

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GLORIA TOMBLIN, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 75-1268

DENZIL GAINER, AUDITOR OF THE  
STATE OF WEST VIRGINIA, et al.,

Defendants.

*Agreed* ORDER

This day came the West Virginia State Board of Education, by counsel, Michael J. Farrell; the Governor of West Virginia, by counsel, John T. Poffenbarger; the West Virginia State Superintendent of Schools, by counsel, Katherine L. Dooley, and moved the Court to accept the agreements hereinafter set forth as a resolution on the nonfunding issues pending before this Court. The plaintiff class, by counsel, Daniel F. Hedges, and the WVEA, by counsel, William B. McGinley, are in agreement with said motion. The Court took the motion under advisement and considering all the ramifications thereof is of the opinion that said motion should be granted.

The plaintiffs made a motion for an Order of Implementation seeking that resource evaluations be reinstated, that court action be taken to implement the Master Plan in terms of formula and other funding changes and that there be a commissioner appointed to oversee the implementation of the decree and for other relief. The defendant State Board of

Education and Superintendent made the motion that H.B. 4306 be accepted in lieu of the Master Plan for such other relief set forth in their motion. The parties being interested in fully compromising all matters pending before the Court have agreed to the terms hereinafter set forth.

The parties recognize that the West Virginia Constitution gives constitutionally preferred status to public education. State ex rel Board of Education v. Rockefeller, 167 W. Va. 72, 281 S.E.2d 131 (1981); West Virginia Education Assoc. v. Legislature of West Virginia, 179 W. Va. 381, 369 S.E.2d 454 (1988). Education is the primary responsibility of State government in the State of West Virginia. Article XII of the West Virginia Constitution requires that the Legislature develop and fund a high quality education system. Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979); West Virginia Education Assoc. v. Legislature of West Virginia, 179 W. Va. 381, 369 S.E.2d 454 (1988) (with the general supervision of the school system being entirely vested in the West Virginia Board of Education); West Virginia Board of Education v. Hechler, 180 W. Va. 451, 376 S.E.2d 839 (1988) (implicit in this definition of the entire system of schools are (1) good physical facilities, instructional materials and personnel; and (2) careful State and local supervision to prevent waste and to monitor pupil and teacher administrative competency; Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979). The parties recognize that in 1990, evaluation of resource needs, which had been accomplished utilizing the Criteria of Excellence, was altered by passage of W. Va. Code §18-2E-1. The parties also recognize that

(1) substantial progress has been made in the implementation of this Court's decree in improvement of facilities through a statewide facility planning and funding mechanism which prevents waste and promotes the efficient use of existing resources, a significant step in the implementation of the Master Plan, and that (2) with the exception of high school curriculum offerings and vocational offerings that the significant portion of the Master Plan has been incorporated into State Board of Education policy.

It is also recognized that all funding needs verified as a result of resource evaluation cannot be immediately funded. West Virginia recognizes and wants to give public primary and secondary education the priority in funding that it deserves but also recognizes that the proper balance of (a) curriculum, facilities and equipment improvements and (b) formula changes is essential given the limited resources of the State.

The State seeks to assure that all of its students are able to compete academically and vocationally in the national and international economy. For that reason, the State Superintendent and the State Board of Education do hereby state their commitment to the highest quality of education, and that priority will be given to those funding needs which produce the greatest benefit for students at the earliest possible time. That is not to suggest that any of the funding needs hereinafter set forth will not be pursued on a timely basis.

Upon the agreements of the parties and the Court's review of the applicable law, it is hereby **ORDERED** and **DECREED** that:

1. Identification of Resource Needs.

a) The State Board of Education shall fully implement resource evaluations as a part of the accreditation and evaluation process. The process will meaningfully evaluate the needs for facilities, personnel, curriculum, equipment and materials in each of the county's schools and how those impact program and student performance. (See e.g., the proposed changes, Appendix A).

There is a controversy about whether a number of evaluation criteria set forth in the Training Manual and Handbook for Education Performance Audits which (a) do not require routine evaluation and should not continue to occupy a significant role in the accreditation process because they are generally followed or are not significant issues affecting delivery of education, or (b) are duplicative, will be reviewed by a committee of the State Board of Education and substantive changes made. (See Appendix B). The high school curriculum offerings and vocational offerings to be available in a high quality school and system shall be listed and all reviewed in the accreditation process. The offerings shall be consistent with elective offerings listed in Policies 2510 and 2520 as updated from time to time by the State Board of Education. The vocational offerings shall be developed consistent with paragraph 3(b) and included in the manual and evaluated in the accreditation process.

b) In effectuating the resource evaluations, Chapters 1 through 14 of Policy 6200 shall be used as the guiding document in the evaluation of the facilities and equipment

portion of the evaluations in all schools throughout the State; and that Policy 6200 shall be updated by the Board to. (a) delete Chapter 15; (b) add computer technology; (c) continue detailed description of facility and equipment needs in each program; (d) assure all service areas are covered; and (e) otherwise reflect that it is the document for facility and equipment evaluation in all of the schools in the State. The parties recognize that corrective measures to be taken in response to any identified resource deficiencies will always of necessity be subject to the feasibility of modifying existing facilities, availability of funding and prioritization of educational needs.

c) Performance audit teams shall be made up primarily of professional personnel employed by the State who routinely perform the same functions in the audit process to insure consistency in the evaluation process.

d) The State Board of Education shall assure in the accreditation process that writing shall continue to be a part of every child's weekly educational curriculum in grade 1 through 12, that writing takes place in every appropriate class, and that the effectiveness of the writing education shall be thoroughly evaluated in the process of school evaluation.

e) The Director of the Office of Education Performance Audits shall propose recommendations regarding policy and regulatory changes contemplated by Paragraph 1 of the Order on or before the October, 2000 meeting of the State Board of Education, to be placed in policy, if accepted, on or before March 1, 2000, with pilots to begin thereafter, and

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full implementation by July 1, <sup>2001</sup>2000.

2. Testing.

a) In the implementation of the accreditation/evaluation process, and in particular that portion of the evaluation relating to student success rate, the State Board of Education shall establish a minimum of six criteria for the evaluation of testing data which shall include, but shall not be limited to: (1) annual changes in students' scores; (2) trends in scores; (3) goals for schools in average scores. This is a value added approach.

The goals of the testing and evaluation process shall be to (i) remove any adverse impact upon schools related to the demographics of the children attending the school, and (ii) improve performance of all children attending all schools. The composite of these criteria shall refine these goals.

b) Questions about the validity and effectiveness of the tests used in the school of this State (grades 3-12) have been raised, both as to basic skills and substantive area tests. Testing procedures/tests to be employed shall be identified by a committee consisting of seven persons: (i) four designees of the State Board of Education, (ii) one designee of the State Legislature, (iii) a designee of WVEA, and (iv) an educator designated by counsel for the plaintiff class of school children. The committee shall, by January 1, 2002, identify basic skills and substantive area tests to be considered by the State Board of Education for implementation on or before the school year 2002-2003, and in addition identify the types of testing mechanisms to be considered by the State Board of Education and be in place

beginning September 2004, and submit the same to the State Board of Education. The decisions of the committee shall be by consensus.

3. Substantive Needs. Certain substantive needs exist in many West Virginia schools and require the development of effective strategies as hereinafter set forth:

a) In order to pursue a remedy for (i) shortage in foreign language teachers, (ii) art and music program limitations and (iii) projected teacher shortages in all areas in upcoming years, in each of the three areas a committee composed of one legislator or designee, three education specialists, and one higher education supervisor shall be appointed by the State Board of Education, with one of the education specialists to be designated by WVEA and one to be designated by counsel for the plaintiff class of school children. Said committees shall develop a strategy and present a needs analysis to the State Board of Education, Governor, and Legislature initially by January 1, 2001 and annually thereafter as the subject area warrants.

b) Vocational Offerings. In order to address delivery of appropriate vocational offerings in public secondary schools in every county in the State, a committee composed of one legislator or designee, three vocational educational specialists, one higher education supervisory person, and a business representative, including one education specialist designated by WVEA and one education specialist designated by counsel for the plaintiff class, shall be appointed by the State Board of Education. The committee shall develop and submit to the State Board of Education for its consideration, strategies for the public schools

to remedy this inadequacy which shall include (a) personnel needs; (b) alternate methods of delivery; and (c) interfacing with community and technical colleges offerings. A needs analysis will be presented to the State Board of Education, Governor, and the Legislature by July 1, 2001, and annually thereafter as the subject area warrants.

The State Department shall supply sufficient staff to coordinate development of technology vocational education in every county of the State. The State Board of Education shall assure that the evaluation and accreditation process includes meaningful evaluation of the vocational offering components.

c) Science facilities and equipment. In order to address inadequacies in some school science facilities for grades 7-12 students, a committee of four persons consisting of one legislator or designee, one State Board of Education designee, one designee of WVEA and one designee of counsel for plaintiff class of school children. The committee will devise strategies to immediately address this issue and present a needs analysis to the State Board of Education for its consideration, with copies to the School Building Authority, Governor, and the Legislature, by January 1, 2001 and annually thereafter as warranted.

4. The resolution of the pending motions filed by the plaintiff class and other plaintiffs, as reflected in this Order, does not change, alter, diminish or otherwise modify the constitutional and statutory powers of the West Virginia State Board of Education to supervise the K-12 public school system of the State of West Virginia. The advisory committees provided for herein are not designed to, in any way, impinge upon that

constitutional and statutory authority.

5. The plaintiffs retain the right to seek further relief from this Court regarding issues of nonimplementation.

FINALLY, the parties address the status of the Master Plan (Chapters II and III) adopted by this Court by its Order dated March 4, 1983 and the motion by the State Board of Education that the Court recognize the policies of the State Board of Education adopted from the Master Plan, including but not limited to: Policy 2510 - Assuring the Quality of Education: Regulations for Education Programs; Policy 2520 - Instructional Goals and Objectives for West Virginia Schools; and Policy 6200 - Handbook on Planning School Facilities together with the requirements hereinbefore set forth in paragraphs 1 through 3 of this Order as the standards of a high quality education, which are so recognized.

The parties further agree that the process set forth in W. Va. Code §18-2E-5 be used as the evaluation process for ascertaining delivery of a high quality education for the students in West Virginia so long as the changes hereinbefore contemplated, in paragraphs 1-3, including but not limited to, the evaluation of resource needs, are included, and govern the implementation of such process.

Therefore, this Order is adopted as a modification of this Court's Order of March 4,

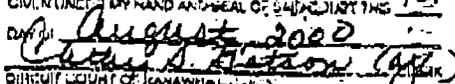
1983 and to the extent that they are in conflict, said Order is hereby vacated. The Court expressly grants the plaintiffs' motion to reinstate resource evaluations, as moulded, and expressly grants the State Board of Education's motion to recognize W. Va. Code §18-2E-5 as the implementation process for ascertaining compliance with the constitutional mandate.

The plaintiffs' pending motion to appoint a commissioner is withdrawn. The Plaintiffs have pending before this court motions relative to funding issues articulated by this Court in its original opinion, further identified by the Department of Education and the State Board of Education in the Master Plan adopted by the Court in 1983, and reiterated by this Court in its 1997 Order. The plaintiffs contend that the issues include, but are not limited to, the areas of (1) facility financing, (2) the elimination of the excess levy as an essential part of educational financing, and (3) all Steps of the funding formula including the primary problem areas of Step 1 and Step 2 of the formula.

It is so **ORDERED**.

Entered this 1st day of August, 2000.

  
CIRCUIT COURT JUDGE

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 1st  
DAY OF August, 2000.  
  
CIRCUIT COURT OF KANAWHA COUNTY