

No. 96-2994

Michael C. Liddell, a minor,
by Minnie Liddell, his mother
and next friend; Kendra *
Liddell, a minor, by Minnie *
Liddell, her mother and next *
friend; Minnie Liddell; *
Roderick D. LeGrand, a minor, *
by Lois LeGrand, his mother *
and next friend; Lois LeGrand; *
Clodis Yarber, a minor, by *
Samuel Yarber, his father and *
next friend; Samuel Yarber; *
Earline Caldwell; Lillie *
Caldwell; Gwendolyn Daniels; *
National Association for the *
Advancement of Colored People; *
United States of America; *

Plaintiffs-Appellees; *

City of St. Louis, *

Plaintiff; *

v. *

The Board of Education of the *
City of St. Louis; Hattie R. *
Jackson, President, The Board *
of Education of the City of *
St. Louis; Rev. Earl E. Nance, *
Jr., a member of the Board of *
Education of the City of St. *
Louis; Renni B. Shuter, a *
member of the Board of Educ- *
ation of the City of St. Louis; *
Paula V. Smith, a member of *
the Board of Education of the *
City of St. Louis; Dr. Albert *
D. Bender, Sr., a member of the *
Board of Education of the City *
of St. Louis; Eddie G. Davis, *
a member of the Board of Educa- *
tion of the City of St. Louis; *
Dr. John P. Mahoney, a member *
of the Board of Education of *

Appeals from the United States
District Court for the
Eastern District of Missouri.

the City of St. Louis; Marybeth *
McBryan, a member of the Board *
of Education of the City of St. *
Louis; Thomas M. Nolan, a *
member of the Board of Educa- *
tion of the City of St. Louis; *
William Purdy, a member of the *
Board of Education of the City *
of St. Louis; Robbyn G. Wahby, *
a member of the Board of Educa- *
tion of the City of St. Louis; *
Madye Henson Whithead, a member *
of the Board of Education of *
the City of St. Louis; *
Dr. Cleveland Hammonds, Jr., *
Superintendent of Schools for *
the City of St. Louis; *

Defendants-Appellees; *

Ronald Leggett, St. Louis *
Collector of Revenue; *

Defendant; *

State of Missouri; Mel *
Carnahan, Governor of the *
State of Missouri; Jeremiah W. *
(Jay) Nixon, Attorney General; *
Bob Holden, Treasurer; Richard *
A. Hanson, Commissioner of *
Administration; Robert E. *
Bartman, Commissioner of *
Education; Missouri State *
Board of Education, and its *
members; Thomas R. Davis; *
Gary M. Cunningham; Sharon M. *
Williams; Peter F. Herschend; *
Jacqueline D. Wellington; *
Betty E. Preston; Russell V. *
Thompson; Rice Pete Burns; *

Defendants-Appellants; *

Special School District of *
St. Louis County; Affton Board *
of Education; Bayless Board of *
Education; Brentwood Board of *
Education; Clayton Board of *
Education; Ferguson-Florissant *
Board of Education; Hancock *
Place Board of Education; *

Hazelwood Board of Education; *
 Jennings Board of Education; *
 Kirkwood Board of Education; *
 LaDue Board of Education; *
 Lindbergh Board of Education; *
 Maplewood-Richmond Heights *
 Board of Education; Mehlville *
 Board of Education; Normandy *
 Board of Education; Parkway *
 Board of Education; Pattonville *
 Board of Education; Ritenour *
 Board of Education; Riverview *
 Gardens Board of Education; *
 Rockwood Board of Education; *
 University City Board of *
 Education; Valley Park Board of *
 Education; Webster Groves Board *
 of Education; Wellston Board of *
 Education; St. Louis County; *
 Buzz Westfall, County Execu- *
 tive; James Baker, Director of *
 Administration, St. Louis *
 County, Missouri; Robert H. *
 Peterson, Collector of St. *
 Louis County "Contract *
 Account," St. Louis County, *
 Missouri; The St. Louis Career *
 Education District; *

Defendants-Appellees; *

St. Louis Teachers' Union, *
 Local 420, AFT, AFL-CIO. *

Intervenor Below-Appellee. *

No. 96-3630

Michael C. Liddell, a minor, *
 by Minnie Liddell, his mother *
 and next friend; Kendra *
 Liddell, a minor, by Minnie *
 Liddell, her mother and next *
 friend; Minnie Liddell; *
 Roderick D. LeGrand, a minor, *
 by Lois LeGrand, his mother *
 and next friend; Lois LeGrand; *
 Clodis Yarber, a minor, by *
 Samuel Yarber, his father and *

next friend; Samuel Yarber; *
Earline Caldwell; Lillie *
Caldwell; Gwendolyn Daniels; *
National Association for the *
Advancement of Colored People; *
United States of America; *

Plaintiffs-Appellees; *

City of St. Louis, *

Plaintiff; *

v. *

The Board of Education of the *
City of St. Louis; Hattie R. *
Jackson, President, The Board *
of Education of the City of *
St. Louis; Rev. Earl E. Nance, *
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of St. Louis; Eddie G. Davis, *
a member of the Board of Educa- *
tion of the City of St. Louis; *
Dr. John P. Mahoney, a member *
of the Board of Education of *
the City of St. Louis; Marybeth *
McBryan, a member of the Board *
of Education of the City of St. *
Louis; Thomas M. Nolan, a *
member of the Board of Educa- *
tion of the City of St. Louis; *
William Purdy, a member of the *
Board of Education of the City *
of St. Louis; Robbyn G. Wahby, *
a member of the Board of Educa- *
tion of the City of St. Louis; *
Madye Henson Whithead, a member *
of the Board of Education of *
the City of St. Louis; *
Dr. Cleveland Hammonds, Jr., *

Superintendent of Schools for	*
the City of St. Louis;	*
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Defendants-Appellees;	*
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Ronald Leggett, St. Louis *	
Collector of Revenue;	*
	*
Defendant;	*
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State of Missouri; Mel	*
Carnahan, Governor of the *	
State of Missouri; Jeremiah W.	*
(Jay) Nixon, Attorney General;	*
Bob Holden, Treasurer; Richard *	
A. Hanson, Commissioner of	*
Administration; Robert E.	*
Bartman, Commissioner of *	
Education; Missouri State *	
Board of Education, and its	*
members; Thomas R. Davis;	*
Gary M. Cunningham; Sharon M.	*
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Jacqueline D. Wellington; *	
Betty E. Preston; Russell V.	*
Thompson; Rice Pete Burns;	*
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Defendants-Appellants;	*
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Special School District of	*
St. Louis County; Affton Board	*
of Education; Bayless Board of	*
Education; Brentwood Board of	*
Education; Clayton Board of	*
Education; Ferguson-Florissant	*
Board of Education; Hancock	*
Place Board of Education;	*
Hazelwood Board of Education;	*
Jennings Board of Education;	*
Kirkwood Board of Education;	*
LaDue Board of Education;	*
Lindbergh Board of Education;	*
Maplewood-Richmond Heights	*
Board of Education; Mehlville	*
Board of Education; Normandy	*
Board of Education; Parkway	*
Board of Education; Pattonville *	
Board of Education; Ritenour	*
Board of Education; Riverview	*
Gardens Board of Education;	*
Rockwood Board of Education;	*
University City Board of *	

Education; Valley Park Board of *
 Education; Webster Groves Board *
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 Education; St. Louis County; *
 Buzz Westfall, County Execu- *
 tive; James Baker, Director of *
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 County, Missouri; Robert H. *
 Peterson, Collector of St. *
 Louis County "Contract *
 Account," St. Louis County, *
 Missouri; The St. Louis Career *
 Education District; *
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 Defendants-Appellees; *
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 St. Louis Teachers' Union, *
 Local 420, AFT, AFL-CIO. *
 *
 Intervenor Below-Appellee. *

Submitted: January 13, 1997

Filed: January 28, 1997

Before MCMILLIAN, HEANEY, and FAGG, Circuit Judges.

HEANEY, Circuit Judge.

In 1984, this court, sitting en banc, affirmed an order of the United States District Court for the Eastern District of Missouri approving a settlement agreement to integrate the St. Louis School District.¹ Since then, as elements of the plan have been implemented, over eighteen appeals have been before this court, usually on questions relating to the responsibility of the State of Missouri to fund various aspects of the plan.

¹Liddell v. Missouri, 731 F.2d 1294 (8th Cir. 1984).

In October 1991, the State moved the district court to declare the St. Louis School District unitary. This motion was resisted by the plaintiffs, the United States, and the St. Louis Board of Education. No response was filed by the State. In May 1992, the State filed a new motion requesting partial unitary status. Later that month, the district court held that the State's request was premature but permitted the State to answer certain discovery requests stating that the possibility existed that a declaration of unitary status might be appropriate in the future.

In November 1993, the State filed an amended motion for unitary status. It informed the court that it would be prepared to present its evidence in support of the motion within nine to twelve months. Most parties again responded that the motion was still premature. In October 1994, the State asked the district court to set a date for a hearing on its motion. In February 1995, the district court granted the State's request and scheduled a hearing for September of that year. The hearing was later rescheduled for March 1996 to accommodate the schedules of the twenty parties to the case.

In November 1996, the State filed a motion with the district court to terminate promptly an element of the desegregation program that permits black students residing in the St. Louis School District to voluntarily transfer to a suburban school, requires the State to fund such transfers, and also permits limited voluntary transfers of suburban students to the St. Louis School District. The motion was "conditional," as the State requested the court to consider the motion only if it did not enter an order finding that the St. Louis School District had achieved a unitary status. The motion provoked varied responses, including that the plaintiffs and the United States urged the court to appoint a settlement coordinator to attempt to resolve the litigation, and the City Board asked that the pending hearing on unitary status be postponed.

In February, the district court denied the State's conditional motion as having been improvidently filed and not ripe for adjudication. The court stated:

The Court agrees with plaintiffs that the best resolution of this case would be an agreed-upon plan for ending Court supervision of the St. Louis Public Schools. The Court[,] however[,] is reluctant to continue the hearing. It may well be that the possibility for settlement will be greater following the hearing, at which time the appointment of a Settlement Coordinator would be appropriate and beneficial.

Liddell, G(1939)96, at 2 (E.D. Mo. Feb. 15, 1996). The State did not appeal the district court's order denying its motion.

The court held an evidentiary hearing on the State's unitary status motion from March 4 through March 26, 1996. The court has yet to decide that motion. Following the hearing, the court entered an order on April 23, 1996 stating that the preferred conclusion of the case would be an agreed-upon plan for ending court supervision of the St. Louis Public Schools. It determined that a serious settlement effort under the direction of the settlement coordinator, Dr. William H. Danforth, should be undertaken. It ordered the parties to participate in good faith in the negotiations. It stayed the post-hearing briefing schedule and ordered that all components of the settlement agreement then in force should continue in effect. Liddell, G(2062)96 (E.D. Mo. April 23, 1996).

The State then filed a motion to alter or amend the court's order appointing Dr. Danforth, arguing that the settlement director should not be authorized to make recommendations to the court as to the disposition of the case, that only twenty-five days should be allowed for negotiations, and raising several other objections.

On June 26, 1996, the court ruled that the negotiations would be confidential from the court and outside parties, that the

coordinator would not recommend to the court how the case should be resolved, and rejected the time limit for negotiations proposed by the State expressing confidence that the settlement coordinator would proceed with all due diligence. Liddell, G(2134)96 (E.D. Mo. June 26, 1996).

On July 24, 1996, the State appealed the two district court orders. The State also sought to stay the interdistrict components of the present desegregation remedy pending appeal of the order appointing the settlement coordinator. The State sought alternative remedies limiting its obligations under the desegregation plan. The district court denied the motions for the stay pending appeal on August 14, 1996. Liddell, G(2175)96 (E.D. Mo. Aug. 14, 1996). This court and Justice Thomas as circuit judge denied substantially similar motions for a stay pending appeal on August 23, 1996 and August 30, 1996, respectively. On October 1, 1996, the State appealed district court order G(2175)96 denying the State's motion for a stay pending appeal. All three appeals have been consolidated by this court.

We dismiss all three appeals. The appeals from orders G(2062)96 and G(2134)96 are interlocutory and relate to settlement procedures and case management. They cannot be characterized as appeals from orders denying an injunction. Thus, these appeals are not within the purview of 28 U.S.C. § 1292(a)(1). A district court, particularly in school desegregation cases, has broad discretion to control its docket and has the necessary flexibility to shape remedies that adjust public and private needs. Milliken v. Bradley, 433 U.S. 267, 288 (1977); Brown v. Board of Educ., 349 U.S. 294, 300 (1955).

With respect to district court order G(2175)96, the denial of a stay pending appeal is not an appealable order. The State argues that the district court erred because it effectively denied its motion for unitary status. We disagree. The district court has

yet to rule on the State's unitary status motion. The district court in this case has not refused to rule on the State's motion that the St. Louis School District be declared unitary. It has simply postponed post-hearing briefing and deferred final ruling on this matter. We cannot review a matter that has not been ruled on by the district court. We lack jurisdiction over the State's claim that the district court has erroneously denied its motion for unitary status.

For the foregoing reasons, we dismiss the State's appeals.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.