**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF ARKANSAS**
**WESTERN DIVISION**

**LITTLE ROCK SCHOOL DISTRICT** **PLAINTIFF**

**v.** **No. 4:82-cv-866 BSM/HDY**

**PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, et al.** **DEFENDANTS**

**MRS. LORENE JOSHUA, et al.** **INTERVENORS**

**KATHERINE KNIGHT, et al.** **INTERVENORS**

**RESPONSE TO MOTION FOR STAY PENDING APPEAL**

The Arkansas Department of Education (ADE), by and through its attorneys, Attorney General Dustin McDaniel, Assistant Attorney General Scott P. Richardson, and Assistant Attorney General Ali Brady, state for their Response to Motion to Clarify Order and for Stay:

Over a year and a half ago, the Court asked the parties and the State four questions about the future progress of this case. The second question posed by the Court was "[i]f the districts have not reached unitary status, what are the impediments to the districts reaching unitary status?" The State responded, in part, as follows:

> A strange irony of this case is that the large financial payments by the State to the three districts have actually become a significant impediment to termination of Court oversight. [As a result of those payments] the districts have significant motivation to avoid unitary status in order to maintain the additional funding. Indeed, this funding provides such a strong incentive that the LRSD, already declared unitary itself, now opposes the efforts of the other districts to be declared unitary. . . . Should the Court determine that twenty years after the signing of the 1989 Settlement Agreement, the PCSSD or the NLRSD is not unitary in some respects, the Court should nevertheless take immediate steps to use the additional funding received by the Districts under the Agreement as an incentive to motivate the rapid resolution of the case. The Court can achieve this result by providing firm cutoff dates for the State funding as a consequence of any failure by a district promptly to attain unitary status. This should give the Districts the needed incentive to ensure that any areas of non-compliance are promptly eliminated and ensure that the students of the districts attend desegregated schools.

DE# 4261, State's Response to Order Setting Status Hearing, filed Sept. 15, 2009. Because the cutoff of the extra desegregation distributions by the State to the three Pulaski County school districts was put squarely before the Court in 2009, LRSD's current contention that it had no idea that any change in funding might be ordered is difficult to comprehend. Indeed, at the status hearing held on September 30, 2009, LRSD raised the very same arguments that it now advances in support of its motion for a stay pending appeal: that even if the districts were declared unitary – i.e. that the effects of illegal segregation were fully remedied to the extent practicable – the State should be ordered to make supplemental desegregation distributions indefinitely. In its recent order the Court did not adopt the theory of perpetual payments advance by LRSD, but it is simply incorrect for LRSD's counsel to assert that the issue was never raised.

Following many weeks of hearings on the unitary status of PCSSD and NLRSD, in which all of the parties and the State participated, and after the Court's scrutiny of the massive record compiled in this case, the Court was left with the definite and firm conviction that continuing to give additional money to the districts had actually become a hindrance to desegregation in Pulaski County. The Court was correct in the course it took in attempting to reverse the perverse incentives the supplemental monies have created. The Order should not be stayed and the case should proceed to its conclusion.

## I. INTRODUCTION

The Little Rock School District ("LRSD") filed this case on November 30, 1982,[1] alleging that the other two districts ("PCSSD" and "NLRSD") and the State had taken actions which were widening the racial imbalance in LRSD. *LRSD v. PCSSD,* 584 F.Supp. 328 (E.D.

[1] This complaint was a continuation of the prior LRSD desegregation case that began on February 8, 1956. *Aaron v. Cooper*, 143 F.Supp. 855 (D.Ark. 1956); *See LRSD 2002*, 237 F.Supp.2d 988, 996-997 fn. 15, 18. In fact, the filing of this case overlapped by some three months with prior desegregation obligations imposed on the LRSD in the prior case. *Clark v. Board of Education of the Little Rock School District*, 705 F.2d 265 (8th Cir.1983).

Ark. 1984); *LRSD v. PCSSD,* 778 F.2d 404 (8th Cir. 1985). In 1984, Judge Henry Woods concluded that the proportion of African-American students in the LRSD was increasing because of actions taken by the then-Defendants. *LRSD 1985*, 778 F.2d at 438 The remedies ordered by the Eighth Circuit (encouraging majority to minority student transfers, providing magnet schools, etc.) were principally designed to bring about race-neutral assignment of students to schools. On November 19, 1984, Judge Woods entered an order, at LRSD's request, stating the Court's "basis for retaining the state defendants in this case for remedial purposes." *LRSD* v. *PCSSD*, 597 F.Supp. 1220, 1227-1228 (E.D. Ark. 1984). Judge Woods explained over five paragraphs that the principle reason the State was being retained was for funding purposes. He listed no affirmative conduct by the State that supported jurisdiction; only that the State should have "encourage[d] the local districts to eliminate discrimination in their school systems. . . deficiencies in the State Board[ of Education's] discharge of its affirmative duty to encourage desegregation in the local school districts had an interdistrict effect upon the Little Rock, Pulaski County and North Little Rock school districts." *Id.* The Eighth Circuit ruled on appeal that interdistrict remedies were appropriate to address past interdistrict violations that tended to segregate students by race. *Little Rock School District v. Pulaski County Special School Dist.*, 778 F.2d 404 (8th Cir. 1985).

In 1989, the parties entered a settlement agreement to address the Eighth Circuit's order with the purpose of "achieving unitary school systems in these three districts which are free from the vestiges of racial discrimination." 1989 Settlement Agreement p. 1. The 1989 Settlement Agreement required dismissal of the State as a party and provided for the release of all claims against the State by the other parties. 1989 Settlement Agreement p. 18-19. LRSD was declared fully unitary by Judge Wilson on February 23, 2007. *LRSD v. PCSSD, et al.*, 2007 WL 624054,

(E.D. Ark. Feb. 23, 2007) Docket # 4103. On April 2, 2009, the Eighth Circuit affirmed Judge Wilson's decision declaring LRSD unitary. *LRSD v. NLRSD*, 561 F.3d 746 (8th Cir. 2009).

On May 19, 2011, this Court issued its Findings of Fact and Conclusions of Law, concluding that all three districts are now unitary as to student assignments.[2] D.E. 4507. This finding was a judicial recognition that the districts no longer illegally assign students to schools based on race, which was the legal wrong that the desegregation remedies funded by the State (magnet and M-M transfers) were principally instituted to address. The Court also found that the distribution of supplemental funds by the State, made pursuant to the 1989 Settlement Agreement and subsequent orders of the Court, had become counterproductive: such extra funding encouraged the districts to remain in litigation for as long as possible so as to continue receiving millions of additional dollars from the State beyond the funding provided to all other school districts. *Id*. at 107-08. Accordingly, the Court terminated any requirement that the State make distributions under the 1989 Settlement Agreement, except for money specifically allocated to the M-to-M transfer program, which will be reviewed at a later date. *Id*. at 108.

LRSD has petitioned the Court for a stay pending appeal of the May 19th Order, and filed an Amended Motion for Stay Pending Appeal D.E. 4512, 4513; D.E. 4517. LRSD's motion challenges the Court's decision to terminate desegregation payments. It does not challenge the Court's determination that all parties have achieved unitary status as to student assignments.

The district's Motion for Stay Pending Appeal should be denied on several independent grounds. First, LRSD cannot demonstrate a likelihood of success on the merits. Indeed, LRSD has already lost on the merits. The principal basis for the Court's decision to end supplemental

[2] The only student assignments issue that remains is reporting by the PCSSD on one-race classrooms. With regard to assignment of students to schools and assignments that require interdistrict transfers, however, the PCSSD has been found to be unitary.

State funding, i.e. that continued funding in effect rewards non-compliance by the districts is barely challenged by LRSD. The Supreme Court, the Eighth Circuit, and other federal courts have made clear that any court-ordered desegregation remedy, such as the State's supplemental distributions to fund desegregation efforts here, cannot legally be continued longer than necessary to remedy the identified Constitutional violations. *Board of Education of Oklahoma City Public Schools v. Dowell,* 498 U.S. 237, 248, 111 S.Ct. 630, 637 (1991); *see also Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749 (1977)(*Milliken II*). In its May 19th ruling, this Court recognized that circumstances had changed significantly, requiring alteration of the previous court-ordered desegregation remedies in this case. First, all three districts have now been declared unitary as to assignments of students to schools. The sole basis for the State's current supplemental payments to the districts was as a remedy for alleged constitutional violations in student to school assignments. Second, rather than being necessary to remedy segregation, the court-ordered supplemental desegregation distributions had become an impediment, encouraging the districts to remain in litigation as long as possible in order to continue receiving the funds. Under such circumstances, the United States Supreme Court's decisions in *Dowell* and *Milliken* not only authorized the Court to alter the consent decree, but required it to do so. The supplemental desegregation disbursements could not be left in place as a remedy if the constitutional violation for which that remedy had been ordered was not gone. Moreover, as the Court found, the supplemental distributions of funds to remedy interdistrict student assignments were not necessary for PCSSD or NLRSD to achieve unitary status in the areas in which the districts remain under court-supervision. Finally, the distributions of supplemental funds had to end because they had become counterproductive to the goal of desegregating the PCSSD and NLRSD as soon as practicable. There is ample federal precedent to support the Court's decision

to modify the consent decree and release the State from its obligation to provide desegregation disbursements based upon the changed circumstances of the finding that the disbursements had become an impediment to desegregation.

Second, the Court's ruling does not create a substantial risk of irreparable harm to LRSD or its students. The harm alleged by LRSD's counsel in its Memorandum Brief is exaggerated. The LRSD is one of the most well funded districts in the State. Even without the "desegregation funding" it receives, the district receives the most total dollars of state and local funding of any district in the State, and is in the top ten districts for per student funding among all of the States nearly 240 school districts. The district's allegations of potential harms – mass teacher layoffs, closing of schools, displacement of students, fear and confusion among parents, and drastic cuts to necessary academic programs – need not result from the loss of the supplemental desegregation monies, and in fact will only result if LRSD chooses a course of action that causes such disruptions. If LRSD structures its budget in a way detrimental to the district's fiscal health and educational adequacy, the State will be prepared to assist the district in addressing its fiscal and academic adequacy for its students. See Ark. Code Ann. § 6-20-1901, et seq. An educationally prudent and fiscally responsible approach is without a doubt available to the LRSD. Any "irreparable harm" to LRSD or its students that results from the Court's May 19th ruling will be directly attributable to the district's own budgeting decisions and is preventable with sensible financial management.

Third, issuance of a stay will substantially injure other parties interested in this litigation. The Court has found, after viewing the testimony and demeanor of the witnesses in addition to reviewing thousands of pages of documents in the record, that court-ordered desegregation payments to the three districts discourage the districts from meeting their remaining obligations

under the 1989 Settlement Agreement and provide an incentive for inaction. D.E. 4507 at 107-08. A stay would not be in the best interests of the students of PCSSD and NLRSD, both of which have continuing desegregation obligations, because delaying the Court's order would perpetuate this broken system. Moreover, a stay would irreparably injure the State of Arkansas as a whole. It would require the State to expend millions of taxpayer dollars in furtherance of this counterproductive arrangement when the segregation those funds were intended to remedy has been eliminated to the extent practicable. In essence, the State would be paying nearly $70 million each year for a job that is finished.

Finally, public policy does not favor a stay of the Court's order pending appeal. A stay pending appeal is disfavored where it could inhibit or delay desegregation efforts. *See Harvest v. Board of Public Instruction of Manatee County, Fla.*, 312 F.Supp. 269 (D. Fla. 1970). Where a district court determines that certain actions are necessary and appropriate in order to promote desegregated education, appellate courts will not lightly delay the implementation of those orders. This Court determined based on the witnesses, testimony, and evidence presented that immediate termination of all State desegregation funding, except for that allocated to M-to-M transfers, was necessary to promote further desegregation of PCSSD and NLRSD. The Court's May 19, 2011, order reflects a clear finding that State desegregation funding was "one of the problems" inhibiting desegregation and created "an absurd outcome in which 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." D.E. 4507 at 107-08. Based on that finding, the Court ordered that the State need not continue supplemental desegregation distributions to the districts other than to fund M-to-M student transfers. The Court ordered the districts to show cause why M-to-M payments should not be

terminated as well. *Id*. at 108. Where, as here, a federal court orders specific action to be taken in order to remedy unconstitutional segregation in education, public policy strongly favors full and swift compliance.

Additionally, public policy favors a clear course of action for the three districts and the State. Both the State and the three districts have already begun implementing the Court's ruling. Complete and immediate implementation of the Court's ruling allows LRSD to move forward as a fully unitary school district, unfettered by the burden of court-ordered desegregation obligations, and free to educate its students on the same funding formula utilized by all other school districts in the State. It requires the districts to conservatively budget and plan for the coming school year. Denial of LRSD's Amended Motion for Stay Pending Appeal prevents the districts from gambling their 2011-2012 budgets on the misplaced belief that the Court's ruling will be overturned and the desegregation funds will continue indefinitely. In light of the applicable standard of review and high burden that LRSD faces in its appeal, it is in the best interests of all involved to require the districts to immediately prepare to operate their schools without the supplemental funding rather than budget for continued payments and claim surprise and hardship when they do not prevail on appeal.

For all of these reasons, which are more fully articulated below, the best course of action is for all parties involved in this litigation to continue full and immediate implementation of the Court's May 19th ruling. Therefore, LRSD's Amended Motion for Stay Pending Appeal should be denied.

## II. STANDARD: STAYS PENDING APPEAL ARE DISFAVORED WHEN SUCH ACTION WOULD INHIBIT OR DELAY DESEGREGATION EFFORTS

LRSD correctly sets out the four factors that generally govern whether a stay pending appeal is appropriate. Those factors, as most recently articulated by the Eighth Circuit in *Brady*

*v. National Football League*, ___ F.3d ___, 2011 WL 1843832 (8th Cir. 2011), are: (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 proceedings; and (4) where public policy interest lies." *Brady*, 2011 WL 1843832, *3 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987).

While these factors, originally set forth in *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981), state the basic elements that any applicant for a stay pending appeal must establish, there is an additional consideration in the special context of desegregation litigation. A stay pending appeal is disfavored where it could inhibit or delay desegregation efforts. *See Harvest v. Board of Public Instruction of Manatee County, Fla.*, 312 F.Supp. 269 (D. Fla. 1970). In *Harvest*, the court relied upon the Fourth Circuit and United States Supreme Court for the principle that, in cases involving the constitutional rights of school children to attend integrated schools, the courts are reluctant to stay mandatory injunctions requiring desegregation. *Id*. at ___ (Citing *Goins v. County School Board of Grayson County*, 282 F.2d 343 (4 Cir. 1960); *Lucy v. Adams*, 350 U.S. 1, 76 S.Ct. 33, 100 L.Ed. 3 (1955); *Tillman v. Bd. of Pub. Instr. of Volusia County*, No. 24501 Civ.J., M.D.Fla. (Order denying motion to stay pending appeal entered on February 2, 1970); *Swann v. Charlotte-Mecklenburg Board of Education*, 311 F.Supp. 265, W.D.N.C. (Order of February 5, 1970)). As the *Harvest* court noted, the Fifth Circuit made its attitude toward stays in school segregation cases clear in *Singleton v. Jackson Municipal Separate School Dist.*, 419 F.2d 1211 (December 1, 1969): "The shift is from a status of litigation to one of unitary operation pending litigation." The policy behind this rule is sound. Where a district court determines that certain actions are necessary and appropriate in order to

promote desegregated education, appellate courts will not lightly delay the implementation of those orders.

The principle articulated in the cases cited above applies with equal force here. The Court determined, after hearing extensive testimony, observing the demeanor of the school district witnesses, and reviewing vast amounts of evidence during over two months of hearings, that immediate cessation of State desegregation funding, except for that allocated to M-to-M transfers, was necessary to further the desegregation efforts of PCSSD and NLRSD. The Court's May 19, 2011, order reflects a clear finding that State funding significantly encouraged failure to desegregate and created "an absurd outcome in which 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." D.E. 4507 at 107-08. LRSD does not seriously dispute this observation. Based on that finding, the Court ordered the State to stop all desegregation payments other than M-to-M payments, and ordered the districts to show cause why M-to-M payments should not be terminated as well. *Id*. at 108. A requested stay of this order should be analyzed under the same standard that has historically applied to other rulings mandating desegregation. Specifically, the Court should apply the four *Dataphase* factors while always bearing in mind the overarching policy disfavoring delays in desegregation.

## III. ARGUMENT

### a. LRSD is Unlikely to Succeed in its Argument for Reversal of the Court's Decision

#### i. The Issue of Whether State Desegregation Disbursments Should Continue was Before the Court and Has been Considered by the District for Years

LRSD cannot demonstrate that it is likely to succeed on the merits of its claim that the Court's order terminating State desegregation distributions should be overturned. LRSD's

procedural claim, that it had insufficient notice and opportunity to present evidence regarding the funding issue, fails on multiple grounds. First, the State put at issue the question of the efficacy of continued desegregation payments and whether they should continue in its September 15, 2009, filing responding to the Court's questions about how it should proceed on the case. DE # 4261. Thus, even if LRSD had completely ignored the likelihood that the supplemental desegregation funding would end, the record shows that LRSD was on notice at least by September 2009 that termination of the desegregation funding had been requested in this case.

Second, the State's obligation to provide desegregation money under the consent decree embodied a court-ordered remedy designed to correct past segregation, and as such, could continue only so long as necessary to achieve that goal. The Court's May 19, 2011, ruling, concluding that all three Pulaski County school districts are now unitary as to inter-district student assignments, meant that State desegregation disbursements are no longer necessary to remedy the past segregation that formed the principle basis for the claims in this case: assignment of students to schools. The Court also concluded that such disbursements would actually inhibit further desegregation efforts. Under controlling federal case law, modification of the consent decree was an automatic and necessary response to the change in circumstances and did not require advanced notice to any party or the presentation of additional evidence.

As the United States Supreme Court has made clear, desegregation decrees were never intended to continue forever. *Board of Education of Oklahoma City Public Schools v. Dowell,* 498 U.S. 237, 248, 111 S.Ct. 630, 637 (1991). They are only "a temporary measure to remedy past discrimination." *Id.* "The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities." *Id*. A desegregation decree can and should continue no longer than necessary to

remedy the identified Constitutional violation "to the extent practicable." *Id. see also Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749 (1977) (*Milliken II*). Once the Constitutional violation is remedied, control of children's education *must* be returned to the local school officials and the State. *Id.* "By withdrawing control over areas where judicial supervision is no longer needed, a district court can concentrate both its own resources and those of the school district on the areas where the effects of *de jure* discrimination have not been eliminated and further action is necessary in order to provide real and tangible relief to minority students." *LRSD v. PCSSD, et al.*, 237 F.Supp.2d 988, 1028 (E.D. Ark. 2002)[3] *quoting Freeman*, 503 U.S. at 493, 112 S.Ct. 1430. Partial withdrawal of supervision over a plan fulfills the Court's duty to return the areas of a school system that are operating in compliance with federal law back to the control of the patrons and taxpayers supporting the schools. *Freeman*, 503 U.S. at 490 ("Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system.").

In the context of institutional reform litigation against a State, a consent decree and its enforcement against a state may only extend to violations of federal law. *Horne v. Flores*, ___ U.S. ____, 129 S.Ct. 2579 (2009). Consent decrees do not strip states of their sovereignty and federal courts exercise caution to ensure that enforcement of a consent decree does not displace the democratic governance of a state over its institutions. *Id*.; *Frew v. Hawkins*, 540 U.S. 431, 124 S.Ct. 899 (2004). These constitutional rules recognize that "[f]ederal courts operate according to institutional rules and procedures that are poorly suited to the management of state agencies." *Angela R. v. Clinton*, 999 F.2d 320, 325 (8th Cir. 1993).

[3] Because of the number of opinions in this case this brief will refer to the opinions by year of decision. For example, Judge Wilson's comprehensive opinion from 2002 finding the LRSD unitary will be referred to as *LRSD 2002*, 237 F.Supp.2d 988.

In this case, the Court's May 19th ruling held that all three districts are now unitary as to student assignments (with one exception) and that continuing the State's desegregation disbursements would serve as a road-block to desegregation in other areas. D.E. 4507 at 1, 107-08. The Court's finding of unitary status in student assignments to schools meant that as a legal matter the parties have successfully eliminated to the extent practicable the vestiges of the original "interdistrict violations" cited by the Eighth Circuit. *LRSD v. PCSSD,* 778 F.2d 404, 433 (8th Cir. 1985). While PCSSD remains under Court supervision as to one portion of its intradistrict student assignment obligation (reporting on one-race classrooms), that should not affect the issues raised in LRSD's motion. PCSSD's remaining obligation, providing reports on single-race classrooms, does not affect the types of student transfers that gave rise to this case.

It is undisputed that the State's involvement in this case – like the accompanying obligation to provide desegregation disbursements under the consent decree – was solely tied to the claim regarding interdistrict assignment of students to schools. At the September 30, 2009, status hearing this Court asked LRSD's counsel, Chris Heller, why and how LRSD was still inserting itself into this litigation when LRSD had been declared entirely unitary in 2007. Counsel replied that "the question still remains about the interdistrict violations, which were the basis of Little Rock's lawsuit in 1982." *See Transcript of Motions Hearing, September 30, 2009, attached hereto as Exhibit A*, at 6. Mr. Heller represented to this Court that to end the State's obligations the Court would have to show that the three Pulaski County School Districts have "remedied, to the extent practicable, the violations which resulted from the interdistrict violations." *Id*. at 7. Throughout the hearing, Mr. Heller focused upon the State's alleged liability for "inter-district violations" making the clear argument that, in order for the State to end its supplemental distributions to the districts to help pay for the inter-district remedy, the Court

would have to find that the inter-district violations had been cured to the extent practicable. That is exactly what has happened. In its May 19th ruling, the Court found all three districts unitary as to the one inter-district issue in this case: assignment of students to schools. D.E. 4507 at 44-49, 53-59.

In its request for a stay, LRSD has now shifted focus to a different claim, i.e. its contention that the Court should have heard arguments and accepted evidence not only on interdistrict violations in the assignment of students to schools but also on whether the State should be held responsible on an ongoing basis for residential housing segregation. D.E. 4513 at 8. Such a claim was not part of the parties' Settlement Agreement nor any court order in this long-running case.[4] Instead, this new claim is merely part of the effort by LRSD to keep supplemental state funds flowing even though there are no longer any interdistrict violations left to remedy. Under the 1989 Settlement Agreement the District Court and Eighth Circuit approved means by which the districts, with State funding, were to remedy inter-district student assignment violations by financing specific inter-district school programs. It is undisputed that, for over twenty years, the State did provide those desegregation disbursements required by the Settlement Agreement. On May 19, 2011, the Court found PCSSD unitary as to student assignments, making all three districts unitary as to the sole inter-district issue in this lawsuit.

The State has met the obligations of the 1989 Settlement Agreement and attained the intended inter-district result. The jurisdiction of federal courts is limited to that provided by the Constitution or by statute. *Kokonnen v. Guardian Life Ins. Co.*, 511 U.S. 375, 114 S.Ct. 1673 (1994). The party seeking to invoke or maintain the remedial authority of a federal court bears the burden of demonstrating that the Court retains jurisdiction. *Id.* Modification of a consent

[4] There is only minimal reference to any sort of housing action in the 89 Settlement Agreement. Section VII.D. That section has not been even mentioned in the over 20 years since the Settlement Agreement was signed.

decree is appropriate when a significant change in circumstances warranting revision of the decree occurs and the modification is suitably tailored to the change in circumstances. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383, 112 S.Ct. 748, 760 (1992). District courts must exercise flexibility when presented with a request to modify a consent decree. *Id*.

In a desegregation case, a federal court's remedial authority ends when the Constitutional violations found to exist in the school district have been remedied. *Dowell*, 498 U.S. 237, s*ee also Kindred v. Duckworth*, 9 F.3d 638, 644 (7th Cir.1993) ("[D]ecrees imposing obligations upon state institutions normally should be enforceable no longer than the need for them."); *Cody v. Hillard*, 139 F.3d 1197 (8th Cir. 1998). Notably, LRSD has not challenged the Court's finding of unitary status as to all districts' assignments of students to schools. Therefore, immediate termination of the State's participation in a completed court-ordered remedy was proper because that remedy was no longer necessary to cure the specific Constitutional violation for which it was put in place. The parties were not entitled to any particular prior notice or separate hearings on continuing State desegregation disbursements because State funding was part of the remedy for past constitutional violations rather than a stand-alone issue. The court-ordered desegregation distributions were permitted under federal law only so far as necessary to remedy the original constitutional violation, and therefore the question of their continued existence hinged solely upon a finding of unitary status as to inter-district student assignments. Once all three districts were found unitary as to assignments of students to schools, all vestiges of the State's original constitutional violation had been cured to the greatest extent practicable, and the State's continued obligation to provide desegregation distributions would have violated *Board of Education of Oklahoma City Public Schools v. Dowell,* 498 U.S. 237, 248, 111 S.Ct. 630, 637 (1991). The parties, all represented by counsel, can be deemed to have had at least constructive

knowledge of the controlling federal case law limiting any court-ordered desegregation remedy to only that which continues to be necessary. Therefore, the parties, which all participated in the months of hearings regarding unitary status, cannot now claim surprise that the outcome of those hearings, a finding of inter-district unitary status, would dictate an immediate change in the court-ordered remedies in this case.

LRSD's argument that they were completely unaware that State desegregation distributions might end as a result of a unitary status finding is contrary to both the statements and the conduct of the District. The Little Rock School Board has stated on several occasions during the four years since LRSD was declared fully unitary that it was aware the funds would soon end. For example, shortly following LRSD's attainment of unitary status in 2007, attorneys Chris Heller and John Walker briefed the Little Rock School Board on the issue of continued State desegregation disbursements. *See Minutes, LRSD Special Board Meeting, January 17, 2007, attached hereto as Exhibit B.* At this meeting,

> Mr. Heller reminded the board that it is the responsibility of the court to return local school operations to the local community once the requirements of the court order have been met . . . and continuation of the magnet programs will be up to the local school districts whether federal court supervision continues or not. In addition, state funding for magnet programs is an issue that will continue to be before the state legislature. Mr. Walker disagreed with this response and suggested the State of Arkansas will discontinue funding the magnet programs once the districts are found to be unitary."

*Id*. at 2. The meeting minutes for the Little Rock School Board's April 24, 2008, meeting again reflect the Board's understanding and expectation that a finding of unitary status legally necessitated a change in the court-ordered desegregation disbursements. *See, Minutes, LRSD Regular Board Meeting, April 24, 2008, attached hereto as Exhibit C.* At this meeting, the board members and attorney Chris Heller discussed options for funding the magnet programs without State desegregation disbursements, the possibility of settlement with the State, and

continued litigation. Notably, attorney Heller advised the Board that they could attempt to reach a settlement with the Arkansas Department of Education under which there would be no immediate change to desegregation disbursements, "until the Pulaski County District is found to be unitary with their student assignments," indicating a clear understanding that a finding of unitary status as to all district's student assignments would necessitate termination of State involvement in this case. *Id.* at 5. At the July 24, 2008, meeting, the Board again engaged in serious discussions with Mr. Heller regarding the termination of desegregation disbursements and the possibility of settlement with the State. *See Minutes, LRSD Regular Board Meeting, July 24, 2008, attached hereto as Exhibit D*. On December 18, 2008, the Board again grappled with the fact that State desegregation disbursements would soon end. *See Minutes, LRSD Regular Board Meeting, December 18, 2008, attached hereto as Exhibit E.* Board Member Baker Kurrus argued against continued litigation against the State on the issue of desegregation disbursements; "[h]e noted that the LRSD is a wealthy school district with a high millage rate and a firm tax base, especially when compared to other districts across the state . . . He repeated comments from a previous meeting - - that the LRSD should strive to become more competitive and more efficient in operations." *Id*. at 8. "The reality is we spend too much money on administration, but we aren't putting it to good use," Kurrus said. *Id*. At that meeting in 2008, Mr. Heller recommended that LRSD work with the State to wind down the desegregation disbursements. *Id*. On June 25, 2009, Board member Baker Kurrus recommended spending stimulus funds on "bricks and mortar" instead of on continued high personnel costs. *See Minutes, LRSD Regular Board Meeting, June 25, 2009, attached hereto as Exhibit F.* On October 22, 2009, Mr. Heller presented the Board with spreadsheets "which provided an estimate of district funding if magnet and M-to-M programs were eliminated in the future." *See Minutes, LRSD Regular Board*

*Meeting, October 22, 2009, attached hereto as Exhibit G.* Finally, before the District Court's May 19, 2011 ruling was issued, Dr. Morris Holmes, LRSD's Superintendent, proposed budgets for the 2011-12 school year to enable LRSD to meet its education obligations within its financial means based on the assumption that some or all of its special desegregation disbursements would soon end. As demonstrated above, LRSD was clearly aware that termination of the State desegregation disbursements was likely once all districts were declared unitary in student assignments. LRSD simply cannot prevail on an argument that it had no warning that termination of the State's desegregation disbursements was a possible result of the Court's findings.

Likewise, LRSD cannot successfully contend that the Court's order must be overturned because the district lacked an opportunity to make its case why the State should be required to continue to pay money to LRSD. Those very arguments were in fact made by the attorney for LRSD at the September 30, 2009, status hearing in the present case. Exhibit A at 5-9. The transcript reflects that Mr. Heller fully articulated LRSD's position regarding its view of the State's obligations under the 1989 Settlement Agreement, its argument that the State could not be released prior to a finding of unitary status as to the inter-district violation, and its belief that continued State desegregation disbursements should be required even after a finding of unitary status. *Id.* While LRSD may regret that the Court did not agree with the analysis laid out by Mr. Heller at the status hearing, it cannot argue that LRSD was prevented from making its case and presenting these theories to the Court. Had the Court agreed with LRSD that the desegregation disbursements should continue beyond a finding of unitary status, it may well have ordered hearings on that issue. However, as demonstrated in this Response, controlling case law and the specific circumstances of this case both dictate that federal jurisdiction over the State's

involvement in this litigation immediately end, negating the need for further proceedings on the desirability of continued funding.

Finally, LRSD argues that the Court's order will be set aside because it was issued prior to a ruling on LRSD's pending Motion to Enforce the 1989 Settlement Agreement. The motion to which LRSD refers relates to a new and independent allegation against the State's laws and policies on charter schools and did not have any bearing upon the Court's determination that the districts' student assignments were unitary. As stated above, the continued validity of a court order requiring the State to provide desegregation disbursements hinged solely upon a finding of unitary status as to the assignment of students to schools. Therefore, LRSD's ancillary claim of a new violation by the State did not, and could not, bar the Court from issuing its May 19th order. Courts are free to manage their docket as they see fit, and there is no procedural bar that would prevent the Court from fully addressing and disposing of the question of unitary status and accordant State obligations before taking up the unrelated matter of charter schools. While LRSD's charter school motion is meritless, it is still pending before the Court and there is no indication that LRSD will not receive full consideration from the Court on that issue at the appropriate time.

**ii. Release of the Desegregation Funding Not Only Supports the Goal of Desegregating the Districts But Also Is Required Once the Districts were Found Unitary as to Assignment of Students to Schools**

LRSD's substantive argument that the Court erred in cutting off State desegregation distributions is also unlikely to succeed on the merits. The district argues that the State may not be released from its obligation to provide desegregation funding, even after a finding of unitary status, because it claims that the State's obligation continues into perpetuity. This claim fails for three reasons: (1) it flies in the face of well-established desegregation case law, (2) LRSD's arguments regarding charter schools are without merit, and (3) LRSD's contract claim requires

the Court to interpret the 1989 Settlement Agreement as a void perpetual contract in which the districts are bound by only illusory promises.

Regarding the first point, LRSD cannot prevail on its claim that State desegregation disbursements should continue beyond a finding of inter-district unitary status, the issue for which the state was originally required to fund a remedy. As noted above, a Court's remedial authority lasts only as long as the existence of the violation it is intended to address.

Moreover, modification of the consent decree was appropriate not only due to the Court's finding of unitary status as to the districts' assignments of students to schools, but also because the Court specifically found that the State desegregation disbursements had become a disincentive for further desegregation efforts. D.E. 4507 at 107-08. Because PCSSD and NLRSD have continuing desegregation obligations in order to become fully unitary, it was appropriate for the Court to modify the consent decree and eliminate the disbursements, which discouraged the districts from reaching that goal.

As to the second point, LRSD claims that its pending Motion to Enforce, regarding charter schools, provides a basis upon which the State must continue to provide desegregation disbursements. As discussed above, the LRSD's claims are without legal basis. The State's Response is incorporated herein by reference as if set out word for word.

Moreover, if LRSD continues to insist that the 1989 Settlement Agreement is to be governed by the law of contracts rather than the established case law regarding consent decrees in desegregation cases, its own arguments would result in a null and void contract. LRSD claims that the State's obligation to provide over $60 million per year in desegregation disbursements continues perpetually, regardless of unitary status. Under this theory, the State would be required to continue to provide its consideration (desegregation disbursements) forever, and the

other parties would have no deadline upon which they were required to meet their contract obligations (successful attainment of complete unitary status), and in fact would not be required to meet them at all.

Governmental entities in Arkansas are prohibited from entering perpetual contracts. *Lamar Bath House Co. v. City of Hot Springs*, 229 Ark. 214, 315 S.W.2d 884 (1958). In general, perpetual contracts are not favored in Arkansas. A contract will not be construed to extend forever "unless the language is so plain as to admit of no doubt of the purpose to provide for perpetual renewal." *Baker Car and Truck Rental, Inc. v. City of Little Rock*, 325 Ark. 357, 361-62, 925 S.W.2d 780, 782-83 (1996). With regard to governmental authorities, the reason for the rule is clear: it is the people's right to decide the fate of the resources they have provided through their democratically elected government, not a contractor.

Finally, LRSD misrepresents one paragraph of the 1989 Settlement Agreement to suggest that the Agreement continues beyond unitary status. The section of the Agreement, in full, is as follows:

> The State conditions this settlement upon its dismissal from this Litigation with prejudice in accordance with the terms of Attachment A. The settlement is also conditioned upon the full execution of and compliance with the terms of the release of all claims against the State affixed hereto as Attachment A. 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. Further, the settlement is contingent upon a determination by the district court that the settlement is binding on the classes of all current, past and future LRSD, PCSSD, and NLRSD black students, their parents and next friends. . . .

1989 Settlement Agreement IV. A. p. 18-19. This paragraph is directed solely at the release of liability executed in favor of the State at the time the 1989 Settlement Agreement was entered. It provides that the release would be signed regardless of whether a district had been declared unitary before or after the execution of the release. It has nothing whatsoever to do with how

long the funding obligations set out in other parts of the Agreement would last. The argument that this language extends to other sections of the agreement in perpetuity is, at best, absurd.

In fact, other sections of the settlement agreement suggest that the funds have lasted well beyond what anyone expected at the time the 1989 Settlement Agreement was drafted. The sections reciting the settlements with the individual school districts provided payment schedules for "compensatory education programs and other desegregation expenses." Section VI (LRSD), VII (PCSSD), and VIII (NLRSD). The last scheduled payment (to LRSD) ended January 1, 1999. None of these payment schedules lasted beyond the 20th Century.

Under these circumstances, it was well within the Court's authority to immediately terminate the State's desegregation disbursements. While LRSD attempts to argue that a wind down of funds is required by precedent, there is ample federal case law to support the Court's immediate termination of court orders requiring desegregation disbursements. In *Price v. Austin Independent School Dist.*, 945 F.2d 1307 (5th Cir. 1991), the Fifth Circuit stated that "a unitariness finding 'is critical because once it is made a federal court loses its power to remedy the lingering vestiges of past discrimination absent a showing that either the school authorities or the state had deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools.'" 945 F.2d at 1314-15. There are multiple examples of cases in which a court declares a district or districts unitary and, in the same order, dissolves outstanding orders and injunctions and terminates court supervision. *See Robinson v. Shelby County Bd. of Educ.*, 566 F.3d 642 (6th Cir. 2009); *N.A.A.C.P., Jacksonville Branch v. Duval City*, 273 F.3d 960 (11th Cir. 2001); *Lee v. Houston County Bd. of Educ.*, __ F. Supp. 2d. ___, 2008 WL 166954 (M.D. Ala. 2008); *Lee v. Pike County Bd. of Educ.*, ___ F.Supp.2d___, 2007 WL 128788 (M.D. Ala. 2007); *Goodwine v. Taft,* ___ F.Supp.2d ___, 2002 WL 1284228 (S.D. Ohio 2002)

("When a school district has achieved unitary status, the Court must dissolve the desegregation decree, terminate its supervision of the school district and dismiss the action"); *Harris v. Crenshaw County Bd. of Educ.*, ___ F.Supp.2d ___, 2006 WL 2590592 (M.D. Ala. 2006). These cases summarily dissolved all the outstanding orders and injunctions and dismiss all parties without mentioning a wind down of any kind. In *Lee v. Talladega County Board of Education*, 963 F.2d 1426 (11th Cir. 1992), the United States Court of Appeals for the Eleventh Circuit held that injunctive orders in a school desegregation case were dissolved by operation of law once a district court declared that the school system had attained unitary status. 963 F.2d at 1429; *Hall v. Alabama Ass'n of School Boards*, 326 F.3d 1157, 1172 (11th Cir. 2003) ("[S]tate actors subject to terminal school desegregation orders have affirmative duties to demonstrate to the court that they have taken all necessary steps to eradicate vestiges of segregation . . . however, such duties cease upon a court's declaration of unitary status for the relevant school system."). Therefore, there is ample federal authority to support the State's immediate release from its obligations under the consent decree upon a finding of unitary status as to inter-district student assignments.

Accordingly, LRSD's claim that it is likely to succeed in perpetuating this litigation forever should be denied.

**b. <u>LRSD's Arguments about Risk of Harm are Exaggerated</u>**

LRSD is also unable to show a significant risk of irreparable harm if its Motion for Stay is denied. LRSD has been entirely unitary since 2007. In the past four years, LRSD has publicly acknowledged that State desegregation disbursements would cease in the near future and that it needed to plan for the end of those disbursements. See Exhibits B-G. Dr. Morris Holmes, LRSD's current Superintendent said well before the District Court's May 19, 2011 ruling that he and other LRSD officials have been preparing budgets for the coming school year to enable

LRSD to meet its education obligations within its financial means based on the assumption that some or all of its special desegregation disbursements would soon end. Former Little Rock School Board Member Baker Kurrus, who recently ended his tenure after twelve years on the Board, has also publicly stated that LRSD has ample financial resources to provide quality education for all of its students without the special desegregation disbursements. Kurrus stated that the loss of funding will no longer allow LRSD to tolerate waste, which he sees as a positive impact of the District Court's ruling. For LRSD's lawyers now to blame the trial court for "disruption" or "irreparable harm" is disingenuous and it contradicts the public statements of the School District's elected and appointed officials. There is absolutely no need, nor any likelihood, that any Little Rock school will be forced to close, that mass layoffs of teachers will occur, or that the plans of students and their parents for the next school year will be disrupted in a significant way. Those things will only happen if LRSD itself chooses such a course of action and not as a result of the Court's decision.

Moreover, in 2010 consultants hired by the LRSD completed the creation of a strategic plan with "eye-popping" goals designed to "dramatically improve student performance." *See LRSD Strategic Plan, attached hereto as H.* The consultants specifically considered whether the district could attain the goals set out in the plan utilizing the regular (non-desegregation) funding received by the district. The conclusion was that the "district has adequate fiscal resources to meet [its] goals." Ex. H at 15. The consultants discussed the amount of funding provided by the "state school finance formula" i.e. foundation and categorical funding, additional local operating property taxes levied in the district, and "targeted Federal resources for special education and Title I." Id. The consultants concluded that the state education funding model and the district's local millages provided enough funding that "the district has more employees overall than are

funded through the state's adequacy model thus providing it more than ample people resources to implement all the strategies identified in this document [the Strategic Plan.]" Id. at p. 17. The Strategic Plan also suggested trimming programs and other cuts at the district. Thus, according to the LRSD's own experts, it has sufficient funding without the desegregation payments to not only maintain educational standards but also to improve the achievement of its students.

Therefore, a stay pending appeal is unnecessary; with proper management of its resources LRSD can continue to educate all of its students without resorting to the drastic measures threatened in its Motion for Stay. Pursuant to the District Court's order, approximately $21 million dollars in M-to-M funding will continue to the three districts, including LRSD, until the Court addresses that issue. Therefore, the change in desegregation disbursements to LRSD is not the full $38 million per year as alleged because M-to M funding remains in effect. Of the $38 million that LRSD received in desegregation disbursements in FY 09-10 less than half were for the Stipulation Magnet Schools ($15,382,372). *See Payment History by District by Purpose, attached hereto as Exhibit I; and Exhibit O Summary of State Cost.* Also, the State pays Foundation Funding for each of the students at the stipulation magnet schools that will continue. Most of the rest of the $38 million disbursed to LRSD was pursuant to the Court's order on teacher retirement and health insurance ($13,076,843). Id. In addition, the LRSD's operating budget for the 2010-2011 school year projects that LRSD will end this year with an operating fund balance of $21,147,944. *See LRSD 2010-2011 Budget, a relevant excerpt of which is attached as Exhibit J.* LRSD has reported to ADE as of April 30, 2011, that it has an operating fund balance of $21,765,638.[5] *See Affidavit of William J. Goff, attached hereto as Exhibit K.*

[5] LRSD also retained a "Building Fund Balance" of $16,821,625 at the end of FY 09-10. If needed, the LRSD Board can draw on these funds by Board vote to help adjust for the reduction of its overall budget from over $348 million to over $310 million.

Over $19 million of that $21 million are unrestricted funds that can be used for any purpose. These surplus funds that Little Rock keeps in its accounts would cover almost a full year of the desegregation disbursements it was previously receiving from the State.

Moreover, even without the desegregation disbursements, LRSD receives more than enough money to provide for its educational and operational needs. During 2009-2010, the most current school year for which complete data is available, LRSD took in $213,775,740.02 in total unrestricted revenue from state and local sources. Exhibit K. That number does not include state categorical funds (which include supplemental NSLA funds for students in poverty, Alternative Learning Environment ("ALE") funds, English Language Learners ("ELL") funds, and professional development funds), federal grant revenue, bond or loan proceeds, desegregation disbursements from the State, or any other state revenue restricted for a specific purpose. *Id*. Based upon its reported number of 22,750 students, LRSD received $9,396.52 per student in unrestricted revenue from state and local sources. *Id*. The statewide average per student in unrestricted revenue from state and local sources was $7,489.44. *Id*. Other districts are capable of operating their schools, including magnet schools, on less money than what LRSD regularly takes in. *Id.*

Also, each year the State compiles the Annual Statistical Report ("ASR") from information provided by the school districts. *See 2009-10 ASR, 2008-09 ASR, 2007-08 ASR, attached hereto as Exhibits L, M, N, respectively.* LRSD's ASR shows that in the 2009-10 school year the district received over $199 million in unrestricted revenue from State and local sources (not including the district's $14.6 million debt service payment or desegregation disbursements). Ex. N. It spent $112.5 million on "Regular Instruction" or classroom instruction; leaving $86.5 million in unrestricted revenue (or $236,886,619 in total revenue) for

other expenses. *Id.* LRSD, in FY 09-10, spent on classroom instruction only 53% of its total unrestricted revenue and 32% of its total revenue. The decision as to whether to lay-off teachers or close the stipulation magnet schools (which operated in the district long before the 89 Settlement Agreement) will be up to the budgeting priorities set by the LRSD. It is, therefore, disingenuous for LRSD to claim that the Court's order creates a fiscal emergency which threatens the education of students when it has begun developing budget proposals to deal with this eventuality; routinely carries fund balances of well over $20 million; and has significant funding from local, state, and federal sources outside the desegregation disbursements. LRSD therefore has more than sufficient funding, without the desegregation disbursements, to provide quality education to all its students. Indeed, its own consultants concluded this a year ago.

Finally, even if LRSD is unable to adjust to this change in its budget, the State will assist them. To be clear, this change in budget has been known and discussed for many years. The crisis that LRSD claims now is due in large part to its own failure to prepare for the termination of the desegregation funding until recently. In the past few years the State attempted to partner with the districts in the ending of the desegregation disbursements, but LRSD refused that effort and chose to litigate against the State instead. Be that as it may, the State, through its fiscal distress law, provides a safety net for districts that are unable to manage their finances. Ark. Code Ann. § 16-20-1901, et seq. In fact, NLRSD and PCSSD have recently been identified as districts in fiscal distress because of problems with how they manage the ample financial resources they are provided. The State is assisting them in addressing the financial management issues that gave rise to the fiscal distress classification. Should the "catastrophe" that LRSD's counsel argues to the Court come to fruition, the State will be ready to take action. *Lake View School District No. 25 v. Huckabee*, 351 Ark. 31, 79, 91 S.W.3d 472, 500 (2002)("No longer can

the State operate on a "hands off" basis regarding how state money is spent in local school districts and what the effect of that spending is. Nor can the State continue to leave adequacy and equality considerations regarding school expenditures solely to local decision-making.") For these reasons, LRSD's claim that an emergency stay is necessary in order to keep school doors open is simply not supported by the facts.

**c. The Impact of Desegregated Education for Students in the Districts will be Positive**

Issuance of a stay will substantially injure other parties interested in this litigation. The Court has issued a finding, after months of hearings and consideration of all the evidence, that court-ordered desegregation payments to the three districts discourage the districts from meeting their obligations under the 1989 Settlement Agreement and provide an incentive for inaction. D.E. 4507 at 107-08. A stay would not be in the best interests of the students of PCSSD and NLRSD, both of which have continuing desegregation obligations, because delaying the Court's order would perpetuate this broken system. Moreover, a stay would irreparably injure the State of Arkansas as a whole. It would require the State to expend millions of non-refundable taxpayer dollars in furtherance of this counterproductive arrangement when those funds are no longer necessary to remedy segregation and could be put to better use addressing the needs of Arkansans across the State.

**d. Public Policy Favors Decisive Action to Encourage Desegregation and the Return of State Institutions to Democratic Control**

Finally, public policy does not favor a stay of the Court's order pending appeal. A stay pending appeal is disfavored where it could inhibit or delay desegregation efforts. *See Harvest v. Board of Public Instruction of Manatee County, Fla.*, 312 F.Supp. 269 (D. Fla. 1970). Where a district court determines that certain actions are necessary and appropriate in order to promote desegregated education, appellate courts will not lightly delay the implementation of those

orders. The Court determined that immediate termination of all State desegregation funding, except for that allocated to M-to-M transfers, was necessary to promote further desegregation of PCSSD and NLRSD. The Court's May 19, 2011, order reflects a clear finding that State desegregation funding was "one of the problems" inhibiting desegregation and created "an absurd outcome in which 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." D.E. 4507 at 107-08. Based on that finding, the Court ordered the State to stop all desegregation payments other than M-to-M payments, and ordered the districts to show cause why M-to-M payments should not be terminated as well. *Id*. at 108. Where, as here, a federal court orders specific action to be taken in order to remedy unconstitutional segregation in education, public policy strongly favors full and swift compliance.

Additionally, public policy favors a clear course of action for the three districts and the State. Both the State and the three districts have already begun implementing the Court's ruling. Complete and immediate implementation of the Court's ruling allows LRSD to move forward as a fully unitary school district, unfettered by the burden of court-ordered desegregation obligations, and free to educate its students on the same funding formula utilized by all other school districts in the State. It requires the districts to conservatively budget and plan for the coming school year. Denial of LRSD's Amended Motion for Stay Pending Appeal prevents the districts from gambling their 2011-2012 budgets on the belief that the Court's ruling will be overturned on appeal and the desegregation disbursements reinstated. In light of the applicable standard of review and high burden that LRSD faces in its appeal, it is in the best interests of all involved to require the districts to tighten their belts now and immediately prepare to operate

their schools without the supplemental funding rather than budget for continued payments and claim surprise and hardship when they do not prevail on appeal.

Public policy clearly favors desegregating the districts, ending the case, and, with it, ending federal control of state and local institutions. The Court properly recognized the fact, obvious to everyone except the LRSD, that continued desegregation funding only encourages non-compliance and, indeed, continued litigation.

## IV. CONCLUSION

For the reasons stated above, the State requests that the Court decline to enter a stay of its May 19, 2011, Order, deny the LRSD's Motion, and allow this case to end.

Respectfully submitted,

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BY: /s/ Scott P. Richardson

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2011, I 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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I, Scott P. Richardson, Assistant Attorney General, do hereby certify that I have served the foregoing and a copy of the Notice of Electronic Filing by depositing a copy in the United States Mail, postage prepaid, on June 6, 2011, to the following non-CM/ECF participants:

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/s/ Scott P. Richardson
SCOTT P. RICHARDSON