

CONSENT AGREEMENT AND ORDER

WHEREAS, the Pennsylvania Human Relations Act, 43 P.S. §§ 951 *et seq.* (“PHRA”), declares the opportunity to obtain an equal educational opportunity, irrespective of race, to be a civil right enforceable under the PHRA;

WHEREAS, the Pennsylvania Human Relations Commission (“PHRC”) initiated a complaint against the School District of Philadelphia (“District”) on October 8, 1970, alleging that the District was unlawfully segregated by race in violation of the PHRA and filed an order enforcement petition (“Petition”) in the Commonwealth Court of Pennsylvania (“Commonwealth Court” or “Court”), *Pennsylvania Human Relations Commission v. School District of Philadelphia*, No. 1056 C.D. 1973 (“Action”);

WHEREAS, the Commonwealth Court determined that the District was racially segregated in violation of the PHRA and had denied an equal educational opportunity, irrespective of race, to its African American and Hispanic students;

WHEREAS, the Commonwealth Court determined that the segregation found to exist was *de facto*, not *de jure*, and that the demographics of the City of Philadelphia and the District have changed subsequent to the initiation of the Action;

WHEREAS, the District had proposed as part of its 1983 plan in this case an “Educational Improvement Component” to improve the quality of education in the District;

WHEREAS, in 1993, the Commonwealth Court permitted several interested organizations (hereinafter collectively referred to as “ASPIRA”) to intervene in this matter;

WHEREAS, in 1994, the Commonwealth Court declared that it considered the “assessment of the equality of educational opportunity and quality of education [to be] an appropriate inquiry by the Court in determining whether racial disparity exists in the public

school system” and found that the District should consider measures and strategies to enhance racial integration and address racial disparities in achievement;

WHEREAS, the Commonwealth Court thereafter ordered the District to develop and implement measures intended to correct the violation found to exist and to provide an equal educational opportunity to all children regardless of race by Order of November 28, 1994 (“Remedial Order”);

WHEREAS, the District has developed and is continuing to implement strategies and plans which are intended and designed to improve the education and achievement of and provide an equal educational opportunity to all children, regardless of race;

WHEREAS, in September 2001, the Court stated that “the Court is satisfied that the School District has made a significant and continued effort to comply with the Remedial Order” and directed the PHRC to “request the Court to close this case when it is satisfied that the School District has demonstrated that it can and will provide an equal educational opportunity to all of its students;”

WHEREAS, the Court conducted a compliance hearing on June 27, 2003 and July 3, 2003, and heard testimony and received other evidence from the District regarding the District’s compliance with the Remedial Order;

WHEREAS, the District, the PHRC and ASPIRA negotiated and entered into the Memorandum of Understanding dated as of February 11, 2004 (“MOU”), which after hearing was approved by the Court, intended, *inter alia*, to provide the District with a three year timeframe for implementation of measures and strategies that were responsive to the Remedial Order and reflective of the parties’ shared objectives, and pursuant to which the Commonwealth Court action was stayed for the term of the MOU, the District submitted reports, the PHRC monitored the District and submitted annual assessments and an evaluation of the District, and which MOU

provides that the PHRC may withdraw its Petition with prejudice and file a praeceipe with the Prothonotary of the Commonwealth Court to mark on the docket that the Action has been discontinued and ended with prejudice;

WHEREAS, the PHRC, after consulting with ASPIRA, submitted an evaluation in which it concluded that the District has not achieved compliance sufficient to warrant withdrawal of the PHRC's enforcement petition and discontinuance of the matter with prejudice, based on the PHRC's finding of continuing differences in resources and programs available to students in racially isolated schools and racially identifiable achievement gaps;

WHEREAS, the PHRC and ASPIRA recognize that the District has been implementing and is continuing to implement programs and strategies intended to address racially identifiable gaps that exist in academic achievement between minority and non-minority students;

WHEREAS, the PHRC, ASPIRA and the District share the common goal of equal educational opportunities for all children, regardless of race, within the District, but have disagreed regarding, *inter alia*, the scope of jurisdiction and remedies in the Action and what is required by the PHRA to achieve compliance with the law, in particular and notwithstanding the District's commitment to same, the parties have disagreed regarding whether the PHRA's mandate of an equal educational opportunity includes an achievement or outcome component;

WHEREAS, the PHRC and ASPIRA recognize that the District has implemented programs which have significantly increased student achievement as measured by state PSSA scores in reading and math, doubling in the last six years the percent proficient in reading and math to 44.6% in reading and 49.0% in math, and has made progress in improving the graduation rate of its 9th grade students to the benefit of all students, regardless of race;

WHEREAS, the achievement gap on the PSSA, in 2008, between White and African American students in the District was 24.8% in math and 22.7% in reading, and between White

and Latino students was 23.1% in math and 24.6% in reading, each of which demonstrates small improvement in narrowing the gaps from six years earlier;

WHEREAS, all but two of the 22 schools with the highest teacher turnover rates in the District are schools with more than 90% African-American and Hispanic students, new teachers disproportionately in schools with more than 90% African-American and Hispanic students, and 22 of the 29 lowest performing schools with the least growth in achievement are more than 90% African American and Hispanic;

WHEREAS, the District, in April 2009, adopted a five-year strategic plan entitled *Imagine 2014*, that is “[a]nchored by the core beliefs and driven by our guiding principles to increase student achievement and close the opportunity and achievement gap for all students; ensure equitable allocation of all District resources; hold all adults accountable for student outcomes; and satisfy parents, students, and the community, ... [and] lay the foundation and framework to make this urban school district greater for ALL children in Philadelphia’s public schools;”

WHEREAS, the PHRC and ASPIRA recognize the good faith commitment of the District to achieving equal educational opportunity for all children, regardless of race, and support the desire of the District to implement plans and strategies which are intended, *inter alia*, to reduce racial gaps in achievement;

WHEREAS, the PHRC and ASPIRA recognize the commitment of the District in its strategic plan to achieving equal educational opportunity for all children, regardless of race, and support the desire of the District to implement plans and strategies which are intended, *inter alia*, to reduce racial gaps in achievement;

WHEREAS, the District believes that it is acting in compliance with the Remedial Order and the PHRA, and that it has meritorious legal defenses that justify terminating this Action;

WHEREAS, the PHRC, ASPIRA and the District desire to avoid continued litigation of and expense in the Action, including with respect to the dispute resolution process provided for in the MOU, and to finally and completely resolve and conclude the Action;

WHEREAS, the PHRC, ASPIRA and the District recognize that the District has responsibility for the development and implementation of strategies and plans that comply with the law, that the District possesses the expertise and is the best qualified and equipped to assess and address the various educational needs of its students and to keep abreast of changes in educational practices, developments and methods, and that the District needs to retain flexibility and latitude in the development and implementation of programs and strategies in the District; and

WHEREAS, the parties agree that in recognition of the actions taken by the District consistent with the Remedial Order and the PHRA, and the commitments made by the District herein, the PHRC and ASPIRA are in a position to monitor compliance of the District with the law without continued Court supervision.

NOW, THEREFORE, as of this 8th day of July, 2009, the PHRC, the District and ASPIRA enter into this Consent Agreement (“Agreement”).

1. The PHRC agrees to withdraw and terminate with prejudice the Petition presently pending before Commonwealth Court, and ASPIRA agrees not to object to, contest or otherwise challenge or impose conditions upon any such withdrawal or termination with prejudice.

2. The PHRC, the District and ASPIRA shall jointly submit this Consent Agreement to the Court for approval and submit a proposed Order as follows:

AND NOW, on this ____ day of July, 2009, the parties having entered into a Consent Agreement dated July 8, 2009, which is attached hereto, and desiring to settle, discontinue and end the above-captioned action with prejudice

as to all parties and all claims, upon the withdrawal by the Pennsylvania Human Relations Commission of the order enforcement petition, and after hearing, it is hereby ORDERED and DECREED that the Consent Agreement shall be entered as a CONSENT ORDER fully enforceable as such. It is FURTHER ORDERED AND DECREED that the above-captioned action is DISMISSED with prejudice, and that the Court hereby relinquishes jurisdiction over the action *Pennsylvania Human Relations Commission v. School District of Philadelphia*, No. 1056 C.D. 1973.

3. The parties agree that any enforcement action taken with respect to the Agreement during the course of this Agreement will occur within the parameters of the Agreement.

4. The District will:

a. Implement the Five-Year Strategic Plan entitled *Imagine 2014*, a copy of which is attached hereto as Exhibit “A” and is incorporated by reference, in the form attached or as revised consistent with this Agreement (“*Imagine 2014*” or “Plan”), subject to available funding and as is consistent with law, in a manner consistent with the following “guiding principles” set forth in *Imagine 2014*:

- a. Increasing achievement and closing the opportunity and achievement gap for all students;
- b. Ensuring the equitable allocation of all District resources;
- c. Holding all adults accountable for student outcomes; and
- d. Satisfying parents, students and the community.

All revisions to the Plan shall be consistent with the four guiding principles and submitted to the PHRC and ASPIRA for review and comment prior to adoption.

- b. By December 15, 2009, provide the PHRC and ASPIRA with, and make publicly available, implementation plans which the District will prepare relating to Phase I (regarding FY 2009-2010) of *Imagine 2014*, that identify proposed commencement dates for program development, key interim steps, beginning implementation in and phasing into schools, goals, objectives and anticipated resources of major components of *Imagine 2014*. At that time, the District will also provide a general overview regarding Phase II (regarding FY 2010-2012) and Phase III (regarding FY 2012-2014). The District will thereafter provide updated implementation plans annually by October 15 of each year during the term of the Agreement.
- c. The District will annually provide the PHRC and ASPIRA with mid-year progress reports, beginning on March 31, 2010, and a year-end report card from the previous school year beginning on September 30, 2010, or within a reasonable time following such date on which mid-year progress reports and/or year-end report cards are released to the public. The mid-year progress report shall include changes in the implementation plan or schedules adopted by the District. The PHRC and ASPIRA shall have the opportunity to review and comment on whether the changes are consistent with the guiding principles set forth in Paragraph 4.a. above.
- d. By fiscal year 2009-2010, a school's demographics will be a key factor when considering in which schools to pilot programs as part of the Plan which are

not otherwise being implemented on a District-wide basis, provided that if the District does not begin phased-in implementation measures in the low performing schools, the District will provide a written explanation to the PHRC and ASPIRA concerning why. For purposes of this Agreement, “low performing schools” shall include at least the bottom quartile of schools as measured by performance on the PSSA in reading and math for the immediately preceding two consecutive years for which data are available.

- e. During fiscal year 2009-2010, begin to mandate teacher instructional evaluations, and professional development planning based on such evaluations, in low performing schools. The District will provide the schedules for developing the teaching standards and evaluation process, implementing the evaluations and providing professional development to the PHRC and ASPIRA by December 1, 2009.
- f. By fiscal year 2010-2011, begin to mandate the provision of common planning time for teachers in low performing schools.
- g. By fiscal year 2010-2011, begin to reduce resource gaps in the District through use of strategic compensation of staff in low performing schools, and compare the actual rather than average budgeted cost of teachers as a basis for determining the extent to which resource gaps persist in low performing schools and, if necessary to reduce the gap, supplement the teaching, programmatic or other resources provided to those low performing schools.
- h. Implement full site selection in low performing schools by fiscal year 2010-2011.

- i. Beginning in fiscal year 2010-2011, pilot a form of weighted student funding to be phased in during the five-year term of the Plan that, after ensuring that all schools are provided a base level of support, gives weight to certain key student characteristics, such as, by way of example, poverty, English language learners, special education, student proficiency levels, whether a school is a low performing school, and/or other student needs and characteristics to be determined, from time to time, by the District. By December 15, 2010, the District will provide the PHRC and ASPIRA with its schedule for implementing a form of weighted student funding, and annually thereafter will provide the PHRC and ASPIRA with any modifications of that schedule.
- j. Publicly report on an annual basis during the term of the Agreement concerning (i) how the District is working to reduce achievement gap differentials between minority and non-minority students, (ii) the racially disaggregated results of such efforts and (iii) the resource gaps between racially isolated schools and other schools, including with respect to teacher vacancy and experience levels (or effectiveness ratings if appropriate and available) on a school-by-school basis.
- k. Continue review by the School Reform Commission and District administration of annual reports of the Accountability Review Council or other independent entity for at least five years after this Agreement otherwise terminates, regarding academic achievement data and resource distribution throughout the District, disaggregated by race, with an opportunity for public review and feedback on the reports, which reports shall be available to the public via the District's website.

1. Use reasonable and good faith efforts, subject to available funding, and consistent with law, to perform in accordance with Paragraphs 4.a.-k. above.

5. Upon request of the District to the PHRC and/or ASPIRA, the PHRC and/or ASPIRA shall:

a. Participate with the District in any evaluation the District undertakes regarding the impact of changes in laws or regulations relating to educational opportunities for children, and changes in the demographics of the City of Philadelphia and District populations, as they may relate to the District's compliance with the law and terms of this Agreement.

b. Conduct or help to develop and offer workshops, training and/or programs, and to be involved in other interventions, within the District and in the communities and neighborhoods surrounding the District's schools, relating to efforts to stem racial and ethnic tensions, and to combat violence and disruption that impact the District and its students.

6. The PHRC shall include in its annual reports to the Pennsylvania General Assembly, the Labor and Industry Committee of the Senate, the State Government Committee of the House of Representatives and the Governor, the status of the implementation of and progress under the Agreement, and shall supply copies of such reports and supporting materials to the District, and make such reports available via the PHRC's website for public review and input.

7. If ASPIRA produces any published reports, newsletters or other similar materials regarding the status of the implementation of and progress under the Agreement, ASPIRA shall supply copies of such reports, newsletters or other similar and supporting materials to the District.

8. The PHRC, pursuant to its statutory authority, shall retain responsibility to monitor compliance with the Agreement; and for purposes of this Agreement, the District agrees that ASPIRA may monitor compliance with the Agreement.

9. Throughout the term of the Agreement, the PHRC and ASPIRA shall promptly notify the District of any matters which implicate possible issues of noncompliance so that the District may have ample opportunity to address and correct matters of concern to the parties.

10. The District, the PHRC and ASPIRA shall each, upon reasonable request made, provide the others with non-privileged, relevant data pertaining to specific action areas set forth in the Agreement, and by mutual agreement, meet and confer during the term of the Agreement to assess the status of its implementation and compliance.

11. The term of the Agreement shall be five years from the date it is entered by the Court as a Consent Order. Upon the fifth anniversary of the date of its entry, this Agreement and all rights and obligations thereunder, except with respect to the obligation to review reports of the Accountability Review Council or other independent entity for a period of an additional five years provided for in Paragraph 4.k. above, shall automatically and forever terminate with prejudice by operation of law, unless otherwise agreed to by the parties.

12. During the term of the Agreement, there may be changes in circumstances, factual, legal, financial or otherwise, that affect the District's compliance. If the District determines that such changed circumstances either impede the District's ability to or prevent the District from continuing to comply, or provide an opportunity for the District to more efficiently or effectively comply, the District will notify and may propose changes to the PHRC and ASPIRA by presenting written notice to that effect. If the PHRC and ASPIRA, after review and any necessary consultation with the District, approve of the proposed change(s), which approval shall not be unreasonably withheld, such change shall be incorporated into this Agreement by

operation of law and without Court review or approval. Absent approval by the PHRC and ASPIRA of any such proposed change, the District may seek approval from the Court.

13. The District retains the right to advise the PHRC and ASPIRA of its position or to raise as a defense that compliance with any of the obligations in this Agreement would expose or subject the District to liability with respect to proprietary, contractual, other legal rights of third parties, or governmental regulations.

14. Each of the parties shall retain all existing rights to seek appropriate relief should it believe that any other party or parties is not in compliance with the terms of this Agreement, and shall not be precluded from challenging any finding of noncompliance or arguing that the Agreement and any related proceedings should be terminated. Provided, however, that under no circumstances shall the District be considered in breach or violation of the Agreement, nor considered in contempt of Court, should the Court conclude that it is not in compliance with this Agreement due to financial constraints or as necessary to remain or become in compliance with other state or federal laws or regulations.

15. The execution and implementation of this Agreement shall not constitute a waiver of powers and duties conferred upon the PHRC by law, nor shall this Agreement be deemed a declaration of policy or precedent by the PHRC. This Agreement shall in no way affect the intake, processing, adjudication or disposition of future complaints involving the District, except that the District may, in the course of any future proceedings, refer to this Agreement and to its performance thereunder, to the extent relevant.

16. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

17. Nothing in this Agreement shall prohibit the PHRC, after consultation with ASPIRA, in the exercise of its judgment, from making a finding of compliance or substantial compliance by the District based upon or in lieu of factors which are not specifically set forth herein and/or from terminating this Agreement at any time, with prejudice, prior to the Agreement's otherwise expressed termination date. ASPIRA hereby waives any right to object, contest, impose conditions upon, or otherwise challenge any such finding of the PHRC or decision to terminate the Agreement prior to its otherwise expressed termination date.

18. The parties may modify the terms of this Agreement at any time, by agreement, and without court review or approval. No such modifications shall be effective unless they are set forth in writing and signed by authorized representatives of the PHRC, ASPIRA and the District.

19. Nothing in this Agreement shall be considered as an admission of liability or used to construe the strength or weakness of any parties' claims or defenses. The inclusion of express or implied defenses and/or reservations of rights in this Agreement shall not be construed as a waiver by the parties of any other defenses and/or reservation of rights, all of which are reserved. No third party shall have any rights hereunder or to enforce the terms hereof.

20. This Agreement is intended to resolve all issues and controversies among the parties relating to the violations earlier found to exist by the PHRC and the Court, and it embodies in full the terms of the Agreement, understanding, rights and obligations of the parties related to the subject matter of this Action and this Agreement.

21. This Agreement constitutes the entire integrated agreement of the parties. No prior or contemporaneous communications, prior drafts or unsigned versions shall be relevant to or admissible for the purpose of determining the meaning or intent of any provisions of this Agreement in any litigation or in any other proceeding among the parties.

22. This Agreement is a public agreement and after entry by the Court as a Consent Order may be made available to any person.

23. Each of the parties shall bear its own respective attorneys' fees, expenses and other costs incurred in connection with the Action, this Agreement, and the negotiation, execution, modification, prosecution or defense of or under this Agreement.

24. Until further written notice, all correspondence with and notice to the parties concerning this Agreement shall be addressed to:

For the Pennsylvania Human Relations Commission

Homer C. Floyd, Executive Director
and
Michael Hardiman, Esquire
Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300
Harrisburg, PA 17105-3145

For the School District of Philadelphia

Robert L. Archie, Jr., Esquire
Chairman, School Reform Commission
and
Arlene C. Ackerman, Ed.D.
Superintendent
and
General Counsel
School District of Philadelphia
Administration Building
440 N. Broad Street
Philadelphia, PA 19130
and
Lynn R. Rauch, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004

For the Intervenors/ASPIRA

Michael Churchill, Esquire
Public Interest Law Center of Philadelphia
125 South 9th Street, Suite 700
Philadelphia, PA 19107

25. The below signatories for each party are authorized to execute this Agreement, subject to the approval of the Commissioners of the PHRC and the School Reform Commission and the Board of Directors of ASPIRA. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

26. This Agreement shall be null and void if the Court does not enter an Order in the form or in a form substantially similar to that set forth in Paragraph 2 above, or if the Agreement is not approved by the Commissioners of the PHRC or the School Reform Commission or the Board of Directors of ASPIRA.

The undersigned AGREE to the form and content of this Agreement, and to be legally bound by its terms.

FOR THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____
Stephen A. Glassman, Chairperson

and

By: _____
Homer Floyd, Executive Director

FOR THE SCHOOL DISTRICT OF PHILADELPHIA

By: _____
Robert L. Archie, Jr., Esquire, Chairman, School Reform Commission

and

By: _____
Arlene C. Ackerman, Ed.D., Superintendent

FOR THE INTERVENORS

By: _____
Alfredo Calderon, Executive Director, ASPIRA of Pennsylvania