UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:72-CV-100 ERW
	)	
BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,	)	
	)	
Defendants.	)	

JOINT MOTION OF PLAINTIFFS AND SPECIAL ADMINISTRATIVE BOARD TO ENFORCE COURT ORDER APPROVING SETTLEMENT AGREEMENT, TO ENFORCE THE SETTLEMENT AGREEMENT, AND TO HOLD THE STATE IN CONTEMPT

COME NOW the certified classes of plaintiffs, denominated throughout this case as the Caldwell-NAACP plaintiffs and the Liddell plaintiffs (hereinafter collectively referred to as the "Plaintiffs"), and the Special Administrative Board of the Transitional School District of the City of St. Louis (the "SAB")[1] and hereby jointly move this Court to enter an Order enforcing the Desegregation Settlement Agreement as agreed to by all parties to this litigation (hereinafter referred to as the "Desegregation Settlement Agreement" or "DSA") and as approved and incorporated by previous order of this Court on March 12, 1999 (the "Settlement Order").

The relief sought from this Court includes, but should not be limited to, (1) a directive that the State and the Missouri Department of Elementary and Secondary Education ("DESE") fully comply with this Court's Settlement Order and the DSA by discontinuing the practice of reallocating "Desegregation Sales Tax" proceeds to school entities other than the District; (2) a finding that by violating the Settlement Order, the State is in contempt of court; (3) a directive

[1] Pursuant to §§ 162.621.2 and 162.1100 Mo.Rev.Stat., the SAB is the sole party with the power to enter into agreements or to pursue legal action on behalf of the St. Louis Public Schools District (the "District"). The Court has permitted SAB to be substituted as a party in this case in place of the City Board. *See* Doc. # 363.

that the State reimburse the SAB for any Desegregation Sales Tax proceeds that have been wrongfully reallocated by the State in violation of the Settlement Order and the DSA; and (4) an award of attorneys' fees incurred in pursuing this Motion.

As grounds for this Motion, Plaintiffs and SAB state as follows:

SUMMARY AND GROUNDS FOR RELIEF

1. On March 12, 1999, following a fairness hearing, the Court entered an Order approving a settlement of this long running desegregation case. The settlement was memorialized in a Settlement Agreement. As this Court recognized in approving the DSA, the desegregation remediation programs implemented by the District under the DSA were to be funded via school foundation formula funding created under Senate Bill 781 ("SB 781") and a local sales tax that was approved by St. Louis City voters (the "Desegregation Tax"). This settlement funding was designed to replace $70 million in State funding that had been allocated to the District by the Court for desegregation remediation purposes. This Court also recognized that the local sales tax portion of the settlement funding was intended by all of the parties to be used exclusively by the District for desegregation remediation purposes. March 12, 1999 Order, pp. 11-12, attached hereto as Exhibit 1. ("funding will be derived from the local sales tax approved by the voters. . .")

2. To memorialize the parties' intention regarding the District's exclusive use of this settlement funding, the parties included provisions in the DSA expressly recognizing that the District would receive the Desegregation Tax proceeds unencumbered in any way. DSA, §§18(a) and 18(b), attached hereto as Exhibit 2. The State agreed that the "State's obligation" under the DSA included "funding to SLPS under SB 781" and "the payment of obligations incurred pursuant to the provisions of this Agreement", which funding and payment obligations

included the District's receipt of the Desegregation Tax without any reallocation to charter schools as expressly provided in SB 781. *Id.*, at §§ 22.A.1. and 22.A.2. The State's contractual agreement not to disturb desegregation funding provided under the DSA is further reiterated by the State's promise that "the State will not seek in any proceeding to limit or diminish the financial relief provided for under the agreement." *Id.*, at § 22.B.4.

3. Consistent with the Court's Order and the State's contractual assurances, and consistent with the SB 781 funding formulas that did not require the District to pay any Desegregation Tax revenue to charter schools, from 1999 through 2006, the District received all of the Desegregation Tax revenues generated without any reductions. However, beginning in 2006, despite these contractual assurances, the State and DESE began diverting millions of dollars from the District in reliance on legislative changes that only impacted the District. In reliance on the statutory changes contained in Missouri Revised Statutes Section 160.415 (created via Senate Bill 287), the State and DESE have implemented changes to the District's funding formula calculations and changes to its accounting rules that now require Desegregation Tax revenues, rightfully belonging to the District, to be reallocated to St. Louis area charter schools. Pursuant to the DSA, these Desegregation Tax monies were funds that: (1) the State agreed would belong to the District to facilitate the continuation of desegregation remediation and other programs established by the Court; (2) St. Louis voters approved so that the District could implement such desegregation remediation programs; and (3) were contractually and unconditionally assigned to the District in exchange for the Plaintiffs' and the District's execution of the DSA. As a consequence, any attempt by the State or any State entity to divert those sales tax proceeds to any party other than the District for any contrary purpose violates both the Settlement Order and the DSA and constitutes contempt of this Court's final ruling.

4. Plaintiffs and the District have demanded that the State cease and desist from violating the Court's Settlement Order and the DSA and reimburse the District for any Desegregation Tax revenue that has been improperly diverted, most recently in a detailed letter dated January 28, 2016, attached hereto as Exhibit 3. On March 4, 2016, the State forwarded a response to this January 28, 2016 demand by refusing to comply with the Settlement Order and its contractual obligations without proffering any precise reasons why, attached hereto as Exhibit 4.

HISTORICAL BACKGROUND AND THE 1999 SETTLEMENT

5. This litigation began in 1972, with a group of African-American parents filing suit against the State and the City Board to challenge illegal segregation within the St. Louis City public schools. Exhibit 1, Settlement Order, at pp. 1-2. An initial settlement plan was reached in 1983 and governed the case for more than 15 years through on-going Court supervision. *Id.*, at p. 2. Under that initial settlement plan, the State agreed to increase annual funding to the District specifically to pay for programs aimed at remedying the negative effects of historical segregation, including quality education programming, early childhood education, capital improvements to city school buildings, magnet schools in the city, a voluntary interdistrict transfer plan with county schools, and a vocational education plan. *Id.*, at p. 2.

6. In 1996, the State moved this Court to declare that the City Board no longer operated a segregated system and that the District had achieved unitary status. Unwilling to declare that the effects of segregation had been remedied, the Court declined to issue such an order and instead appointed Dr. William Danforth to lead settlement discussions in the hopes that all parties could reach a negotiated resolution. *Id.*, at p. 2.

7. After three years of protracted negotiations, in February, 1999, the parties finally reached a settlement that was memorialized in the DSA, which was approved by the Court on March 12, 1999 following a fairness hearing. *See generally* Exhibit 1; Exhibit 2, DSA.

8. Under the DSA, the District agreed to continue with various programs established in the context of the desegregation litigation -- including all-day kindergarten, summer school, college prep and preschool programs, and magnet school programs. In return, the District was to receive a combination of State and local funding (in the form of a local sales tax, *i.e.*, the Desegregation Tax) to maintain and expand the most successful desegregation remedies and education programs. Exhibit 1, at pp. 3-4. The DSA provided that the District would receive "a minimum in additional funding" for desegregation remediation -- funding that included all of the Desegregation Tax revenue. Exhibit 2, at § 11.1. Without provisions being made for funding these desegregation programs, neither Plaintiffs nor the District would have agreed to the terms of the DSA. *Id.*

9. Aside from the State's contractual obligations under the DSA and the Court's Settlement Order, the State's obligation for future funding for desegregation was also established under SB 781, which became effective as a result of the DSA. Exhibit. 1, at p. 2. The DSA provided that: "This Agreement is intended to provide a complete substitute for and modification of all substantive remedial obligations placed upon the City Board by the above-referenced orders, **subject to financing pursuant to Missouri Senate Bill 781**." *Id.* (Emphasis added). Under SB 781, (previously codified at Missouri Revised Statutes Section 163.031 before being repealed) the formula for determining state aid to all public schools was an equalized tax-rate driven formula, meaning the formula provided a certain amount of state aid money per student,

per penny of locally generated tax revenue. *See* Senate Bill 781, pp. 1402-1408, relevant excerpts attached hereto as Exhibit 5.

10. In addition to remediation funding from the State supplied through SB 781, the DSA required the passage of a local sales tax increase for the District. Exhibit 2, DSA, at § 11.1. On February 2, 1999, the voters of the City of St. Louis approved a 2/3 of 1-cent sales tax, to comply with the requirements of the DSA, hereinafter referred to as the "Desegregation Tax." Exhibit 1, Settlement Order, at p. 3.

11. Various provisions of the DSA likewise direct that monies raised from the Desegregation Tax would be solely for the benefit of the District and its students, to be used for desegregation remediation purposes:

> The parties agree that an express condition to the City Board's decision to accept this Agreement is that **the sales tax** and the resulting State aid **will produce** a minimum of $60 million in **additional funding for the St. Louis City Public Schools** based on current SLPS enrollments and current levels of participation in the interdistrict transfer program.
>
> Exhibit 2, DSA, at § 11.1 (emphasis added).
>
> The **revenues from any and all taxes imposed through a ballot measure** submitted by the Transitional District, and any resulting State and federal aid, (excluding any attributable to transfer students) **shall be unconditionally assigned to the City Board** upon receipt by the Transitional District.
>
> *Id.*, at § 18(a)4 (emphasis added).
>
> Upon such a determination [that the Transitional District is no longer needed], the Transitional District is dissolved and **any and all taxes and other receipts approved for the Transitional District are assigned to the City Board**.
>
> *Id.*, at § 18(b) (emphasis added).

12. Consistent with the DSA, the campaign literature leading up to the City's vote on the Desegregation Tax provided assurances to the voters that: "If the sales tax increase is passed and a settlement is reached and approved by the court, **the funds raised by this tax increase**

will go ONLY to the St. Louis Public Schools to fund the City's portion of the desegregation programs." *See* Focus on Desegregation: Questions and Answers about the Implication of Citywide Vote on February 2, 1999, a publication of FOCUS St. Louis in partnership with The League of Women Voters Information Service, at p. 5, attached hereto as Exhibit 6 (emphasis added).[2]

13. The "State's obligation" under the DSA included "funding to SLPS under SB 781" and "the payment of obligations incurred pursuant to the provisions of this Agreement." Exhibit 2, DSA, at §§ 22.A.1. and 22.A.2. Those DSA and SB 781 funding and payment obligations included the District's receipt of the Desegregation Tax without any reallocation to charter schools. *Id.*, at §§ 22.A.1. and 22.A.2. In further recognition of the District's unconditional right to receive the Desegregation Tax for the benefit of City schools, the State unconditionally agreed not to interfere with the funding provided to the District under the DSA: "…the State will **not seek in any proceeding to limit or diminish the financial relief** provided for under the agreement". *Id.*, at § 22B.4 (emphasis added).

THE COURT'S MARCH 12, 1999 APPROVAL OF THE SETTLEMENT

14. On March 12, 1999, the Court approved the DSA. *See generally* Exhibit 1, Settlement Order. In explicitly incorporating the terms of the DSA into the Settlement Order, the Court highlighted the importance of the funding commitments from the State (via SB 781) and the City (via passage of the Desegregation Tax) as a pre-requisite for the Court approving the DSA:

> In May 1998, the Missouri **General Assembly passed Senate Bill 781, which provides**, inter alia, **for approximately $40m per year in state funds for St. Louis city schools** on the condition that (1) on or before March 15, 1999, the state attorney general notify the revisor of statutes that a "final judgment" had been

[2] Settlement facilitator William H. Danforth is listed as one of the "Document Reviewers" of this FOCUS St. Louis publication.

> entered in this case as to the State and its officials, and (2) the voters of the City of St. Louis pass a sales or property tax which would generate **approximately $20m per year for the public schools**.
>
> **Passage of this law gave great impetus to the settlement process.**
>
> *Id.*, at pp. 2-3 (emphasis added).
>
> At the hearing, the Attorney General accepted blame on behalf of the State for past segregation in its public schools and apologized for this inequity. **He noted that the continued funding provided for by the state legislature in SB 718 (sic) was evidence that this was not an empty apology**…. The overwhelming consensus was that while the settlement did not provide a perfect remedy, it is fair, reasonable and adequate **because it guarantees long-term funding for continuing the key aspects of the 1983 plan, including remedial programs in the city schools, the magnet schools, the voluntary transfer programs and an area-wide vocational education plan**.
>
> *Id.*, at p. 6 (emphasis added).
>
> The Court concludes that **the settlement is adequately funded** as to ensure that **City Board's obligations** under the agreement can be fulfilled. **Funding is grounded in SB 781, which provides that funding will be derived from the local sales tax approved by the voters and the amendments in SB 781 to the State's statutory scheme of school funding**…. **The State agrees to provide the funds as set forth in SB 781** and **all signatories have agreed to the financial terms**.
>
> *Id.*, at pp. 11-12 (emphasis added).

INITIAL IMPLEMENTATION THE DSA

15. Starting in 1999, the District received state aid pursuant to the funding formula of SB 781. Declaration of Angela Banks, at ¶ 5, attached hereto as Exhibit 7. As part of that legislation, SB 781 for the first time also permitted the creation and operation of charter schools in the State of Missouri, specifically limited to the City of St. Louis and the City of Kansas City. Exhibit 5, Senate Bill 781, at pp. 1424-1435. With respect to basic aid for charter schools under the funding formula, SB 781 (Section 7.2) provided for the following:

> (1) A school district having one or more resident pupils attending a charter school shall pay to the charter school an annual payment amount equal to the product of the equalized, adjusted operating levy for school purposes for the pupils' district

> of residence for the current year times the guaranteed tax base per eligible pupil, as defined in section 163.011, RSMO, times the number of the district resident pupils attending the charter school plus all other state aid attributable to such pupils, including summer school, if applicable, and all aid provided pursuant to section 163.031, RSMo.
>
> (2) The district of residence of a pupil attending a charter school shall also pay to the charter school any other federal or state aid that the district received on account of such child."

Id., at p. 1432.

16. Effectively, under SB 781, a charter school received funding reallocated from the District on a per-pupil basis, funding that, in the case of the St. Louis Public Schools, would otherwise be retained by the District. For every student eligible to attend a District school but who chose to attend a charter school, the charter school would receive the per-pupil portion of state aid received by the District from the State under the funding formula. Exhibit 7, Declaration of Angela Banks, at ¶ 7.

17. Neither the SB 781 funding formula for the District nor that for charter schools required any of the Desegregation taxes revenue to be paid to or credited in favor of any charter school. *Id.*, at ¶ 8. In accordance with SB 781, the District and the State did not include monies raised from the Desegregation Tax in any aid that was transferred from the District to any St Louis City charter school. *Id.*, at ¶ 10. Between 1999 – the year that the DSA was signed and approved and SB 781 became effective – and 2006, none of those Desegregation Tax proceeds was used to benefit charter schools. *Id.*, at ¶ 9. Instead, all of the Desegregation Tax revenue was paid, unencumbered, to the District for the exclusive benefit of District students through the continuation of desegregation remediation programs. *Id.* During this 1999 through 2006 timeframe, as required by the DSA and the Settlement Order, the State treated the Desegregation Tax as monies to be used only by the District for city schools. *Id.*, at ¶¶ 9-10.

STATE'S VIOLATIONS OF THE SETTLEMENT ORDER AND THE DSA

18. In 2006, the General Assembly revised the basic aid funding formula for public schools with the passage of Senate Bill 287 ("SB 287"). *See generally* Mo. Rev. Stat. § 163.031; SB 287, at pp. 1340-1348, relevant excerpts attached hereto as Exhibit 8. Significantly altering how state aid to public schools was calculated, SB 287 changed the funding formula from one driven by local tax rates to a formula driven by student needs. Exhibit 8, at pp 22-27.

19. SB 287 also changed the law regarding charter schools and charter school funding by permitting charter schools to be formed as Local Education Agencies (LEAs)(meaning that instead of being paid by the District, the charter schools would be paid directly by the State). *Id.*, at pp. 1322-1324. Additionally, SB 287 also changed the funding methodology for charter schools. *Id.*

20. With the passage of SB 287, the General Assembly changed SB 781 by adding language in the charter school provisions (Mo.Rev.Stat. § 160.415) suggesting that among the revenue that either the District (for non-LEAs) or the State (for LEAs) would be required to pay to charter schools on a per pupil basis, those funds would include "local tax revenues." The provision dealing with funding for non-LEAs now provides that:

> A school district having one or more resident pupils attending a charter school **shall pay to the charter school** an annual amount equal to the product of the charter school's weighted average daily attendance and the state adequacy target, multiplied by the dollar value modifier for the district, **plus local tax revenues** per weighted average daily attendance for the incidental and teachers' funds in excess of the performance levy as defined in section 163.011 plus all other state aid attributable to such pupils.

Mo.Rev.Stat. § 160.415 (emphasis added).

21. Similarly, the provision dealing with LEAs provides that:

> A charter school that has declared itself as a local educational agency shall receive from the department of elementary and secondary education an annual

> amount equal to the product of the charter school's weighted average daily attendance and the state adequacy target, multiplied by the dollar value modifier for the district, **plus local tax revenues** per weighted average daily attendance for the incidental and teachers' funds in excess of the performance levy as defined in section 163.011 plus all other state aid attributable to such pupils. **If a charter school declares itself as a local education agency, the department of elementary and secondary education shall**, upon notice of the declaration, **reduce the payment made to the school district by the amount specified in this subsection and pay directly to the charter school the annual amount reduced from the school district's payment**.

Mo.Rev.Stat. § 160.415.4 (emphasis added).

22. In applying the revised SB 287 funding formula, the State and DESE have determined that the Desegregation Tax monies should be included in calculating the "local tax revenues" component of the charter school funding. Based on this change in the statute, contrary to the Court's Settlement Order and the DSA mandates that the Desegregation Tax would be paid to the District only for desegregation remediation purposes, and contrary to what was done from 1999 through 2006, the State now takes Desegregation Tax monies away from the District by reducing, on a per pupil basis, the amount of basic aid that would otherwise be payable to the District and paying that amount to charter schools. Exhibit 7, Declaration of Angela Banks, at ¶ 12; Declaration of Richard Sullivan, at ¶ 3, attached hereto as Exhibit 9.

ADVERSE EFFECTS OF SENATE BILL 287 ON THE DISTRICT FUNDING

23. The revised SB 287 funding formula, as implemented by and as applied by the State and DESE, has resulted in millions of dollars in Desegregation Tax revenue being reallocated from the District to charter schools – schools that a) did not even exist at the time the Desegregation Tax was voted on and the DSA was approved by the Court, b) were not parties to the lawsuit or the DSA, and c) have no responsibility to use those monies for desegregation remediation purposes.

24. Based on the District's calculations derived from information supplied by the State, the State has applied SB 287 to reduce the District's revenue in the following amounts for the following years:

Fiscal Year	Total Monies Raised from Desegregation Tax	Portion of Desegregation Tax Reallocated to Charter Schools
2006-07	$25,085,804	$2,676,747
2007-08	$25,402,585	$4,111,463
2008-09	$23,460,331	$6,264,579
2009-10	$22,758,347	$3,329,937
2010-11	$23,924,832	$3,714,098
2011-12	$25,123,431	$4,282,048
2012-13	$21,357,765	$5,177,375
2013-14	$26,096,778	$6,817,748
2014-15	$24,035,558	$6,143,263
Total		**$42,517,258**

Exhibit 7, Declaration of Angela Banks, at ¶ 14.

25. In addition to the $42,517,258 that the State has already diverted from the District to charter schools, the District estimates that the State and DESE will improperly divert $8,807,389 from the District for the current 2015-2016 school year. *Id.*, at ¶ 15.

NOTICE TO STATE OF BREACH OF SETTLEMENT AND VIOLATION OF THE ORDER

26. After the passage of SB 287 and after the District became aware of the State's violations of the Settlement Order and breach of the DSA, the SAB advised the State and DESE that their application of the revised funding formula in SB 287 violated the Settlement Order and the DSA. Exhibit 9, Declaration of Richard Sullivan, at ¶ 4, Exhibit A. More recently, the

Plaintiffs and the District demanded that the State and DESE cease violating the Settlement Order and the DSA, which demand was summarily rejected by the State. *See* Exhibit 3, January 28, 2016 Letter from Jeffrey St. Omer to the State; Exhibit 4, March 4, 2016 Letter from William R. Thornton to Jeffrey St. Omer.

27. Thus, despite notice to the State and continued attempts by the District to resolve this issue, the State has continually refused to apply the revised funding formula in a manner consistent with the DSA and the Settlement Order. Exhibit 9, at ¶¶ 5-6.

28. Consequently, in light of the State's continual violations of the Settlement Order and breach of the DSA, which has resulted in harm to the Plaintiffs and continued financial detriment of the District, Plaintiffs and SAB have no recourse other than to file this Motion requesting the Court to (1) enforce its Settlement Order, (2) order specific performance of the DSA by the State, and (3) hold the State in contempt. Such specific performance and contempt remedy should include, but should not be limited to, an Order directing the State to reimburse the District for any Desegregation Tax proceeds that have been wrongfully reallocated by the State in violation of this Court's Settlement Order and the DSA.

29. Section 22.A.2 of the DSA provides that in the event of a breach by the State, this Court can award "the cost of obtaining compliance including an award of reasonable attorney fees and costs." Thus, because of the State's breach of the DSA, Plaintiffs and the SAB are entitled to recover their attorneys' fees incurred in pursuing this Motion.

30. Plaintiffs and SAB respectfully request that the Court grant them a hearing and oral argument on this Motion.

31. Plaintiffs and SAB file simultaneously herewith and incorporate by reference herein their Memorandum in Support of their Joint Motion to Enforce Court Order Approving, to Enforce the Settlement Agreement, and to hold the State in Contempt.

WHEREFORE, Plaintiffs and the SAB pray for an Order from this Court: (1) directing the State and DESE to fully comply with this Court's March 12, 1999 Order and the Desegregation Settlement Agreement by discontinuing the practice of diverting Desegregation Sales Tax proceeds to charter schools or otherwise financially penalizing the District based on the District's receipt of Desegregation Sales Tax proceeds; (2) finding that by violating the March 12, 1999 Order, the State is in contempt of court; (3) ruling that such specific performance and contempt relief should include, but should not be limited to, an order directing the State to reimburse or recredit the District any Desegregation Tax proceeds that have been wrongfully reallocated by the State in violation of the March 12, 1999 Order and the Desegregation Settlement Agreement; (4) awarding Plaintiffs and SAB their attorneys' fees incurred in pursuing this Motion; and (5) granting them a hearing and oral argument on this Motion.

Dated: April 11, 2016

Respectfully submitted,

LEWIS RICE LLC

By: */s/ Ronald A. Norwood*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was filed and served via the Court's electronic filing system on counsel of record this 11th day of April, 2016.

/s/ Ronald A. Norwood