No. HHD-LND-CV-89-4026240-S	:	SUPERIOR COURT
MILO SHEFF, et al.	:	J.D. OF HARTFORD
v.	:	
WILLIAM A. O'NEILL, et al.	:	MAY 30, 2017

PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION

Pursuant to General Statutes § 52-471 et seq., the Plaintiffs hereby apply for a temporary injunction enjoining the Defendants to continue to comply with the June 10, 2016 Stipulation and Order (Exhibit A) for at least an additional six months after June 30, 2017 or until further order of this Court or pending resolution of the Plaintiffs' Motion for Order Further Implementing the Supreme Court Mandate, filed concurrently with this application.

Allowing the June 10, 2016 Stipulation (hereinafter, "the Stipulation") to expire on June 30, 2017 with no follow-on stipulation or court order would wreak havoc on the complex and wide-ranging regional educational desegregation system collaboratively designed and operated since 2003 by the State Department of Education, the Plaintiffs, the operators of the 42 *Sheff* magnet schools (including the Capital Region Education Council, the Hartford Public School System, Goodwin College, and other school districts), and the 27 additional suburban school districts currently participating in the Open Choice Program.

The Plaintiffs' application is based on the assumption that a six-month extension of the current Stipulation would enable the *Sheff* educational desegregation efforts to progress at or above the current levels of Hartford resident student participation and would enable the Plaintiffs to participate fully in the myriad decisions required to be made to create, implement, manage and supervise the school programs made by the Regional School Choice Office.

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

Of imminent concern is that the Defendant State Department of Education has announced its intention to unilaterally disregard the explicit terms of the current Stipulation by conducting the remainder of the Regional School Choice (*Sheff*) lottery for the 2017-2018 school year substituting a more segregated Reduced Isolation Standard (RIS) of 80%-minority-student-and-20%-reduced isolation student ("80-20 RIS") for the current 75-25 RIS at those magnet schools that are now at 27% or fewer RIS. The State Department of Education intends to adopt this new standard even for those schools that currently meet the 75-25 RIS and thereby substantially undo the progress made under the stipulations and orders that this Court has approved over the past fourteen years. The Defendants' unilateral decision to change the terms of the currently-in-progress lottery would deny the Plaintiffs an effective remedy for the next several years because, if the funding and number of seats available as provided for in the Stipulation are not continued, the implementation of the Supreme Court's mandate will immediately be reversed.

Most importantly, once available seats have been offered to families in the forthcoming rounds of the RSCO lottery, those seats cannot be taken back, and the resultant increased racial isolation at *Sheff* schools would extend until the children entering kindergarten in 2017 graduate from high school thirteen years from now. The Defendants have conducted the first round of the lottery for the 2017-2018 school year, and further rounds are imminent, coming perhaps as early as June 1, 2017. Schools now within a mere one or two points of compliance would be subject to this negative change as well as schools that are fully within compliance with 75-25 RIS. (*See* Exhibit B.)

At stake now is not merely the outcome of the lottery for the 2017-2018 year, but rather the unilateral dismantling by the Defendants of the entire *Sheff* regional educational

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

desegregation system that, until this year, was developed based on jointly-agreed upon standards, practices, and goals and under the supervision of this Court for nearly 15 years.

The Plaintiffs have sought for the twenty-one years since the Supreme Court decision to maximize the number of Hartford resident minority schoolchildren in a quality desegregated educational setting. The dual existence of unmet demand by Hartford parents who apply unsuccessfully to the *Sheff* lottery combined with the existence of empty seats in Hartford host magnet schools is a highly disturbing and unacceptable outcome of the management of the regional school choice system. But as the Plaintiffs have asserted over the past years, the problem of empty seats in Hartford Host Magnets is not the result of the current 75-25 Reduced Isolation Standard but rather is the result of the Defendants' failure to adopt a long-range plan after 2008, and to use its specialized access to student data, school construction approvals and funding, and other managerial assets to prepare a long-range regional growth plan that both fills empty seats and expands the seating capacity of the existing school choice system to meet 100% of the unmet demand of Hartford parents. Even the State concedes that several hundred or more "empty" seats can be filled under the 75-25 standard. The Defendants' apparent decision to unilaterally dismantle the collaborative *Sheff* partnership system will make filling empty seats for desegregation more difficult and diminish the educational opportunities for thousands of additional Hartford minority resident children.

Accordingly, the Plaintiffs seek a temporary injunction requiring the Defendants to continue to comply with the Stipulation for not less than six months, including the 75-25 RIS currently used to offer seats in the lottery and to determine compliance, to preserve the Plaintiffs' legal rights pending resolution of the Motion for Order. The Plaintiffs respectfully

request that the Defendants be ordered to appear at an early date to show cause why this Court should not grant this application for a temporary injunction.

FACTS

In 1996, the Supreme Court held that: (1) the Plaintiffs, students in Hartford or the Hartford metropolitan-area public schools, had been deprived of their right to substantially equal educational opportunities under Article First, §§ 1 and 20, and Article Eighth, § 1, of the Connecticut Constitution because of the racial and ethnic segregation in the public schools in the Hartford metropolitan-area, and (2) the State must promptly implement appropriate remedial measures for this unconstitutional racial segregation. *Sheff v. O'Neill*, 238 Conn. 1 (1996).

Since that time, the parties have entered into a series of stipulations in 2003, 2008, 2013, 2015 and 2016 that were approved by the Court and presented to the Legislature to implement the Supreme Court's mandate. The latest Stipulation expires on June 30, 2017.

While significant progress has been made in desegregating the public schools in the Hartford metropolitan-area since the first stipulation in 2003, it nonetheless remains a disturbing and unacceptable fact that over half the students residing in Hartford still attend a public school that is racially and ethnically segregated. The demands of thousands of students and their parents for placements via the *Sheff* lottery system and the opportunity to obtain an integrated education remain unfulfilled. There is no reasonable likelihood that this situation will be resolved without further order of this Court.

ARGUMENT

This Court should grant the Plaintiffs' application for a temporary injunction to preserve their legal rights pending resolution of their Motion for Order, filed concurrently with

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

this application. This Court has authority to grant the application pursuant to General Statutes § 52-471 et seq. The standard for granting a temporary injunction is well established:

> In general, a court may, in its discretion, exercise its equitable power to order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law. A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. The plaintiff seeking injunctive relief bears the burden of proving facts that will establish irreparable harm as a result of that violation. Moreover, [t]he extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm.

Aqleh v. Cadlerock Joint Venture II, L.P., 299 Conn. 84, 97–98 (2010) (citations omitted) (internal quotation marks omitted). "The purpose of a temporary injunction is to [maintain] the status quo while the rights of the parties are being determined . . . ." *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 682 (2012) (internal quotation marks omitted). Here, all four factors weigh in favor of granting the injunction.

First, the Plaintiffs have no adequate remedy at law. The harm to Hartford school children due to the racial and ethnic segregation that the Supreme Court identified in *Sheff v. O'Neill* cannot adequately be redressed by money damages:

> Racial and ethnic segregation has a pervasive and invidious impact on schools . . . . [S]chools are an important socializing institution, imparting those shared values through which social order and stability are maintained. Schools bear central responsibility for inculcating [the] fundamental values necessary to the maintenance of a democratic political system . . . . When children attend racially and ethnically isolated schools, these shared values are jeopardized: If children of different races and economic and social groups have no opportunity to know each other and to live together in school, they cannot be expected to gain the understanding and mutual respect necessary for the cohesion of our society. [T]he elimination of racial isolation in the schools

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

promotes the attainment of equal educational opportunity and is beneficial to all students, both black and white.

Sheff, 238 Conn. at 33–34 (citations omitted; internal quotation marks omitted).

Second, the Plaintiffs will suffer irreparable harm without an injunction. The most imminent aspect of the irreparable harm arises from the fact that the second round of the lottery process for the 2017–2018 school year is scheduled to run in a few days. The current Stipulation uses a 75-25 RIS and that RIS was applied to the first round of the 2017-2018 lottery that concluded last week. The Defendants have announced their intention to use an 80-20 RIS for future rounds of this lottery for schools that are at or below 27% RIS. If the Defendants are allowed to change the RIS for the second and subsequent rounds of the lottery to an 80-20 RIS for certain schools, it will substantially undo the progress made under the stipulations and orders approved by this Court. The Plaintiffs would be denied any effective remedy for the next several years because once those seats have been assigned, they cannot realistically be taken back from students. The resultant increase in racial isolation would likely extend far beyond the 2017-2018 school year, thus causing irreparable harm to far more students than the Plaintiffs and those schoolchildren presently attending Hartford-area schools.

Further, diluting the RIS standard would have the unintended consequence of increasing the concentration of poverty in Sheff schools as long as the socio-economic status of families is not made a deliberate element of student diversity goals.

Even worse, changing to an 80-20 RIS will affirmatively undermine meeting the desegregation goals of Sheff by enabling those compliant magnet schools that currently meet the 75-25 RIS, but have less than 27% RIS, to remain in compliance by dropping down

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

to only 20%. Currently, there may be as many as five (5) magnet schools in this "Twilight Zone" situation. As the Plaintiffs indicate, *infra*, there are many alternative methods of responding to schools that fail to meet the current RIS without diluting the RIS downward.

Indeed, the current Stipulation that the state now wants to abandon affirmatively requires, in Sec. III, A, 7, that "The state shall collaborate with Hartford Public Schools to develop school-specific strategies in order to achieve compliance" for enumerated non-compliant schools. Abandoning the 75-25 RIS in the face of pragmatic alternatives also means that the state avoids this important requirement to elevate the performance of non-compliant schools.

Diluting the RIS for the next rounds of the lottery for certain schools is only the tip of the iceberg of irreparable harm. An equally significant and imminent irreparable harm from this Court's failure to act would be the tacit condoning of the state's decision to unilaterally dismantle the stipulated agreements and to operate the *Sheff* system based on its sole and unaccountable discretion. Although the stipulations have provided the state with considerable managerial latitude in the day-to-day operations of the *Sheff* system, these agreements nonetheless establish the system-wide standards for accountability and compliance concerning number of seats, percentage of Hartford participation, level of funding, eligibility of funding, waiver and exceptional circumstance provisions, the establishment of the position of Plaintiffs' Representative and many other such standards.

Third, the Plaintiffs will likely prevail on the merits. Although further hearings are necessary to determine the precise form of a court order, at the very least, the Plaintiffs are likely to prevail in arguing that they are entitled to the bare minimum to which the Defendants already consented for the 2016–2017 school year, which is what the Plaintiffs seek in this

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

application for temporary injunction.

Fourth and finally, the balance of equities tips in favor of the Plaintiffs. The Supreme Court made clear that racial segregation has pervasive and harmful effects on schoolchildren. *Sheff v. O'Neill*, 238 Conn. 1 (1996). Regrettably, the Defendants are trying to portray the Plaintiffs as rigid and inflexible in the face of purported demographic challenges to meeting the current RIS. The state claims the only way to respond to these difficulties is to dilute the RIS. To the contrary, the balance of equities should also be measured by acknowledging that the Plaintiffs have agreed to numerous accommodations for the state's failure to meet the 75-25 RIS.

For example, here are the major accommodations made by the Plaintiffs in the Stipulation that serve to assist the state in addressing and meeting the current RIS:

- Percentage deviation: Sec. II, A, 3 (p. 3)— "A school shall be deemed to provide a reduced-isolation setting so long as it does not deviate by more than 1% from the 75% standard . . . Any such acceptable deviations shall not exceed three (3) schools for any single school year";
- Operational discretion: Sec. III, A, 3: "Deviation from any provision(s) of this extension…shall not be a material breach so long as at least the 47.5% goal of this extension agreement is met…."
- Grace periods: Sec. III, A, 5 – "… the grace periods for inclusion of certain schools in the performance benchmark calculation…" shall survive beyond the Stipulation;
- Negotiated compliance: Sec. III, A, 7—Allows counting of six non-compliant Hartford schools as compliant;

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

- Extension of Grace Period: Sec. III, A, 9 -- Extends grace period for Hartford Public Schools' Breakthrough II Magnet School;
- Supplemental Funding for Compliance: Sec. III, B, 1, a, (iii) – authorizes additional funding for more magnet students above the so-called "caps" if justified for "meeting the reduced isolation standard set forth in the Phase III Stipulation"; and
- Percentage Deviation for 50/50 Compliance: Sec. III, B, 1, b, iv – "A school shall be deemed to meet the 50% minimum Hartford-resident enrollment requirement...so long as it does not deviate by more than 1% from the 50% minimum."

This list should make it clear that the Plaintiffs have agreed to a variety of alternative methods of accommodating the difficulties that the state claims to confront in meeting the current RIS without resorting to the drastic and unnecessary decision of diluting it. The fact that the Plaintiffs have been very accommodating to the challenges of non-compliance should weigh against the inflexible and rigid decision of the state to weaken the RIS.

This Court should grant the requested temporary injunction to prevent a relapse in the progress made in combatting the unconstitutional segregation that continues to exist in the Hartford metropolitan-area school systems for many children.

The Plaintiffs further request, pursuant to General Statutes § 52-474, that this Court not require a bond for good cause shown because the Plaintiffs already have a judgment in their favor, and no such bond is necessary to indemnify the Defendants.

CONCLUSION

WHEREFORE, this Court should order the Defendants to appear at an early date to

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

show cause why the Plaintiffs' application for a temporary injunction without bond should not be granted.

I swear that the above statements are true to the best of my knowledge and belief.

Elizabeth Horton-Sheff

30 May 2017

Subscribed and sworn to before me on (Date)

Commissioner of Court

PLAINTIFFS,

By: Martha Stone

Martha Stone
CENTER FOR CHILDREN'S ADVOCACY
65 Elizabeth Street
Hartford, CT 06105
Phone: (860) 570-5327
mstone@kidscounsel.org

By: Scott Garosshen

Wesley W. Horton
Scott T. Garosshen
HORTON, DOWD, BARTSCHI & LEVESQUE, P.C.
90 Gillett Street
Hartford, CT 06105
Phone: (860) 522-8338
Fax: (860) 728-0401
whorton@hortonshieldsknox.com
sgarosshen@hortonshieldsknox.com

By: Deuel Ross ms

Deuel Ross
Angel Harris
NAACP LEGAL DEFENSE FUND
40 Rector Street, 5th floor
New York, NY 10006
Phone: (212) 965-2200
dross@naacpldf.org
aharris@naacpldf.org

By: Dennis Parker ms

Dennis Parker
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
Phone: (212) 519-7832
dparker@aclu.org

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

ORDER TO SHOW CAUSE

Whereas, the foregoing application for a temporary injunction has been presented to the Court, and

Whereas, upon application of the Plaintiffs, it appears that an order should be issued directing the Defendants in this action to appear before the Court to show cause why a temporary injunction without bond should not issue.

Now therefore, it is ordered that the Defendants be summoned to appear before the Superior Court for the Judicial District of Hartford in Court Room _____, 95 Washington Street, Hartford, at _____ on May _____, 2017, then and there to show cause why a temporary injunction without bond should not issue against them as sought in the foregoing application.

Dated at Hartford, this _____ day of May 2017.

By the Court,

_____

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

SUMMONS

To Any Proper Officer:

By authority of the state of Connecticut, you are hereby commanded to summon the Defendants in the foregoing action to appear before the Honorable _____ of the Superior Court at the time and place specified in the foregoing order, then and there to show cause why a temporary injunction should not be issued against them as sought in the foregoing application, by serving in the manner provided by statute for the service of process a true and attested copy of the foregoing application, order and this summons on the Defendants on or before May _____, 2017.

Hereof fail not, but due service and return make.

Dated at Hartford, May _____, 2017.

_____

Commissioner of the Superior Court

[Exhibit A]

HHD-X07-CV89-4026240-S

MILO SHEFF, et al. Plaintiffs v. WILLIAM A. O'NEILL, et al. Defendants	SUPERIOR COURT COMPLEX LITIGATION DOCKET AT HARTFORD – X07 June 10th, 2016

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 ("Phase II 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

Filed 6/10/16 ab/co

412.00

WHEREAS, the parties executed a one year extension agreement, dated February 23, 2015, to continue the Phase III Stipulation through June 30, 2016 ("Phase III Stipulation Extension") to continue the progress achieved in the Phase III Stipulation for another one year period; and

WHEREAS, the parties mutually desire to continue the Phase III Stipulation for an additional one year period through June 30, 2017, as a second extension of the Phase III Stipulation ("Phase III Stipulation Second Extension") ; and

WHEREAS, this agreement represents reasonable measures to reduce racial, ethnic, and economic isolation in the Hartford Public Schools for the 2016-17 school year until June 30, 2017; and

WHEREAS, the parties are cognizant that efforts will need to continue beyond June 30, 2017 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, and extended by the Phase III Stipulation Extensions shall be extended for a period of one year, until June 30, 2017, except where this Stipulation extends the period of implementation beyond June 30, 2017, such as in Sections III.A. and III.B.1. and 2 of the Phase III Stipulation Extension. If there is any direct conflict between any provision of the Phase III Stipulation, the Phase III Stipulation Extension and this second extension thereto, the language of this Phase III Stipulation Second 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 2016-17: "The new or expanded Voluntary Interdistrict Programs contemplated for 2016-17 are set forth in Section III of this second extension agreement."

2. Section II.B.5. shall provide that "Existing Magnet Schools are those Interdistrict Magnet Schools that are in operation during the 2015-16 school year."

3. Section II.M.1. is amended to add the following clarification to the definition of a reduced-isolation setting: "A Voluntary Interdistrict Program, as identified in the Phase III Stipulation, or Hartford Public School shall be deemed to provide a reduced-isolation setting if enrollment is such that the percentage of enrolled students who are identified as any part Black/African American, or any part Hispanic, does not exceed 75% of the school's total enrollment. A school shall be deemed to provide a reduced-isolation setting so long as it does not deviate by more than 1% from the 75% standard and, is operating pursuant to an Enrollment Management Plan ("EMP") as set forth in Section V.A. Any such acceptable deviations shall not exceed three (3) schools for any single school year. The EMP for any such school deemed compliant as a result of the 1% allowance shall be revised jointly by the State and the school's operator, with an opportunity for comments by the plaintiffs' representative. The State shall provide the updated EMP to the plaintiffs' representative within one week after approval. The State may at any time exercise its right to seek an audit of the school's data and records pertaining to student race and ethnicity to verify the accuracy of the data. If the State determines that a school is statistically not different from or within 2% of the reduced isolation standard as of December 1, 2016, and an audit is sought, no action for material breach may be brought until the audit has been completed and the State certifies the compliance data for the school unless such audit or certification is not completed and reported to the Plaintiffs within 60 days."

III. CHANGES TO GOALS AND PEFORMANCE:

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 2016-17 school year as follows: "The goal of the Phase III Stipulation Second 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 representing a 2% increase over the 2015-16 school year. Pursuant to the state's efforts to meet the goal set forth herein, the state shall fund the approved increases in enrollment for planned new grades for the 2016-17 in accordance with Section III.B.1.a. of this Phase III Stipulation Second Extension irrespective of whether such growth increases the percentage of Hartford-resident minority students in reduced isolation settings over 47.5%.

2. Section III.A.3. is revised to read: "The goal of the Phase III Stipulation Second Extension for the percentage of Hartford resident minority students in reduced isolation settings in any public school is to be attained primarily through implementation of the Voluntary Interdistrict Programs defined in Section II.A. of the Phase III Stipulation

3. Section III.A.4. is revised to add the following clarification: "Defendants shall use 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 Second 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, subject to Section V.D.1.a. of the Phase III Stipulation."

4. Section III.A.5. is revised to add the following clarification: "Performance of the 2016-17 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 Second 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 second extension and the Phase III Stipulation Extension, and in Section IV.A. herein, shall survive the expiration of this Phase III Second 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 2016-17 for purposes of calculating performance of the 2016-17 goal, and will be made available to the Plaintiffs and the City of Hartford on or before December 1, 2016; provided, however, that all operators of Sheff-related programs have submitted data that is free of material discrepancies and meets the requirements set forth in the "Timely and Accurate Data" section of the Connecticut State Department of Education Data Collections Guide for Schools and Districts, 2015-16, on or before October 30, 2016. In the event transmission of the goal calculation is delayed because said data is not received by October 30, the state shall provide the data to the Plaintiffs and the City of Hartford as soon as reasonably practicable but in no event later than 30 days after the December 1, 2016 deadline.

7. Section III.A.7.c. is revised to read: "All Hartford-resident minority students enrolled in the Hartford Journalism and Media Academy, and, the greater of, 250 Hartford-resident minority students or half of the total school enrollment at Rawson Lighthouse School, will continue to be included in the performance benchmark calculation in 2015-16, 2016-17 and 2017-18, and all Hartford-resident minority students enrolled in Capital Preparatory Magnet School (lower school and upper school), Classical Magnet School, and Capital Community College Magnet Academy shall be included in the 2016-17 and 2017-18 performance benchmark calculation, so long as each such school is operating

pursuant to an approved Enrollment Management Plan as set forth in Section V.A. The state shall collaborate with Hartford Public Schools to develop school-specific strategies in order to achieve compliance at the aforementioned schools within the waiver period."

8. Section III.A.7.d. is amended to extend the grace period for another year to include 2016-17 Hartford-resident minority student enrollment at Breakthrough II Magnet School.

9. Section III.A.7.e. is amended to revise the Open Choice target to at least 300 additional seats for 2016-17 beyond the total number of Open Choice seats in 2015-16, including new seats, replacements for graduated student seats and for seats left vacant by student attrition or disqualification for the Open Choice program.

B. **Choice Programming Plans:** Section III..B.1. from the Phase III Stipulation Extension under the heading "Choice Programming Plans" is continued as part of the Phase III Stipulation Second Extension as if fully set forth here, and shall survive the expiration of this second extension agreement. The remaining Section III.B. is continued through June 30, 2017 as part of this Phase III Stipulation Second Extension with the following revisions to the introductory section under III.B. and to section III.B.2. of the Phase III Stipulation Extension as set forth below: "B. Choice Programming Plans: Section III.B. of the Phase III Stipulation Extension and this Section III.B. herein describe choice programming plans for the second extension of the Phase III Stipulation. Deviation from any provision(s) of this second extension agreement 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 second extension agreement is met, subject to Section V.D.1.a. of the Phase III Stipulation."

1. **Capacity For Hartford-Resident Students At Existing Magnet Schools:** Section III.B.2. of the Phase III Stipulation Extension under "Capacity for Hartford-Resident Students At Existing Magnet Schools," shall remain in effect for fiscal year 2016 as set forth in the Phase III Extension and is replaced with the following in this Phase III Stipulation Extension for fiscal year 2017:

    a. For fiscal year 2017, subject to adequate funding appropriated by the General Assembly for this purpose, the SDE shall provide funding to support payment to Sheff magnet operators of the interdistrict magnet operating grant set forth in C.G.S. §10-264*l* 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, or October 1, 2015, whichever is lower, plus any planned and approved increases in enrollment based on (i) adding planned new grades for the 2016-17 school year; (ii) adding planned new grades for school year 2014-15 and/or 2015-16 which were funded during the fiscal year ending June 30, 2015 or fiscal year ending June 30, 2016; and (iii) meeting the reduced isolation standard set forth in the Phase III Stipulation. To the extent funding appropriated for such purposes is less than the amount authorized by Section 10-264l(c) of the Connecticut General Statutes, the SDE shall allocate any funds remaining in the Sheff settlement account on June 30, 2016 and June 30, 2017 respectively on the following basis to interdistrict magnet operators within the Sheff Region: 60% distributed proportionately among Hartford Public Schools, East Hartford Public Schools and Bloomfield Public School; and 40% distributed proportionately among the Capitol Region Education Council and Goodwin College.

b. In accordance with the stated goal of the Phase III Stipulation, this second 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 10-264*l*(c)(3)(D) of the Connecticut General Statutes, shall manage their capacity for 2016-17 within the funding appropriated by the General Assembly for fiscal year 2017, to enroll a minimum of at least 50% Hartford-resident students among incoming students for 2016-17 subject to the following:

    i. Subject to subsections b.ii.-iv. herein, any such interdistrict magnet school that fails to meet the minimum 50% Hartford-resident student enrollment of the total student enrollment for incoming students in any grade for 2016-17, using the October enrollment data for 2016-17 shall be ineligible for the grant amount set forth in Conn. Gen. Stat. §10-264*l*(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 10-264*l*(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 10-264*l*(c)(3)(D) for all Hartford resident students enrolled in the school, and such schools that enroll at least 50% Hartford-

resident students among the incoming students in any grade for 2016-17 shall be eligible for said grant for all non-Hartford residents enrolled in the school.

ii. "Incoming students" shall include students enrolled through the Regional School Choice Office ("RSCO") Lottery for 2016-17 in any grade served by the school. Town of residence for purposes of this Section shall be determined at the time the applicant accepts the placement through the RSCO Lottery.

iii. 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.1.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 interdistrict magnet operator must demonstrate efforts to maximize enrollment of Hartford-resident students and the SDE will limit the extent of any resulting waiver to address the specific compliance concern or seat requirements of verified current partnership agreements, including but not limited to, restricting the school operator from offering seats at the respective school to students outside the partnering towns except in the case of siblings. In no event shall an interdistrict operator that receives a waiver based on partnership agreements enroll students from partnering towns, other than Hartford, beyond the partnering town's documented allocation of seats in the school, and any such allocated seats that are not filled by students from the applicable partnering town shall be made available to Hartford resident students through the Regional School Choice Lottery until the school reaches the 50% enrollment requirement. The SDE shall provide the plaintiffs' representative with copies of all waiver requests, all approved waivers and all waiver denials.

iv. A school shall be deemed to meet the 50% minimum Hartford-resident enrollment requirement set forth in this Section II.B.(1)(b) for 2016-17 so long as it does not deviate by more than 1% from the 50% minimum.

c. The state will propose legislation for 2016-17 which will allow all magnet school operators in the state of Connecticut to receive and administer their magnet operating grant as an aggregate magnet budget rather than a school specific allocation in order to provide operators with funding flexibility to operate magnet systems within their districts. The magnet grant would

continue to be calculated on a per pupil basis as authorized by statute and this second extension for operation of magnet programs.

IV. CHANGES TO SECTION IV: ACCOUNTABILITY

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

1. By December 1, 2016, 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*l*(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 IV.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 2016-17 school year shall be submitted to SDE no later than October 15, 2016.

3. On or before October 25, 2016, the SDE shall provide the plaintiffs' representative with copies of the EMP for those schools that SDE anticipates may be in non-compliance with the desegregation standard for the 2016-17 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.

4. Prior to April 1, 2016, the RSCO Director organized an initial collaboration between Sheff staff from the Connecticut State Department of Education and the plaintiffs' representative to assess the effectiveness of the EMP relative to improving compliance at schools that are not compliant with the reduced isolation standard. Prior to June 1, 2016, the RSCO Director shall convene a working group, composed of the initial collaboration team as well as RSCO partners, and additional Sheff staff from the Connecticut State Department of Education to review the current EMP template and the recommendations of the initial

collaboration team. The working group will make recommendations for revisions for 2017-18 to the RSCO Director, as appropriate. Any resulting revisions to the EMP template shall be at the sole discretion of the RSCO Director.

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

1. Section IV.B.1. is revised to add the following clarification: "It shall not constitute a material breach of this second extension of the Phase III Stipulation if any of the new programs or program expansions set forth in Section III.B. herein or Section III.B. of the Stipulation Extension are not implemented in 2016-17 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, subject to Section V.D.1.a. of the Phase III Stipulation, 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 IV.D.2. is updated to reflect the earliest date by which October enrollment data will be made available for 2016-17 as December 1, 2016.

~~3.~~

C. **Mediation:** The following changes are made to Section IV.C. of the Phase III Stipulation Extension:

1. The parties agree to schedule mediation with a mutually agreed upon mediator, to facilitate negotiations for a Phase IV Stipulation, no later than June 15, 2016. The parties acknowledge and agree that a goal of the mediation shall include clearly articulated benchmarks that, if achieved, would result in an end to court jurisdiction. Such benchmarks may include reasonably attainable levels of participation in reduced isolation settings, reflective of the values and goals of the Supreme Court decision in *Sheff v. O'Neill*, and may include one or more measures of sustainability. The parties agree to hold regular mediation sessions for the purpose of completing negotiations no later than September 15, 2016, 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 October 15, 2016, 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 Second Extension.

V. OTHER PROVISIONS

A. Section V.A. of the Phase III Stipulation Extension is replaced with the following: "The Phase III Stipulation Second Extension and Proposed Order shall be adopted upon execution by counsel for all parties and, thereafter, submitted to the Court for entry as a court order at the earliest possible time.

B. Section V.B. of the Phase III Stipulation Extension 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 Stipulation Second 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 Second Extension, plaintiffs reserve the right to seek further relief from the Court upon receipt of such information."

C. Section V.C. of the Phase III Stipulation Extension is updated to describe planned revisions to the Regional School Choice Lottery for the 2016-17 or 2017-18 application cycle, as set forth below:

1. Section V.C.1. of the Phase III Stipulation Extension is updated to reflect October 15, 2016 as the goal date for the launch of the uniform application and lottery materials for the 2017-18 RSCO lottery 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. Section V.C.3. of the Phase III Stipulation Extension is updated to continue efforts by the SDE, RSCO partners and Plaintiffs' Representative 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 for 2016-17 and 2017-18.

3. Section V.C.4. of the Phase III Stipulation Extension is updated to continue efforts by the SDE and RSCO Partners to collect data and review proposals to change the lottery process for 2017-18 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.

4. The RSCO Director will continue to collaborate with RSCO partners, Sheff staff from the Connecticut State Department of Education, and the plaintiffs' representative, to review lottery and school choice procedures for purposes of formulating revisions to the RSCO lottery and/or school choice process for 2016-17 or a later lottery cycle, as appropriate, to stream-line the lottery process, implement parent-friendly reforms, improve communications to families, avoid duplication, encourage cooperation among the partners, implement additional recruitment efforts for non-compliant schools, and enroll students consistent with the terms of the Phase III Stipulation, as extended. Any resulting revisions to the lottery and school choice procedures shall be at the sole discretion of the RSCO Director.

PLAINTIFFS
MILO SHEFF, ET AL.

By: Martha Stone Date: 6/10/16

Martha Stone
Center for Children's Advocacy
University of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105

Wesley W. Horton Date: 6/10/16

Wesley W. Horton
Horton, Shields & Knox, P.C.
90 Gillett Street, Hartford, CT 06105

Dennis Parker Date: 6/10/16

Dennis D. Parker
American Civil Liberties Union
125 Broad Street, New York, NY 10004

Duell Ross Date: 6/10/16

Duell Ross
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, Fifth Floor
New York, NY 10006

DEFENDANTS
WILLIAM A. O'NEILL, ET AL.

By: _____ Date: 6/9/16

George Jepsen, Attorney General
State of Connecticut
55 Elm Street, Hartford, CT 06106

INTERVENORS
CITY OF HARTFORD

By: _____ Date: 6/10/16

SO ORDERED:

_____
Superior Court Judge

DATE: 6/10/16

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478

EXHIBIT B

MILO SHEFF, et al. Plaintiffs v. WILLIAM A. O'NEILL, et al. Defendants	:	SUPERIOR COURT COMPLEX LITIGATION DOCKET CIVIL No. HHD-X07-CV89-4026240-S MAY 30, 2017
STATE OF CONNECTICUT COUNTY OF HARTFORD	: ss: Hartford	

AFFIDAVIT OF TIMOTHY J. SULLIVAN, JR.
IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION

1. I, Timothy J. Sullivan, Jr., am presently the Assistant Superintendent of CREC (Capitol Region Education Council) Schools and have been appointed to the position of Superintendent of CREC Schools as of July 1, 2017. I have been an educator for 27 years, including serving as Principal of Classical Magnet School for 8 years and serving as an assistant principal and teacher in Hartford Public Schools for 15 years.

2. CREC has been operating since 1966, and in recent decades has operated magnet schools and managed the Hartford Region Open Choice Program in response to *Sheff* stipulation benchmarks. I have led many aspects of this expansion and have knowledge of the enrollment procedures and data in magnet schools and understand the Open Choice program in the *Sheff* region.

3. CREC's mission is equity, excellence, and success for all through high-quality educational services. Central to CREC's mission is supporting the region's

effort to offer high-quality schools for all children. We believe that segregation in schools, as well as racial and socioeconomic isolation, contributes to disparities in resources and educational success. CREC Magnet Schools are representative of the diversity in the region and have consistently reduced the size of Connecticut's largest and most devastating achievement gaps.

4. I have been made aware of potential proposed changes to the standards of the current stipulation. We have heard that the state is considering options, including reducing the desegregation standard to 20% RI for some schools for the second round of the lottery. CREC believes that the current stipulation, which requires CREC's magnet schools to maintain a 25% desegregation rate is the right standard to ensure our schools maintain an essential level of integration. We aim to reach this standard in all of our schools and believe it is an achievable goal for CREC's magnet schools. The majority of CREC's magnet schools have maintained compliance with the current *Sheff* stipulation guidelines. The results of the first round of the lottery over the last month indicate that 13 out of 16 CREC schools (81.25%) are projected to remain "compliant" with a 25% desegregation standard in the upcoming school year.

5. Changing the desegregation standard could have several effects on CREC schools, including that it may permit CREC schools that are in compliance with the current stipulation to become less compliant. Lowering the rate of RI admitted students for just one year necessarily has an effect on the student population until that class graduates. Therefore, reducing the desegregation standard for one year will make it more difficult for the school to reach compliance with a 25% standard in future years. These results will compound as the years go by.

6. CREC supports the motion to extend the current stipulated agreement for six months, and we believe all elements of the current stipulation should be maintained during this extension.

7. CREC believes that the region is closer to a long-term solution to Sheff than ever before, and short-term remedies and changes to the stipulation jeopardize our ability to develop and implement a long-term plan. Changes to the standards outlined in the current stipulation could cause irreparable harm to the system and to the ability of CREC schools to remain compliant and provide a high-quality integrated education to students in the future.

8. CREC believes that a regional approach will maximize the number of Hartford students in integrated schools, while providing predictability for other districts and parties. In a regional, long-term solution, we estimate as many as 2,000 additional Hartford students could be accommodated system-wide.

9. Currently, there is uncertainty in some aspects of the administration of the RSCO programs which contribute to the inability to administer stable plans to operate the magnet and open choice programs. The state still must communicate to operators the budget for the next year, the number of open choice seats, and the number of magnet school seats.

10. Extending the conditions of the current stipulated agreement for six months will provide the key players with the opportunity to further develop a long-term regional plan that will ensure the best path forward for expanding integrated educational opportunities for Hartford residents, while also ensuring the financial sustainability of the system.

I, Timothy J. Sullivan, Jr., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Timothy J. Sullivan, Jr.

Subscribed and sworn to before me this 30TH day of May, 2017.

Commissioner of Superior Court

Regina B. Terrell
Notary Public-Connecticut
My Commission Expires
March 31, 2020

CERTIFICATION

I hereby certify: (1) on May 30, 2017, the foregoing document was emailed and/or mailed to the counsel of record listed below; (2) the document contains no personally identifiable information or such information has been redacted; and (3) the document complies with all applicable rules of procedure.

Ralph Urban
Assistant Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5210
ralph.urban@ct.gov

Howard Rifkin
Office of Corporation Counsel
Room 210
550 Main Street
Hartford, CT 06103
(860) 757-9700
howard.rifkin@hartford.gov

Scott T. Garosshen

HORTON, DOWD, BARTSCHI & LEVESQUE, P.C. · ATTORNEYS AT LAW
90 GILLETT STREET · HARTFORD, CT · 06105 · (860) 522-8338 · JURIS NO. 038478