UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOYCE MARIE MOORE, ET AL.	**CIVIL ACTION**
VERSUS	**NO. 65-15556**
TANGIPAHOA PARISH SCHOOL BOARD	**SECTION: "B"(1)**

ORDER AND REASONS

Considering the Court Compliance Officer's ("CCO") Annual Report for 2023–2024 Academic Year, and the recommendations made therein, (Rec. Doc. 1835), the CCO's supplementation to the Annual Report (Rec. Doc. 1836), defendant Tangipahoa Parish School Board's ("TPSB") objections (Rec. Doc. 1837), plaintiffs' response to objections in support of the CCO's recommendations (Rec. Doc. 1838), TPSB's reply in opposition to plaintiffs' response (Rec. Doc. 1841), parties' joint status report (Rec. Doc. 1842), and the CCO's second supplementation to the Annual Report (Rec. Doc. 1844),

IT IS HEREBY ORDERED that TPSB's objections (Rec. Doc. 1837) are **OVERRULED** and the CCO's Annual Report (Rec. Doc. 1835), as supplemented (Rec. Docs. 1836 and 1844), is **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that the person identified as "Candidate 2" in Section B(5)(d) of the Annual Report (Rec. Doc. 1835 at 21–24) be installed as a principal at Hammond Eastside Magnet Elementary School, Lower.

IT IS FURTHER ORDERED that the CCO's other recommendations (*see* Rec. Doc. 1835 at 57 § C(1)(A) and Rec. Doc. 1836 at 14) are **DISMISSED AS MOOT**.

On April 12, 2024, the Court ordered parties to meet with the CCO in an effort to resolve TPSB's objections to the CCO's Annual Report. *See* Rec. Doc. 1840. As the Order concluded,

"The Court will either conduct a hearing on unresolved objections or issue a ruling based upon the written record." *Id*. In their status report to the Court, parties indicate they have not resolved all objections. Specifically, parties disagree over the installation of "Candidate 2" as a principal at Hammond Eastside Magnet Elementary School Lower. *See* Rec. Doc. 1842 at 2. TPSB specifically opposes the CCO's recommendation to install a principal candidate after a grievance panel found a violation of a Court-ordered process.

The Final Settlement Agreement details the applicable steps and possible redress for unsuccessful applicants "in the event they are of a subsequent belief that they were not selected to fill a staffing position vacancy based upon their race." *See* Rec. Doc. 1630-1 at 22–23. This "Aggrieved Complainant Resolution Process" provides that such applicants bring their complaints to a three-person panel, composed of one reviewer selected each by the complainant and TPSB and the final reviewer mutually selected by the two previously selected reviewers. *Id*. The process stipulates clear pre- and post-resolution procedures. Before a panel ruling, the process "will stay the selection process pending the result of the aggrieved complainant resolution process[.]" *Id.* at 22. After the panel ruling, the position will be filled in one of two ways: "in the event the grievance of the applicant is upheld the applicant will be selected to fill the vacancy and in the event the grievance is not upheld the school system's selection will be maintained." *Id*. "A majority ruling by the reviewer panel shall serve to resolve an aggrieved person's complaint." *Id.* at 23.

The CCO describes the instant principal hiring process in summary form: a non-African American candidate was selected and two unsuccessful African American candidates filed complaints through the Aggrieved Complaint Resolution Process. Rec. Doc. 1835 at 21. Candidate 1 was unsuccessful by "not prov[ing] their case," but Candidate 2 "received a favorable award."

Id. at 22. The CCO explains that the panel did not find intentional or direct discrimination against Candidate 2 but that the hiring process itself was discriminatory. *Id.* The panel specifically found:

> Upon careful consideration, the Review Panel determined that there was not sufficient evidence to establish that TPSS directly discriminated against Complainant based on her race. However, there was sufficient evidence to conclude that TPSS did indirectly discriminate against Complainant when it failed to adhere to a mutually agreed upon Desegregation Order imposed by the court.
>
> In light of the Review Panel's findings, it is acknowledged that while Complainant did not meet the burden of proving direct racial discrimination against her, she successfully demonstrated that the hiring process itself was racially discriminatory on its face, including but not limited to the failure of Superintendent Stilley's failure to consult with the Chief Equity Officer prior to hiring for the position which is specifically outlined in the Consent Agreement (Order 1661).

Rec. Doc. 1835-6 at 2. The panel determined the lack of "acceptable objective criteria" further indicated a racially discriminatory process. *Id.* As its final decision, "the Review Panel's ruling upholds the Complainant's complaint in part." *Id*.

Despite "the grievance of the applicant [being] upheld," the CCO notes TPSB "refused to appoint Candidate 2 as a Principal at Hammond Eastside Elementary Magnet School, Lower." Rec. Doc. 1835 at 23. In explanation of its refusal, TPSB claims only "direct discrimination" against a candidate merits relief:

> Record document 1630-1 of the Desegregation case requires that an aggrieved party be found to be directly discriminated against in the selection process because of race in order to be provided relief. Although the Review Panel in this case found the process to be in need of correction, they did not conclude that REDACTED was directly discriminated against. Therefore, REDACTED will not be appointed as the principal of Eastside Magnet School.

Rec. Doc. 1835-7. The CCO disagrees with TPSB's reasoning: "Rec.Doc. 1630-1 does not appear to contain the phrase 'direct discrimination' anywhere in its text." Rec. Doc. 1835 at 24. Instead, the CCO concludes that Candidate 2's grievance was upheld and, thus, recommends Candidate 2 be installed as principal. *See id.* at 57.

In its opposition, TPSB repeats its basic contention: direct racial discrimination against an individual candidate is necessary for relief from the Aggrieved Complainant Resolution Process. *See* Rec. Doc. 1837 at 15–17; Rec. Doc. 1841 at 2 ("The act must be directly against the aggrieved for the aggrieved to be selected to fill the vacancy."). To TPSB, the letter of the Court Order was not followed, but the outcome would have been the same:

> The Review Panel for "Candidate 2" did not find that "Candidate 2" had been denied the position due to her race. However, the Review Panel found "the hiring process itself was racially discriminatory." The Review Panel then lists perceived flaws within the Court Approved [sic] hiring process and the Superintendents [sic] failure to consult with the CEO prior to hiring. TPSB acknowledges the unintentional failure to consult with the CEO, [sic] however, no evidence presented shows that would have changed the outcome [sic] and the consultation advice from the CEO is not binding per 1661. This and the other flaws listed by the Review Panel were unintentional and or [sic] done under the Courts [sic] Order.

Rec. Doc. 1837 at 16. TPSB further surveys Title VII caselaw for its assertion that there must be discriminatory motivation on the part of the employer for an actionable claim by an applicant. *See* Rec. Doc. 1841 at 4 (quoting *Deines v. Tex. Dep't. of Protective & Regulatory Servs.*, 164 F.3d 277, 281 (5th Cir. 1999)).

TPSB complicates the issue. Contained within parties' mutually negotiated and consented-to Final Settlement Agreement, the Aggrieved Complainant Resolution Process supplies the pertinent—and binding—language. Two provisions therein simplify the current matter. First, "[a] majority ruling by the reviewer panel shall serve to resolve an aggrieved person's complaint." Rec. Doc. 1630-1 at 23. Second, "in the event the grievance of the applicant is upheld the applicant will be selected to fill the vacancy[.]" *Id.* at 22.

"The interpretation of a settlement agreement is a question of contract law[.]" *In re Deepwater Horizon*, 785 F.3d 1003, 1011 (5th Cir. 2015); *see also E. Energy, Inc. v. Unico Oil & Gas, Inc.*, 861 F.2d 1379, 1380 (5th Cir. 1988) ("Although federal courts possess the inherent

power to enforce agreements entered into in settlement of litigation, the construction and enforcement of settlement agreements is governed by the principles of state law applicable to contracts generally."); *Liddell v. Special Sch. Dist.*, 65 F.4th 969, 973 (8th Cir. 2023) (applying, in the unitary status context, "basic principles of contract law" as expressed in caselaw of the forum state); *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004) (enforcing consent decree as both a contract and a judicial decree). Under Louisiana law, interpretation of a contract begins with the determination of the common intent of the parties. *Sundown Energy, L.P. v. Haller*, 773 F.3d 606, 612 (5th Cir. 2014) (citation omitted) (applying Louisiana law). This intent is manifest through the words of the contract. *Id.* "If the contract is unambiguous and does not have absurd consequences, we apply the ordinary meaning of the contractual language." *Id*.

TPSB makes great effort to dissect the difference between "direct" and "unintentional" discrimination. *See* Rec. Doc. 1837 at 16; Rec. Doc. 1841 at 2. These distinctions, however, do not exist in parties' settlement agreement. Instead, parties agreed that if a complaint by an applicant citing racial discrimination is upheld "the applicant will be selected to fill the vacancy." Rec. Doc. 1630-1 at 22. As it pertains to the Aggrieved Complainant Resolution Process, this if-then relief procedure is the common intent of the parties. No ambiguity or absurdity is evident in its language or consequences. Any broader examination of intent is unnecessary.

From the clear language of the settlement agreement, Candidate 2 merits relief. Summarizing its decision, "the Review Panel's ruling upholds the Complainant's complaint in part." Rec. Doc. 1835-6 at 2. Any vagueness of an upholding "in part" is clarified by the Panel's explanation of the ruling. According to the Review Panel, Candidate 2 did not prove that she experienced "direct racial discrimination against her," but did "successfully demonstrate[]" that

her application process "was racially discriminatory on its face." *Id.* Thus, her complaint was upheld. Thus, she merits the relief provided in the Final Settlement Agreement.

Our enforcement of the settlement agreement is pursuant to its unambiguous text. As the CCO rightly notes, the Final Settlement Agreement "does not appear to contain the phrase 'direct discrimination' anywhere in its text." Rec. Doc. 1835 at 24. Indeed, not only is direct discrimination not the measure agreed upon by parties—sufficient for our current inquiry—but it is also not the standard for school districts under federal oversight for a system of *de jure* racial segregation. As the Supreme Court directed in *Brown II*, "In fashioning and effectuating the decrees, the courts will be guided by equitable principles." *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 300 (1955). These equitable principles must relate to the racial segregation in violation of the Constitution, be designed to restore victims of the discriminatory conduct, and be devised with consideration of state and local interests. *See Milliken v. Bradley*, 433 U.S. 267, 280–81 (1977); *see also Freeman v. Pitts*, 503 U.S. 467, 487 (1992) ("That the term 'unitary' does not have fixed meaning or content is not inconsistent with the principles that control the exercise of equitable power. The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action.").

The Final Settlement Agreement, as confected by parties and approved by this Court, provides remedies consistent with the United States Supreme Court's structure of equitable principles. *See* Rec. Doc. 1630-1 at 1 ("[S]uch terms and provisions are reasonable, equitable and consistent with public policy and when faithfully implemented by defendant in good faith will result in dismissal of this lawsuit."). These equitable terms include the Aggrieved Complainant Resolution Process.

Although this result follows the unambiguous settlement agreement text and is in accord with federal caselaw, our current posture is notable. Consent decrees are contractual in nature, so parties may fairly expect such orders to be enforced as both a contract and a judicial decree. *See Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004). TPSB's actions are presumptuous from both contractual and judicial lenses.

Through contract, TPSB agreed to submit aggrieved complaints to an arbitration proceeding. This arbitration panel so ruled. Rather than attempting to vacate the ruling or request a rehearing through this Court, *see generally* 9 U.S.C. § 10, TPSB chose to append its own final award.

Through judicial order, TPSB has committed itself to remedying the vestiges of *de jure* racial segregation. Its strides in compliance are notable, as it "continues to progress toward unitary status[.]" Rec. Doc. 1835 at 2. Compliance, however, is not a measure of a litigant's making. Where a party has confusion over interpretation of a judicial decree, wisdom would dictate seeking clarification from the court. TPSB chose not to do so, moving headlong down a road of their own choosing. *See* Rec. Doc. 1835-7.

And these choices have real-world consequences. For instance, when the Aggrieved Complainant Resolution Process begins, the hiring process pauses: "The agreement providing for the process will advise that it will stay the selection process pending the result of the aggrieved complainant resolution process." Rec. Doc. 1630-1 at 22. If our decision has undesirable employment ripple effects, it is regrettable—and not an indication of the quality and capacity of a current employee. Instead, it is an indication of TPSB's qualifying the Final Settlement Agreement, by choosing a different set of rules. On this road to unitary status, TPSB should not

fail to seek contractual clarification or court confirmation. Its students, its faculty and staff, and its parish-wide shareholders merit that much.

Based on the application of the Aggrieved Complainant Resolution Process, the facts presented, and applicable caselaw, we adopt the CCO's recommendation that "Candidate 2" in Section B(5)(d) of the Annual Report (Rec. Doc. 1835 at 21–24) be installed as a principal at Hammond Eastside Magnet Elementary School, Lower.

New Orleans, Louisiana, this 10th day of May, 2024

SENIOR UNITED STATES DISTRICT JUDGE