

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

**REPLY BRIEF
TO THE STATE OF ARKANSAS' RESPONSE IN OPPOSITION
TO APPELLANT'S
EMERGENCY MOTION FOR STAY PENDING APPEAL
AND EXPEDITED APPEAL AND A TEMPORARY STAY
PENDING DECISION ON THIS MOTION**

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LRSD REPLY BRIEF

For its Reply to the State of Arkansas' Response in Opposition to LRSD's Emergency Motion Pending Appeal and Expedited Appeal, LRSD states:

1. The State points out that "approximately \$21 million in M-to-M funding will continue" as the district court gave the parties thirty days to "show cause" why that funding should not also be discontinued. State's Response, paragraph 11. "Therefore," the State argues, "the change in desegregation disbursements to LRSD is not \$38 million per year as alleged, but considerably less, because M-to-M funding will continue." State's Response, paragraph 11. The implication is that all or most of that \$21 million in M-to-M funding will be paid to LRSD. As the State well knows, LRSD will receive only about \$4.5 million dollars in M-to-M funding for the 2011-12 school year, not \$21 million, and that will happen only if the parties are able to "show cause" in a ten page brief why the funding should not be discontinued. The balance of the M-to-M funding will go to PCSSD and NLRSD. Second Bailey Affidavit. The State easily could have provided the Court with the amount of M-to-M funding which LRSD may receive, rather than imply that LRSD will get \$21 million.

2. The State argues that LRSD will not suffer irreparable harm because it will only lose about \$2,620,575 million within the next thirty days. State's Response, paragraph 12; Goff Affidavit, p. 1. The State fails to point out that by

law LRSD's fiscal year and the State's fiscal year run from July 1 to June 30, so the payments the State will withhold in June are funds that have already been committed for the 2010-2011 school year. Even if the M-to-M program is allowed to continue next year, LRSD faces the immediate loss of about \$34 million, or ten percent of its budget. Second Bailey Affidavit.

3. The State argues that "LRSD will end this year with an operating fund balance of \$21,147,944" and that this amount "would cover nearly a full year of the desegregation disbursements it was previously receiving from the State." State Response, paragraph 12. Actually, as can be seen from Exhibit B to the State's Response, LRSD's unrestricted fund balance (operating funds minus restricted funds) will be about \$19.3 million, or about 5% of LRSD's budget. Second Bailey Affidavit. The recommended "best practice" in government finance is to maintain a fund balance equal to at least two months expenditures which, in LRSD's case, would be more than \$60 million. Second Bailey Affidavit.

4. Arkansas law provides serious consequences for school districts in fiscal distress. *See* Ark. Code Ann §§ 6-20-1908(h) and (i); 6-20-1909 and 1910. A school district may be identified as being in fiscal distress if it meets any of the criteria set out in Ark. Code Ann § 6-20-1904. The first criterion listed in that statute is "[a] declining balance determined to jeopardize the fiscal integrity of a school district."

5. In any event, LRSD's fund balance would cover only half of its loss or State desegregation funding. No responsible school Board member would approve an annual budget which LRSD can afford to fund for only half a year, especially since state law prohibits school districts from incurring obligations in excess of their revenue. Ark. Code Ann § 6-20-402.

6. The success of the magnet schools depends on their ability to attract students from LRSD, NLRSD and PCSSD. PCSSD and NLRSD currently contribute a total of about \$5 million each year to the magnet schools. Second Bailey Affidavit. If the State is relieved of its obligation to pay one-half share of the magnet operating costs that it agreed to pay, those districts would be required to contribute \$10 million beginning July 1, 2011. If the State is not required to provide the transportation to magnet schools that it agreed to provide, NLRSD and PCSSD would have to pay the cost of transporting their students to the magnet schools. The State had already declared PCSSD and NLRSD to be in "fiscal distress" before the district court relieved the State of its desegregation funding obligations. Given the significant funding losses to PCSSD and NLRSD as a result of the district court's decision, there is reason to doubt the ability of those districts to continue to pay their share of the magnet costs as well as what would become their portion of the State's share. Second Bailey Affidavit.

7. The purported remarks of one former LRSD Board member, which the State offers without an affidavit or a citation, do not establish that the district court's order will not result in irreparable harm.

8. LRSD must cut at least \$38 million from its budget immediately. Bailey Affidavit. It cannot count on receiving the \$4.5 million dollars of M-to-M funding that it will get if the district court decides later this summer to allow that program to continue. Second Bailey Affidavit. The Magnet schools and the M-to-M program, both of which depend on voluntary participation, will inevitably be hurt by the fiscal and educational crisis created by the sudden loss of State desegregation funding.

9. The State did not even discuss likelihood of success on the merits, injury to other parties, or the public interest, all of which weigh heavily in favor of a stay.

10. LRSD is a unitary school district. The magnet schools and the M-to-M transfer program exist to remedy interdistrict violations by the State, NLRSD and PCSSD. By shifting the costs of remedying the State's constitutional violations to the victims of those violations, especially without a hearing or the opportunity for an orderly transition, the district court order will cause irreparable harm to LRSD unless the order is stayed pending appeal.

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 June 1, 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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/s/ Christopher Heller

Appeal No. 11-2130

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LITTLE ROCK SCHOOL DISTRICT,

Appellant

V.

STATE OF ARKANSAS, ET AL.,

Appellee

SECOND AFFIDAVIT OF KELSEY BAILEY

I, Kelsey Bailey, being duly sworn, do hereby state and verify the following from personal knowledge

1. I am the Chief Financial Officer of the Little Rock School District.
2. LRSD will receive only about \$4.5 million dollars in M-to-M funding for the 2011-12 school year, not \$21 million. The balance of the M-to-M funding will go to PCSSD and NLRSD.
3. LRSD's fiscal year and the State's fiscal year run from July 1 to June 30, so any payments the State will withhold in June are funds that have already been committed for the 2010-2011 school year. Even if the M-to-M program is allowed to continue next year, LRSD faces the immediate loss of at least \$34 million, or ten percent of its budget.

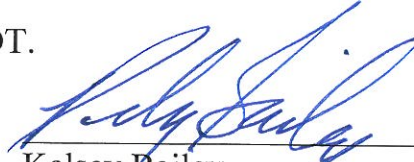
4. LRSD's unrestricted fund balance (operating funds minus restricted funds) will be about \$19.3 million, or about 5% of LRSD's budget, at the end of the current fiscal year. The recommended "best practice" in government finance is to maintain a fund balance equal to at least two months expenditures which, in LRSD's case, would be more than \$60 million.

5. PCSSD and NLRSD currently contribute a total of about \$5 million each year to the magnet schools.

6. According to the Arkansas Department of Education website, the State had already declared PCSSD and NLRSD to be in "fiscal distress" before the district court relieved the State of its desegregation funding obligations. Given the significant funding losses to PCSSD and NLRSD as a result of the district court's decision, there is reason to doubt the ability of those districts to continue to pay their share of the magnet costs as well as what would become their portion of the State's share.

7. LRSD must cut at least \$38 million from its budget immediately. It cannot count on receiving the \$4.5 million dollars of M-to-M funding that it will get if the district court decides later this summer to allow that program to continue.

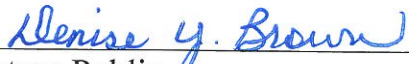
FURTHER AFFIANT SAYETH NOT.


Kelsey Bailey
Chief Financial Officer
Little Rock School District

Executed this 1st day of June, 2011.

State of Arkansas)
) ss.
County of Pulaski)

Subscribed to and sworn to before me, a Notary Public, on this 1st day of June, 2011.


Notary Public

My commission expires:

08-16-2012

