

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

CHINYERE JENKINS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 77-0420-CV-W-1
)	
SCHOOL DISTRICT OF KANSAS)	
CITY, MISSOURI, et al.,)	
)	
Defendants.)	

**KCMSD’S OPPOSITION TO MOTION OF PLAINTIFFS
TO ENJOIN THE KCMSD DEFENDANTS’ PLANNED EXPANSION OF THE
AFRICAN CENTERED APPROACH**

The Kansas City, Missouri School District (“KCMSD” or the “District”) strongly opposes Plaintiffs’ efforts to turn the question of where and at what grades the African-Centered Education Program will be offered in the KCMSD in the 2002-03 school year into a federal court litigation issue. There are several grounds on which the Court should deny the Motion of Plaintiffs to Enjoin the KCMSD Defendants’ Planned Expansion of the African-Centered Approach (“Motion”), without the need for a hearing:

1. The parties mediated this issue with the Implementation Monitor (“IM”), who reported the parties’ agreement that the KCMSD’s intended implementation of the African-Centered Program in 2002-03 “would not materially impact the implementation of the educational improvement plans” involved in this case. Attachment A (April 24, 2002 Memorandum from Charles J. McClain, Implementation Monitor, to counsel and parties). The IM was correct that, because there is no impact on the implementation of the Court-approved plans, the KCMSD should be allowed to proceed without the need to defend itself further.

2. The question of whether and where KCMSD may offer African-Centered Programs has been litigated before in this case, with resulting agreement to a K-12 articulation of the program. As a school district that is unitary in the area of student assignment and facilities, KCMSD should be free to locate programs in accordance with its own educational judgment, without the need for Court approval.

For all of these reasons, no status conference need be held because no hearing would be appropriate. Plaintiffs' Motion should be denied on the papers.

FACTUAL BACKGROUND

Since 1991, KCMSD has implemented an African-Centered Education Program at J.S. Chick Elementary School. By 2001, Chick's third and fourth grade communication arts and mathematics scores on the Missouri Achievement Program test exceeded the State average, as measured by the MAP index. The Missouri Department of Elementary and Secondary Education named Chick as one of the "Top 10" most improved schools in the state on its 2001 MAP scores in Social Studies.

In 1996, Judge Clark considered Plaintiffs' objections to the expansion of the African-Centered Education Program proposed for Ladd Elementary School. Plaintiffs objected to putting the program at Ladd in the absence of the racial placement guidelines that were in use at magnet schools. Judge Clark expressed some uncertainty about the educational benefits of the program (as distinct from the dedication of the principal and staff, which clearly was present at Chick), but nonetheless permitted KCMSD to proceed. July 15, 1996 Order at 7-8 (Docket 4131).

The parties and the Desegregation Monitoring Committee agreed in a Stipulation and Agreement Regarding the KMCSA African Centered Approach, filed on October 6, 1998

(Docket 4731), that the African-Centered Education Program should be implemented at King Middle and Southeast High Schools. The initiative to continue the African-Centered Education Program beyond grade 5 was the result of parent and community support for continuing into higher grades the strong achievement results at Chick. Exhibit B to Docket 4731. The African-Centered Education Program was to be fully coordinated with the Core Curriculum. *Id.*

For 2001-02, the KCMSD Board added a sixth grade to the K-5 program at Chick. The Board took this action in public session, with the stated purpose of permitting planning during the summer of 2001 and the 2001-02 school year for the future of an African-Centered Education Program for middle school. No party objected to KCMSD proceeding with sixth grade at Chick in 2001-02.

It thus is not correct that the District proposes to implement the African-Centered Education Program “at grade levels beyond grades in which [the program] is currently implemented. . . .” Motion at 1. The District has had approval by means of a stipulation of the parties to provide the African-Centered Education Program in grades K-12. The District plans, beginning in 2002-03, to locate grades 6-8 at the former Southeast Annex facility rather than King Middle School or by extending further the grades at Chick (which does not have room for all of grades 6-8).

It is the KCMSD’s experience, and educational judgment, that the African-Centered Education Program did not thrive at King Middle School largely because students feed into King Middle from elementary schools in addition to Chick and Ladd. The program at King Middle had the substantial challenge of initiating students for the first time at the sixth grade level, who enrolled at King for reasons apart from the African-Centered Education Program. Locating the program at Southeast Annex will make the program available to students who

choose affirmatively to have that focus for their middle school years, much in the same way as a magnet school. The reconfiguration that KCMSD plans for fall 2002 involves only the relocation of the unopposed Chick sixth grade to Southeast Annex, and the implementation of seventh grade in an African-Centered Education Program at Southeast Annex rather than at King Middle School.

ARGUMENT

A. By Agreeing That A Middle School African-Centered Program As Planned By KCMSD For 2002-03 Will Not Interfere Materially With Implementation Of The Educational Improvement Plans, Plaintiffs Have Conceded That The Issue Does Not Belong Before The Court.

Under the July 27, 2000 Order, the Implementation Monitor was authorized to “mediate any dispute that, in the opinion of the KCMSD, the AFT, or the Jenkins Class, materially affects or has the potential to materially affect the KCMSD’s efforts to implement its educational improvement plans.” July 27, 2000 Order at 2 (footnote omitted). The Court noted that “the question of how the dispute materially affects the KCMSD’s ability to implement its educational improvement plans must be answered to the Implementation Monitor’s satisfaction before he shall have the authority to coordinate mediation efforts.” July 27, 2000 Order at 3 n.2. In the written notice that initiates any mediation, the party seeking mediation must state “how, in the notifying party’s opinion, the issue materially affects the KCMSD’s implementation efforts.” *Id.* at 3.

After reviewing the Plaintiffs’ mediation notice, which was framed in terms similar to their Motion, and after hearing from the parties and counsel at a mediation session on April 24, 2002, Dr. McClain concluded as follows:

All the parties agreed that the addition of grade 7 with an African-centered theme at Southeast Annex would not materially impact the implementation of the educational improvement plans. In view of

this agreement, any further opposition by Mr. Benson to the implementation of the above plan would be outside the scope of the mediation process established by the Court, Court order, 27 July 2000.

Attachment A. Plaintiffs' Motion does not address or refute that conclusion.

The Court, in the same July 27, 2000 Order, ruled that objections filed with the Court from a final recommendation of the IM shall state, *inter alia*, "how, in the objecting party's opinion, said course of action materially affects the KCMSD's implementation efforts." July 27, 2000 Order at 3-4. The Court's language suggests that if an action proposed by the KCMSD does not materially interfere with its implementation of the Court-approved plans, it should not be considered by the IM or the Court. That is correct under the law governing school desegregation cases.

A school board implementing a school desegregation plan is "entitled to a rather precise statement of [its] obligations under a desegregation decree." *Missouri v. Jenkins*, 515 U.S. 70, 101 (1995) (quoting *Board of Educ. v. Dowell*, 498 U.S. 237, 246 (1991)). The course that this Court has followed in recent months of requiring from the parties clear and specific articulation of what is left to complete in the educational plans is the only sensible road to completion of the case and achievement of unitary status. KCMSD accordingly knows what it must do to implement the plans. It can proceed to make the many educational, building, staffing, and other decisions involved in operating a school system, so long as it consistently implements the plans in that context.

The Court has made clear that it does not intend any and all decisions about educational policy to be brought under its jurisdiction or into the mediation process:

The Court has specifically made the recommendations of the Implementation Monitor non-binding because decisions about educational policy and actions must remain presumptively in the

hands of the KCMSD, its local School Board, the Department of Elementary and Secondary Education, and the Missouri State Board of Education.

July 27, 2000 Order at 4. The Court was correct in these statements and consistent with the Supreme Court's teachings in this case. *See Jenkins*, 515 U.S. at 88. A federal court in a school desegregation case should be very hesitant to impose or forbid certain educational judgments simply because the Court (or the Plaintiffs) would make some judgment different than the school board's. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *United States v. Board of Educ.*, 799 F.2d 281, 293-95 (7th Cir. 1986).

The Plaintiffs propose to take this case down a far different road. They assume that if they assert that any action of the KCMSD "will materially impair the District's ability to improve student achievement, close the black/white achievement gap, and delay the District's attainment of unitary status," Motion at 4, the Court will hold an evidentiary hearing to permit them to pit their educational judgment against the District's. The Court should not allow them to proceed in this manner. Virtually any judgment the KCMSD makes – on what positions to fund in the budget, whether students should wear uniforms, which extracurricular activities to offer, whether to give spelling tests – would be argued by some educational expert to help or hurt student achievement. That does not mean that the Court should rule on such issues. The parties agreed on plans, approved by the Court, that are the road to unitary status. The parties have just completed an extensive process of negotiating changes to the plans. There should be no doubt now about what the KCMSD must do. If KCMSD interferes with a plan, the Court should hear a complaint by another party. But because the Court-approved plans will be fully implemented at the African-Centered Education Program at Southeast Annex, and the Plaintiffs make no claim to the contrary, the Motion should be denied.

B. A School District That Is Unitary In The Area Of Student Assignment Should Be Free To Choose The Location Of Programs.

The parties already stipulated that KCMSD may offer middle and high school programs based in African-Centered Education. KCMSD now plans to offer the middle school program at Southeast Annex rather than at King Middle School. It does not seem to be the change in location, however, that is the basis for Plaintiffs' objection. Plaintiffs seem to focus on the program itself and its impact on student achievement. The time for such objections passed, however, in 1998. If Plaintiffs are trying to stop the implementation of an African-Centered Education Program at any location at the middle school level, it is they who are trying to change the agreed-upon programs in the District.

Particularly since the Court has granted unitary status to the KCMSD in the areas of student assignment, budget, facilities, and transportation, it would be quite startling for the Court now to exercise jurisdiction over the issue of where an approved program will be located. Plaintiffs have nothing to say in their motion about the relative merits of the King and Southeast Annex locations. Even if they did, it is doubtful that the Court has jurisdiction to order this program back to King. The consequence of a declaration of unitary status is the mandatory devolution of control to local authorities. *See Dowell*, 498 U.S. at 250; *Pasadena City Board of Educ. v. Spangler*, 427 U.S. 424, 436-37 (1976); *Dowell v. Board of Educ.*, 8 F.3d 1501, 1511 (10th Cir. 1993); *Lee v. Talladega County Board of Educ.*, 963 F.2d 1426, 1429 (11th Cir. 1992), *cert. denied*, 507 U.S. 910 (1993). The question of which students will go to which schools for which programs is the heart of the student assignment area of a school district's operation. Now that KCMSD is unitary in the area of student assignment, the Court should not entertain challenges to KCMSD's conduct in that area. *See Lee*, 963 F.2d at 1429-30. For this reason as well, the Motion should be denied.

CONCLUSION

For all of the foregoing reasons, the Plaintiffs' Motion should be denied on the papers. Should the Court want a hearing on this issue, KCMSD stands ready to demonstrate on the merits that the African-Centered Education Program advances student achievement, and will benefit by the improvement in articulation that will be accomplished by locating the middle school program at Southeast Annex.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing were sent via electronic mail, this 9th day of May 2002

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