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June 20, 2011

**Via CM/ECF**

Hon. Michael E. Gans  
Clerk of Court  
Eighth Circuit Court of Appeals  
Thomas F. Eagleton Courthouse  
Room 24.329  
111 South 10<sup>th</sup> Street  
St. Louis, Missouri 63102

**Re: Little Rock School District v. State of Arkansas  
Case No. 11-2130**

Dear Mr. Gans:

This letter is to inform you of events that have transpired today with respect to the Pulaski County Special School District (PCSSD). In March, the Arkansas Department of Education (ADE) identified the PCSSD as a district in fiscal distress. Ark. Code Ann. § 6-20-1901, et seq. This finding was affirmed by the State Board of Education on May 16, 2011. Unfortunately, events have transpired that have made it necessary for the ADE to assume control of the PCSSD pursuant to the authority granted the Commissioner of Education by Arkansas Code Annotated section 6-20-1909. This afternoon, Commissioner Tom Kimbrell relieved the Superintendent and Board of Directors of the PCSSD of their authority and appointed an interim-superintendent to take over the operations of the district.

This situation obviously has implications for the litigation pending before this Court and the Eastern District of Arkansas. I spoke with counsel for PCSSD in this case, Mr. Sam Jones, and informed him that he should proceed as he has been directed by his client; that there should be no change in how he proceeds on the case. The State has also filed the attached Motion and Brief with Judge Brian Miller, the presiding judge in the case below, requesting that he set a protocol for counsel for the PCSSD to manage the litigation consistent with counsel's ethical responsibilities as well as the Attorney General's responsibilities as the State's lawyer.

If you or the Court has any questions about this matter, please do not hesitate to contact me.

Best regards,



Scott P. Richardson  
Assistant Attorney General

SPR

cc: Mr. Mark Burnette (via CM/ECF)  
Mr. Tim Gauger (via email)  
Mr. Chris Heller (via CM/ECF)  
Mr. M. Samuel Jones, III (via CM/ECF)  
Mr. Steven Jones (via CM/ECF)  
Mr. John Walker (via CM/ECF)

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

**LITTLE ROCK SCHOOL DISTRICT**

**PLAINTIFF**

**v.**

**No. 4:82-cv-866 BSM**

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

**DEFENDANTS**

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

**INTERVENORS**

**KATHERINE KNIGHT, et al.**

**INTERVENORS**

**MOTION FOR ORDER**

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

1. Pursuant to the authority granted by State law, the ADE is relieving the Superintendent and Board of Directors of the Pulaski County Special School District of their authority to operate the district. This action is being taken this afternoon, Monday, June 20, 2011.

2. As the Court is aware, following the Court's entry of its Finding of Facts and Conclusions of Law on May 19, 2011, the PCSSD has filed a Notice of Appeal and joined in Little Rock School District's (LRSD) Motion to Stay the effect of the Court's Order as to the release of State funding. PCSSD also has due this afternoon its response to the Court's Order requesting briefing on whether the M to M program funding should remain in place.

3. In short, Mr. Sam Jones's client, as of this afternoon, is no longer making decisions on its own, but is being directed by the State. This presents a potential for a conflict of

interest in the management of the current litigation issues pending before this Court and the Eighth Circuit.

4. Given this situation, the State is seeking the Court's assistance in setting a protocol for counsel for PCSSD to manage the litigation consisted with counsel's ethical responsibilities. The State suggests that an order to the effect that appeals filed by PCSSD will be allowed to go forward and that counsel who have served PCSSD to date will be allowed to continue to participate in the appellate process to its conclusion and be reasonable compensated by PCSSD, with ADE's approval, in accordance with whatever contract or other arrangement that counsel had with PCSSD prior to the action taken this afternoon.

WHEREFORE, the State of Arkansas requests that the Court enter an order consistent with the recommendation in paragraph six of this motion, or, alternatively, an order providing terms on which counsel for PCSSD can continue in their representation of the district in this case while PCSSD remains temporarily under direct State control, and for all other relief to which it is entitled.

Respectfully submitted,

DUSTIN McDANIEL  
Attorney General

BY: /s/ Scott P. Richardson  
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ATTORNEYS FOR STATE OF ARKANSAS AND  
ARKANSAS DEPARTMENT OF EDUCATION

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 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:

Mr. Clayton R. Blackstock  
[cblackstock@mbbwi.com](mailto:cblackstock@mbbwi.com)

Mr. John W. Walker  
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Mr. Mark Terry Burnette  
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Mr. Stephen W. Jones  
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mqpowell@odmemail.com, lfbryant@odmemail.com, paramer@odmemail.com

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 10, 2011, to the following non-CM/ECF participants:

Mr. Robert Pressman  
22 Locust Avenue  
Lexington, Mass. 02173

/s/ Scott P. Richardson  
SCOTT P. RICHARDSON

**UNITED STATES DISTRICT COURT  
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**LITTLE ROCK SCHOOL DISTRICT**

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**BRIEF IN SUPPORT OF MOTION FOR ORDER**

The Arkansas Department of Education (ADE), by and through its attorneys, Attorney General Dustin McDaniel and Assistant Attorney General Scott P. Richardson, state for their Brief in Support of Motion for Order:

On March 30, 2011, the Arkansas Department of Education sent letters to the Pulaski County School Board notifying the district's administration that it had been identified as being in fiscal distress under A.C.A. section 16-20-1904, et. seq. The PCSSD appealed that decision to the Arkansas State Board of Education ("State Board"). Ark. Code Ann. § 6-20-1905. On May 16, 2011, the State Board held a hearing to determine whether PCSSD and two other districts should remain in fiscal distress. A representative of the ADE presented to the State Board findings that PCSSD had a number of fiscal issues over the past few years that negatively impact the continuation of educational services by the district (material State fiscal audit exceptions; audit reports that found inadequate controls for reconciling bank statements and documenting funding sources for employees' salaries; misappropriation of funds; issuing blanket purchase orders exceeding the district's policy of limiting contracts to \$1,000 per vendor per month; and other issues). Exhibit A, partial transcript of May 16, 2011, State Board Meeting. The State

Board, by public vote, denied PCSSD's appeal and classified the district as in fiscal distress. *Id.* On June 10, 2011, the Arkansas Legislative Joint Auditing Committee identified significant continuing concerns regarding spending and financial management of the district.

A number of the fiscal conditions identified by the Division of Legislative Audit, several of which implicate the current Superintendent directly, have not been corrected, even though the district has been on notice of those deficiencies for some time now. The board of directors of the PCSSD is experiencing a number of problems that have eroded both their ability to address the fiscal needs of the district and the public's confidence in their decision-making ability. Some of these issues have been aired in news reports over the last several weeks. The ADE has determined that the situation in PCSSD's administration cannot be allowed to continue. For the sake of the students, parents, and staff at the district, the ADE must act to restore the public's confidence in the third largest school district in the State.

Pursuant to the authority granted to the ADE by State law, the ADE is relieving the Superintendent and Board of Directors of the Pulaski County Special School District of their authority to operate the district. This action is being taken this afternoon, Monday, June 20, 2011. Pursuant to Arkansas Code Annotated section 6-20-1909, ADE is appointing a new Superintendent, Mr. Bobby Lester, to manage the district. The appointed Superintendent will report directly to the Commissioner of Education, Dr. Tom Kimbrell. *Id.* Under Arkansas law, a district may not remain in fiscal distress for more than two consecutive school years. A.C.A. § 6-20-1908.

As the Court is aware, following the Court's entry of its Finding of Facts and Conclusions of Law on May 19, 2011, the PCSSD has filed a Notice of Appeal and joined in Little Rock School District's (LRSD) Motion to Stay the effect of the Court's Order as to the

release of State funding. PCSSD also must file this afternoon its response to the Court's Order requesting briefing on whether the M to M program funding should remain in place.

Placing the PCSSD under State control raises several significant issues related to the PCSSD's involvement in the current desegregation litigation. In short, Mr. Sam Jones's client, as of this afternoon, is no longer making decisions on its own, but is being directed by the State. This presents a potential for a conflict of interest in the management of the current litigation issues pending before this Court and the Eighth Circuit.

Given this situation, the State is seeking the Court's assistance in setting a protocol for counsel for the PCSSD to manage the litigation consistent with counsel's ethical responsibilities as well as the Attorney General's responsibilities as the State's lawyer. The State suggests that an order to the effect that appeals filed by the PCSSD will be allowed to go forward and that counsel who have served the PCSSD to date will be allowed to continue to participate in the appellate process to its conclusion and be reasonably compensated by the PCSSD in accordance with whatever contract or other arrangement that counsel had with the PCSSD prior to the action taken this afternoon.

“In fashioning and effectuating school desegregation decrees, federal courts are guided by equitable principles, and, traditionally, ‘equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.’” *Lorain NAACP v. Lorain Bd. of Educ.*, 979 F.2d 1141 (6th Cir. 1992) (quoting *Brown v. Board of Education*, 349 U.S. 294, 300, 75 S.Ct. 753, 756, 99 L.Ed. 1083 (1955) (footnote omitted)). Therefore, this Court has the authority to fashion whatever remedy it deems necessary to address the complex litigation issues that arise from State control over the PCSSD.



WHEREFORE, the State of Arkansas requests that the Court enter an order consistent with the recommendation in paragraph six of its Motion for Order, or, alternatively, an order providing terms on which counsel for PCSSD can continue in their representation of the district in this case while PCSSD remains temporarily under direct State control, and for all other relief to which it is entitled.

Respectfully submitted,

DUSTIN McDANIEL  
Attorney General

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