

3. Defendant Dr. Tom W. Kimbrell is the Commissioner of Education for the State of Arkansas and the responsible for the administrative management of the Twin Rivers School District.

Jurisdiction and Venue

4. This Court has jurisdiction pursuant to the Declaratory Judgment Act, Ark. Code Ann. § 16-111-103.

5. Pulaski County is the proper venue for this action. *See* Ark. Code Ann. § 16-60-103.

Background

6. Act 60 of 2003 (2nd Ex. Sess.), effective January 29, 2004, required the annexation or consolidation of school districts with less than 350 students for the 2004-2005 school year. Act 260 of 2003, § 3, *codified as* Ark. Code Ann. § 6-13-1601, *et seq.* **Ex. A, Act 60 of 2003 (2nd Ex. Sess.)**

7. Before and during the 2003-2004 school year, the Williford School District and the Randolph County School District qualified as isolated school districts under Ark. Code Ann. § 6-20-601. *See* Ark. Code Ann. § 6-20-603. Thus, schools within the Williford School District and Randolph County School Districts are “isolated schools” as defined by Ark. Code Ann. § 6-20-602(a).

8. In 2004, the Williford School District and the Randolph County School District were identified as districts with less than 350 students, and the

contiguous districts petitioned the State Board to voluntarily consolidate into a single school district pursuant to Ark. Code Ann. § 6-13-1601, *et seq.*

9. The State Board created the Twin Rivers School District (“Twin Rivers”) on May 10, 2004, by the administrative consolidation of the Williford School District and Randolph County School District pursuant to Ark. Code Ann. § 6-13-1601, *et seq.* **Ex. B, State Board Minutes, May 10, 2004.**

10. From May 10, 2004 to May 10, 2010, the Two Rivers School District operated four schools on two campuses, Williford and Oak Ridge Central (the former Randolph County School District campus). Each campus included both an elementary and secondary school.

11. Act 60 included special protection for isolated schools within consolidated districts like Twin Rivers. Section 5 of Act 60 (codified at § 6-20-602(b)) provided, “Any isolated school within a resulting or receiving district shall remain open.” **Ex. A, Act 60 of 2003 (2nd Ex. Sess.)**

12. Twin Rivers was the “resulting” school district following the consolidation of the Williford School District and Randolph County School District pursuant to Ark. Code Ann. § 6-13-1601, *et seq.* Thus, when the State Board created Twin Rivers, § 6-20-602(b) prohibited the closing of the schools because of their status as “isolated schools.”

13. Act 1397 of 2005 amended § 6-20-602(b) to create a process for closing isolated schools. As amended, § 6-20-602(b) provides:

Any isolated school within a resulting or receiving district shall remain open unless *the school board of directors* of the resulting or receiving district adopts a motion to close the isolated school or parts thereof by:

(1) Unanimous *vote of the full board of directors*; or

(2)(A) A *majority vote of the full board of directors*, but less than a unanimous vote, and the motion is considered by and approved by a majority vote of members of the State Board of Education.

(B) Any *school board of directors* seeking the state board approval to close isolated schools or parts thereof under subdivision (b)(2)(A) of this section shall:

(i) No less than thirty (30) days prior to a regularly scheduled state board meeting, request a hearing on the matter before the state board and file a petition to have the motion reviewed and approved by the state board.

(ii) The petition shall:

(a) Identify the specific isolated schools or part thereof that the local board of directors has moved to close;

(b) State all reasons that the isolated schools or part thereof should be closed;

(c) State how the closure will serve the best interests of the students in the district as a whole;

(d) State if the closure will have any negative impact on desegregation efforts or violate any valid court order from a court of proper jurisdiction; and

(e) Have attached a copy of the final motion approving the closure by the local board of directors.

(C)(i) Upon receiving a petition for approval of a motion to close all or part of an isolated school under subdivision (b)(2)(A) of this section, the state board shall have the authority to review and approve or disapprove the petition.

(ii) The state board shall only approve a motion to close isolated schools or parts thereof under subdivision (b)(2)(A) of this section if the closure is in the best interest of the students in the school district as a whole.

(iii) The state board shall not close a school if the state board finds that the closure will have any negative impact on desegregation efforts or will violate any valid court order from a court of proper jurisdiction.

(D) The state board is not authorized to require the closure of an isolated school or any parts thereof without a motion from the local board of directors as required under subdivision (b)(2)(A) of this section.

Ark. Code Ann. § 6-20-602(b) (emphasis supplied). **Ex. G, Act 1397 of 2005**

(Reg. Sess.)

14. The Quality of Education Act of 2003, effective July 1, 2003, authorized the State Board to develop accreditation standards for schools and to

enforce those standards. *See* Ark. Code Ann. § 6-15-201, *et seq.* School districts that fail to meet accreditation standards are subject to the remedies outlined in Ark.

Code Ann. 6-15-207(c):

The state board shall be allowed to take the following actions to address any school or school district on probationary status for failing to meet the standards for accreditation:

- (1) Require a school district to reorganize or reassign the administrative, instructional, or support staff of a public school;
- (2) Require a school or school district to institute and fully implement a curriculum that is based on state academic content and achievement standards, including providing appropriate professional development at the cost of the school district;
- (3) Remove a particular school from the jurisdiction of a school district and establish alternative public governance and supervision of the school or schools;
- (4) Require a school district to close down or dissolve a particular school or schools within a school district;
- (5) Annex a school district or districts or parts thereof with another receiving school district or districts pursuant to the authority of § 6-13-1401 *et seq.* and this subchapter;
- (6) Consolidate a school district or districts or parts thereof with another school district or districts or parts thereof to form a resulting district pursuant to the authority of § 6-13-1401 *et seq.* and this subchapter;
- (7) Reconstitute the leadership of a school district by removing permanently or suspending on a temporary

basis the superintendent of the school district or any particular board members of a school district. The state board shall have the authority to appoint an administrator or to call for the election of new school board members to administer the affairs and provide governance of the school district, or both; and

(8) Take any other appropriate action allowed by law which is determined by the state board to assist and address a school or school district failure to meet the standards for accreditation.

Ark. Code Ann. § 6-15-207.

15. On February 8, 2010, the State Board acted on its authority under § 6-15-207(c) to dismiss Twin Rivers' superintendent and dissolve its board of directors. The State Board also directed the Arkansas Department of Education ("ADE") to develop a plan for dissolving Twin Rivers and annexing its territory to contiguous school districts. **Ex. C, State Board Minutes, Feb. 8, 2010.**

16. On May 10, 2010, the State Board considered ADE's proposed plan for the dissolution and annexation of Twin Rivers and the closing of the Williford and Oak Ridge Central schools. STRS prepared a written submission and appeared and offered testimony opposing ADE's plan. The State Board unanimously approved ADE's proposed findings of fact and conclusions of law and ordered that Twin Rivers be dissolved, that the Williford and Oak Ridge Central schools be closed, that Twin Rivers' territory be annexed into six contiguous school districts and that ADE take other steps necessary to effectuate the order, including the

liquidation of Twin Rivers' assets. **Ex. D, State Board Proposed Findings, May 10, 2010.**

Declaration Sought

17. STRS seeks a declaration that the State Board's general authority under § 6-15-207(c) must give way to the more recent and specific provisions of § 6-20-602(b) governing the closing of isolated schools. *See Steward v. Statler*, 371 Ark. 351, 356, 266 S.W.3d 710, 714 (2007)(finding earlier statute repealed by implication "pursuant to our rule of statutory construction that the earlier statute must yield to the later enactment"); *Shelton v. Fiser*, 340 Ark. 89, 94, 8 S.W.3d 557, 560 (2000)("It has long been the law in Arkansas that a general statute must yield when there is a specific statute involved the particular subject matter."). The Williford and Oak Ridge Central schools are isolated schools as defined by § 6-20-602(a), and §6-20-602(b) is the only process by which isolated schools may be closed. Moreover, §6-20-602(b) expressly prohibits the State Board from closing isolated schools except pursuant to the process set forth therein – "The state board is not authorized to require the closure of an isolated school or any parts thereof without a motion from the local board of directors as required under subdivision (b)(2)(A) of this section." Ark. Code Ann. § 6-20-602(b)(2)(D).

18. This case raises the issue of whether the State Board has authority to close isolated schools under the authority granted by § 6-15-207.

19. The interests of the parties to this case are adverse.

20. STRS has a legally protectable interest in the controversy. Williford and Oak Ridge Central students have a right under the Arkansas Constitution, Article 14, § 1 and Article 2, §§ 2, 3 and 18 to a substantially equal opportunity to an adequate education. *See Lake View v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002) ("*Lake View III*"). They will be denied that right due to excessive transportation time if the Williford and Oak Ridge Central schools are closed. As to Williford and Oak Ridge Central teachers, they have a property interest in their continued employment but have been given notice that their contract will not be renewed for the 2010-2011 school year because the Williford and Oak Ridge Central schools will be closed. *See Rogers v. Masem*, 788 F.2d 1288, 1295 (8th Cir. 1986). As to patrons, property owners and taxpayers, the closure of the Williford and Oak Ridge Central schools will destroy the communities built around those schools and decrease the value of homes and businesses in those communities.

21. The issue raised by this case is ripe for judicial resolution.

Motion for Preliminary Injunctive Relief

22. In determining whether to issue a preliminary injunction, this Court must consider two things: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has

demonstrated a likelihood of success on the merits. *Baptist Health v. Murphy*, 362 Ark. 506, 209 S.W.3d 360 (2005) (citing *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 72 S.W.3d 95 (2002)).

23. Irreparable Harm. If this Court does not grant preliminary injunctive relief, ADE may proceed with plans to liquidate the Twin Rivers Assets, including selling the Williford and Oak Ridge Central campuses and it will be impossible for the schools to reopen should Plaintiff prevail in this action. Even before the State Board's May 10, 2010 vote, ADE has been taking steps to close the schools. An April 12, 2010 "to do" list included, "Select Realtor to list and sell land and buildings belonging to the Twin Rivers School District." **Ex. E, ADE Report to State Board, April 12, 2010.**

24. Likelihood of Success on the Merits. The State Board acted on a clearly erroneous interpretation of § 6-20-602(a) advocated by ADE. ADE advised the State Board that § 6-20-602 did not apply to the closure of the Williford and Oak Ridge Central schools because the State Board was exercising its authority under § 6-15-207(c) to annex school districts and § 6-20-602 only applies to annexations pursuant to Ark. Code Ann. § 6-13-1601, *et seq.*

25. ADE's interpretation conflicts with two well-established rules of statutory construction. First, when two statutes conflict, the specific statute governs over the more general. *Fiser*, 340 Ark. at 94, 8 S.W.3d at 560 ("It has

long been the law in Arkansas that a general statute must yield when there is a specific statute involved the particular subject matter.”). For this reason, § 6-20-602’s specific procedure for closing isolated school governs over the more general authority granted by § 6-15-207. Isolated schools may only be closed following a vote by the local board of directors. To make this clear, § 6-20-602(b)(2)(D) provides, “The state board is not authorized to require the closure of an isolated school or any parts thereof without a motion from the local board of directors as required under subdivision (b)(2)(A) of this section.”

26. Second, when two statutes conflict, “the earlier statute must yield to the later enactment” *Steward*, 371 Ark. at 356, 266 S.W.3d at 714 (finding earlier statute repealed by implication “pursuant to our rule of statutory construction that the earlier statute must yield to the later enactment”). The State Board’s authority under § 6-15-207 (effective July 1, 2003) to close isolated schools was repealed by implication with the passage of Act 60 (effective January 29, 2004) which prohibited the closing of isolated schools and Act 1397 of 1995 (effective August 12, 2005) which created the exclusive process by which isolated schools may be closed.

27. ADE will argue there is not conflict between statutes because Williford and Oak Ridge Central schools do not meet the definition of an “isolated school” under § 6-20-602(a). Section 6-20-602(a) provides:

“Isolated school” means a school within a school district that:

- (1) Prior to administrative consolidation or annexation under this section, § 6-13-1601 *et seq.* and § 6-13-1405(a) qualified as an isolated school district under 6-20-601; and,
- (2) Is subject to administrative consolidation or annexation under this section, § 6-13-1601 *et seq.*, and § 6-13-1405(a)(5).

Prior to their May 10, 2004 consolidation, the Williford School District and the Randolph County School District qualified as isolated school districts under § 6-20-601. *See* Ark. Code Ann. § 6-20-603. The Williford School District and the Randolph County School District had less than 350 students and were consolidated under § 6-13-1601 *et seq.*, Thus, the Williford and Oak Ridge Central schools are isolated schools as defined by § 6-20-602(a) and may only be closed pursuant to the process set forth in § 6-20-602(b).

28. ADE’s current interpretation is inconsistent with the State Board’s past practice. Also on May 10, 2004, the Fourche Valley School District, an isolated school district under § 6-20-601, was consolidated with the Plainview-Rover School District and the Ola School District to form the Two Rivers School District pursuant to § 6-13-1601 *et seq.* On February 2, 2009, the Two Rivers School District Board of Directors voted 6-1 to close the Fourche Valley schools. Two Rivers petitioned the State Board to approve the closure pursuant to § 6-20-602(b), and the State Board conducted a hearing as required by § 6-20-602(b) and

approved the closure. **Ex. F, State Board Findings, July 13, 2009.** Under ADE's current interpretation of § 6-20-602(a), there was no need for State Board approval because the closure was not pursuant to a consolidation under § 6-13-1601 *et seq.*

29. The State Board's order dissolving the Twin Rivers School District and closing the Williford and Oak Ridge Central schools is *ultra vires* and *void ab initio*. See *Gelly v. West*, 253 Ark. 373, 486 S.W.3d 31 (1972)(voiding regulation by State Real Estate Commission based on its general authority where it conflicted with specific authority granted to State Board of Education).

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests and prays that the Court:

(1) Conduct a hearing as soon as practicable on Plaintiff's Motion for Preliminary Injunction;

(2) Enter a declaration that the State Board does not have authority to close isolated schools pursuant to its general authority granted pursuant to Ark. Code Ann. § 6-15-207;

(3) Enter a declaration that isolated schools under Ark. Code Ann. § 6-20-602(a) may only be closed pursuant to the process set forth in Ark. Code Ann. § 6-20-602(b);

(4) Enter a declaration that the State Board's order authorizing the dissolution of the Twin Rivers School District and the closure of the Williford and Oak Ridge Central schools is *ultra vires* and *void ab initio*;

(5) Preliminarily and permanently enjoin the State Board and ADE from taking any further steps to close the Williford and Oak Ridge Central schools;

(6) Directing ADE to continue to operate the Williford and Oak Ridge Central schools until such time as the State Board returns control of the district to a local board of directors;

(7) Order ADE and the State Board to pay STRS its attorneys' fees and costs expended herein; and,

(8) Grant STRS all other just and proper relief to which it may be entitled.

Respectfully submitted,

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