-American students.

19. The School District denies any intentional act to discriminate against students on the basis of race.

22. The purpose of this Agreed Judgment Order is, among other things, to address the complaints referenced in paragraph 17 and alleviate the conditions described in paragraph 16.

21. Notice of this Order, in the form attached hereto as Exhibit "A", was provided to the Plaintiff Class by publication in the Crete-University Park Star on July 5, 9, 12, 16 and 19, 1998.

22. A public hearing concerning this Order was held by the parties on July 21, 1998 and the proceedings have been reported to this Court.

23. A Fairness Hearing concerning this Order was held by the Court on August 13, 1998, in room 2103 of the Dirksen Federal Building located at 219 S. Dearborn, Chicago, Illinois.

24. Neither the Plaintiff Class nor Defendants object to the entry of this Judgement Order.

25. The parties, acting by and through their respective attorneys, have compromised and settled the issues remaining in dispute between them and the Court finds that the settlement is reasonable and enforceable and has been entered into in good faith.

THE AGREEMENT

The parties agree that the following paragraphs set forth the terms of the compromise and settlement of all issues remaining in dispute:

PART I

DEER CREEK RE-OPENING

1. Deer Creek Junior High School ("Deer Creek") will be re-opened for the commencement of classes for the 1998-99 school year.

2. Deer Creek will be the District's only middle school.

3. The District will renovate Deer Creek, located in the Village of University Park ("University Park"), so as to have a student capacity of not less than 900 students. The District agrees to obtain and/or appropriate sufficient funds to complete the renovation of Deer Creek.

4. Regardless of population fluctuations in the District, Deer Creek will remain open as a school and the Board will take such action as is necessary to assure that the racial make-up of students attending Deer Creek accurately reflects the racial composition of the entire District.

5. The District will institute an in-service multi-cultural training program to be presented to all teachers in the District. The program will focus on developing sensitivity for cultural differences among the students of the District so as to impart an understanding and tolerance of these differences not only in the teachers and administrative staff, but also in the students. The ultimate goal of such a program shall be to foster an appreciation of cultural diversity and a working knowledge of diverse learning styles among students of differing cultural backgrounds so as to establish the teaching and administrative practices necessary to ensure that all children, regardless of race or cultural heritage, realize their maximum individual learning potential.

PART II
THE BUSING SCHEME

1. New elementary school attendance boundaries will be established for grades Kindergarten through fourth grade ("K-4"). These boundaries shall be as described in the District's attendance map proposal of March 25, 1996 as approved by the School Board at its regular meeting of April 15, 1996, with the exception of the north boundary of the proposed Hickory Elementary Attendance Zone (the "Hickory Zone") which shall be relocated so as to include within said Attendance Zone those subdivisions or residential developments located within University Park commonly known as Pine Trace and Pine Woods. Provided, however, that for one (1) year only (being the 1996-97 elementary school year) those students who have completed third grade with the close of school in June, 1996 shall have the option of attending fourth grade for the elementary school year beginning September, 1996 at that elementary school to which the majority of their third grade classmates are assigned. Thereafter, the foregoing attendance boundaries shall be strictly enforced.

2. Beginning with the 1996-97 school year, and each year thereafter, all fifth and sixth grade students in the District will attend Balmoral Elementary School ("Balmoral") and Balmoral shall become the District's fifth and sixth grade center.

3. The District commits to use good faith and its best efforts to develop and implement programs and strategies designed to achieve a level of racial diversity in each of the

District's K-4 elementary schools which approximates the over-all racial composition of students in the District.

4. The District will attempt to achieve a student teacher ratio at Hickory which shall not exceed 26 students to one teacher; provided, however, that this can be accomplished within the parameters of the District's guidelines for class size.

5. In the event that population changes and/or future funding are such that an elementary school must be closed within the District, then and in that event, either Monee Elementary or Talala Elementary shall be closed and the students previously attending the elementary school that is closed shall be reassigned to the Hickory Elementary School.

PART III

ATTORNEYS' FEES

1. Subject to the completion-opening date compliance provision hereafter stated, the District shall pay the Village of University Park, as and for attorneys' fees, costs and expert fees the total sum of \$275,000.00 payable as follows:

A) \$100,000.00 upon entry of a final order of Court in this matter;

B) \$25,000.00 per year for a period of five (5) successive years (for a total of \$125,000,00); and

C) \$50,000.00 on August 25, 1998.

2. The payment due on August 25, 1998 shall be forgiven in the event that Deer Creek shall open and convene classes on said date for the 1998-99 school year.

3. In the event that Deer Creek does not open on August 25, 1998 for any reason whatsoever, the District shall pay the Plaintiff's class attorneys' fees and costs (including expert witness costs) in addition to the above, incurred in connection with the Plaintiff's enforcement of the final order of Court requiring Deer Creek to open for the 1998-99 school year on August 25, 1998.

PART IV

GENERAL TERMS

1. This Court will retain jurisdiction to enforce each and every term of this Order and this Order shall remain in full force and effect for a period of 10 years.

2. No damages, other than those specified in Part III, paragraph 1, including but not limited to punitive damages, shall be sought or paid by any of the parties to the underlying litigation. The only damages contemplated are those specified in Part III, paragraph 1 above.

3. The parties agree that this Order may not be used as an admission of liability or a concession of any claim as to any issue arising from this case; rather, the terms and conditions stated herein are intended to be a good faith effort by the parties to resolve and settle pending claims.

CONCLUSIONS OF LAW

The Court hereby makes the following conclusions of law:

1. This Court has jurisdiction of the parties and the subject matter.
2. Venue is proper in the Northern District of Illinois, Eastern Division.
3. The Board of Education of Community Unit School District 201-U is a local public entity within the meaning of 745 ILCS 10/1-206 (the *Local Governmental and Governmental Employees Tort Immunity Act*).

4. 745 ILCS 10/9-102 authorizes a local public entity to make payments and/or settle a claim or action which has been or might be filed or instituted against it when the governing body or person vested by law or ordinance with the authority to make overall policy decisions for such entity considers it advisable to enter into such a settlement or compromise.

5. 105 ILCS 5/10-22.7 (the *Illinois School Code*) authorizes school boards to "repair and improve school houses and furnish them with the necessary fixtures, furniture, apparatus, etc."

6. 105 ILCS 5/10-22.13 authorizes school boards to decide when a site or building has become unnecessary, unsuitable or inconvenient for a school.

7. 105 ILCS 5/10-22.5 authorizes school boards to assign pupils to the several schools in the district.

8. 105 ILCS 5/10-20.8 authorizes school boards to direct what branches of study shall be taught and what apparatus shall be used.

9. 105 ILCS 5/10-21.3 authorizes school boards to establish one or more attendance units within the district. This section also directs and authorizes school boards to change or revise existing attendance units or create new units in a manner which will take into consideration

the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality.

10. 105 ILCS 5/17-2.11 authorizes school boards to utilize life safety funds for the purpose of reconstructing a school building when the cost of the reconstruction is less than the cost to effectuate the recommended life safety repairs for that building.

11. 105 ILCS 5/10-20 provides that school boards may exercise all other powers not inconsistent with those specifically delineated in the *Illinois School Code*.

CONCLUSION AND JUDGMENT ORDER

The agreement of the parties as set forth in this Order is entered into by and between the parties for sufficient and adequate consideration as specifically set forth above, and further in consideration of the following:

relieving the financial burden and acrimony of continuing litigation, allowing the School District administration to refocus its resources toward student affairs, and eliminating the uncertainties attendant to litigation.

This Order is hereby approved and this action is dismissed with prejudice, except to the extent stated otherwise in the agreement and to the extent this Court retains jurisdiction to enforce the terms of the agreement. Every provision of this Order, in addition to being the order of this

Court, also represents an agreement between the parties. As such, this Order is reasonable and each and every of its terms is specifically enforceable as a settlement agreement and contract between the parties.

The Court has reviewed the provisions of this Order in light of the claims in this case and the scope of remedies which this Court would be authorized by law to enter if there were a finding of liability on those claims. The Court concludes that all of the provisions of this Order are within the scope of such remedies and therefore are consistent with the constitution and laws of the United States and the State of Illinois. If any provisions are nevertheless found by a court of competent jurisdiction to be outside the scope of constitutional or statutory remedies, it is the express intention of the parties and the Court that such provisions be deemed and are severable from all other provisions. Finally, the Court has considered the judicial resources that are likely to be necessary to monitor and enforce this Order, including the judicial resources that might be conserved by resolving in this fashion the issues addressed herein. In this regard, the Court concludes that this Order represents an appropriate commitment of the Court's resources.

Upon giving careful consideration to the impact of this Order upon the rightful interests of third parties, the Court is satisfied at this time that the entry of this Order does not undermine any such rights. The Court also determines that it is important to enter this Order at the present time, so that implementation may begin immediately of the many provisions herein. If any third party chooses to present a question concerning the impact of this Order, the Court will address the matter in an appropriate manner at that time.

In the event objections or challenges are raised by any third party (*e.g.*, through intervention or separate collateral litigation), or appeals are filed challenging the lawfulness or appropriateness of (a) this Order, any provision hereof or any proceedings pursuant hereto, or (b) any aspect of the implementation of this Order, the Plaintiff Class and Defendants shall jointly defend the lawfulness and appropriateness of the matter challenged. If any such collateral lawsuit arises in state court, the parties shall seek to remove such action to the United State District Court.

This Order is legally enforceable, and shall remain in effect until further order of this Court. This Court retains jurisdiction to enforce all of the terms and conditions of this Order. Each and every term of this Order is specifically enforceable. The parties to this Order may apply to this Court at any time for such further orders and directions as may be necessary or for the construction and enforcement of the provisions contained herein. Prior written notice of all such applications shall be given to opposing counsel, and this Court may thereafter enter further relief after proper hearing on the merits of said applications.

DATED: 8/13/98

ENTERED:

James B Zagel
JUDGE JAMES B. ZAGEL

AGREED TO:

Carlton Lowe
Attorney for Plaintiff Class

Forest V. Miles
Attorney for Plaintiff Class

Raymond A. Hauser
Attorney for Defendants

R. G. Crawford
President, Board of Education of Crete-Monee
Community Unit School District 201-U

Attest: Ann M. Simpson
Secretary, Board of Education of
Crete-Monee Community Unit School
District 201-U

ANTHONY G. SCARIANO
RAYMOND A. HAUSER
JON G. CRAWFORD
TODD K. HAYDEN
SCARIANO, KULA, ELLCH and HIMES, CHTD.
1450 Aberdeen
Chicago Heights, IL 60411
(708)755-1900

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