



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 24, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated September 17, 2013, requesting information and documents related to the Department of Justice's Civil Rights Division's efforts to ensure that the State of Louisiana complies with long-standing court orders requiring it to desegregate its public schools. We are sending identical responses to the other Members who joined in your letter. While we review your requests for information, we wish to respond to your first question and to correct any misunderstanding about our recent actions in *Brumfield v. Dodd*, a case in which a federal court in 1975 placed Louisiana under a desegregation order because the State had been directing state resources to private schools to keep its education system segregated.

To be clear, we are neither opposing Louisiana's school voucher program nor seeking to revoke vouchers from any students. When properly run, state and local voucher programs need not conflict with legal requirements to desegregate schools.

Our goal in filing a motion for further relief in *Brumfield* on August 22, 2013 (the "August Motion"), was straightforward: The United States is seeking the court's assistance in ensuring that the information Louisiana collects in connection with its school voucher program is provided to the United States in a timely fashion and that Louisiana implements its program in full compliance with federal law, including the desegregation order in this case. This goal aligns with the express provisions of the state law that established the voucher program, Act No. 2, which specifies that the program is "subject to any court-ordered desegregation plan in effect."

We are pleased to update you about a key development in this case that occurred late last week. On Friday, following a meeting of the two sides convened by the court, Louisiana agreed to provide information on the voucher program that the Department had originally requested in May 2013 and that the State had, up until now, largely withheld. This is thus a major step

forward and puts the parties on a path to resolving the primary issue that motivated the Department's court filing in the first place. In addition, the court granted some of the relief the Department sought in the August Motion, as the court ordered Louisiana to undertake an analysis of the voucher program and provide it to the United States by November 7 (see the attached court order).

This represents a significant breakthrough. We are pleased that Louisiana finally has agreed to provide the necessary information to the Department. It is only regrettable that the Department had to resort to court involvement in this case in order to obtain it. Louisiana officials recently acknowledged in a sworn affidavit that they already collect most of this information; indeed, this information is similar to information about student assignment that schools subject to federal desegregation orders in Louisiana have routinely provided to the Department for decades without delay or need for court involvement. Despite these facts, during the first year of the voucher program (2012-2013), the Department had to resort to court involvement because Louisiana refused to provide us information about the program. In January of this year, a federal court granted our motion to compel and ordered Louisiana to provide the Department with information for the 2012-2013 school year. The Department again sought Louisiana's cooperation in providing information for the second year of the voucher program (2013-2014), and was unsuccessful until last week's breakthrough, facilitated by the court's intervention.

The court's September 18 order also requires the parties to brief and argue two questions: 1) does the desegregation order issued in *Brumfield* apply to the Voucher Program so as to require the State to obtain authorization from the Court prior to implementation?; and 2) if the desegregation order applies to the Voucher Program, is there any need to amend existing orders to ensure a process of review of the Voucher Program or similar ones in the future? Thus, the court has now established an orderly process for resolving precisely the question that the United States hoped to resolve when it filed the August Motion. Indeed, the Department has filed a supplement to the August Motion (see attached) clarifying that the only issues remaining from that motion are the two questions above that the court has presented for briefing.

We share your interest in ensuring that low-income and minority children in Louisiana have equal access to educational opportunities. Because your letter expressed concern about students being able to "access better education opportunities" through the voucher program, you should be aware that it is not clear that all of the new schools for which children are receiving vouchers in Louisiana provide opportunities that are better than or even equal to those in their old schools. For example, according to media reports, the New Living Word School in Lincoln Parish was approved to accept 300 low-income students, and ultimately received around 100, for the 2012-2013 school year through the voucher program despite having no teachers or actual classrooms. Students in the school were only shown DVDs until the "school" was exposed and ejected from the program for financial irregularities. There have been other reports noting a lack of educational accountability, a lack of financial oversight, and the limited parent choice involved in the program.

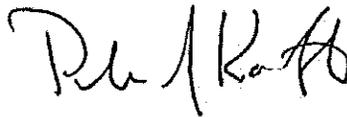
The Department has worked for decades, in Louisiana and across the country, to ensure that every student is able to enjoy the fundamental rights guaranteed by the Constitution and the

The Honorable John Kline
Page Three

Supreme Court's decision in *Brown v. Board of Education*. Indeed, the Department has worked to ensure that Louisiana students can participate in all school activities free from racial discrimination or segregation, and to make sure that no Louisiana student, based on his or her race, is left in failing schools with crumbling walls, faulty toilets, and inadequate opportunities to learn. We hope that we will be able to work cooperatively with Louisiana in the future to ensure that students are assigned to schools in a manner that complies with the law and fulfills the promise of *Brown*.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is fluid and cursive, with the first name "Peter" and last name "Kadzik" clearly distinguishable.

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable George Miller
Ranking Member

Enclosures



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 24, 2013

The Honorable Todd Rokita
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General, dated September 17, 2013, requesting information and documents related to the Department of Justice's Civil Rights Division's efforts to ensure that the State of Louisiana complies with long-standing court orders requiring it to desegregate its public schools. We are sending identical responses to the other Members who joined in your letter. While we review your requests for information, we wish to respond to your first question and to correct any misunderstanding about our recent actions in *Brumfield v. Dodd*, a case in which a federal court in 1975 placed Louisiana under a desegregation order because the State had been directing state resources to private schools to keep its education system segregated.

To be clear, we are neither opposing Louisiana's school voucher program nor seeking to revoke vouchers from any students. When properly run, state and local voucher programs need not conflict with legal requirements to desegregate schools.

Our goal in filing a motion for further relief in *Brumfield* on August 22, 2013 (the "August Motion"), was straightforward: The United States is seeking the court's assistance in ensuring that the information Louisiana collects in connection with its school voucher program is provided to the United States in a timely fashion and that Louisiana implements its program in full compliance with federal law, including the desegregation order in this case. This goal aligns with the express provisions of the state law that established the voucher program, Act No. 2, which specifies that the program is "subject to any court-ordered desegregation plan in effect."

We are pleased to update you about a key development in this case that occurred late last week. On Friday, following a meeting of the two sides convened by the court, Louisiana agreed

to provide information on the voucher program that the Department had originally requested in May 2013 and that the State had, up until now, largely withheld. This is thus a major step forward and puts the parties on a path to resolving the primary issue that motivated the Department's court filing in the first place. In addition, the court granted some of the relief the Department sought in the August Motion, as the court ordered Louisiana to undertake an analysis of the voucher program and provide it to the United States by November 7 (see the attached court order).

This represents a significant breakthrough. We are pleased that Louisiana finally has agreed to provide the necessary information to the Department. It is only regrettable that the Department had to resort to court involvement in this case in order to obtain it. Louisiana officials recently acknowledged in a sworn affidavit that they already collect most of this information; indeed, this information is similar to information about student assignment that schools subject to federal desegregation orders in Louisiana have routinely provided to the Department for decades without delay or need for court involvement. Despite these facts, during the first year of the voucher program (2012-2013), the Department had to resort to court involvement because Louisiana refused to provide us information about the program. In January of this year, a federal court granted our motion to compel and ordered Louisiana to provide the Department with information for the 2012-2013 school year. The Department again sought Louisiana's cooperation in providing information for the second year of the voucher program (2013-2014), and was unsuccessful until last week's breakthrough, facilitated by the court's intervention.

The court's September 18 order also requires the parties to brief and argue two questions: 1) does the desegregation order issued in *Brumfield* apply to the Voucher Program so as to require the State to obtain authorization from the Court prior to implementation?; and 2) if the desegregation order applies to the Voucher Program, is there any need to amend existing orders to ensure a process of review of the Voucher Program or similar ones in the future? Thus, the court has now established an orderly process for resolving precisely the question that the United States hoped to resolve when it filed the August Motion. Indeed, the Department has filed a supplement to the August Motion (see attached) clarifying that the only issues remaining from that motion are the two questions above that the court has presented for briefing.

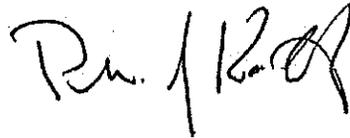
We share your interest in ensuring that low-income and minority children in Louisiana have equal access to educational opportunities. Because your letter expressed concern about students being able to "access better education opportunities" through the voucher program, you should be aware that it is not clear that all of the new schools for which children are receiving vouchers in Louisiana provide opportunities that are better than or even equal to those in their old schools. For example, according to media reports, the New Living Word School in Lincoln Parish was approved to accept 300 low-income students, and ultimately received around 100, for the 2012-2013 school year through the voucher program despite having no teachers or actual classrooms. Students in the school were only shown DVDs until the "school" was exposed and ejected from the program for financial irregularities. There have been other reports noting a lack of educational accountability, a lack of financial oversight, and the limited parent choice involved in the program.

The Honorable Todd Rokita
Page Three

The Department has worked for decades, in Louisiana and across the country, to ensure that every student is able to enjoy the fundamental rights guaranteed by the Constitution and the Supreme Court's decision in *Brown v. Board of Education*. Indeed, the Department has worked to ensure that Louisiana students can participate in all school activities free from racial discrimination or segregation, and to make sure that no Louisiana student, based on his or her race, is left in failing schools with crumbling walls, faulty toilets, and inadequate opportunities to learn. We hope that we will be able to work cooperatively with Louisiana in the future to ensure that students are assigned to schools in a manner that complies with the law and fulfills the promise of *Brown*.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is written in a cursive, somewhat stylized font.

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Carolyn McCarthy
Ranking Member
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Enclosures

MINUTE ENTRY
LEMELLE, J.
September 18, 2013

JS10(00:30)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

OLESS BRUMFIELD, et al.,

CIVIL ACTION

and

UNITED STATES OF AMERICA

VERSUS

NO. 71-1316

WILLIAM J. DODD SUPERINTENDENT OF
PUBLIC EDUCATION, et al

SECTION "B" (2)

Considering today's telephone conference with counsel of record regarding the United States' Motion for Further Relief (Rec. Doc. No. 203), and Defendant's Motion for Extension of Time to File Responsive Pleadings (Rec. Doc. No. 206),

IT IS ORDERED that a hearing be conducted on November 22, 2013 at 9am before the undersigned judge. Prior to that hearing, all parties are to submit briefing on the following two questions:

(1) Does the desegregation order issued in *Brumfield v. Dodd*, 405 F. Supp. 338 (E.D. La. 1975) apply to the State of Louisiana's Student Scholarships for Educational Excellence Program ("Voucher Program") so as to require the State to obtain authorization from the Court prior to implementation?

(2) If the desegregation order applies to the Program, is there any need to amend existing orders to ensure a process of

review of the Voucher Program or similar ones in the future?

Defendants' and the State of Louisiana's briefs, including an analysis of the voucher awards for the 2013-14 school year respecting impact on school desegregation in each school district presently under a federal desegregation order, are due no later than November 7, 2013; Reply briefs from Plaintiffs and the United States are due no later than November 15, 2013.

IT IS FURTHER ORDERED that parties are to submit a joint status letter no later than October 1, 2013 proposing a discovery schedule, if further discovery is needed at this time, and advising the Court whether there is a need for an evidentiary hearing on the ultimate merits of the underlying Motion for Further Relief.

IT IS FURTHER ORDERED that to the extent there are overdue responses to discovery requests or orders, parties shall seek expedited consideration in accordance with court rules.

New Orleans, Louisiana, this 18th day of September, 2013.



UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

OLESS BRUMFIELD, et al.,)	
)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	Civ. A. No. 71-1316
)	
Plaintiff-Intervenor,)	Judge Ivan L.R. Lemelle
)	Magistrate Judge Joseph C. Wilkinson Jr.
v.)	
)	
WILLIAM J. DODD, SUPERINTENDENT)	
OF PUBLIC EDUCATION, et al.,)	
)	
Defendants.)	

**UNITED STATES' SUPPLEMENT TO AUGUST 22, 2013 MOTION FOR FURTHER
RELIEF**

As this Court has noted, the United States is neither opposing the Defendant State of Louisiana's ("Louisiana" or "State") school voucher program nor seeking to take vouchers away from any students who have received them. Rather, the United States is simply seeking this Court's assistance in ensuring that the information Louisiana collects in connection with its school voucher program is provided to the United States in a timely fashion and that Louisiana implements its program in full compliance with federal law, including the desegregation order in this case.

In light of this Court's September 18, 2013 Order (ECF No. 212) ("Sept. 18 Order"), which sets forth a schedule for determining how Louisiana can come into compliance with the orders in this case and requires Louisiana to provide the information and analysis requested, a process is now in place for the United States to obtain the relief it was seeking.

When the United States filed the Motion for Further Relief and associated Memorandum in Support on August 22, 2013 (ECF No. 203, Att. 1) (“the August Motion” or “August Mot.”), it had three key objectives:

- *First*, for the 2013-2014 school year, Louisiana should provide the United States with information regarding the students who applied for and/or received vouchers, as set forth in the United States’ May 31, 2013 Request for Information. *See* August Mot. at 4 (citing the May 31, 2013 request for “specific information concerning the State’s awards of vouchers to students for the 2013-2014 school year,” and attaching the request as Exhibit C to the August Motion).
- *Second*, also for the 2013-2014 school year, Louisiana should provide the United States with an analysis of the voucher awards’ impact on school desegregation in each school district that is currently operating under a federal desegregation order. *See* August Mot. at 15 (asking the Court “to direct the State to analyze the impact of the voucher awards for the 2013-14 school year with respect to impact on school desegregation in each school district operating under a federal desegregation order and to submit those analyses to the applicable courts and parties”).
- *Third*, for the 2014-2015 and subsequent school years, Louisiana should agree to an annual, orderly process for reviewing implementation of the State’s voucher program under the desegregation order in this case. *See* August Mot. at 3-5, 7-8 (describing at length the State’s repeated failure to provide the United States or this Court with information and analysis needed to monitor implementation of the State’s voucher program, and recounting the specific requirements of the desegregation order in this case).

Pursuant to this Court’s September 18 Order, all three of these objectives are now in the process of being fulfilled.

First, as of late Friday afternoon, Louisiana has finally agreed to provide the United States with information that the United States requested on May 31 of this year, regarding the students who applied for and/or received vouchers for the current school year. The State defendants have now indicated to the United States that some of the requested information will be provided by September 26, 2013, and nearly all of the remainder should be provided by October 8, 2013.

Second, the Court required the State to provide, no later than November 7, 2013, “an analysis of the voucher awards for the 2013-14 school year respecting impact on school desegregation in each school district presently under a federal desegregation order.” Sept. 18 Order at 2.

Third, the Court required the parties to brief and argue the following two legal issues to determine the State’s compliance obligations in this case: first, whether the desegregation order in this case “appl[ies] to the State of Louisiana’s Student Scholarships for Educational Excellence Program (‘Voucher Program’)”; and second, if so, whether there is “any need to amend existing orders to ensure a process of review of the Voucher Program or similar ones in the future.” Sept. 18 Order at 1-2.

Consequently, the United States supplements its August Motion to clarify that the only issues remaining from that motion are the two questions the Court has presented for briefing: (1) does the desegregation order issued in *Brumfield* apply to the Voucher Program so as to require the State to obtain authorization from the Court prior to implementation?; and (2) if the desegregation order applies to the Voucher Program, is there any need to amend existing orders to ensure a process of review of the Voucher Program or similar ones in the future? The United States will file its brief addressing the two legal issues presented by November 15, 2013, as ordered by the Court, and will participate in the hearing on November 22, 2013. To the extent this Court determines it appropriate to resolve those two questions in the affirmative, and a schedule is put in place to facilitate compliance and the timely sharing of school voucher program data and analysis by Louisiana as requested by the United States, it is the position of the United States that the relief sought by the August Motion will have been satisfied.

Dated: September 23, 2013

Respectfully submitted,

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

ANURIMA BHARGAVA, Chief
FRANZ R. MARSHALL, Deputy Chief
Educational Opportunities Section

s/ Torey B. Cummings
TOREY B. CUMMINGS (Mass. Bar 664549)
Trial Attorney
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Avenue, NW, PHB 4300
Washington, D.C. 20530
Telephone: (202) 305-4204
Fax: (202) 514-8337
torey.cummings@usdoj.gov

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2013, a true and correct copy of the foregoing Supplement was served on all counsel of record in the above-captioned matter by electronic means through the Court's ECF system.

s/ Torey B. Cummings