No. 11-2130

In the

United States Court of Appeals

for the

Eighth Circuit

Little Rock School District,

Plaintiff-Appellant,

vs.

State of Arkansas, *et al.*,

Defendants-Appellees

APPELLANT'S
EMERGENY MOTION FOR STAY PENDING APPEAL AND EXPEDITED APPEAL AND A TEMPORARY STAY PENDING DECISION ON THIS MOTION

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INTRODUCTION

On May 19, 2011, the United States District Court for the Eastern District of Arkansas (the Honorable Brian S. Miller) released the State of Arkansas from its obligation to pay for any and all desegregation efforts of the North Little Rock School District ("NLRSD"), Pulaski County Special School District ("PCSSD"), and the Little Rock School District ("LRSD"), except for those associated with the majority-to-minority ("M-to-M") transfers. The district court further directed the districts to file a ten page brief within 30 days to show cause why the State of Arkansas should not be ordered to stop funding M-to-M transfers. The State of Arkansas pays the interdistrict desegregation costs of the three Pulaski County districts pursuant to a consent decree which incorporated the parties' 1989 Settlement Agreement. This Court approved the 1989 Settlement Agreement in *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 921 F.2d 1371 (8th Cir. 1990).

The district court erred in releasing the State of Arkansas, an adjudicated constitutional violator, from its desegregation obligations under the consent decree without notice and a hearing and with no factual basis for determining whether the consent decree remains efficacious or whether the State of Arkansas has in good faith substantially complied with the consent decree. The district court's order followed hearings on whether NLRSD and PCSSD had in good faith substantially

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complied with their desegregation plans and should be declared unitary. No party requested modification or termination the consent decree, and no evidence was introduced regarding the continuing efficacy of the decree or the State's compliance with the decree. The district court's *sua sponte* decision to modify and possibly terminate the consent decree, without notice and a hearing, was clear error and is likely to be reversed. *Jenkins v. Mo.*, 216 F.3d 720, 727 (8th Cir. 1991).

The balance of equities also weighs heavily in favor of a stay. The district court's abrupt, unanticipated decision to modify the consent decree will disrupt the education of thousands of Pulaski County students beginning with the 2011-2012 school year. No party will be injured by continuing the decree pending appeal. The State of Arkansas has expressed its support for an orderly phase-out of desegregation funding. *See, e.g.,* Ark. Code Ann. § 6-20-416. The public interest clearly lies in continuing the decree and avoiding a chaotic disruption of the education of thousands of students.

As expedition would minimize negative consequences resulting from the district court's order, LRSD respectfully proposes the following expedited schedule:

LRSD's Opening Brief and Appendix - June 6, 2011
State of Arkansas' Brief and Appendix - June 17, 2011
LRSD's Reply Brief - June 24, 2011
Oral Argument - ASAP

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This Emergency Motion for Stay Pending Appeal and Expedited Appeal and a Temporary Stay Pending Decision on this Motion is supported by the following documents:

1. May 19, 2011 Order of the District Court
2. Affidavit of Kelsey Bailey, LRSD Chief Financial Officer
3. M-to-M Stipulation
4. Magnet Stipulation
5. 1989 Settlement Agreement
6 LRSD Motion to Enforce 1989 Settlement Agreement [docket 4440] filed May 19, 2010
7. LRSD Brief in Support of Motion to Enforce 1989 Settlement Agreement [docket 4442] filed May 19, 2010

STATEMENT OF FACTS

This case was filed in 1982 by LRSD seeking an interdistrict desegregation remedy based on the unconstitutional conduct of the State of Arkansas, State Board of Education ("State Board"), NLRSD and PCSSD. In 1984, the district court found the defendants guilty of interdistrict constitutional violations including acting in concert for the purpose of preserving residential segregation. *Little Rock School District v. Pulaski County Special School District,* 584 F.Supp. 328, 352-553 (E.D. Ark. 1984).

The district court ordered consolidation of the LRSD, NLRSD and PCSSD, but this Court reversed finding consolidation "exceeds the scope of the violations." *Little Rock Sch. Dist. v Pulaski County Special Sch. Dist.,* 778 F.2d 404, 434 (8th Cir. 1985). This Court directed the district court to develop a remedy consistent

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with certain "principles," including magnet schools and a majority-to-minority transfer program funded by the State of Arkansas. *Id*. 778 F.2d at 435-36.

Consistent with these principles, the parties submitted the M-to-M Stipulation to the district court on August 26, 1986. "Beginning in the 1987-88 school year and continuing thereafter," the M-to-M Stipulation requires LRSD, PCSSD and NLRSD to "permit and encourage voluntary majority-to-minority interdistrict transfers." M-to-M Stipulation, ¶ 1. The M-to-M stipulation allows black LRSD and NLRSD students to transfer to majority non-black PCSSD schools, and non-black PCSSD students to transfer to LRSD and NLRSD schools that are majority black. The M-to-M Stipulation requires the State of Arkansas to "pay the full cost of transporting students opting for interdistrict transfers." M-to-M Stipulation, ¶ 12. The State of Arkansas also pays a financial incentive to both the sending and receiving district. M-to-M Stipulation, ¶ 13; 1989 Settlement Agreement, § II, ¶ E(2).

The parties submitted the Magnet Stipulation to the district court on February 16, 1987. The Magnet Stipulation created six interdistrict magnet schools, four elementary schools (Carver, Williams, Booker, Gibbs), one middle school (Mann) and one high school (Parkview). Magnet Stipulation, p. 1. The Magnet Stipulation requires the magnet schools to have a student population "which is fifty-percent (50%) black and fifty percent (50%) non-black" and

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prescribes a method for allocating magnet seats among the three districts. Magnet Stipulation, p. 5. It requires the State of Arkansas to pay the actual cost of transporting magnet students and one-half of the cost of educating magnet students. Magnet Stipulation, p. 3; 1989 Settlement Agreement, § II, ¶¶ E(1) and (4). In addition, each districts' magnet students are included in the district's average daily membership for the purpose of determining the district's regular state education funding. 1989 Settlement Agreement, § II, ¶ A.

The 1989 Settlement Agreement, among other things, incorporated the M-to-M Stipulation and the Magnet Stipulation and resolved numerous funding issues related to those agreements. 1989 Settlement Agreement, § II, ¶¶ A, B, C, D and E. As a part of the 1989 Settlement Agreement, each school district also agreed to an intradistrict desegregation plan to resolve its individual desegregation case. See 1989 Settlement Agreement, p. 1. LRSD was released from its intradistrict desegregation obligations in 2002, with the exception of program evaluations. LRSD was released as to program evaluations in 2007.

The present appeal follows hearings on NLRSD's and PCSSD's requests to be granted complete unitary status based on their compliance with their intradistrict desegregation plans. Before the hearings, the district court issued a detailed scheduling order outlining the order of proof. It provided:

> The hearing on the North Little Rock School District's ("NLRSD") petition for declaration of unitary status and release from court

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> supervision (Doc. No. 4141) is set for January 25, 2010. To ensure an orderly hearing, the NLRSD is ordered to present evidence regarding the requirements of its desegregation plan in the following order: (1) staff recruitment; (2) special education; (3) compensatory education; (4) compensatory programs aimed at dropout prevention; (5) extracurricular activities; (6) discipline, suspensions and expulsions; (7) secondary gifted and talented education; (8) school construction and facilities; and (9) desegregation monitoring.
>
> The hearing on the Pulaski County Special School District's ("PCSSD") motion for a declaration of unitary status (Doc. No. 4159) is set for February 22, 2010. To ensure an orderly hearing, the PCSSD is ordered to present evidence regarding the requirements of Plan 2000 in the following order: (1) assignment of students; (2) advanced placement, gifted and talented, and honors programs; (3) student assignment: interdistrict schools; (4) discipline; (5) multicultural education; (6) school facilities; (7) scholarships; (8) school resources; (9) special education; (10) staff; (11) student achievement; (12) monitoring; and (13) continuing jurisdiction.

Docket No. 4312. Hearings were conducted as scheduled and, with minor exceptions, the districts presented their proof as ordered by the district court. No evidence was presented regarding the efficacy of the interdistrict remedy (magnet schools and the M-to-M transfer program) or the State of Arkansas' compliance with its interdistrict desegregation obligations.

On May 19, 2010, LRSD filed a Motion to Enforce 1989 Settlement Agreement, supported by 73 exhibits, alleging a number of violations of the consent decree by the State of Arkansas and the State Board. First, LRSD alleged that the State Board violated the consent decree by unconditionally authorizing open-enrollment charter schools in Pulaski County without considering the impact

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on magnet schools and the M-to-M transfer program. *See* Docket No. 4442, ¶¶ 29-151. Second, LRSD alleged that the State of Arkansas violated the consent decree by failing to monitor compensatory education programs, failing to identify or develop programs to remediate the racial achievement disparity, and failing to adequately fund education generally as required by the Constitution of Arkansas. *See* Docket No. 4442, ¶¶ 158-187. Finally, LRSD recognized that the consent decree included racial preferences in student assignment and requested a "periodic review" to determine whether a race-neutral student assignment system could achieve the goals of the decree. *See* Docket No. 4442, ¶ 188. The State of Arkansas responded to LRSD's motion to enforce on June 18, 2010. *See* Docket No. 4463. No hearing has been scheduled on LRSD's Motion to Enforce.

On May 19, 2011, the district court issued its order granting in part and denying part NLRSD's and the PCSSD's motions for unitary status. LRSD does not appeal the district court's decision on the districts' motions for unitary status. LRSD appeals the district court's *sua sponte* decision to modify and likely terminate the interdistrict remedy for the interdistrict constitutional violations of the State of Arkansas and other defendants.

LRSD filed a Motion for Stay Pending Appeal [docket 4512] supported by a Memorandum Brief [docket 4513] in the district court on May 23, 2011. On May 24, 2011, LRSD filed an Amended Motion for Stay [docket 4517] asking the

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district court to expedite its consideration of the stay motion and decide that motion by May 27, 2011. On May 25, 2011, the parties received notice by email from Judge Miller's law clerk that LRSD's request for an expedited ruling on its Motion to Stay is denied and that the parties will be allowed fourteen (14) days from the date of the motion within which to respond. LRSD's efforts to "move first in the district court" for relief, therefore, have not been successful in obtaining relief appropriate to the emergency circumstances described in this Motion. *See* Rules of Appellate Procedure 8.

STANDARD OF REVIEW

This Court reviews the district court's factual findings for clear error, its modification of a consent decree for an abuse of discretion, and its interpretations of the law and consent decree *de novo*. *Little Rock Sch. Dist. v. North Little Rock Sch. Dist.*, 451 F.3d 528, 531 (8th Cir. 2006).

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ARGUMENT

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 Court 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. Each factor will be discussed in turn below.

A. Likelihood of Success on the Merits

The district court erred in *sua sponte* modifying the consent decree without notice and a hearing and without any factual basis. The present case cannot be distinguished from the district court's *sua sponte* decision declaring the Kansas City, Missouri School District unitary. The Court 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, the district court's decision to relieve the State of Arkansas, an adjudicated constitutional

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violator, from paying the interdistrict desegregation costs of the three Pulaski County school districts was error. *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).

Setting aside the procedural defects, the district court's decision to modify the consent decree has no factual basis. The Supreme Court identified the standard for modifying a consent decree 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.

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This Court 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. The district court's order does not even mention this standard or consider the facts in light of any legal standard for modifying a consent decree.

The district court abused its discretion in modifying the consent decree and relieving the State of Arkansas of its interdistrict funding obligations. The districts' unitary status hearings were limited -- by order of the district court -- to their compliance with their intradistrict desegregation plans. *See* Docket No. 4312. No evidence was presented on the efficacy of magnet schools or the M-to-M transfer program. As a result, there is no factual basis to support a finding that the modification ordered by the district court "furthers the original purpose of the decree in a more efficient way, without upsetting the basic agreement of the parties." *Id.* LRSD's Motion to Enforce, on the other hand, showed that LRSD's six magnet schools constitute one-half of LRSD's truly desegregated schools, defined as between 40 and 60 percent black. *See* Docket No. 4442, LRSD's Motion to Enforce, ¶ 134.

The district court decided to modify the consent decree finding that "the districts are rewarded with extra money from the state if they fail to comply with their desegregation plans and they face having their funds cut by the state if they act in good faith and comply." Docket No. 4507, Order, p. 108. This finding is clearly erroneous. First, LRSD has no intradistrict desegregation plan because the district court found, and this court affirmed, that LRSD substantially complied with its desegregation obligations and is unitary. *See Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 561 F.3d 746 (8th Cir. 2009) and *Little Rock Sch. Dist. v.*

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Armstrong, 359 F.3d 957 (8th Cir. 2004). Second, the districts do not "face having their funds cut by the state if they act in good faith and comply." Ex. 1, Order, p. 108. The 1989 Settlement Agreement contemplated the districts would become unitary and made it clear that, even after the districts are unitary, the State of Arkansas must continue to fund the interdistrict remedy, including magnet schools and the M-to-M transfer program. It provides, "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 (satisfying their intradistrict desegregation obligations), the districts' unitary status does not provide a basis for modifying the interdistrict remedy designed to address residential segregation. *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 . . . .").

The State of Arkansas violated the Constitution by failing to act affirmatively to desegregate the districts and by 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 of Arkansas proves that it has complied in good faith with its affirmative duty to

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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. Mo.*, 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, interdistrict relief does not end simply because the school district has remedied its intradistrict 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's Motion to Enforce outlines the State of Arkansas' past violations of the consent decree. Docket No. 4442, ¶¶ 18-25. It further alleges new violations of the consent decree that must be addressed by the district court before modifying or terminating the decree. *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.").

B. Irreparable Harm

The second factor to be considered is whether the applicant will be

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irreparably injured absent a stay. The district court's abrupt, unanticipated decision to modify the consent decree will require LRSD reduce its operating budget by at least $38 million dollars. Pursuant to the consent decree, LRSD receives from the State approximately $14 million for teacher retirement and health insurance costs; $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 $38 million, more than 10 percent of its total budget, without a substantial negative impact on the education of over 25,000 students. Bailey Affidavit. 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 75 percent of LRSD's operating costs are employee salaries and benefits, 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. Bailey Affidavit. If the district court's decision is eventually reversed, it may be difficult for LRSD to rehire teachers who have found other jobs. LRSD will lose its investment in the professional development of these teachers, and the quality of

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LRSD's teaching staff will be irreparably harmed.

Moreover, it is unlikely that LRSD can continue to operate the magnet schools as required by the consent decree absent the funding provided by the consent decree. Students from all three districts have already been assigned to magnet schools for next year. Before the Court's May 19, 2011 order, the State was obligated to pay one-half the cost of operating the magnet schools and all of the transportation cost for magnet students. Bailey Affidavit.

NLRSD and PCSSD also pay half of the operating costs for their students who attend magnet schools. These districts will also suffer significant financial losses as a result of the district court's order, and it is unknown whether those districts can accommodate their students who may be displaced from the magnet schools. Bailey Affidavit.

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 district court's decision will likely 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, supra,* 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 997. 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.

Id. at 998. *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 which 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.").

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 obligation to fund the interdistrict remedy. *Jenkins*, 216 F.3d at 727. No party asked the district 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 the district 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 district court's decision is likely to be reversed, and LRSD should be granted a stay pending appeal.

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WHEREFORE, LRSD respectfully requests that the Court temporarily stay the district court's order pending consideration of this motion pursuant to Eighth Circuit Rule 27A(b)(4); that the Court enter a stay pending appeal; that the Court expedite this appeal under the schedule proposed herein; and that it be granted all other just and proper relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 25, 2011, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

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