

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LASHAWN ROBINSON, on behalf of herself and her five children; **NICHOLE BURKE-KANE**, on behalf of herself and her minor son; **NATALIE DELGADO**, on behalf of herself and her two minor children; **SHARA FERGUSON**, on behalf of herself and her four minor children; **MARIE JOULET**, on behalf of herself and her three minor children; **TYNIMA TONEY**, on behalf of herself and her two minor children; and **JUAN TIRADO** and **JAHAIRA VELAZQUEZ**, on behalf of themselves and their two minor children,

Plaintiffs,

v.

DIANNA WENTZELL, in her official capacity as Commissioner, Connecticut State Department of Education; **GLEN PETERSON**, in his official capacity as the Director, Sheff and Regional School Choice Office; **ALLAN B. TAYLOR**, in his official capacity as Chairperson of the Connecticut State Department of Education's Board of Education; **DANNEL MALLOY**, in his official capacity as Governor of Connecticut; **GEORGE JEPSSEN**, in his official capacity as Connecticut Attorney General; and **CRAIG STALLINGS**, in his official capacity Chairperson of the Hartford Public Schools Board of Education,

Defendants.

Civil Action No. _____

FEBRUARY 15, 2018

Jury Trial Demanded

COMPLAINT

INTRODUCTION

1. Thousands of Hartford's most needy students suffer under an education bureaucracy that is more concerned with the color of a child's skin than her academic future. Every year, hundreds of Hartford's black and Hispanic students are denied admission to the City's best schools solely because of their race. Hartford's world-class magnet schools have the space to educate these students, but they are kept out by a racial quota that reserves 25% of the seats at the best schools for students who are white. These schools are literally mandated to leave desks unoccupied if enrolling an additional black or Hispanic child would upset the racial quota. Turned away from Hartford's best schools, these black and Hispanic students are forced into Hartford's failing neighborhood schools, where their hope for a bright future is, all-too-often, extinguished.

2. In addition to the racial quota, Hartford students are routinely sorted and classified by race in a backroom "lottery" that determines whether a student's dream of a quality school will be fulfilled. A recent exposé by the *Hartford Courant* detailed this divvying up by race: "The state-run school choice lottery . . . is in fact a carefully engineered process designed to push white and Asian students toward the front of the line at magnet schools that still attract too few non-minority applicants."¹

¹ Matthew Kauffman and Vanessa de la Torre, *Beyond Reach: Even As Magnet School Seats Remain Empty, Racial Quotas Keep Many Black, Latino Students Out*, *Hartford Courant* (Mar. 13, 2017), <http://www.courant.com/education/hc-sheff-lottery-empty-seats-day-2-20170313-story.html>.

3. Today, seven brave families challenge this rampant unconstitutional discrimination by Connecticut and Hartford officials. Included among the plaintiffs bringing this lawsuit is a mother who was a student in the Hartford school system twenty years ago when a prior lawsuit promised a brighter future for her children. She has had to watch as her once-curious son lost out on lottery after lottery, and was sent to a school where bullying, chaos, and confusion have all but sapped his will to learn. Another mother came to Hartford from Puerto Rico specifically to give her daughters a better education. Having “lost” in the lottery multiple times, she too fears for her daughters’ future at their current school, where reading and math scores are among the worst in Connecticut. Another mother describes the plight of her son, who has been ranked between 8th and 15th on three different magnet school waiting lists, but who has never received the dream phone call that would give him the opportunity for a future he deserves. These and other families challenge the racial discrimination by Connecticut and Hartford officials that is denying their children the opportunity to compete for available seats in Hartford’s world-class magnet schools.

JURISDICTION AND VENUE

4. This action arises under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §§ 1981 & 1983. The Court has jurisdiction over these federal claims under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as Defendants are residents of this judicial district and the State of Connecticut. Venue is also proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred or will occur in this judicial district.

PARTIES

Plaintiffs

6. LASHAWN ROBINSON lives in Hartford with her five children. She and her children are African-American. Ms. Robinson's children all attend Hartford Public Schools. All have applied to attend Hartford magnet schools and will continue to do so as long as they are eligible. Jr.T. is a 19-year-old African-American boy in the 11th grade. J.T. is a 15-year-old African-American boy in the 9th Grade. N.H. is an 11-year-old African-American boy in 5th grade. J.H. is a 10-year-old African-American girl in 4th grade. T.R. is a five-year-old African-American girl in kindergarten. As the mother and legal guardian of her five children, Ms. Robinson claims their injuries in this litigation. *See Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718-19 (2007).

7. NICHOLE BURKE-KANE and her son C.K. are African-American. C.K. is six-years old and attends a Hartford public school. Ms. Burke-Kane has twice applied for C.K. to attend a Hartford magnet school, but he has never been accepted. She will apply for C.K. to attend a magnet school next year, and all subsequent years he is eligible. As the mother and legal guardian of C.K, Ms. Burke-Kane claims his injury in this litigation. *See id.*

8. NATALIE DELGADO, originally from Puerto Rico, came to Hartford for better opportunities for her daughters, I.M. and D.M. I.M. is 10-years old and is currently in 5th grade. D.M. is nine-years old and is currently in 4th grade. Both children attend a Hartford public school. Ms. Delgado has applied for her children to attend magnet schools in the City of Hartford, and she will continue to do so as long as they are eligible. As the mother and legal guardian of her children, Ms. Delgado claims their injuries in this litigation. *See id.*

9. SHARA FERGUSON and her children are African-American. Her son C.K. is 15-years old and is currently in 9th grade. Her son J.H. is nine-years old and is currently in the 4th grade. Her daughter C.B. is seven-years old and is currently in the 2nd grade. Her son J.B. is five-years old and is currently in kindergarten. C.K., J.H., C.B., and J.B. all attend Hartford Public Schools. Ms. Ferguson has applied for C.K., J.H., C.B., and J.B. to attend Hartford magnet schools multiple times, and she will continue to do so long as they are eligible. Her children have never been selected to attend a magnet school. As the mother and legal guardian of her children, Ms. Ferguson claims their injuries in this litigation. *See id.*

10. MARIE JOULET and her minor children are Hispanic. Her three children all attend Hartford Public Schools. Her son Kz.R. is 16-years old and is currently in the 9th grade. Ms. Joulet's son Kl.R. is 14-years old and is currently in the 7th grade. Ms. Joulet's son A.C. is 10-years old and is currently in the 5th grade. Ms. Joulet has applied for her children to attend Hartford magnet schools multiple times, and she

will continue to do so, as long as they are eligible. As the mother and legal guardian of her children, Ms. Joulet claims their injuries in this litigation. *See id.*

11. TYNIMA TONEY and her two minor children are African-American. Her children attend Hartford Public Schools. Ms. Toney's son Za.C. is eight-years old, and her daughter Zy.C. is seven-years old. Ms. Toney has applied to Hartford magnet schools for both of her children every year they have been eligible, and she will continue to do so in the future. Her children have never been accepted at to attend a magnet school. As the mother and legal guardian of her children, Ms. Toney claims their injuries in this litigation. *See id.*

12. JAHAIRA VELAZQUEZ is originally from Puerto Rico and has two minor children that attend Hartford Public Schools. Both she and her children are Hispanic. Y.T. is nine-years old and is currently in 4th grade. J.T. is seven-years old and is currently in 2nd grade. She has applied for her children to attend magnet schools in Hartford, and she will continue to do so as long as they are eligible. As the mother and legal guardian of her children, Ms. Velazquez claims their injuries in this litigation. *See id.*

13. JUAN TIRADO, originally from Puerto Rico, is married to Plaintiff Jahaira Velazquez, and he is Y.T. and J.T.'s father. With Ms. Velazquez, Mr. Tirado has applied for his children to attend magnet schools in Hartford, and they will continue to do so as long as they are eligible. As the father and legal guardian of his children, Mr. Tirado claims their injuries in this litigation. *See id.*

14. All Plaintiffs have in the past applied for their children to attend Hartford magnet schools, and all will continue to apply for a chance to enroll their children in one of the Hartford magnet schools.

Defendants

Connecticut State Department of Education

15. DIANNA WENTZELL is the Commissioner² of the Connecticut State Department of Education (Department of Education or Department). Dr. Wentzell is sued in her official capacity.

16. The Department of Education serves “as the administrative arm of the State Board of Education.” Conn. Gen. Stat. § 10-3(a). The Department is “under the direction” of the Commissioner of Education, who “shall be the administrative officer of the department and shall administer, coordinate and supervise the activities of the department in accordance with the policies established by the board.” *Id.* The appointment of the Commissioner is recommended by the Board of Education to the Governor, for a term of four years to be coterminous with the term of the Governor. *Id.*

17. The Board of Education is obligated to “organize the Department of Education into such bureaus, divisions and other units as may be necessary for the efficient conduct of the business of the department.” *Id.* § 10-3(b). The Board has

² Pursuant to Connecticut General Statute § 10.2(b), whenever “the term the secretary to the State Board of Education occurs or is referred to in the general statutes, it shall be deemed to mean or refer to the Commissioner of Education.”

“general supervision and control of the educational interests of the state,” including elementary education. *Id.* § 10-4(a).

19. The Department of Education is tasked with, among other things, “assisting the state in meeting the goals” in the *Sheff v. O’Neill*, 238 Conn. 1 (1996) settlements and stipulations. Conn. Gen. Stat. § 10-264l(a). The Commissioner of Education is responsible for, among other things, developing the “reduced-isolation setting standards for interdistrict magnet school programs” that are the subject of this litigation. *Id.*

Regional School Choice Office (RSCO)

20. The Connecticut Department of Education created the Regional School Choice Office in response to the *Sheff* decision. The RSCO conducts, operates, and administers the lottery process for interdistrict magnet schools that is the subject of this lawsuit.

21. GLEN PETERSON is the Director of Connecticut’s *Sheff* and Regional School Choice Office, and is sued in his official capacity.

Connecticut State Board of Education

22. The Connecticut State Board of Education (State Board) has “general supervision and control of the educational interests of the state,” including elementary education. Conn. Gen. Stat. § 10-4(a). Among other things, the State Board “shall ensure that all interdistrict educational programs and activities receiving state funding are conducted in a manner that promotes a diverse learning environment[,]” and it “may establish reasonable enrollment priorities to encourage

such programs and activities to have racially, ethnically and economically diverse student populations.” Conn. Gen. Stat. § 10-276*b*.

23. ALLAN B. TAYLOR is Chairperson of Connecticut’s State Board of Education and is sued in his official capacity.

State Officials

24. DANIEL MALLOY is the Governor of Connecticut and is sued in his official capacity. As Governor, he is vested with the “supreme executive power of the state.” Conn. Gen. Stat. § 3-1. Among other things, the governor is responsible for appointing, with the advice and consent of the Connecticut General Assembly, the members of the State Board of Education, and the governor selects one Board member as chair. *Id.* §§ 10-1(b), 10-2(a). The Governor appoints the Commissioner of Education, upon recommendation by the Board of Education, for a term of four years to be coterminous with the term of the Governor. *Id.* § 10-3(a).

25. GEORGE JEPSSEN currently serves as Attorney General for the State of Connecticut and is sued in his official capacity. The Attorney General has “general supervision over all legal matters in which the state is an interested party.” Conn. Gen. Stat. § 3-125.

Hartford Public Schools Board of Education

26. The Hartford Board, like all local and regional boards of education, has “charge of the schools of its [] school district[.]” Conn. Gen. Stat. § 10-220(a). Among other things, the Hartford Board must “determine the number, age and qualifications

of the pupils to be admitted into each school[]” and “designate the schools which shall be attended by the various children within the school district[.]” *Id.*

27. CRAIG STALLINGS is Chairman of the Hartford Public Schools Board of Education (Hartford Board) and is sued in his official capacity.

ALLEGATIONS

The Sheff decision

28. In 1989, ten families filed a class-action lawsuit in Hartford Superior Court alleging racial discrimination and segregation in the State of Connecticut, including Hartford and its adjacent suburban communities. The families alleged that de facto segregation along racial and ethnic lines within Connecticut schools violated provisions of the Connecticut Constitution. *Sheff v. O’Neill*, 238 Conn. 1 (1996).

29. The Connecticut Supreme Court ruled that the Connecticut Constitution required the State to provide all schoolchildren with a “substantially equal educational opportunity,” and that a significant component of that requirement was access to schools that were “not substantially impaired by racial and ethnic isolation.” *Sheff*, 238 Conn. at 24. The court remanded the case to the superior court with orders to enter declaratory judgment for the plaintiffs and retain jurisdiction to grant consequential relief. The court also ordered the executive and legislative branches of Connecticut to enact remedial programs.

Legislative response to Sheff

30. In response to the *Sheff* decision, Governor John Rowland issued Executive Order No. 10, creating the Education Improvement Panel. The panel issued a final report in January 1997, recommending multiple legislative reforms.

31. The Connecticut Legislature passed Public Act 97-290, “*An Act Enhancing Educational Choices and Opportunities*” (Act), adopting many of the recommendations contained within the final report, and ordering Connecticut school boards to reduce racial, ethnic, and economic isolation by various methods, including interdistrict magnet school programs, charter schools, and intradistrict and interdistrict public school choice programs.

32. The Act established a state-wide program enabling the enrollment of children in schools in urban and suburban areas beyond their neighborhood school through a lottery system. Originally named the Choice program, now known as Open Choice, the system replaced a voluntary busing system known as Project Concern that had been in operation since 1966.

33. The Connecticut State Department of Education created the Regional School Choice Office (RSCO) to operate in partnership with school districts to conduct a lottery process for placement of children in Open Choice and magnet schools.

Continuing litigation and settlements in Sheff

34. In March 1998, the *Sheff* plaintiffs filed a motion for an order directing that further remedial measures be undertaken. At that time, the superior court found that the State had complied with the decision of the Connecticut Supreme Court. *Sheff v. O’Neill*, 45 Conn. Supp. 630, 667 (Super. Ct. 1999).

35. In December 2000, the *Sheff* plaintiffs filed an order to show cause as to why the State's efforts to comply with the 1996 decision should not be held to be inadequate. After extended negotiations, a settlement was reached between the *Sheff* plaintiffs and the State that was entered as an order of the court in March 2003 (the Phase I Stipulation).

36. The Phase I Stipulation was submitted to the Connecticut General Assembly for approval and to the Connecticut Supreme Court for entry as a court order. Conn. Gen. Stat. § 3-125a. The Phase I Stipulation mandated implementation of three types of voluntary interdistrict programs to lessen racial, ethnic, and economic isolation: (a) interdistrict magnet schools, (b) the Open Choice program, and (c) interdistrict cooperative programs.

37. The Phase I Stipulation created a four-year plan through which the State was to achieve stated interim goals reducing racial isolation of Hartford's minority schoolchildren, and which included plans for eight new integrated magnet schools in Hartford. The Phase I Stipulation created a formula by which progress would be measured. This formula was calculated by (1) adding (a) the number of minority students attending public schools in districts other than Hartford to (b) the number of minority public school students attending any interdistrict magnet school, and then (2) dividing that sum by the total number of minority students in the Hartford schools. Phase I Stipulation § II(2).

38. In January 2007, while the *Sheff* plaintiffs and the State of Connecticut were negotiating a replacement for the Phase I Stipulation, the City of Hartford

intervened in the court action. A revised settlement was not reached before the expiration of the Phase I Stipulation. The Phase I Stipulation expired in June 2007, without the State meeting the stated goals. In July 2007, the *Sheff* plaintiffs filed a motion for order enforcing judgment and to obtain a court-ordered remedy, alleging that the State had failed to comply with the requirements of the 1996 *Sheff* judgment.

39. After further negotiations, the *Sheff* plaintiffs reached a settlement with the State, and that settlement was entered as an order of the court in April 2008 (the Phase II Stipulation). The Phase II Stipulation covered a five-year term ending June 30, 2013, and it sought to expand the use of regional magnet schools and Open Choice. The Phase II Stipulation included a “Desegregation Standard” that required “Sheff Region” interdistrict magnet schools to maintain no more than 75% minority-student enrollment to receive operating grants from the State. *See* Phase II Stipulation, § IV. The Phase II Stipulation also included a minimum goal that required at least 41% of minority students to be in “reduced isolation settings,” as established by the Desegregation Standard, within five years. Phase II Stipulation, § II(C)(4).

40. In 2013 the *Sheff* plaintiffs, the State, and the City of Hartford agreed to a one-year extension of the Phase II Stipulation, with some modifications, which was entered as an order of the court in April 2013. This agreement extended the Phase II Stipulation deadline to June 30, 2014.

41. In 2013, the *Sheff* plaintiffs, the State, and the City of Hartford negotiated a replacement to the Phase II Stipulation that was entered as an order of

the court in December 2013 (the Phase III Stipulation). The Phase III Stipulation covered the period from July 1, 2014 to June 30, 2015. The Desegregation Standard was incorporated into the definition of “reduced-isolation setting,” but it was altered to explicitly exclude all minorities except for black and Hispanic individuals. Under the Phase III Stipulation, a “Voluntary Interdistrict Program” is required to “provide a reduced-isolation setting if its enrollment is such that the percentage of enrolled students who identify themselves as any part Black/African American, or any part Hispanic, does not exceed 75% of the school’s total enrollment.” Phase III Stipulation, § II.M.

42. As a result of the Phase III Stipulation’s new definition of “reduced-isolated,” Asian students are no longer considered minority students. This reformulation was necessary because Hartford magnet schools could not enroll enough white students to meet their goals. By redefining Asian students as “reduced isolated,” the Hartford magnet schools could increase their student populations.

43. In February 2015, the parties agreed to a one-year extension of the Phase III Stipulation, with modifications, through June 30, 2016. This extension was entered as an order of the court. In June 2016, the parties agreed to another one-year extension of the Phase III Stipulation, with additional modifications, through June 30, 2017, and this extension was entered as an order of the court. The Phase III Stipulation expired June 30, 2017, and the parties have not reached any further settlement agreements.

44. Unable to reach an agreement, the *Sheff* plaintiffs on May 30, 2017, filed a motion for a temporary injunction. In opposition to that motion, the State of Connecticut sought to decrease the racial quota of non-minority students from 25% to 20%. The State presented evidence that this quota reduction would allow an additional 1,165 students to attend Hartford magnet schools. The *Sheff* plaintiffs opposed the quota reduction. The Hartford County Superior Court ruled in favor of the plaintiffs, granting their motion for a temporary injunction, and denying Connecticut's attempt to reduce the racial quota by 5%. *Sheff v. O'Neill*, No. LND CV-89-4026240-S, 2017 WL 3428676 (Hartford Cty. Superior Ct. Aug. 7, 2017).

Current law governing racial quota

45. The 75% cap on black and Hispanic enrollment, as well as the rest of the *Sheff* stipulations in their current form, have been codified and incorporated by reference into the Connecticut General Statutes.

46. Conn. Gen. Stat. § 10-264l(a) requires that, “[f]or the school years commencing July 1, 2017, and July 1, 2018, the governing authority for each interdistrict magnet school program shall . . . maintain a total school enrollment that is in accordance with the reduced-isolation setting standards for interdistrict magnet schools programs, developed by the Commissioner of Education pursuant to section 1 of public act 17-172.”

47. On October 23, 2017, the Connecticut Department of Education issued its regulation incorporating the stipulated *Sheff* quota. A true and correct copy of this regulation is included as Exhibit 1.

48. Under the regulation, a “reduced-isolation” student may not be black or Hispanic. Furthermore, “the percentage of [reduced-isolation] students enrolled in the interdistrict magnet school must equal at least 25 percent of the total school enrollment.”

49. Accordingly, under the statute and regulation, black and Hispanic students—and only black and Hispanic students—are restricted from enrolling in Hartford interdistrict magnet schools.

The RSCO Lottery

50. The Connecticut State Department of Education created the Regional School Choice Office (RSCO) to operate in partnership with school districts to conduct a lottery to determine which students may be permitted to attend interdistrict magnet schools.

51. Approximately 20 of these magnet schools are located within the Hartford Public Schools school district.

52. The lottery is a computer-based method of assigning to magnet schools students who have submitted a completed and on-time application.

53. The lotteries for the 2018-2019 school year opened on November 1, 2017, and close on February 28, 2018.

54. RSCO plans to inform current students of the lottery results by May 2018.

55. Although touted as a random process, the RSCO lottery uses race to carefully engineer the racial makeup of magnet schools in Hartford.

56. From the close of the lottery application process until the results are made public, State and local officials test and tweak the lottery in order to tip the scales in favor of white and Asian applicants.

57. The lottery algorithm is not decided *ex ante*. Instead, State and local officials constantly monitor the racial makeup of the applicant pool and tinker with the lottery algorithm in order to ensure a “proper” racial balance.

58. State and local officials give preferences to individuals from areas known to have high concentrations of white and Asian applicants.

59. State and local officials run the lottery simulation as many times as necessary to ensure that white and Asian students rank high in the ordering.

60. The RSCO lottery gives preference to white and Asian applicants—over black and Hispanic applicants—to attend a Hartford magnet school.

INJUNCTIVE RELIEF ALLEGATIONS

61. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

62. Defendants are responsible for enforcing and/or implementing the 75% cap on black and Hispanic students in Hartford’s magnet schools, and for enforcing and/or implementing the RSCO lottery, both of which violate Plaintiffs’ civil rights. Because of these violations, present and future, Plaintiffs are now and will continue to suffer deprivation of their constitutional rights.

63. If not enjoined by this Court, Defendants and their agents, representatives, and employees will continue to discriminate against children on the

basis of race, in contravention of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

64. Pecuniary compensation to Plaintiffs or other victims of such continuing discrimination would not afford adequate relief.

65. Injunctive relief is necessary to prevent a multiplicity of judicial proceedings on these same or similar issues.

66. Accordingly, permanent injunctive relief is appropriate and proper.

DECLARATORY RELIEF ALLEGATIONS

67. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

68. An actual and substantial controversy currently exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants are discriminating on the basis of race in violation of the Fourteenth Amendment to the United States Constitution. Defendants dispute that their actions are unconstitutional.

69. There exists a present justiciable controversy between the parties concerning the constitutionality and legality of the 75% cap on black and Hispanic students who may attend Hartford's magnet schools, and the constitutionality or legality of enforcing and implementing the RSCO lottery in a racially discriminatory manner. Plaintiffs will be directly, adversely, and irreparably harmed by Defendants' actions in enforcing and implementing the racial quota and the RSCO lottery, and by

Defendants' continuing administration, implementation, reliance, and enforcement of them now and in the future.

70. A judicial determination of rights and responsibilities arising from this actual controversy is necessary and appropriate at this time.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

The 75% Minority Cap Violates the Equal Protection Clause of the Fourteenth Amendment

71. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

72. Plaintiffs are persons under 42 U.S.C. §§ 1981 & 1983.

73. Defendants acted under the color of state law in developing, implementing, and administering the 75% cap on black and Hispanic students who may attend Hartford magnet schools.

74. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. All governmental action based on race must be subjected to detailed judicial scrutiny to ensure that no person is denied equal protection of the laws.

75. Defendants' 75% cap on black and Hispanic enrollment at Hartford magnet schools discriminates against Plaintiffs because of their race. In particular, they are disadvantaged in their ability to attend Hartford magnet schools because

their children are black and Hispanic. If they were white, they would stand a much greater chance of gaining admission to one of Hartford's magnet schools.

76. The Defendants' actions in enforcing and administering the 75% cap on black and Hispanic enrollment is not narrowly tailored to a compelling state interest.

77. Limiting black and Hispanic children from attending Hartford's elite magnet schools serves no compelling state interest.

78. Defendants' cap on black and Hispanic student enrollment is not required to remedy past, intentional discrimination.

79. Defendants' cap on black and Hispanic student enrollment is not required to secure the educational benefits that flow from racial diversity in higher education.

80. Defendants' cap on black and Hispanic student magnet school enrollment does not serve a compelling state interest, because Defendants have not first determined that race-based measures are necessary to achieve a compelling governmental interest.

81. The Defendants' actions in enforcing and administering the cap on black and Hispanic student magnet school enrollment is not narrowly tailored to a compelling state interest, because Defendants cannot prove that a non-racial approach would fail to promote the government objective as well at a tolerable administrative expense.

82. The Defendants' actions in enforcing and administering the cap on black and Hispanic enrollment at magnet schools are not narrowly tailored to a compelling

state interest, because Defendant failed to exhaust race-neutral alternatives before resorting to race-based classifications.

83. The Defendants' actions in enforcing and administering the cap on black and Hispanic enrollment at magnet schools are not narrowly tailored to a compelling state interest, because Defendant is using race as a categorical bar—and not merely a “plus” factor—in enrollment decisions.

SECOND CAUSE OF ACTION

Racial manipulation of the RSCO Lottery Violates the Equal Protection Clause of the Fourteenth Amendment

84. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

85. The current RSCO lottery process violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because State and local officials use race, overtly and covertly, so as to preference white and Asian students at the expense of black and Hispanic students.

86. Accordingly, the current RSCO lottery process discriminates against Plaintiffs because their black and Hispanic children are less likely to be offered enrollment at a Hartford magnet school because of their race. If their children were Asian or white, they would have a greater chance of being selected to attend a Hartford magnet school via the RSCO lottery.

87. Defendants' actions in enforcing and administering the RSCO lottery in a racially discriminatory manner are not narrowly tailored to a compelling state interest.

88. Limiting black and Hispanic enrollment at Hartford's elite magnet schools through manipulation of the RSCO lottery serves no compelling state interest.

89. Defendants' racial manipulation of the RSCO lottery is not required to remedy past, intentional discrimination.

90. Defendants' manipulation of the RSCO lottery is not required to secure the educational benefits that flow from racial diversity in higher education.

91. Defendants' racial manipulation of the RSCO lottery does not serve a compelling state interest, because Defendants have not first determined that race-based measures are necessary to achieve a compelling governmental interest.

92. The Defendants' racial manipulation of the RSCO lottery is not narrowly tailored to a compelling state interest, because Defendants cannot prove that a non-racial approach would fail to promote the government objective as well at a tolerable administrative expense.

93. The Defendants' racial manipulation of the RSCO lottery is not narrowly tailored to a compelling state interest, because Defendants failed to exhaust race-neutral alternatives before resorting to race-based classifications.

94. The Defendants' racial manipulation of the RSCO lottery is not narrowly tailored to a compelling state interest, because Defendants are using race as a categorical bar—and not merely a “plus” factor—in admissions decisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. A declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, from the Court, that the 75% cap on black and Hispanic students who may attend Hartford magnet schools, enforced and administered by the Defendants, which significantly restricts the number of black and Hispanic children who may attend magnet schools within Hartford, is unconstitutional, illegal, invalid, and unenforceable, because it discriminates on the basis of race and denies individuals equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and federal civil rights statutes 42 U.S.C. §§ 1981 and 1983.

2. For a permanent prohibitory injunction enjoining Defendants, their agents, employees, officers, and representatives from adopting, enforcing, attempting, or threatening to enforce the 75% cap on black and Hispanic students who may attend magnet schools in the City of Hartford, insofar as it discriminates on the basis of race and denies individuals equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and federal civil rights statutes 42 U.S.C. §§ 1981 and 1983.

3. A declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, from the Court, that the use of race in the RSCO lottery in a manner that disadvantages black and Hispanic students, which significantly restricts the number of black and Hispanic children who may attend magnet schools within Hartford, is unconstitutional, illegal, invalid, and unenforceable, because it discriminates on the basis of race and denies individuals equal protection of the laws

in violation of the Fourteenth Amendment to the United States Constitution and federal civil rights statutes 42 U.S.C. §§ 1981 and 1983.

4. For a permanent prohibitory injunction enjoining Defendants, their agents, employees, officers, and representatives from adopting, enforcing, attempting, or threatening to enforce the RSCO lottery in a manner that disadvantages black and Hispanic students, insofar as such manipulation discriminates on the basis of race and denies individuals equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and federal civil rights statutes 42 U.S.C. §§ 1981 and 1983.

5. A permanent injunction prohibiting Defendants from using race in future magnet school enrollment decisions.

6. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable legal authority; and

7. All other relief this Court finds appropriate and just.

* * *

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

DATED: February 15, 2018.

Respectfully submitted,

HARTFORD STUDENTS

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*Motions for *Pro Hac Vice* Admission to be filed



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



TO: Interdistrict Magnet School Operators

FROM: Glen Peterson, Division Director, Choice Programs
Office of Student Supports and Organizational Effectiveness

DATE: October 23, 2017

SUBJECT: Public Act 17-172 - An Act Concerning the Establishment of Reduced-Isolation Setting (RIS) Standards for Interdistrict Magnet School Programs

During the 2017 legislative session, the General Assembly adopted revised enrollment standards for interdistrict magnet schools to unify state standards in accordance with the articulated purpose of magnet programming. Pursuant to Public Act (PA) 17-172, the revised standards apply for the 2017-18 and 2018-19 school years and under Section 10-264l of the Connecticut General Statutes, require interdistrict magnet schools to satisfy specific enrollment requirements to remain eligible for a magnet school operating grant. The revised standards have two components: (a) a residency standard requiring interdistrict magnet schools to limit student enrollment from any single district to no more than 75 percent of the total enrollment of the program (the Residency Standard); and (b) reduced-isolation standards requiring interdistrict magnet schools to meet enrollment standards for a reduced-isolation setting (RIS) promulgated by the Commissioner of Education. Per existing practice, compliance with the Residency Standard and the RIS Standards is based on student information data submitted to the statewide public school information system on or before October 1 of each school year (SY).

For your information, PA 17-172 is attached to this memorandum. As an aid to the attachment, please find below a summary of the enrollment requirements for interdistrict magnet schools across Connecticut for 2017-18 and 2018-19.

Residency Standard

PA 17-172 adopts a uniform Residency Standard for all interdistrict magnet schools. Under the revised standard, student enrollment from a single participating district may not exceed 75 percent of total school enrollment.

Reduced Isolation (RI) Student

PA 17-172 requires the RIS Standards promulgated by the Commissioner to define the term “reduced-isolation” student (RI student).

Accordingly, for purposes of these standards, an RI student:

- Is Native American, Asian, Alaska Native, Native Hawaiian, Other Pacific Islander, White and/or Two or More Races (any combination other than Black/African American or Hispanic).
- Is Not Black/African American, Hispanic and/or Two or More Races (any combination of Black/African American or Hispanic).

Reduced-Isolation Setting (RIS) Standards

In addition to the Residency Standard, interdistrict magnet schools must meet the RIS Standards promulgated by the Commissioner as follows:

A. Non-Sheff Interdistrict Magnet Schools

Pursuant to PA 17-172, all non-Sheff interdistrict magnet schools share the same RIS Standards. The Commissioner's standards give non-Sheff magnet schools that began operations prior to July 1, 2005, five years to comply with the revised standard since schools in this category are subject to a racial/ethnic enrollment standard for the first time.

a. Non-Sheff Interdistrict Magnet Schools Commencing Operations *Prior to July 1, 2005*

Non-Sheff interdistrict magnet schools that began operations before July 1, 2005, have five years (by the 2021-22 school year) to meet the RIS Standards promulgated by the Commissioner as follows:

- By the 2021-22 school year, the percentage of RI students enrolled in the interdistrict magnet school must equal at least 25 percent of the total school enrollment. If the percentage of RI students is less than 25 percent of the total school enrollment, an interdistrict magnet school still meets the RIS Standards if, by the 2021-22 school year, the percentage of RI students enrolled at the school is at least 20 percent of total school enrollment and the school is operating pursuant to a compliance plan (CP) approved by the Commissioner by December 1 of the applicable SY. The CP must be designed to bring the percentage of RI students enrolled at the school to the 25 percent RIS Standards.
- Prior to the 2021-22 school year, an interdistrict magnet school where RI students do not make up at least 20 percent of enrollment must operate pursuant to a CP approved by the Commissioner by December 1 of the SY to remain eligible for the magnet operating grant. The CP must be designed to bring the percentage of RI students enrolled at the school to the 25 percent RIS Standards by SY 2021-22.

b. Non-Sheff Interdistrict Magnet Schools Commencing Operations *After July 1, 2005*

Non-Sheff interdistrict magnet schools that began operations after July 1, 2005, must meet the RIS Standards promulgated by the Commissioner as follows:

- If the percentage of RI students enrolled at the school equals at least 25 percent of the total school enrollment, an interdistrict magnet school meets RIS Standards. If the percentage of RI students is at least 20 percent of total school enrollment, and the school is operating pursuant to a CP approved by the Commissioner by December 1 of the applicable SY, a magnet school enrolling less than 25 percent RI students still provides a RIS. The CP must be designed to bring the percentage of RI students enrolled at the school to the 25 percent RIS Standards.

c. One Percent Variance Allowance from Residency or RIS Standard for Non-Sheff Schools

To provide some flexibility for enrollment shifts, PA 17-172 and the Commissioner's standards consider a non-Sheff magnet school compliant with the enrollment standards if it is within 1 percent of the applicable Residency Standard or RIS Standards and the school is operating under an approved CP by December 1 of the applicable SY to bring enrollment into compliance with the 75 percent Residency Standard and/or 25 percent RIS Standards, as applicable.

B. Sheff Interdistrict Magnet Schools

On June 16, 2017, and on August 7, 2017, by written Memorandum of Decision, the court set the RIS Standards for Sheff magnet schools at 25 percent. Under the court's order, if the percentage of RI students enrolled at the school equals at least 25 percent of total school enrollment, a Sheff magnet school meets the RIS Standards. If the court issues a new order or if any provision of the Commissioner's standards conflicts with a court order, the court order controls.

While the RIS Standards are currently set by the court, there are other provisions in the Commissioner's standards that are important for operators to note, including the following:

- **Maximizing Hartford Enrollment:** Within available appropriations, the Regional School Choice Office ("RSCO") may direct a Sheff magnet school to maximize Hartford-resident enrollment within the standards set by the Commissioner and/or the court.
- **Lottery Protocols:** RSCO may direct magnet operators to develop and implement specific lottery protocols for purposes of meeting the standards set by the Commissioner and/or the court and maximizing Hartford-resident enrollment within those standards, subject to order of the court.
- **One percent Variance Allowance from RIS Standards for Sheff Schools:** For up to three (3) Sheff magnets in any single SY, a school that does not meet the minimum 25 percent RIS Standards shall be deemed to provide a RIS if it does not deviate by more than 1 percent from the 25 percent RIS Standards and operates under an approved CP to bring the percentage enrollment of RI students to the 25 percent RIS Standards. The CP will be revised jointly by the state and magnet operator with an opportunity for comments by the plaintiffs' representative.

C. All Interdistrict Magnet Schools

a. Waiver -75 percent Residency and/or Applicable RIS Standard(s) Not Met

If an interdistrict magnet school does not meet the 75 percent Residency Standard, and/or the applicable RIS Standards promulgated by the Commissioner, the Commissioner may award a magnet operating grant to the magnet school for an additional year or years if the Commissioner determines that it is appropriate to continue the grant (a) for purposes of increasing access to reduced-isolation educational opportunities or (b) because the school has other indices of diversity, such as racial, geographic, socioeconomic, percentage of special education students and EL students, achievement and other factors. If the Commissioner determines that such circumstances exist to continue the magnet grant, the school must be operating pursuant to an approved CP by December 1 of the applicable school year.

b. Commissioner Action

The Commissioner may impose a financial penalty on the operator (up to the magnet grant amount) of an interdistrict magnet school that does not meet the RIS for two consecutive years, or take other measures, in consultation with such operator, to assist the operator in complying with the applicable standard.

c. Data Verification

In its discretion, the Connecticut State Department of Education (CSDE) may audit school data and records pertaining to student race and ethnicity to verify the accuracy of the data.

The Bureau of Choice Programs will be holding a conference call on Friday, October 27, at 9:30 a.m. and Monday, October 30, at 3:30 p.m. to discuss and answer any questions regarding the implementation of the new RIS Standards. To confirm the date and time of your participation, please contact Irma Francis at 860-713-6778 or Irma.francis@ct.gov. Once this information is provided, a confirmation e-mail will be sent to you, along with the conference call dial-in number and participant code.

If you have questions concerning the RIS Standards, contact Regina Hopkins at 860-713-6549 or regina.hopkins@ct.gov or Shola Freeman at 860-713-6532 or shola.freeman@ct.gov.

Thank you for your cooperation and continuing partnership.

GP:sff

cc: Dr. Dianna R. Wentzell, Commissioner of Education
Charlene Russell-Tucker, Chief Operating Officer, CSDE
Peter Haberlandt, Director, Legal and Governmental Affairs, CSDE
Robin Cecere, Staff Attorney, Legal and Governmental Affairs, CSDE
Shola Freeman, Education Consultant, Choice Programs, CSDE
Dr. Regina Hopkins, Education Consultant, Choice Programs, CSDE
Dr. Yemi Onibokun, Education Consultant, Sheff/RSCO, CSDE

Attachment

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Robinson, LaShawn; Burke-Kane, Nichole; Ferguson, Shara; Joulet, Marie; Toney, Tynima; Tirado, Juan; and Velazquez, Jahaira.

(b) County of Residence of First Listed Plaintiff Hartford (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott Sawyer, Sawyer Law Firm, The Jill S. Sawyer Building, 251 Williams Street, New London, CT 06320, Telephone: 860-442-8131

DEFENDANTS

Connecticut State Dept. of Education; Wentzell, Dianna, Commissioner, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Unlawful discrimination on the basis of race.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/15/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott Sawyer

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.