

MILO SHEFF, et al.

Plaintiffs

v.

WILLIAM A. O'NEILL, et al.

Defendants

SUPERIOR COURT

COMPLEX LITIGATION DOCKET

AT HARTFORD – X07

February 23, 2015

STIPULATION AND ORDER

WHEREAS, the above entitled action was initially filed by the Plaintiffs in 1989 against the named Defendants and various state officials; and

WHEREAS, the Connecticut Supreme Court on July 9, 1996, held that public school students in the City of Hartford attended schools that were racially, ethnically, and economically isolated in violation of the Connecticut Constitution, and urged the State to take prompt steps to seek to remedy the violation; and

WHEREAS, the City of Hartford intervened in this action on January 4, 2007; and

WHEREAS, the Plaintiffs and Defendants entered into a Stipulation and Order dated January 22, 2003 (the "Phase I Stipulation") and a second Stipulation and Order dated April 4, 2008 ("Phase II Stipulation"), which set forth programs for voluntary interdistrict opportunities to lessen racial, ethnic, and economic isolation; and

WHEREAS, the parties executed a one year extension agreement, dated April 30, 2013, to continue the Phase II Stipulation, as amended, through June 30, 2014 ("Stipulation Extension") to achieve the compliance standards of the Phase II Stipulation for the 2013-14 school year; and

WHEREAS, the Plaintiffs and Defendants entered into a Stipulation dated December 13, 2013 ("Phase III Stipulation"), which set forth a one year plan for reasonable progress in reducing racial, ethnic, and economic isolation for Hartford-resident minority students through June 30, 2015; and

WHEREAS, the parties mutually desire to continue the Phase III Stipulation for an additional one year period as a Phase III extension; and

HARTFORD J.D.
SUPERIOR COURT
OFFICE OF THE CLERK
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WHEREAS, this agreement represents reasonable measures to reduce racial, ethnic, and economic isolation in the Hartford Public Schools for the 2015-16 school year until June 30, 2016; and

WHEREAS, the parties are cognizant that efforts will need to continue beyond June 30, 2016 to further reduce racial, ethnic, and economic isolation in the Hartford Public Schools; and

WHEREAS, the parties do hereby knowingly and voluntarily enter into this Stipulation Extension and agree to be bound thereby;

NOW THEREFORE, the parties hereby stipulate and agree as follows:

I. EXTENSION OF STIPULATION

- A. Pursuant to mutual agreement of the parties, the time period applicable to the Phase III Stipulation, as defined in Section I.A. of said agreement, shall be extended for a period of one year, until June 30, 2016, except where this Stipulation extends the period of implementation beyond June 30, 2016, such as in Sections III.B.1. and 2. If there is any direct conflict between any provision of the Phase III Stipulation and this extension thereto, the language of the extension will control.

II. CHANGES TO SECTION II: DEFINITIONS

A. The following changes are made to Section II of the Phase III Stipulation:

1. Section II.A. is amended to add the following clarification to the new expanded Voluntary Interdistrict Programs for 2015-16: "The new or expanded Voluntary Interdistrict Programs contemplated for 2015-16 are set forth in Section III of this extension agreement."
2. Section II.B.5. shall provide that "Existing Magnet Schools are those Interdistrict Magnet Schools that are in operation during the 2014-15 school year."

III. CHANGES TO GOALS AND PERFORMANCE:

A. The following changes are made to Section III of the Phase III Stipulation:

1. Section III.A.2. is amended to add the goal for the 2015-16 school year as follows: "The goal of the Phase III Stipulation Extension is attained if the percentage of Hartford-resident minority students in a reduced-isolation educational setting, as defined in Section II.M. is equal to or greater than 47.5%."
2. Section III.A.3. is revised to read: "The goal of the Phase III Stipulation Extension is to be attained through implementation of the Voluntary Interdistrict

Programs defined in Section II.A. of the Phase III Stipulation, as amended herein.”

3. Section III.A.4. is revised to add the following clarification: “Defendants shall utilize available resources to plan, develop, open, and operate the schools and programs necessary to achieve the 47.5% goal benchmark set forth in Section III.A.1. of this Phase III Stipulation Extension within the one year extension period. Deviation from any provision(s) of this extension with respect to schools, grades, magnet seats offered or filled, Open Choice seats offered or filled, Interdistrict Cooperative programs offered or filled, or legislation proposed or passed into law, shall not be a material breach so long as at least the 47.5% goal of this extension agreement is met.”
 4. Section III.A.5. is revised to add the following clarification: “Performance of the 2015-16 goal shall be calculated by dividing the number of Hartford-resident minority students in reduced-isolation settings by the total number of Hartford-resident minority students.”
 5. Section III.A.6. is revised to add the following clarification: “Notwithstanding the Phase III Extension Term specified in Section I.A., the grace periods for inclusion of certain schools in the performance benchmark calculation as set forth in Section III.A.7.b.-d. of the Phase III Stipulation, as amended by this extension, and in Section IV.A. herein, shall survive the expiration of this Phase III Extension Agreement.
 6. The enrollment data used to calculate goal compliance, as referenced in Section III.A.7.a., shall be based on the October enrollment data for 2015-16 for purposes of calculating performance of the 2015-16 goal, and will be made available to the Plaintiffs and the City of Hartford on or before November 15, 2015.
 7. Section III.A.7.d. is amended to extend the grace period for one year to include 2015-16 Hartford-resident minority student enrollment at Breakthrough II Magnet School.
 8. Section III.A.7.e. is amended to extend the Open Choice target of 325 additional seats to 2015-16.
- B. The following Section III.B. is added to the Phase III Stipulation under the heading “Choice Programming Plans” to describe choice programming plans for this extension agreement: “B. Choice Programming Plans: This Section describes choice programming plans for the extension agreement. Deviation from any provision(s) of this extension with respect to schools, grades, magnet seats offered or filled, Open Choice seats offered or filled, Interdistrict Cooperative programs offered or filled, or legislation proposed or

passed into law, shall not be a material breach so long as at least the 47.5% goal of this extension agreement is met.”

1. **Relocation of Existing Magnet Programs:** Provided construction does not begin prior to fiscal year 2017, the SDE will request adequate funding for the relocation of the Montessori Magnet at Moylan School, the Hartford Prekindergarten Magnet School, and Betances STEM Magnet School, to new locations in accordance with the terms set forth in this Section III.B.1.a.-c. below. Upon legislative approval, the state will reimburse the Capitol Region Education Council (“CREC”) for up to 95% of eligible construction costs pursuant to Chapter 173 of the Connecticut General Statutes for construction of the three building projects specified in this Section III.B.1. The state will not cover any additional construction costs associated with said projects and Hartford agrees to assume full responsibility for the 5% local cost and any ineligible costs associated with the building projects. The SDE will support the required legislative changes. If the legislative changes do not occur, and/or the CREC partnership does not materialize, the SDE will reimburse the HBOE up to 95% of the eligible construction costs for the construction of the three building projects specified in Section III.B.1.
 - a. The Montessori Magnet at Moylan School program will relocate to a desirable new location, as approved by the SDE, with the goal of attracting the required applicant pool to meet compliance expectations for Sheff magnet programs. The new facility will provide sufficient capacity for the prek3 through 6th grade Montessori program currently located at Moylan School in Hartford. Once the new school location is identified and approved, the Hartford Board of Education will rename the Montessori Magnet at Moylan School program. Relocation of the Montessori Magnet at Moylan School is subject to timely submission and approval of the required ED049 school construction grant application.
 - b. The Hartford Prekindergarten Magnet School will relocate to a desirable new location, as approved by the SDE, with the goal of attracting the required applicant pool to meet compliance expectations for Sheff magnet programs. Hartford will seek to locate the new school facility in proximity to an existing magnet school property that may serve to allow for a lottery preference into such school. Relocation of the Hartford Prekindergarten Magnet School is subject to timely submission and approval of the required ED049 school construction grant application.
 - c. The SDE will provide capital funding for the renovation of the building located at 585 Wethersfield Avenue in Hartford for the permanent location of Betances STEM, 4th through 8th grade magnet program, subject to

timely submission and approval of the required ED049 school construction grant application.

2. Capacity For Hartford-Resident Students At Existing Magnet Schools:

- a. For fiscal year 2016, subject to funding appropriated by the General Assembly, the SDE shall provide adequate funding to support payment to Sheff magnet operators of the interdistrict magnet operating grant set forth in C.G.S. §10-264i in an amount equal to the grant that such magnet school operator was eligible to receive based on the enrollment level of the interdistrict magnet school program on October 1, 2013, plus any planned and approved increases in enrollment based on (i) adding planned new grades for the 2015-16 school year; (ii) adding planned new grades for school year 2014-15 which were funded pursuant to P.A. 14-217 §89; (iii) moving into a permanent facility for the school year commencing July 1, 2014 or July 1, 2015; and (iv) meeting the reduced isolation standard set forth in the Phase III Stipulation .
- b. In accordance with the stated goal of the Phase III Stipulation, this extension agreement seeks to expand reduced isolation opportunities for Hartford-resident students in existing Sheff magnet schools, as defined herein, by achieving a minimum of 50% Hartford-resident student enrollment out of the total school enrollment in said schools. Pursuant to this goal, existing Sheff full-time magnet schools, as defined herein, operating pursuant to Section 10-264i(c)(3)(D) of the Connecticut General Statutes, shall manage their capacity for 2015-16 within the funding appropriated by the General Assembly for fiscal year 2016, to enroll a minimum of at least 50% Hartford-resident students in the incoming class for 2015-16 subject to the following:
 - i. Any such interdistrict magnet school that fails to meet the minimum 50% Hartford-resident student enrollment of the total student enrollment of the incoming class for 2015-16 shall be ineligible for the grant amount set forth in Conn. Gen. Stat. §10-264i(c)(3)(D) for one-half of the total number of non-Hartford resident students enrolled in the school over 50% of the total school enrollment but shall receive a grant amount for each such student at the applicable non-resident interdistrict magnet rate authorized by Section 10-264i(c)(3)(A) to the extent otherwise eligible for a grant award under applicable laws. To the extent otherwise eligible under applicable laws, all existing Sheff full-time magnet schools subject to this paragraph shall be eligible to receive the per pupil rate authorized under Section 10-264i(c)(3)(D) for all Hartford resident students enrolled in the school, and such

schools that enroll at least 50% Hartford-resident students in the incoming class for 2015-16 shall be eligible for said grant for all non-Hartford residents enrolled in the school.

- ii. Upon written request and justification from an interdistrict magnet school operator, the SDE may authorize a waiver from the enrollment percentages stipulated in this Section III.B.2.b. to accommodate current written partnership agreements, copies of which shall be provided to the SDE, or compliance concerns at a specific magnet program. In the event of a waiver application, the SDE will seek to maximize enrollment of Hartford-resident students and will limit the extent of any resulting waiver to address the specific compliance concern or seat requirements of verified current partnership agreements.

3. Restructuring of Existing Magnet Programs:

- a. The parties have agreed that compliance with the reduced isolation standard at High School Inc. is not attainable. Following the 2014-15 school year, the school will be demagnetized. Hartford will be ineligible for magnet operating grants for the school beyond the demagnetization date and shall notify affected families such that they have time to participate in the School Choice Lottery implemented by RSCO for 2015-16. Nothing in this extension agreement shall prohibit High School Inc. from enrolling non-Hartford resident students beyond the 2014-15 school year through the Open Choice program in accordance with Section 10-266aa of the Connecticut General Statutes.
- b. Beginning in 2015-16 and each school year thereafter, CREC shall be ineligible for the grant amount set forth in Conn. Gen. Stat. §10-264(c)(3)(D) and (c)(4) for students enrolled in the part-time Greater Hartford Arts Academy program but shall receive a grant amount for each enrolled student at the applicable non-resident interdistrict magnet rate authorized by Conn. Gen. Stat. §10-264(c)(3)(A) and (c)(4) to the extent otherwise eligible under applicable laws.
- c. Beginning in 2015-16 and each school year thereafter through June 30, 2018, CREC will discontinue enrollment of new students to the part-time Greater Hartford Math and Science program. CREC will remain eligible to receive the per pupil interdistrict magnet grant at the rate set forth in Conn. Gen. Stat. Section 10-264(c)(3)(D) and (c)(4) for the part-time Greater Hartford Math and Science program through June 30, 2018 but

will discontinue operation as an interdistrict magnet school on or before said date.

IV. CHANGES TO SECTION V: ACCOUNTABILITY

A. **Enrollment Management Plans:** Section V.A. of the Phase III Stipulation is replaced with the following:

1. By November 15, 2015, any Voluntary Interdistrict Program in which more than 75% of its student enrollment has identified itself as any part Black/African American, or any part Hispanic, must be operating pursuant to an Enrollment Management Plan, as approved by the State Department of Education. In accordance with the waiver provisions of Conn. Gen. Stat. § 10-264(b) and specifically incorporating Part IV of the 2008 Sheff v. O'Neill Phase II Stipulation and Order as if fully set forth here, the State may continue to award operating grants to such programs that contribute to the goals set forth in this Stipulation upon proper application, for good cause, and provided the school at issue is operating under a State approved Enrollment Management Plan that demonstrates compliance with the reduced isolation standard set forth herein within an agreed upon compliance period. The Enrollment Management Plans submitted pursuant to this Section V.A shall be updated on an annual basis and subject to review and approval by the RSCO Director during the term of the waiver period.”
2. Based on preliminary analyses of October 1 enrollment data, Enrollment Management Plans (“EMP”) for those schools that SDE anticipates may be in non-compliance with the desegregation standard for the 2015-16 school year shall be submitted to SDE no later than October 15, 2015.
3. On or before October 25, 2015, the SDE shall provide the plaintiffs’ representative with copies of the EMP for those schools in non-compliance with the desegregation standard for the 2015-16 school year. The plaintiffs’ representative may provide written, non-binding comments within 5 business days of receipt of the EMP document and prior to SDE approval.

B. **Material Breach and Enforcement:** The following changes are made to Section V.D. of the Phase III Stipulation:

1. Section V.D.2. is revised to add the following clarification: “It shall not constitute a material breach of this Stipulation Extension if any of the new programs or program expansions set forth in Section III.B. herein are not implemented in 2015-16 due to the failure to enact any necessary legislation, or any other reason, provided the performance goal set forth in Section III.A.2., as amended, is

attained and provided the SDE and the administration have made a good faith effort to obtain the necessary legislative approvals on a timely basis."

2. Section V.D.3.a. is updated to reflect the earliest date by which October enrollment data will be made available for 2015-16 as November 15, 2015.

C. Mediation

1. The parties agree to begin mediation through a mutually agreed upon mediator, to facilitate negotiations for a Phase IV Stipulation and for successive agreements as the parties may decide no later than February 14, 2015 and hold regular mediation sessions thereafter for the purpose of completing negotiations no later than July 1, 2015, unless extended by mutual agreement of the parties.
2. The mediation shall be conducted by a mediator mutually agreed upon by the Plaintiffs, the Connecticut State Department of Education, and the City of Hartford (the "parties"). The mediation process and all communications made within the mediation structure between the parties, the mediator, experts or consultants retained by the parties, and/or any other participants shall be confidential. No party shall request that the mediator testify at any subsequent legal, legislative, or other public proceedings. The parties will request that the mediator will not have contact with the judge assigned to this case.
3. In the event the parties are unable to reach agreement on a Phase IV Stipulation by August 1, 2015, unless extended by mutual agreement, or in the event the parties reach an impasse during mediation, Plaintiffs reserve the right to seek judicial relief to enforce the mandates of the Supreme Court decision for the period subsequent to the period covered by this Phase III Stipulation Extension.

V. OTHER PROVISIONS

- A. Section VI.A. of the Phase III Stipulation is replaced with the following: "The procedure for adoption of the Phase III Stipulation Extension and Proposed Order shall be as follows: After the document is signed by counsel for Plaintiffs, the Attorney General shall submit it to the General Assembly within ten (10) days of the commencement of the 2015 regular session pursuant to Conn. Gen. Stat. § 3-125a. Unless this Phase III Stipulation Extension and Proposed Order is approved (or not disapproved) by the General Assembly in its entirety, without modification or addition, it shall be null and void. If this Phase III Stipulation Extension and Proposed Order is approved or deemed approved by the General Assembly, the parties shall submit the Phase III Stipulation Extension and Proposed Order to the Court for entry as a court order at the earliest possible time.
- B. Section VI.B. of the Phase III Stipulation is replaced with the following: "In the event the

Connecticut General Assembly does not: (1) approve the currently anticipated Sheff-related funding as needed to implement the plan set forth in the Phase III Extension, and SDE cannot make up the shortfall with other funding; or (2) approve Sheff-related legislation recommended for adoption by SDE or submitted by administration to the Appropriations and Bonding Committees, which in SDE's assessment (which assessment must be reasonable), to be reflected in a timely communication to plaintiffs, will substantially impair SDE's ability to comply with the Phase III Stipulation Extension, plaintiffs reserve the right to seek further relief from the Court upon receipt of such information."

- C. The SDE shall implement the following revisions to the Regional School Choice Lottery ("RSCO") for the 2015-16 or 2016-17 application cycle, as set forth below:
1. The SDE, in collaboration with RSCO partners and other stakeholders, will launch the uniform application and lottery materials for application to the 2016-17 RSCO lottery on or before October 15, 2015 in order to implement an early marketing and recruitment schedule for Sheff-related opportunities and maximize information distribution to families in the Greater Hartford Region.
 2. Based on a collaboration among SDE staff, RSCO partners, and the plaintiffs' representative, RSCO developed a protocol to afford a preference for twins and other multiples. This protocol will be implemented in the 2015-16 RSCO Lottery.
 3. The SDE, in collaboration with RSCO partners and other stakeholders, will continue to plan the lottery process and choice programming to increase clearly defined opportunities for students to enjoy a continuous K-12 education in reduced isolation settings.
 4. The SDE, in cooperation with RSCO Partners, will continue to collect data and review proposals to change the lottery process to achieve the following outcomes:
 - i. Reduce the disparities in the number of students in ELL programs in the Hartford neighborhood schools and Sheff magnet schools;
 - ii. Reduce the disparities in the number of students requiring special education services in the Hartford neighborhood schools and Sheff magnet schools;
 - iii. Provide recognition for families that participate in RSCO lotteries over several years without obtaining an offer.
- D. Pursuant to this Stipulation Extension, the SDE shall issue a payment to the NAACP Legal Defense & Education Fund, Inc. ("LDF") in an amount equal to \$19,731.56 in full and final payment for all services performed by the Plaintiffs' Representative up to and including July 31, 2013.

**PLAINTIFFS
MILO SHEFF, ET AL.**

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WILLIAM A. O'NEILL, ET AL.

By: _____

George Jepsen, Attorney General
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55 Elm Street, Hartford, CT 06106

Date: 2/19/15

INTERVENORS
CITY OF HARTFORD

By: _____

Date: 2/23/2015

APPROVED:

W. J. Berger
Superior Court Judge

DATE: 2/23/15

SO ORDERED:

Superior Court Judge

DATE: _____