DOCKET NO.: HHB-CV-23-6080532-S

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EDUCATION, AND STATE OF CONNECTICUT, DEPARTMENT OF EDUCATION	:	SUPERIOR COURT JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	TAX AND ADMINISTRATIVE APPEALS SESSION
FREEDOM OF INFORMATION COMMISSION, AND ALICIA SOLOW-NIEDERMAN	:	MARCH 27, 2025

MEMORANDUM OF DECISION

The plaintiffs, the Commissioner of the State of Connecticut Department of Education, and the State of Connecticut Department of Education (together, the department), appeal from a June 7, 2023, final decision (the decision) of the defendant, the Freedom of Information Commission (the commission), ordering the disclosure of public records under the Connecticut Freedom of Information Act, see General Statutes § 1-200 et seq. (the act), related to the long running *Sheff* v. *O'Neill* litigation. See *Milo Sheff* v. *William A. O'Neill*, LND-HHD-CV-17-S-040566-S; see also *Sheff* v. *O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996). More specifically, the commission ordered the department to produce public records to the co-defendant, Alicia Solow-Niederman, related to the methodology used by the department to place students in interdistrict magnet and technical schools as part of the Comprehensive School Choice Protocol (CCP) stemming from the *Sheff* litigation (the subject records). The department argues that the subject records are exempt from public disclosure as records pertaining to strategy and negotiation in pending litigation, see General Statutes § 1-210(b)(4), and that the subject records are exempt from public disclosure as trade secrets, see General Statutes § 1-210(b)(5). As more fully set forth below, the court holds that the subject records are exempt from public disclosure as records

Electronic notice sent to all counsel of record, 3/27/25
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131

of strategy and negotiation with respect to pending claims or litigation and that those claims or litigation have not been finally adjudicated. Because the court can resolve this appeal based on General Statutes § 1-210(b)(4), the court need not address the department's arguments under General Statutes § 1-210(b)(5).

FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

In 1996, our Connecticut Supreme Court ruled "that the existence of extreme racial and ethnic isolation in the [Hartford] public school system deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial measures." *Sheff* v. *O'Neill*, supra, 238 Conn. 25-26. The Connecticut Supreme Court further held that "in the context of public education, in which the state has an affirmative obligation to monitor and to equalize educational opportunity, the state's awareness of existing and increasing severe racial and ethnic isolation imposes upon the state the responsibility to remedy 'segregation . . . because of race [or] . . . ancestry. . . . .' We therefore hold that [the Connecticut Constitution] requires the legislature to take affirmative responsibility to remedy segregation in our public schools, regardless of whether that segregation has occurred de jure or de facto." Id., 29-30. Nevertheless, the Supreme Court held that "[i]n light of the complexities of developing a legislative program that would respond to the constitutional deprivation that the plaintiffs had established . . . further judicial intervention should be stayed 'to afford the General Assembly an opportunity to take appropriate legislative action.'" Id., 45-46; see also Return of Record (ROR), at 905.

Since the issuance of the original *Sheff* decision in 1996, the parties to that litigation have been attempting to craft an appropriate legal remedy to fix the state constitutional violation identified by the Connecticut Supreme Court in *Sheff*. Over the last nearly thirty years, the parties to the *Sheff* litigation have crafted five separate stipulations designed to reduce racial, ethnic, and economic isolation in Hartford public schools. ROR, at 906. One of the main features of the parties' efforts to craft an appropriate legal remedy is the adoption of the Comprehensive School Choice Plan (CCP), which, generally, is a voluntary interdistrict school program in which students from Hartford and surrounding towns are allowed to apply to interdistrict magnet schools and regional technical schools outside of their local school districts and outside of Hartford. Id.

A primary goal of the CCP is providing Hartford school children with substantially equal educational opportunities in desegregated settings as required by the original *Sheff* decision. ROR, at 906. Thus, the CCP requires the department to adhere to a racial and socioeconomic diversity goal when assigning students to interdistrict schools under the CCP. Id. To meet the goal of racial and socioeconomic diversity in Hartford public schools, the department considers a variety of factors when deciding where to place students participating in the voluntary interdistrict school program. Id. These factors include a student's address, school preferences, whether a student has a sibling at a particular school, and other socioeconomic factors. Id. To assist in the placement decision process, the department utilizes a software program known as Blenderbox. Id. Generally, the information provided by students on their program applications is put into the Blenderbox program and the department uses the program to assist the department in deciding where to place participating students to help achieve racial and socioeconomic

diversity in Hartford schools as required by the original *Sheff* decision. Id. The series of rules and the weight accorded to each factor considered within the Blenderbox program and by the department is known as the Placement Protocol.[1] Id. To the extent the Placement Protocol does not yield sufficient racial and socioeconomic diversity in any given year, the department adjusts the rules and weighting factors of the Placement Protocol. ROR, 907. The operation and adjustment of the Placement Protocol is highly confidential within the department, with only a small number of department employees having full access to the Placement Protocol. Id.

On January 27, 2022, the parties to the *Sheff* litigation agreed to a permanent injunction (the injunction) that was subsequently entered as an order of the court. See ROR, 655-662; see also *Sheff* v. *O'Neill*, LND-HHD-CV-17-S-040566-S, Hartford Superior Court, Docket Entry No. 145.86. The injunction was the fifth stipulation entered into by the *Sheff* parties in an attempt to craft an appropriate legal remedy to fix the state constitutional violation identified by the original *Sheff* court. ROR, 905. Despite being captioned as a "permanent" injunction, the injunction has an explicit term of ten years. ROR, 655. Generally, the injunction requires the department to implement the terms of the CCP and provides the *Sheff* plaintiffs with the explicit right, at any point in the next ten years,[2] to seek court enforcement of the injunction if the *Sheff*

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[1] The process by which students are placed in schools in an effort to comply with the original *Sheff* decision "is extraordinarily complex and subject to a great number of variables." *Sheff* v. *O'Neill*, No. LND-CV-17-5045066-S, 2017 WL 4812624, at *4 (Conn. Super. Ct. Aug. 7, 2017) (*Berger, J.*).

[2] Although the *Sheff* plaintiffs' rights under the injunction have a ten year limitation, this court observes that the Connecticut Supreme Court's original holding in *Sheff* that the State has an affirmative constitutional obligation to remedy racial and ethnic segregation in Hartford public schools would not appear to be time limited. In other words, the State's "affirmative constitutional obligation to provide all public school children with a substantially equal educational opportunity," *Sheff* v. *O'Neill*, supra, 238 Conn. 25, does not somehow cease to exist

plaintiffs believe that the department is not complying with the "material terms" of the CCP. ROR, 659. The injunction defines the "material terms" of the CCP to include, *inter alia*, such issues as department commitments to meet student demand for limited seats in integrated schools, department commitments to maintain and increase socioeconomic diversity in interdistrict schools, state commitments to provide sufficient public funding to meet the CCP's goals, and department commitments to provide the *Sheff* plaintiffs with sufficient information to monitor the department's compliance with the CCP. ROR, 656-58. This court takes judicial notice of the fact that some thirty years of litigation demonstrates the fact that simply because the parties to the *Sheff* litigation agree to a process that the parties believe, in good faith, will meet the requirements of the Connecticut Supreme Court's mandate to desegregate Hartford public schools, does not make it so.[3] See e.g., *Sheff* v. *O'Neill*, 2017 WL 4812624, at *2-*5 (discussing generally the *Sheff* parties' efforts over the years to craft a process to remedy the racial and ethnic segregation in Hartford public schools, the difficultly in achieving that goal, and the highly technical and fact specific nature of the decisions that go into the *Sheff* parties' desegregation plans); see also *Sheff* v. *O'Neil*, No. X07CV894026240S, 2010 WL 1233971, at *1 fn.1 (Conn. Super. Ct. Feb. 22, 2010), opinion modified on reargument sub nom. *Sheff* v. *O'Neill*, No. X07CV894026240S, 2011 WL 1566975 (Conn. Super. Ct. Apr. 8, 2011) (*Berger,*

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at the end of ten years. This court also observes that the injunction includes no release of claims provision.

[3] Indeed, the difficulty in ending racial and ethnic segregation in Hartford public schools is illustrated by good faith, yet unsuccessful, efforts to end such segregation that predate the *Sheff* litigation. See *Sheff* v. *O'Neill*, supra, 238 Conn. 23 ("[t]he state had ample notice of ongoing trends toward racial and ethnic isolation in its public schools, and indeed undertook a number of laudable remedial efforts that unfortunately have not achieved their desired end.")

J.) (discussing the history of the parties' litigation up to that point); *Sheff* v. *O'Neill*, 45 Conn. Supp. 630, 662, 733 A.2d 925 (Super. Ct. 1999) (*Aurigemma, J.*) (discussing at length the intricacies and difficulties involved in crafting a remedy that will comply with the Supreme Court's original *Sheff* ruling.) Perhaps reflecting this reality, the injunction explicitly authorizes the *Sheff* parties to engage in discovery to substantiate any claims or defenses regarding non-compliance with the injunction, ROR, 659, and further explicitly authorizes the court to "adopt a schedule, order discovery, hold an evidentiary hearing, issue orders, and take any other appropriate action necessary to resolve" any dispute under the injunction. Id. Although the injunction ostensibly "ends [the court's] supervisory jurisdiction" over the *Sheff* litigation, ROR, 660, the injunction expressly maintains the court's jurisdiction with respect to disputes regarding compliance with the injunction's material terms.[4] Id. This court takes judicial notice that the "material terms" of the injunction are those terms implementing the parties' agreed remedies that are intended to end racial and ethnic segregation in Hartford public schools. The court takes further judicial notice that it is the *Sheff* parties' disputes regarding the adequacy of the remedies intended to end racial and ethnic segregation in Hartford public schools that lead to the thirty years of litigation that preceded the injunction.[5]

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[4] The *Sheff* plaintiffs represent that they have already sought a meeting with the Office of the Connecticut Attorney General with respect to possible violations of the injunction's material terms. See Docket Entry No. 125.00, Attachment A, at 2.

[5] This court also observes that, understandably, there is a certain aspirational quality to the injunction. The injunction states that the court finds that the injunction and CCP "are designed to address" the Supreme Court's original *Sheff* holding. ROR, 660. But there is no finding that the injunction and CCP *do in fact* address (or, more properly, provide a remedy that complies with) the Supreme Court's original *Sheff* holding. Similarly, the injunction states that the court finds that the injunction and CCP "will meet" the requirements of the Supreme Court's original *Sheff* holding and then only based "upon a joint request of the parties." Id. Indeed, there are no

On April 5, 2021, Alicia Solow-Niederman filed a request (the request) under the act with the department seeking public records related to the automated decision-making systems related to how the department makes placement decisions related to the CCP.[6] ROR, 904. Ms. Solow-Niederman is a law professor doing research on how government entities use algorithms and artificial intelligence to make decisions. See Docket Entry No. 117.00, 2-3. The department provided responsive documents to Professor Solow-Niederman on October 14, 2021, May 12, 2022, and April 21, 2023. ROR, 904; 907. Nevertheless, the department claimed that certain documents related to the Blenderbox program and the process by which the department weighs and considers specific factors and variables in making student placement decisions under the CCP are exempt from public disclosure under the act (the subject documents).[7] On June 10, 2022, Professor Solow-Niederman filed an appeal with the commission. ROR, 904. On April

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factual findings whatsoever set forth in the injunction upon which the court can make any finding as to the adequacy of the injunction or CCP to meet the requirements of the Supreme Court's original *Sheff* holding. This is not surprising because the adequacy of the CCP to meet the requirements of the Supreme Court's original *Sheff* holding is based on events yet to occur.

[6] The department contends that while the department uses the Blenderbox software to assist in decision making, department employees make the actual decisions and therefore there is no "automated decision making system," as sought in the request. Therefore, the department argues that Professor Solow-Niederman has not demonstrated that any of the public records she seeks actually exist. The court is not convinced. "FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions. It would be unreasonable to deny a member of the public access to the FOIA simply because of arguable imperfections in the form in which a request for public records is couched. A talismanic insistence on the use of [certain words] would be inconsistent with the spirit and the policy of the FOIA." *Perkins* v. *Freedom of Info. Comm'n*, 228 Conn. 158, 167, 635 A.2d 783 (1993). The court holds that Professor Solow-Niederman's request is sufficiently clear to demonstrate the existence of the public records that Professor Solow-Niederman seeks and that the department is aware of what public records Professor Solow-Niederman is seeking.

[7] The subject documents are more particularly described at paragraph 22 of the decision. See ROR, 907; see also ROR, 908.

25, 2023, the commission held a hearing on Professor Solow-Niederman's appeal. Id., 907. The commission viewed the subject documents in camera at the April 25, 2023, hearing. Id. On June 7, 2023, the commission issued the decision finding that the department's claimed exemptions where inapplicable and ordering that the subject documents must be disclosed to Professor Solow-Niederman. ROR, 921.

LEGAL ANALYSIS

"It must be noted initially that there is an overarching policy underlying [the Freedom of Information Act] . . . favoring the disclosure of public records. . . . It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the . . . legislation [comprising the act]. . . . The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. . . . This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted; internal quotation marks omitted). *Rocque* v. *Freedom of Information Comm'n*, 255 Conn 651, 660-61, 774 A.2d 957 (2001).

General Statutes § 1-210 (4) exempts from public disclosure "[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled." Under General Statutes § 1-200(6)(B), which, as relevant to this case, contains language identical to § 1-210 (4), our Connecticut Supreme Court has interpreted the term "adjudicate" to mean "'to settle finally (the rights and duties of the parties to a court case) on the merits of issues raised. . .

.'" *Plan. & Zoning Comm'n of Town of Monroe* v. *Freedom of Info. Comm'n*, 316 Conn. 1, 17, 110 A.3d 419 (2015) (hereinafter *Monroe*); see also id., 19 (". . . adjudication fundamentally pertains to legal issues being resolved and decided."). The Supreme Court further held that "[t]he adjective 'final' is commonly defined as: 'not to be altered or undone. . . .'" Id., 17. The Connecticut Supreme Court further concluded that "[r]eading these definitions together, we conclude that [§ 1-200(6)(B)] is plain and unambiguous and that the term 'finally adjudicated' refers to the point at which a court has decided the matter in question, and that decision cannot be altered or modified on appeal. Thus, a matter is 'finally adjudicated' . . . either upon completion of an appeal to the highest possible tribunal or upon expiration of a party's right to appeal." Id., 17-18. Additionally, for purposes of § 1-210 (4), our Supreme Court has defined "[s]trategy . . . as 'the art of *devising or employing plans or stratagems.*' . . . Negotiation is defined as 'the action or process of negotiating,' and negotiate is variously defined as: 'to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something'; 'to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings or agreements or compromises'; and 'to influence successfully in a desired way by discussions and agreements or compromises.'" (Emphasis in original.) *City of Stamford* v. *Freedom of Info. Comm'n*, 241 Conn. 310, 318, 696 A.2d 321 (1997).

Here, this court holds that the subject records are exempt from public disclosure under General Statutes § 1-210 (4) because the fundamental legal issue that remains to be adjudicated in the *Sheff* litigation cannot be said to be finally settled or finally decided such that the settlement or decision cannot be altered or undone. The original 1996 Supreme Court decision in

Sheff adjudicated the issue of whether Hartford public schools were racially and ethnically segregated in violation of the Connecticut Constitution and whether the State of Connecticut has an affirmative obligation to remedy that circumstance. The Connecticut Supreme Court ruled that there was such a state constitutional violation and that the State had an obligation to remedy that violation. What has been at issue since 1996, and what the *Sheff* parties have been litigating over for nearly thirty years, is what does the appropriate legal remedy to end the constitutional violation identified in *Sheff* actually look like. Thus, for the purpose of determining finality under § 1-210 (4), as defined by *Monroe*, the "rights and duties" at issue and the legal issues "being resolved and decided" are what is the appropriate legal remedy to end racial and ethnic segregation in Hartford public schools. By its plain terms, the injunction agreed to by the parties in January of 2022 does not finally adjudicate that issue such that the parties' agreed resolution cannot be "altered or undone." By its explicit terms, the injunction gives the *Sheff* plaintiffs the right to seek court intervention at any time within the next ten years[8] if the *Sheff* plaintiffs believe the "material terms" of the injunction are not being complied with. The Superior Court explicitly retains jurisdiction to entertain such a litigation, with the power to order discovery, take new evidence, and "take any other appropriate actions" necessary to resolve the litigation. As set forth above, the "material terms" of the injunction plainly encompass the very same issues that have locked the parties in litigation for decades – how to make the Supreme Court's original holding in *Sheff* a reality and end racial and ethnic segregation in Hartford public schools. Nowhere in the injunction does the court adjudicate what the proper legal remedy may be for

[8] Thus, the final adjudication of the *Sheff* litigation does not hinge on an event that may never occur. See *Monroe*, supra, 316 Conn. 18 n.13. The *Sheff* plaintiffs' right to seek alterations to the CCP under the terms of the injunction ends after 10 years.

racial and ethnic segregation in Hartford public schools and do so in a manner that cannot be "modified" or "altered." Indeed, the injunction explicitly establishes a process by which the *Sheff* plaintiffs may, as of right, seek additional court intervention if, *inter alia*, the department does not "meet the [d]emand of Hartford-resident minority students for an integrated educational experience," "maximize [social economic diversity]," or "achieve and maintain the desegregation goal." ROR, 656. The most that can be said for the injunction is that it expresses the parties' no doubt sincere desire that the injunction and the CCP "are designed to address the Supreme Court's findings in *Sheff* v. *O'Neill*. . . ." ROR, 660. But nowhere does the injunction conclusively and finally adjudicate the legal issue of whether the injunction and CCP are in fact the appropriate legal remedy to address the state constitutional violation found in the original *Sheff* decision.[9]

Because the court can resolve this appeal based on the foregoing analysis, and because resolution of the department's arguments under General Statutes § 1-210(b)(5) would require this court to adjudicate the department's right to protect alleged trade secrets against the public's right to access public records that could be used to vindicate their state constitutional rights,[10] the court need not consider the department's arguments under General Statutes § 1-210(b)(5). See

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[9] The court holds that the subject documents plainly meet the definition of public records pertaining to strategy and negotiations as set forth in § 1-210 (4). See infra, at 9.

[10] In support of its trade secrets argument, the department argues, in part, that if Hartford public school students (or their parents) knew how placement decisions were made under the Blenderbox program and the Placement Protocol, they would use that information to "secure more desirable placements." See Docket Entry No. 113.00, 38. In other words, the information the department seeks to protect might be used by Hartford public school students to better secure their state constitutional right to a racially diverse educational setting that the Connecticut Supreme Court has ruled those students are due. See *Sheff*, supra, 238 Conn. 29-30.

State v. *Washington,* 39 Conn. App. 175, 176-77 n.3, 664 A.2d 1153 (1995) (holding that a court "has a basic judicial duty to avoid deciding a constitutional issue if a nonconstitutional ground exists that will dispose of the case.") (Internal quotation marks omitted.)

CONCLUSION

For all the foregoing reasons, the plaintiffs' appeal is sustained. The court holds that the subject records are exempt from public disclosure under General Statutes § 1-210(b)(4). Pursuant to General Statutes § 4-183(k), this matter is hereby remanded to the commission with the instruction to dismiss the underlying complaint.

Budzik

Budzik, J.