

EDGEWOOD V. MENO

MOTION TO MODIFY

LEGISLATIVE REFERENCE LIBRARY
P.O. BOX 12483 - CAPITOL STATION
AUSTIN, TEXAS 78711

MAY 04 1993

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Plaintiffs, and

ALVARADO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Plaintiff-Intervenors

V.

LIONEL R. MENO, ET AL.,

Defendants,

ANDREWS INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendant-Intervenors/
Cross Claimants,

HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendant-Intervenors/
Cross-Claimants,

CARROLTON-FARMERS BRANCH ISD., ET AL.,

Defendant-Intervenors/
Cross-Claimants

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250TH JUDICIAL DISTRICT

MOTION TO MODIFY ORDER OF JANUARY 11, 1993. AND
REPORTS OF THE STATE COMPTROLLER
AND COMMISSIONER OF EDUCATION

TO THE HONORABLE F. SCOTT McCOWN, JUDGE PRESIDING:

COME NOW, the Comptroller of Public Accounts and the Commissioner of Education by and through their undersigned attorney of record and file this their Motion to Modify Order of January 11, 1993 and the reports required by the Court's January 11, 1993, Order.

The reports required by the January 11, 1993 Order are attached as exhibits A and B.

payment of teacher salaries over a twelve month period for work they have already completed during the 1992-93 school year. The January 1993 Order appears to contemplate that these contractual obligations can be reduced to judgment and then the judgment creditors can apply to this Court for relief. The Comptroller and the Commissioner advise the Court that this system may create problems. School districts will simply agree to judgment in order to facilitate the payment of teachers and other creditors. It seems logical that school districts should consent to judgment in these cases since they have nothing to gain by arguing that the district does not owe the money. Under these circumstances the Comptroller, the Commissioner, and the Court could potentially have to review and approve or disapprove individual payments for amounts no larger than individual paychecks. In short, if the January 1993 Order is not modified, it seems entirely possible that the TEA, Comptroller, and Court staff will spend a significant portion of the summer approving State warrants.

II. REQUEST FOR MODIFICATION:

The Comptroller and Commissioner propose an alternative plan. Because of the timing of the distribution of state funds all districts will be able to meet their June 1, 1993 obligations. A few districts will encounter financial difficulties for the July 1 payroll. For the most part, however, financial difficulties will not be encountered by most school districts until approximately August 1, 1993. After reviewing the information the Comptroller and the Commissioner recommend the following two steps to the Court:

First, the Court should make explicit what is already implicit in the Court's Orders, i.e., under the miscellaneous provisions of the injunction in this case, the sequestered funds are required to be available to ensure repayment of school district contractual obligations incurred prior to September 1, 1993.¹

¹ Bank loans made by school districts fall within these provisions, being contractual obligations. If the Court were to expressly hold that the sequestered funds would be available to secure district borrowing over the summer as the existing Order seems to

Second, school districts, rather than submitting large numbers of judgments for payment, should be allowed by the Court to aggregate their obligations, report them once during the summer and submit an application to the Court to draw down State funds. The application should require an affidavit by the superintendent that:

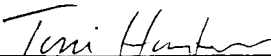
1. The district's entire unobligated fund balance has been or will be spent by August 1, 1993;
2. That all district obligations except those under valid contract have been eliminated and no district funds will be spent for obligations not listed in the miscellaneous provisions section of the Court's Order;
3. That the district has tried and failed to secure funds by borrowing from other sources; and
4. That ____ dollars are necessary to meet those obligations listed in the miscellaneous provisions of the Order.

This application should be filed on or before July 2, 1993. Since the application would be under oath it would be subject to contempt or aggravated perjury sanctions. TEA would process the applications, review the requests against Public Education Information Management Systems (PEIMS) data and the survey responses gathered for this report to the Court to assure that the requests were reasonable. The aggregated requests would then be presented to the Court for approval and the money delivered to districts prior to August.

The Comptroller and Commissioner believe that this method would not involve the outflow of any more funds than the reduction to judgment system proposed by the Court, but the administration of the system would be streamlined, judicial resources of not only this but courts all over the State would be conserved, and the teachers of this State would

state, school district creditworthiness will be enhanced, districts should be able to borrow additional funds, and the projected 110 million cash deficit should be reduced without immediately drawing down sequestered state funds.

Page 5 Missing in Original



TONI HUNTER
Assistant Attorney General
State Bar No. 10295900
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2120
Fax: (512) 320-0667

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, has been sent, via certified mail, return receipt requested, on this the 3rd day of May, 1993, to the following:

R. James George
Graves, Dougherty, Hearon & Moody
2300 NCNB Tower
515 Congress Avenue
Austin, Texas 78767

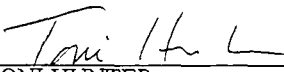
Earl Luna
Law Offices of Earl Luna
4411 North Central Expressway
Dallas, Texas 75205

Schuyler B. Marshall
Thompson & Knight
1700 Pacific Avenue
Suite 3300
Austin, Texas 75201

Rick Gray
Gray & Becker
900 West Avenue
Austin, Texas 78701

VIA HAND DELIVERY

Al Kauffman
Mexican-American Legal
Defense and Education Fund
140 East Houston Street
Suite 300
San Antonio, Texas 78205



TONI HUNTER
Assistant Attorney General

Court Ordered Plans

The following schedules were prepared in accordance with the court's January 11, 1993 Order to Prepare to Cut Off State Funds to Public Schools. The schedules address plans for sequestering funds, determining school district fund balances, and releasing sequestered funds for support of the state's schools.

It should also be noted that the plans, as they apply to funds held by county education districts, recognize that these funds do not flow through the state treasury and thus the Comptroller and the Texas Education Agency have no direct control over them. The plans focus on making the county education districts aware of their responsibilities under the court's injunction.

I. Plan for sequestering fund balances

This schedule deals with the overall plan for sequestering funds. The first part (steps 1 through 4) deal with actions to be taken prior to the June 1 hearing. The remaining steps would apply if the court's injunction goes into effect on June 1, 1993.

1. May 18, 1993 The Comptroller, working with the Texas Education Agency, will identify all accounts associated with the disbursement of funds under Chapter 16 of the Education Code. This step is in preparation for deactivating these accounts on June 1, 1993.
2. May 25, 1993 A joint letter by the Texas Education Agency and Comptroller's office will be sent to all county education districts (CEDs) informing them of the implementation plan set to go into effect on June 1. The letter will advise all CEDs that:

The court order is scheduled to go into effect on June 1, 1993.

No funds on hand pending distribution to the school districts are to be released to school districts after May 31, 1993 except by order of the court.

No funds received for distribution to school districts on June 1, 1993 or later are to be released to the school districts except by order of the court.
3. May 31, 1993 The Texas Education Agency and Comptroller's office will notify all school districts (via either TENET or letter) about the implementation plan that will take effect on June 1, 1993.
4. June 1, 1993 **The court will order the Texas Education Agency and the Comptroller's office to put the plans for sequestering funds and releasing sequestered funds into effect.**
5. June 1, 1993 All accounts identified in step 3 will be deactivated on FACTS (the statewide accounting system).
6. June 1, 1993 The Comptroller will notify all county education districts that the injunction is in effect and that no funds may be released to any school district for any purpose.

STATE'S
EXHIBIT

A

7. June 1, 1993 The Texas Education Agency and the Comptroller will notify all school districts that the injunction is in effect and inform the school districts concerning procedures for releasing funds for:

compliance with federal law
avoiding bond defaults
8. June 1, 1993 The Comptroller will put controls in place to identify all payments issued using the foundation school program code.

The Comptroller will begin running a daily computer analysis program to identify all payments generated out of the foundation school fund and the available school fund. These are the two funds in the state treasury from which Chapter 16 allocations to schools are made.

No warrant will be released to any school district unless the Texas Education Agency certifies that the disbursement does not include funds subject to the court's injunction.
9. June 7, 1993 and the fifth working day of each month thereafter The Comptroller will make the regular fifth working day transfer of motor fuel taxes to the Available School Fund. See Note 1 below.
10. June 25, 1993 and each month thereafter on the regular foundation school payment date Comptroller will make normally scheduled transfers of funds from general revenue to the Foundation School Fund. The amount of the transfer will be determined jointly with the Texas Education Agency and will represent the amount of funds that would have been distributed to the school districts under the foundation school program but for the court order. See Note 1 below.
11. Optional If the court were to order or approve the Comptroller placing the funds sequestered in steps 9 and 10 above in a trust fund established with the state treasury to be held for future distribution to schools, the Comptroller would make the transfers described in steps 9 and 10 to a fund created for that purpose. Interest earned on moneys in such a trust fund would be retained by the trust fund and would be available for payment to school districts without additional appropriation authority.

Note 1: Funds deposited in the state treasury earn depository interest. The funds sequestered in steps 9 and 10 above will accrue interest during the time they remain in the Available School Fund and the Foundation School Fund. The treatment of this interest is not addressed in the court's order. The Available School Fund is authorized to retain its own depository interest. However, the interest earned on moneys in the Foundation School Fund is deposited in the general revenue fund. Further, the Comptroller may not draw any warrant on the state treasury unless a claim is made pursuant to a specific appropriation. At the present time, no appropriation exists which would allow the Comptroller to issue a warrant for interest earned on sequestered funds. Optional step 11 above suggests a method that would allow interest earned on sequestered funds to be paid to school districts without additional appropriation authority.

II. Plan for determining fund balances for purposes of insuring that all balances have been exhausted.

1. March 23, 1993 Send financial survey form to all school districts. The survey will request actual fund balance data for the period ending February 28, 1993 and projected receipts and expenditures for the period through August 31, 1993. (See attached letter dated March 23, 1993.)

This step has been completed.

2. April 30, 1993 The Texas Education Agency will compile the results of the survey described in Step 1.

This step has been completed.

3. June 1, 1993 and thereafter. School districts submitting requests for release of sequestered funds must certify that all available fund balances have been exhausted. The Texas Education Agency and the Comptroller will determine the reasonableness of the request based upon the information gathered by the survey accompanying the March 23, 1993 letter to school districts. The Texas Education Agency and the Comptroller may also require additional information from the district including an update of the March 23 survey through the most recent month.

III. Plan for releasing sequestered funds as required to comply with federal law or to avoid bond default.

Steps 1 through 10 below apply to claims submitted by school districts as authorized under sections VI and VII of the January 11, 1993 Order to Prepare to Cut Off State Funds to Public Schools. Any claims for the release of sequestered funds from any other source or of any other type that are received by the Texas Education Agency or the Comptroller will be sent to the court for its approval. If the court orders that any other type of claim for sequestered funds is to be honored the Texas Education Agency will prepare a purchase voucher and submit it to the Comptroller. Steps 8 through 10 of the procedure will then be followed.

1. The school district will submit a claim to the Texas Education Agency.
2. The school district will certify that all funds reported as of February 28 and all funds received between February 28 and the date of the claim have been exhausted.
3. The school district will certify that the claim being submitted must be paid in order to be in compliance with federal law or that the claim must be paid in order to avoid bond default by the school district.

In the case of a federally required program, the school district will be required to identify the name of the program, the amount or amounts needed, and the time or times when the funds must be received. This information is subject to being audited.

In the case of funds needed to avoid a bond default, the school district must identify the bond issue, the nature of the payment that is due, the payment date and the amount. This information is subject to being audited.

The Texas Education Agency may request any additional information deemed necessary to determine whether the school district's claim meets the requirements for release of funds under the terms of the court's injunction.

4. The Texas Education Agency will review the claim and certify to the Comptroller whether it should be paid pursuant to the court order.
5. The Texas Education Agency will prepare a purchase voucher which will be sent to the Comptroller. The purchase voucher will contain the certification by the Texas Education Agency described in step 4.
6. The Comptroller will forward the claim to the court (along with any supporting documentation) and a statement to the effect that the Texas Education Agency and the Comptroller have determined that the claim should be paid from sequestered funds.
7. The court will issue an order to the Comptroller to issue a warrant drawn on sequestered funds to pay the claim.
8. The Comptroller will prepare a warrant and return it to the Texas Education Agency for delivery to the school district.
9. The Texas Education Agency will forward the warrant to the school district.
10. The Texas Education Agency will maintain an accounting of the sequestered funds disbursed to each school district pursuant to the court's orders.

Other States Contacted Pursuant to Court Order

On January 11, 1993, the Court ordered the Comptroller to consult with "appropriate officials in states where the courts have threatened or have been forced to close schools." The Comptroller's office then contacted Dr. John Augenblick, a school finance expert who acts as a consultant for the Education Commission of the States. Dr. Augenblick informed the Comptroller's Office that, to his knowledge, no other state has been in a position comparable to Texas'. However, he did mention a *somewhat* similar situation to Texas' that occurred in New Jersey in 1976. He then directed this office to Marilyn Morehauser of the Education Law Center in Newark. The Education Law Center represented one of the parties in the 1976 case.

Marilyn Morehauser recalled the following information:

In 1975, in *Robinson v. Cahill*, the Court found the legislature had not enacted a curative statute and that the Court must act. The Court decided it had the authority to redistribute the funds and did so. *Robinson v. Cahill*, 69 N.J. 133, 351 A.2d 713 (1975).

In 1976, in *Robinson v. Cahill*, the Court found that the legislature had enacted a curative statute, but had not funded the statute. A May order gave the legislature time to enact a money raising measure before July 1, 1976. The legislature failed to enact a funding measure, and on July 1, 1976, the schools closed for a period of six (6) days. This was during the summer when schools were not in session, but within six days the New Jersey legislature had enacted the state's first income tax. *Robinson v. Cahill*, 70 N.J. 155, 358 A.2d 457 (1976).

After several telephone interviews, the Comptroller's office was unable to talk with anyone who could recall a formal plan being created for implementation upon the closing of the schools.