IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LITTLE ROCK SCHOOL DISTRICT PLAINTIFF

v. Case No. 4:82cv00866 BSM

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, NORTH LITTLE ROCK SCHOOL DISTRICT, ET AL DEFENDANTS

MRS. LORENE JOSHUA, ET AL INTERVENORS

KATHERINE KNIGHT, ET AL INTERVENORS

MOTION FOR STAY PENDING APPEAL

The Little Rock School District ("LRSD") for its Motion for Stay Pending Appeal states:

1. On May 19, 2011, the district court entered an order modifying the Court's consent decree which incorporated the parties' 1989 Settlement Agreement. See Docket No. 4507. On May 20, 2011, LRSD filed notice that it is appealing that portion of the Court's Order relieving the State of its obligations to fund magnet schools and to fund other desegregation costs.

2. LRSD should be granted a stay pending appeal. LRSD is likely to succeed on the merits of its appeal. LRSD and its students will be irreparably harmed absent a stay. Issuance of a stay will not substantially injure other parties interested in the proceedings. It is in the public interest

that a stay be granted. *See Brady v. National Football League,* ___F.3d ___, 2011 WL 1843832 (8th Cir. 2011) (applying these four factors).

3. LRSD will seek to expedite the appeal so the duration of a stay will likely be limited.

4. LRSD's Memorandum Brief in Support of Stay Pending Appeal is hereby incorporated by reference as if set forth herein word for word.

5. LRSD's Motion to Enforce 1989 Settlement Agreement and the accompanying brief and exhibits (Docket Nos. 4440-42) are hereby incorporated by reference as if set forth herein word for word.

WHEREFORE, LRSD prays that the Court stay that part of its May 19, 2011, order relieving the State of Arkansas of its funding obligations under the consent decree; that the State of Arkansas be ordered to comply with the consent decree until such time as the Eighth Circuit issues its mandate or otherwise resolves LRSD's appeal; and, that LRSD be awarded all other just and proper relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR STAY PENDING APPEAL

I. Introduction

On May 19, 2011, the district court entered an order modifying the Court's consent decree which incorporated the parties' 1989 Settlement Agreement. See Docket No. 4507. On May 20, 2011, the Little Rock School District ("LRSD") filed an interlocutory appeal of this order. *See* 28 U.S.C. § 1292(a). For the reasons set forth below, LRSD moves to stay the Court's order pending appeal.

II. Standard for Granting Stay Pending Appeal

Four factors are considered in determining whether to issue a stay pending appeal. In *Brady v. National Football League*, ___ F.3d ___, 2011 WL 1843832 (8th Cir. 2011), the Eighth Circuit explained:

> [W]e consider four factors in determining whether to issue a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v.Braunskill,* 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987).

2011 WL 1843832, *3. The Eighth Circuit further explained:

> The most important factor is the appellant's likelihood of success on the merits. *Shrink Mo. Gov. PAC v. Adams,* 151 F.3d 763, 764 (8th Cir .1998); *S & M Constructors, Inc. v. The Foley Co.,* 959 F.2d 97, 98 (8th Cir.1992). The movant must show that it will suffer irreparable injury unless a stay is granted. *Packard Elevator v. ICC,* 782 F.2d 112, 115 (8th Cir.1986); *cf. James River Flood Control Ass'n v. Watt,* 680 F.2d 543,544 (8th Cir.1982) (per curiam) (granting stay pending appeal after determining that "it appears that the United States may suffer irreparable injury unless this court grants the stay"). Ultimately, we must consider the relative strength of the four factors, "balancing them all." *Fargo Women's Health Org. v. Schafer,* 18 F.3d 526, 538 (8th Cir .1994) (appendix); *see also Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n,* 259 F.2d 921, 925 (D.C.Cir.1958) (per curiam) ("[I]njury held insufficient to justify a stay in one case may well be sufficient to justify it in another, where the applicant has demonstrated a higher probability of success on the merits."); Developments in the Law, *Injunctions,* 78 Harv. L.Rev. 994, 1056 (1965) ("Clear evidence of irreparable injury should result in a less stringent requirement of certainty of victory; greater certainty of victory should result in a less stringent requirement of proof of irreparable injury."), *quoted in Roland Machinery Co. v. Dresser Indus., Inc.,* 749 F.2d 380, 388 (7th Cir.1984).

Id. Each factor will be discussed in turn below.

A. Likelihood of Success on the Merits

This Court erred in *sua sponte* modifying the consent decree without notice and a hearing and without any factual basis. The Court ordered modification of the consent decree following hearings on the petitions for unitary status filed by defendants North Little Rock School District ("NLRSD") and Pulaski County Special School District ("PCSSD"). Those hearings dealt exclusively with the districts' compliance with their desegregation plans. No party requested modification or dissolution of the consent decree, and no evidence was presented concerning the continuing need for magnet schools and the majority-to-minority ("M-to-M") transfer program to address residential segregation in Pulaski County.

The present case cannot be distinguished from the district court's *sua sponte* decision declaring the Kansas City, Missouri School District unitary. The Eighth Circuit reversed that decision stating:

> The sua sponte ruling declaring the district unitary and releasing the admitted constitutional violator from further court supervision, without giving notice either to the constitutional violator or the victims or permitting the parties to present evidence and argue these issues, was error.

Jenkins v. Missouri, 216 F.3d 720, 727 (8th Cir. 1991). Similarly, this Court's decision to relieve the State of Arkansas, an adjudicated constitutional violator, from paying desegregation costs of the three Pulaski County school districts was error. The Court's error is even more serious

given that the Eighth Circuit expressly ordered components of the interdistrict remedy that the district court now finds are a "problem." *See Little Rock School District v. Pulaski County Special School District*, 778 F.2d 404, 434-36 (8th Cir. 1985)(ordering the creation of magnet school and an majority-to-minority ("M-to-M") transfer programs funded by the State of Arkansas). *See also Little Rock School District v. Pulaski County Special School District*, 60 F.3d 435, 436-37 (8th Cir. 1995)(vacating the district court order because it failed to conduct a hearing and take evidence on the meaning of an ambiguous term of the consent decree."); *Mayberry v. Maroney*, 529 F.2d 332, 335 (3rd Cir. 1976)(district court erred in terminating consent decree without an evidentiary hearing based on the unsupported allegations of the defendant).

While a court has the power to modify a consent decree, that power is not unfettered. The Supreme Court described the analysis for determining when a modification to a consent decree is warranted in *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). The Supreme Court noted that while a consent judgment "embodies an agreement of the parties and thus in some respects is contractual in nature," such a judgment is still "an agreement that the parties desire and expect will be reflected in and be enforceable as a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo,* 502 U.S. at

378, 112 S.Ct. at 757. Thus, the Supreme Court reasoned that modification of a consent decree is governed by the same standards that govern modifications of judgments as set forth in Federal Rule of Civil Procedure 60(b). *Id.* at 379-81, 112 S.Ct. at 758.

The Eighth Circuit discussed modification of the consent decree in this case in *Appeal of LRSD*, 949 F.2d 253 (8th Cir. 1991):

> Finally, we think it prudent to mention the standard to be used by the District Court for reviewing proposed modifications to the plan (if any are submitted in the future) to which all the parties have not agreed. As appellants have correctly noted, disputed modifications are governed by a stricter standard than agreed-to modifications. In *Board of Education of Oklahoma City Public Schools v. Dowell,* 498 U.S. 237, 111 S.Ct. 630, 636, 112 L.Ed.2d 715 (1991), the Supreme Court rejected, as too burdensome, the requirement that a party requesting a dissolution or modification of a school-desegregation plan show a "grievous wrong evoked by new and unforeseen conditions," under *United States v. Swift & Co.,* 286 U.S. 106, 119, 52 S.Ct. 460, 464, 76 L.Ed. 999 (1932). In rejecting the *Swift* standard, however, the Court did not indicate what showing would be necessary for a party to demonstrate the need for modification. We find the Sixth Circuit case of *Heath v. DeCourcy,* 888 F.2d 1105 (6th Cir.1989), instructive on this issue:
>
> > To modify [a] consent decree[ ], the court need only identify a defect or deficiency in its original decree which impedes achieving its goal, either because experience has proven it less effective [or] disadvantageous, or because circumstances and conditions have changed which warrant fine-tuning the decree. A modification will be upheld if it furthers the original purpose of the decree in a more efficient way, without upsetting the basic agreement between the parties.

Id. at 1110.

949 F.2d at 948. Given this standard, this Court has no record on which to base a finding that the interdistrict remedy should be modified. No evidence concerning the efficacy of the interdistrict remedy was introduced at the unitary status hearings of NLRSD or PCSSD. This Court had no factual basis for deciding, for example, that magnet schools are no longer necessary to remedy residential segregation caused by the State and other defendants' unconstitutional conduct. This Court also had no factual basis for deciding that LRSD had failed to comply with any aspect of the interdistrict remedy. Even so, the Court unfairly lumped LRSD in with NLRSD and PCSSD in finding "the districts are wise mules that have learned how to eat the carrot and sit down on the job." Docket No. 4507, p. 108. This finding is inconsistent with this Court's finding, affirmed by the Eighth Circuit, that LRSD has satisfied its intradistrict desegregation obligations, and is operating as a unitary school district. *See Little Rock School District v. Pulaski County Special School District*, 561 F.3d 746 (8th Cir. 2009) and *Little Rock School District v. Armstrong*, 359 F.3d 957 (8th Cir. 2004).

This Court relieved the State of Arkansas of its interdistrict funding obligations with the exception of M-to-M payments, and has signaled its intent to end the State of Arkansas' obligation for M-to-M payments if the districts' do not "show cause why the State of Arkansas should not be

ordered to stop funding for M-to-M transfers." Docket No. 4507, p. 108. Neither the consent decree nor the findings of the district court justify modification or termination of the interdistrict remedy.

The consent decree makes it clear that the State's obligations under the agreement continue after all three districts are unitary. The 1989 Settlement Agreement contemplated that the districts would obtain unitary status and specifically stated, "The settlement of the State's liability, while contingent on the district court's approval, is not contingent upon court approval of any District's plan ***or a finding of unitary status for any District.***" 1989 Settlement Agreement, § IV, ¶ A (emphasis supplied). Because the 1989 Settlement Agreement anticipated the districts becoming unitary, the districts' unitary status does not provide a basis for modifying the agreement. *See White v. National Football League*, 585 F.3d 1129, 1138 (8th Cir. 2009)("When, as here, changed conditions have been anticipated from the inception of a consent decree, they will not provide a basis for modification . . . .").

This Court found the State to be a constitutional violator for failing to act affirmatively to desegregate the districts and for perpetuating residential segregation. *See LRSD v. PCSSD*, 584 F.Supp. at 352-53; *LRSD v. PCSSD,* 597 F.Supp. at 1228. The consent decree should continue in force until the State proves that it has complied in good faith with its affirmative duty to

desegregate the districts and that any current residential segregation "is not traceable, in a proximate way, to the prior violation," *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). *See Jenkins v. Missouri*, 216 F.3d 720, 725 (8th Cir. 2000)("[O]nce there has been a finding that a defendant established an unlawful dual system in the past, there is a presumption that current disparities . . . are the result of the defendant's unconstitutional conduct."). Other courts have recognized that, where the State is a constitutional violator, ***inter***district relief does not end simply because the school district has remedied its ***intra***district violations. *See United States v. Bd. of School Comm'rs of the City of Indianapolis*, 128 F.3d 507 (7th Cir. 1997). *See also Berry v. Sch. Dist. of the City of Benton Harbor*, 195 F.Supp.2d 971 (W.D. Mich. 2002).

The State of Arkansas has not and cannot establish a record of good faith compliance with the consent decree. LRSD has pending a motion alleging violations of the consent decree by the State, and that motion details the State of Arkansas' long history of violating the consent decree. Docket No. 4442, pp. 10-16. *See Youngblood v. Dalzell*, 925 F.2d 954, 955 (6th Cir. 1991)(district court improperly terminated the consent decree without addressing the plaintiff's pending motion for enforcement."). The Court must at least decide LRSD's pending motion before it finds the State has

substantially complied with the consent decree and should be relieved of any further funding obligation.

For these reasons, it is likely that LRSD will prevail on appeal. The district court erred in failing to give the parties notice and a hearing before modifying/dissolving the consent decree. The record is devoid of evidence justifying modification or termination of the consent decree. Finally, the district court should have decided LRSD's pending motion to enforce the consent decree before modifying or terminating the decree.

B. Irreparable Harm

The second factor to be considered is whether the applicant will be irreparably injured absent a stay. The Court's abrupt, unanticipated decision to modify the consent decree will require LRSD reduce its operating budget by approximately $38 million dollars. Pursuant to the consent decree, LRSD receives from the State approximately $14 million for teacher retirement and health insurance; $15.5 million to operate magnet schools (one-half the cost of operating magnet schools); $4.5 million in M-to-M incentive payments; and $4 million for magnet and M-to-M transportation. There is no way for LRSD to adjust its budget to accommodate to loss of approximately $38 million, more than 10 percent of its total budget, without a substantial negative impact on the education of over 25,000 students. Educational disruption has been recognized to constitute irreparable harm. *See*

Heartland Academy Community Church v. Waddle, 335 F.3d 684 (8th Cir. 2003).

Given that roughly 80 percent of LRSD's operating costs are employee salaries, LRSD will be forced to lay off a large number of teachers. This will be complicated by the fact that teachers are already under contract for the 2011-2012 school year by virtue of the automatic contract renewal provision of the Arkansas Teacher Fair Dismissal Act ("TFDA"), Ark. Code Ann. § 6-17-1506. If the district court's decision is eventually reversed, it may be difficult for LRSD to rehire teachers who will have found other jobs. LRSD will lose its investment in the professional development of these teachers, and the quality of LRSD's teaching staff will be irreparably harmed.

Moreover, it is unlikely that LRSD can continue to operate the magnet schools absent the funding provided by the consent decree. The magnet schools budget for 2010-2011 ending June 30, 2011 was just recently approved by the district court. *See* Docket No. 4476. No substantial changes were contemplated for the 2011-2012 school year, and students from all three districts have already been assigned to magnet schools for next year. Before the Court's May 19, 2001, order, the State paid one-half the cost of operating the magnet schools and all of the transportation cost for magnet students. NLRSD and PCSSD also pay LRSD for their students

who attend magnet schools. It is unknown whether NLRSD and PCSSD can accommodate their students displaced from the magnet schools.

Dismantling LRSD's magnet schools will irreparably harm LRSD's ability to provide students a quality, desegregated education. The consent decree continues to serve its purpose of providing desegregated schools for LRSD students who would otherwise be attending racially identifiable schools. LRSD's six magnet schools constitute half of LRSD's truly desegregated schools – schools with between 40 and 60 percent black students. *See* Docket No. 4280, ODM Racial Balance Report 2009-2010. Approximately a third of magnet students come from NLRSD and PCSSD and are transported to LRSD by their home districts. NLRSD and PCSSD are unlikely to agree to transport these students to LRSD if the State discontinues reimbursing the districts for this transportation. If these students are forced to change schools, it will be difficult to get these students to return to magnet schools even if the district court's decision is reversed. The uncertainty about the future of magnet schools will likely result in many affluent students fleeing to private schools resulting increasing concentrations of poverty within LRSD.

Finally, abruptly ending the magnet schools and M-to-M program will deny students rights guaranteed by the consent decree. The M-to-M stipulation provides:

> The commitment to accept a student shall be for the duration of the student's voluntary participation. Once a student exercises his or her right to participate, the student will continue in the initially selected school for at least one full school year or until the student graduates or affirmatively withdraws from participation as herein set out. Students will not have to transfer each year or exercise a transfer choice to remain in the host district. Students shall be encouraged to continue to participate at their initial school of choice. It is expected that the student will follow the pattern of assigned schools for the resident students in the school in which the transfer student first enrolls.

M-to-M Stipulation, ¶ 6. Similarly, students transferring to magnet schools remain in the magnet school until they complete the final grade at the magnet school. The Court's decision will result in magnet and M-to-M students immediately returning to their home district and school contrary to the intent of the consent decree. *See Jenkins v. State of Missouri,* 103 F.3d 731, 741-42 (8th Cir. 1997)(" [the district court] rejected the State's argument that the program should be discontinued after one year, but looked to the public interest in seeing the State honor its agreements made on the public's behalf. The district court therefore ordered that the present participants in the program be allowed to remain with present state funding until they graduate eighth grade or voluntarily leave the program."); *Liddell v. Board of Educ. of City of St. Louis*, 1999 WL 33314210, *2 (E.D. Mo. 1999)(" In the event of any phase-out of the transfer program, all city students then enrolled in county schools will have the right to complete high school in the county.").

C. Impact on Other Parties

The third factor to be considered is whether issuance of the stay will substantially injure the other parties interested in the proceeding. All of the other parties agreed to the decree and none of them asked the Court to modify the decree. No party will be injured by continuing the decree. The best interest of students must be paramount. Even though various State officeholders have complained about desegregation funding, the State supports an orderly phase-out of that funding. *See* Ark. Code Ann. § 6-20-416.

D. Public Interest

The final factor to be considered is where the public interest lies. The public interest clearly lies in continuing the decree and avoiding a chaotic disruption of the education of thousands of students. In *Berry v. School District of City of Benton Harbor*, 195 F.Supp.2d 971(W.D. Mich. 2002), the court explained:

> A district court has the duty "to restore state and local authorities to the control of a school system that is operating in a Constitutional manner." *Freeman,* 503 U.S. at 489, 112 S.Ct. 1430. The Supreme Court has recognized, however, that the court has both the authority and duty to "provide an orderly means for withdrawing from control when it is shown that the school district has attained the requisite degree of compliance. A transition phase is an appropriate means to this end." *Id.* at 490, 112 S.Ct. 1430.

195 F.Supp.2d at 996-98. The court approved a phase-out of desegregation payments concluding:

> [T]ermination of a desegregation remedy should not be made in a manner that penalizes the class entitled to the original remedy so as to undermine the very status quo upon which the finding of unitary status is made. The Court has an obligation to provide, as the Supreme Court has recognized, an orderly means for withdrawing from control. *Freeman*, 503 U.S. at 490, 112 S.Ct. 1430. The court therefore accepts the suggestion of the BHASD that a transition phase is proper for the elimination of state payments.

See Hoots v. Pennsylvania, 118 F.Supp.2d 577, 604 (W.D. Pa. 2000)("We will further order that certain remedial programs be phased out and not abruptly discontinued, since to do so would be detrimental to the children presently being served by them."). Even if the consent decree is to be dissolved, desegregation funding should be phased-out in a manner that will facilitate an orderly transition. Other states who have sought to end desegregation payments have conceded that the funding should be phased-out over time. *See Jenkins,* 103 F.3d at 742 (State of Missouri conceded that "some reasonable phaseout is authorized.").

III. Conclusion

LRSD, the plaintiff in the interdistrict case, was entitled to notice and a hearing before the State, an adjudicated constitutional violator, was relieved of its desegregation obligations. *Jenkins*, 216 F.3d at 727. No party

asked this Court to modify or terminate the consent decree, and no party supports ending funding in a manner that will disrupt the education of thousands of students. It was this Court's duty to "provide an orderly means for withdrawing from control . . . ." *Freeman,* 503 U.S. at 490, 112 S.Ct. 1430. Because it failed to do so, the Court's decision is likely to be reversed, and LRSD should be granted a stay pending appeal for the reasons set forth herein.

Respectfully submitted,

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May 23, 2011

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RE: 11-2130 Little Rock School District v. State of Arkansas, et al

Dear Counsel:

The district court clerk has transmitted a notice of appeal in this matter, and we have docketed it under the caption and case number shown above. Please include the caption and the case number on all correspondence or pleadings submitted to this court.

Please review the attached caption and notify this office of any corrections that should be made.

Counsel in the case must supply the clerk with an Appearance Form. Counsel may download or fill out an Appearance Form on the "Forms" page on our web site at www.ca8.uscourts.gov.

The court has established a briefing schedule for the case, a copy of which will be forwarded under separate notice of docket activity. Please refer to the schedule and note the key filing dates. You should also review Federal Rules of Appellate Procedure 28 and 32, as well as Eighth Circuit Rules 28A and 32A. Sample briefs are available on our website, the address of which is shown above.

Within 14 days of today's date, counsel for appellant must: (1) file a verification that any transcripts needed for the appeal have been ordered and that satisfactory arrangements have been made for payment, and (2) file a notice of the method of appendix preparation selected for the case. Eighth Circuit Rule 30A contains detailed information on appendix preparation.

The court has directed the clerk's office to monitor and enforce compliance with the briefing schedule. Failure to file your brief will result in issuance of a show cause order and may lead to dismissal of the appeal. Requests for extensions of time must be timely and should establish good cause. Overlength briefs are strongly discouraged.

Please note the provisions of Eighth Circuit Rule 32A governing briefs and reply briefs responding to multiple briefs.

On June 1, 2007, the Eighth Circuit implemented the appellate version of CM/ECF. Electronic filing is now mandatory for attorneys and voluntary for pro se litigants proceeding without an attorney. Information about electronic filing can be found at the court's web site www.ca8.uscourts.gov. In order to become an authorized Eighth Circuit filer, you must register with the PACER Service Center at https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl. Questions about CM/ECF may be addressed to the Clerk's office.

If you have any questions about the schedule or procedures for the case, please contact our office.

Michael E. Gans
Clerk of Court

LLB

Enclosure(s)

cc: Mr. Khayyam M. Eddings
Mr. John Fendley
Mr. Philip E. Kaplan
Mr. Jeremy Christopher Lasiter
Mr. Jim McCormack
Mr. Scott Paris Richardson

District Court/Agency Case Number(s): 4:82-cv-00866-BSM

Caption For Case Number: 11-2130

Little Rock School District

Plaintiff - Appellant

North Little Rock Classroom Teachers Association; Pulaski Association of Classroom Teachers; Little Rock Classroom Teachers Association; Alexa Armstrong; Karlos Armstrong; Ed Bullington; Khayyam Davis; John Harrison; Alvin Hudson; Tatia Hudson; Milton Jackson; Lorene Joshua; Leslie Joshua; Stacy Joshua; Wayne Joshua; Sara Matthews; Derrick Miles; Janice Miles; John M. Miles; NAACP; Brian Taylor; Hilton Taylor; Parsha Taylor; Robert Willingham; Tonya Willingham; Pulaski Association of Support Staff; Donna Stone, as class representative on behalf of minor children, Denise, Dennis and Danielle Stone; Katherine Knight; Dennis Stone

Intervenor plaintiffs

Dale Charles; Robert L. Brown, Sr.; Gwen Hevey Jackson; Diane Davis; Raymond Frazier

Plaintiffs

v.

North Little Rock School District; Pulaski County Special School District

Defendants

State of Arkansas

Defendant - Appellee

Arkansas Department of Education

Respondent - Appellee

Blytheville School District; Bryant School District; Fort Smith School District; West Memphis School District; Altus-Denning School District; Ashdown School District; Barton-Lexa School District; Batesville School District; Biggers-Reyno School District; Black Rock School District; Bright Star School District; Brinkley School District; Centerpoint School District; Clarendon School District; Cotton Plant School District; Cutter Morning Star School District; Dewitt School District; Dollarway School District; Foreman School District; Fountain Lake School District; Gillett School District; Glen Rose School District; Guy-Perkins School District; Hoxie School District; Jonesboro School District; Kirby School District; Lavaca School District; Lewisville School District; Magazine School District; Malvern School District; Mammoth Spring School District; Manila School District; Maynard School District; Oden School District; Ozark School District; Plainview-Rover School District; Pocahontas School District; Prairie Grove School District; South Conway School District; Spring Hill School District; Stamps School District; Stephens School District; Turrell School District; Van Buren School District; Warren School District; Watson Chapel School District; West Fork School District; White Hall School District; Winslow School District; Wonderview School District; Yellville-Summit School District; Alma School District; Alread School District; Bentonville School District;

Bergman School District; Berryville School District; Blevins School District; Booneville School District; Bradford School District; Buffalo Island School District; Caddo Hills School District; Charleston School District; Corning School District; County Line Public School; Crossett School District; Decatur School District; Dermott School District; Elaine School District; Fordyce School District; Gosnell School District; Greeb County Technical Schools; Green Forest School District; Greenland School District; Greenwood School District; Harrisburg School District; Hamburg School District; Holly Grove School District; Huttig School District; Jackson County School District; Junction City School District; Lakeside School District; Lead Hill School District; Leslie School District; Marion School District; Marshall School District; Mayflower School District; Mountainburg School District; Nettleton School District; Newport School District; Ola School District; Paragould School District; Parkin School District; Pleasant View School District; Quitman School District; Rural Special School District; Saratoga School District; Searcy School District; Smackover School District; Southside School District #2 Bee Branch; Strong School District; Stuttgart School District; Valley Springs School District; Waldron School District; Weiner School District; Wickes School District; Beebe School District; Carthage School District; Dumas School District; Grady School District; McGehee School District; Wynne School District

Intervenors

Pulaski County Board of Education; Patricia Gee, Individually and in her Official Capacity as a Member of the Board of Education of the Little Rock School District, A Public Body; George Cannon, Dr., Individually and in his Official Capacity as a Member of the Board of Education of the Little Rock School District, A Public Body; Katherine Mitchell, Dr., Individually and in her Official Capacity as a Member of the Board of Education of the Little Rock School District, A Public Body; W. D. Hamilton, Individually and in his Official Capacity as a Member of the Board of Education of the Little Rock School District, A Public Body, also known as Bill Hamilton; Cecil Bailey, Individually and in his Official Capacity as a Member of the Pulaski County Board of Education, a Public Corporate; Thomas Broughton, Individually and in his Official Capacity as a member of the PUlaski County Board of Education, a Public Corporate; Martin Zoldessy, Dr., Individually and in his Official Capacity as a member of the Pulaski County Board of Education, a Public Corporate

Defendants

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11-2130 Little Rock School District v. State of Arkansas, et al "CIVIL case docketed"
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Eighth Circuit Court of Appeals

Notice of Docket Activity

The following transaction was filed on 05/23/2011

Case Name:	Little Rock School District v. State of Arkansas, et al
Case Number:	11-2130
Document(s):	Document(s)

Docket Text:
Civil case docketed. [3790159] [11-2130] (Linda Burmeister)

The following document(s) are associated with this transaction:
Document Description: Civil Docketing Letter
Original Filename: /opt/ACECF/live/forms/lburmeister_112130_3790159_CivilDocketingLetters_104.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105112566 [Date=05/23/2011] [FileNumber=3790159-0]
[605b28041251b994267598a72dcf87d6aa11d0fd133c83eefa87e2332378516d7c11edf1a7192ecd8ef40dbda99fe73bad86d3a3812ac1889ffac7debd87bf36]]
Recipients:

- Mr. Eddings, Khayyam M.
- Mr. Fendley, John
- Mr. Heller, Christopher
- Mr. Kaplan, Philip E.
- Mr. Lasiter, Jeremy Christopher
- Mr. McCormack, Jim, Clerk of Court
- Mr. Richardson, Scott Paris, Assistant Attorney General

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The following information is for the use of court personnel:

DOCKET ENTRY ID: 3790159
RELIEF(S) DOCKETED:
DOCKET PART(S) ADDED: 4381996, 4381997

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPEAL BRIEFING SCHEDULE ORDER

Appeal No. 11-2130 Little Rock School District v. State of Arkansas, et al

Date: May 23, 2011

APPEAL REQUIREMENTS

1. Complete and file immediately:
   A. Appeal Information Form. See 8th Cir. R. 3B.
   B. Corporate Disclosure Statement. See 8th Cir. R. 26.1A.
   C. Entry of Appearance Form.
   Appeal Information Forms and Appearance Forms are available at:
   www.ca8.uscourts.gov/newcoa/forms.htm

2. Prepare the Record on Appeal:
   A. Within 10 days, confer with opposing counsel and determine the method of Appendix preparation. See FRAP 30 and 8th Cir. R. 30A.
   B. Within 14 days, order any transcripts required for the appeal and arrange for payment. If no transcript is required, file a certificate of waiver. See FRAP 10(b). Appellee should order any additional transcripts within 14 days of appellant's order.
   C. Review the "Record on Appeal" at: www.ca8.uscourts.gov/newcoa/appealInfo.htm .

3. Review "Briefing Checklist" and "Pointers on Preparing Briefs" at:
   www.ca8.uscourts.gov/newcoa/appealInfo.htm .

GENERAL INFORMATION

The following filing dates are established for the appeal. The dates will only be extended upon the filing of a timely motion establishing good cause for an extension of time. An extension of time automatically extends the filing date for the responding or replying party's brief. Dates are advanced if a party files its brief before the due date. Please refer to FRAP 25, FRAP 26 and FRAP 31 for provisions governing filing and service, as well as computing and extending time.

The Federal Rules of Appellate Procedure and the Eighth Circuit's Local Rules may be found at www.ca8.uscourts.gov/newcoa/publs/publs.htm

The Practitioner's Handbook and the Court's Internal Operating Procedures may also be found at the same address.

APPEAL BRIEFING SCHEDULE
FILING DATES:

Method of Appendix Preparation Notification. . . . . **14 days from today**

Designation & Statement of Issues-Appellant . . . . . **14 days from today**

Designation of Record-Appellee. . . . . **10 days from service of appellant's designation**

Appendix (3 copies) **07/05/2011**

Appellant Brief with addendum **07/05/2011**
(Little Rock School District)

Appellee Brief. . . . . **30 days from the date the court issues the Notice of Docket Activity filing the brief.**

Reply Brief . . . . . **14 days from the date the court issues the Notice of Docket Activity filing the brief.**

ALL BRIEFS AND APPENDICES SHOULD BE FILED WITH THE ST. LOUIS OFFICE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LITTLE ROCK SCHOOL DISTRICT **PLAINTIFF**

V. **NO. 4:82CV00866BSM/HDY**

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, ET AL. **DEFENDANTS**

MRS. LORENE JOSHUA, ET AL. **INTERVENORS**

KATHERINE KNIGHT, ET AL. **INTERVENORS**

REPLY TO JOSHUA INTERVENORS OPPOSITION TO THE PCSSD'S MOTION FOR COURT APPROVAL OF CONSTRUCTION, RECONSTRUCTION, SCHOOL CONSOLIDATION AND SCHOOL REPLACEMENT

PCSSD for its reply states:

1. The PCSSD Motion is timely because construction plans have been approved by the Board subject to the approval of this Court and the Arkansas State Board of Education. Accordingly, the Motion is not premature.

2. The PCSSD studied the student assignment implications of Vision 2020 and appropriately demonstrated them to this Court in the initial Motion and Brief filed May 6, 2011.

3. The District has appropriately complied with Section H.3 of Plan 2000.

4. The PCSSD followed the provisions of Plan 2000 in notifying Joshua concerning its plans as outlined in the March 7, 2011 letter to counsel for Joshua.

5. Any details that were not available on March 7 when the Notice Letter was dispatched have been supplied with the filing that occurred on May 6, 2011.

6. In all other material respects, the contentions set out in the Joshua opposition are either irrelevant, wrong or erroneous.

7. Certainly if this Court desires additional information or desires to schedule a hearing, the PCSSD will respond appropriately.

WHEREFORE, the PCSSD prays that this Court approve the Construction, Reconstruction, School Consolidation and School Replacement set forth and described in its Motion and Brief dated May 6, 2011 and for all proper relief.

Respectfully submitted,

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/s/ M. Samuel Jones, III
M. Samuel Jones III (76060)

Attorneys for Pulaski County Special School District

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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/s/ M. Samuel Jones, III

I hereby certify that on May 23, 2011, I mailed the document by United States Postal Service to the following non CM/ECF participants.

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/s/ M. Samuel Jones, III

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LITTLE ROCK SCHOOL DISTRICT **PLAINTIFF**

V. **NO. 4:82CV00866BSM/HDY**

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, ET AL. **DEFENDANTS**

MRS. LORENE JOSHUA, ET AL. **INTERVENORS**

KATHERINE KNIGHT, ET AL. **INTERVENORS**

MEMORANDUM IN SUPPORT OF REPLY TO JOSHUA OPPOSITION

PCSSD for its Memorandum in Support of its Reply states:

The relief requested in the May 6, 2011 Motion is consistent with and in accordance with the provisions and requirements of Plan 2000 including Section H.3.

Respectfully submitted,

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/s/ M. Samuel Jones, III

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