

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

LITTLE ROCK SCHOOL DISTRICT

PLAINTIFF

v.

4:82-CV-00866-DPM

PULASKI COUNTY SPECIAL SCHOOL
DISTRICT NO. 1, ET AL

DEFENDANTS

MRS. LORENE JOSHUA, ET AL

INTERVENORS

KATHERINE KNIGHT, ET AL

INTERVENORS

LIGHTHOUSE ACADEMIES OF
ARKANSAS, INC., ET AL.

INTERVENORS

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE
IN SUPPORT OF LRSD'S AND JOSHUA'S
MOTION FOR SUMMARY JUDGMENT

Plaintiff Little Rock School District ("LRSD") and the Joshua Intervenors ("Joshua") submit their Statement of Material Facts Not in Dispute in Support of LRSD's and Joshua's Motion for Summary Judgment pursuant to Local Rule 56.1 of the United States District Court for the Eastern District of Arkansas:

I. The Consent Decree.

A. M-to-M Stipulation.

1. The parties submitted the Stipulation for Proposed Order on Voluntary Majority to Minority Transfers ("M-to-M Stipulation") to the district court on August 26, 1986. *DN 4440*,

Ex. 1.

2. "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.” *DN 4440, Ex. 1, ¶ 1.*

3. The M-to-M Stipulation allows students in the racial majority at their school and district to transfer to a school and district where they would be in the racial minority. *DN 4440, Ex. 1, ¶ 2.* LRSD and NLRSD are majority black, and PCSSD is majority non-black. *DN 4440, Ex. 15; LRSD Ex. 76.*

4. Thus, 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.

5. The M-to-M Stipulation states that, “Students who have elected to transfer shall remain students of the host district until they choose to return to the district where they reside.” *DN 4440, Ex. 1, ¶ 7.*

6. The M-to-M Stipulation requires the State Board to “pay the full cost of transporting students opting for interdistrict transfers.” *DN 4440, Ex. 1, ¶ 12.* The State also pays a financial incentive to the sending district and the full cost of educating an M-to-M student to the receiving district. *DN 4440, Ex. 1, ¶ 13; Ex. 3, § II, ¶ E(2).*

7. The financial incentive serves to compensate the districts for recruiting and encouraging voluntary interdistrict transfers. *See Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 778 F.2d 404, 436 (8th Cir. 1985) (ordering the State of Arkansas “to pay benefits to the sending and receiving schools for the interdistrict transfers . . .”); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 934 F.Supp. 299, 301 (E.D. Ark. 1996) (interpreting the 1989 Settlement Agreement “in a manner that will promote voluntary interdistrict transfers,

particularly to interdistrict schools.”), *aff’d Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 109 F.3d 514 (8th Cir. 1997).

B. Magnet Stipulation.

8. The parties submitted the Stipulation for Recommendations Regarding Magnet Schools (“Magnet Stipulation”) to the district court in open court on February 17, 1987.

9. The Magnet Stipulation created six interdistrict magnet schools, four elementary schools (Carver, Williams, Booker, Gibbs), one middle school (Mann) and one high school (Parkview). *DN 4440, Ex. 2, p. 1.*

10. 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 prescribes a method for allocating magnet seats among the three districts. *DN 4440, Ex. 2, p. 5.*

11. It requires the State Board to pay the actual cost of transporting magnet students and one-half of the cost of educating magnet students. *DN 4440, Ex. 2, p. 3; Ex. 3, §II, ¶¶E(1) and (4).*

12. 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. *DN 4440, Ex. 3, §II, ¶A.*

13. The purpose of the Stipulation Magnet schools was to encourage voluntary interdistrict transfers and improve racial balance and to provide academic benefits through special programs. *See Liddell v. State of Missouri*, 731 F.2d 1294, 1310 (8th Cir. 1984) (“Before reviewing the State’s specific arguments, we observe that the utility and propriety of magnets as a desegregation remedy is beyond dispute.”).

C. The 1989 Settlement Agreement.

14. 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. *DN 4440, Ex. 3, §II, ¶¶ A, B, C, D and E.*

15. It also incorporated by reference each district's intradistrict desegregation plan and the Interdistrict Desegregation Plan ("Interdistrict Plan"), collectively referred to as, "the Plans." *DN 4440, Ex. 3, p. 1.*

16. While the 1989 Settlement Agreement noted that the Plans "hold excellent promise for achieving unitary school systems," the purpose of the 1989 Settlement Agreement was to avoid "[c]ontinued litigation regarding funding and other issues" that may "make more difficult and further delay effective implementation of the constitutional obligations of the State of Arkansas and the three Pulaski County school districts ("the Districts")." *DN 4440, Ex. 3, p. 1.*

17. Consistent with this purpose, the 1989 Settlement Agreement deals almost exclusively with funding issues, and the Plans are only mentioned incidentally. *DN 4440, Ex. 3, pp. 1, 2, 8, 13, 19.*

18. The 1989 Settlement Agreement does not include any provision pertaining to termination of funding received by the districts pursuant to the M-to-M Stipulation or Magnet Stipulation. *DN 4440, Ex. 3.*

19. The State agreed to make payments totaling \$129,750,000.00 (with the last payment due January 1, 1999) for the purpose of implementing compensatory education programs. *DN 4440, Ex. 3, §II, ¶N and § VI(A)(1).*

20. In addition to funding compensatory and remedial education programs, the 1989 Settlement Agreement required the Arkansas Department of Education (“ADE”) to monitor implementation of compensatory education programs by the districts. It provides:

The State shall be required (as a non-party) to monitor, through ADE, the implementation of compensatory education programs by the Districts. If necessary as a last resort, ADE may petition the court for modification or changes in such programs being implemented by the Districts (but not for a reduction in the agreed level of State funding). . . . ADE shall provide regular written monitoring reports to the parties and the court.

Monitoring by the State shall be independent of that of the other parties. It is being done to ensure that the State will have a continuing role in satisfactorily remediating the achievement disparities. Any recommendations made by ADE shall not form the basis of any additional funding responsibilities of the State.

DN 4440, Ex. 3, § III, ¶ A.

21. The State Board “committed” to certain principles including, “There should be remediation of the racial academic achievement disparities for Arkansas students.” *DN 4440, Ex. 3, § III, ¶ F.*

22. Consistent with that commitment, the 1989 Settlement Agreement provides:

G. Remediation of Disparities in Academic Achievement

The ADE, with the assistance of the Court's desegregation expert(s), will develop and will search for programs to remediate achievement disparities between black and white students. If necessary to develop such programs, the ADE will employ appropriately trained and experienced consultants in the field of remediation of racial achievement disparities and/or hire as staff members persons with such training and experience. The remediation of racial achievement disparities shall remain a high priority with the ADE.

DN 4440, Ex. 3, § III, ¶ G.

23. In reaching the 1989 Settlement Agreement, the districts were concerned that the State Board would retaliate or otherwise discriminate against them because of the funding

received pursuant to the agreement. See *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 83 F.3d 1013, 1018 (8th Cir. 1996).

24. To address this concern, the 1989 Settlement Agreement included the following provisions:

In addition to any payment described elsewhere in this agreement, the State will continue to pay . . . the State's share of any and all programs for which the Districts now receive State funding. The funds paid by the State under this agreement are not intended to supplant any existing or future funding which is ordinarily the responsibility of the State of Arkansas. (§ II, ¶ E.)

* * *

The State shall take no action (including the enactment of legislation) for the purpose of retaliating against the Districts (including retaliatory failure to increase State aid and retaliatory reduction in State aid) because of this Litigation or this Settlement. The State will enact no legislation which has a substantial adverse impact on the ability of the Districts to desegregate. (§ II., ¶ L.)

25. The M-to-M Stipulation, Magnet Stipulation and 1989 Settlement Agreement were approved and adopted by this Court as a consent decree on April 29, 1992. *Knight v. Pulaski County Special Sch. Dist.*, 112 F.3d 953, 954 (8th Cir. 1997).

26. The State of Arkansas is a constitutional violator and has continuing obligations pursuant to the consent decree. *Little Rock Sch. Dist. v. State of Ark.*, 664 F.3d 738, 744 (8th Cir. 2011).

27. The State's past policy of racially segregating schools and neighborhoods is among the reasons the interdistrict assignment of students in Pulaski County is governed a federal consent decree. *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 778 F.2d 404, 423 (8th Cir. 1985).

28. LRSD implemented its intradistrict desegregation plan in good faith and was declared completely unitary in 2007. *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*,

2007 WL 624054 (E.D. Ark.), *aff'd Little Rock Sch. Dist. v. North Little Rock Sch. Dist.*, 561 F.3d 746 (8th Cir. 2009). *See DN 4465*, p. 7-8; *DN 4699*, ¶ 54.

29. LRSD remains obligated to implement the interdistrict remedy set forth in the consent decree, and LRSD has complied with its interdistrict obligations.

II. Arkansas Charter Schools Act.

30. The Arkansas Charter Schools Act of 1999 ("Charter Schools Act") went into effect July 30, 1999.

31. The Charter Schools Act authorizes the State Board to approve applications for open-enrollment charter schools. *See Ark. Code Ann. § 6-23-101, et seq.*

32. Open-enrollment charter schools are public schools operated by non-profit or governmental entities based on a "charter" -- an initial five-year contract between the State Board and the operating entity. *See Ark. Code Ann. § 6-23-103(2).*

33. Open-enrollment charter schools have no boundaries and "may draw [their] students from any public school district in the state." *See Ark. Code Ann. § 6-23-103(8)(B).*

34. Public school districts are not eligible to operate open-enrollment charter schools. *See Ark. Code Ann. § 6-23-103(4)* and ADE Rules and Regulations Governing Public Charter Schools ("Charter Rules"), § 5.04 (October 2009). *DN 4440, Ex. 8.*

35. The Charter Schools Act requires the applicant to first submit its application to the local school board for the public school district where the open-enrollment charter school will be located. *See Ark. Code Ann. § 6-23-302(d)(1).*

36. If the local school board does not approve the application, the applicant may appeal to the State Board. The State Board must hear the appeal within 45 days of receipt of the

applicant's notice of appeal. *See* Ark. Code Ann. § 6-23-302(d)(2).

37. The local school board and other affected school districts may present arguments for or against the application. At the conclusion of the hearing, the State Board may approve a charter with or without conditions. The State Board's decision is final. *DN 4440, Ex. 8, §§ 9.02, 9.03 and 9.05.*

38. The Charter Schools Act authorizes the State Board to include conditions in charters related to the "geographical area, public school district, or school attendance area to be served by the program," and "the methods for applying for admission, enrollment criteria, and student recruitment and selection processes." *See* Ark. Code Ann. § 6-23-306(13) and (14)(A) and *DN 4440, Ex. 8, § 7.03.*

39. The Charter Schools Act mandates that the State Board consider the impact of a proposed open-enrollment charter school on the ability of public school districts to comply with desegregation orders or to maintain a desegregated system of public schools. *See* Ark. Code Ann. § 6-23-106.

40. The charter application, together with any conditions and requirements agreed upon by the State Board, serves as the terms and conditions of the charter. *DN 4440, Ex. 8, Charter Rules, § 3.05.*

III. Open-Enrollment Charter Schools in Pulaski County.

41. The State Board has authorized 17 open-enrollment charter schools, not including the Arkansas Virtual Academy.

42. Eleven of the 17 open-enrollment charter schools are located in Pulaski County. *LRSD Ex. 79, Kimbrell Dep. p. 95; LRSD Ex. 94, Duncan Dep. p. 31-32.*

43. Nine of the 11 open-enrollment charter schools in Pulaski County were authorized by the State Board over the objection of the LRSD, PCSSD and/or NLRSD and without approval of the Court. *DN 4440, Exs. 9, 10, 12, 24, 26-29, 37, 43, 44, 47, 48, 50, 53-57.*

44. There is no limit to the number of charter schools that can be located in Pulaski County. *LRSD Ex. 79, Kimbrell Dep. p. 124, ln 18-21.*

45. There are no restrictions on where charter schools may be located within Pulaski County. *LRSD Ex. 79, Kimbrell Dep. p. 100.*

46. It is a fundamental concept of desegregation that the state should not create segregated schools. *LRSD Ex. 81, Morris Dep. p. 20.*

47. The state board has approved charter schools knowing that based on the location of the schools the student population “could be skewed very highly to one race.” *LRSD Ex. 79, Kimbrell Dep. p. 101.*

48. The consent decree created a system of interdistrict school choice in Pulaski County intended to lessen racial disparities in individual schools in LRSD, PCSSD, and NLRSD. *DN 4440, Exs. 1-3; DN 4440, Ex. 7A, p. 5.*

49. Open-enrollment charter schools in Pulaski County are interdistrict schools of choice, meaning they have no attendance zone and only students that choose to apply for admission may be enrolled. *LRSD Ex. 79, Kimbrell Dep. p. 48, ln 11-13; DN 4440, Ex. 8, § 3.10.*

50. The Stipulation Magnet schools are interdistrict schools of choice, meaning they have no attendance zone and only students that choose to apply for admission may be enrolled. *DN 4440, Ex. 1; LRSD Ex. 79, Kimbrell Dep. p. 48, ln 11-13.*

51. The M-to-M program is system of interdistrict choice that requires students to choose to apply for admission. *DN 4440, Ex. 1.*

52. Open-enrollment charter schools in Pulaski County compete with the Stipulation Magnet schools and the M-to-M transfer program to attract students. *See DN 4699, ¶¶ 79-80; LRSD Ex. 79, Kimbrell Dep. p. 146, ln 15-22; LRSD Ex. 93, Bacon Dep. p. 33, ln 11-20.*

53. Open-enrollment charter schools in Pulaski County attract students who might otherwise participate in the magnet and M-to-M programs. *See DN 4699, ¶¶ 79-80; LRSD Ex. 79, Kimbrell Dep. p. 146, ln 15-22; LRSD Ex. 93, Bacon Dep. p. 33, ln 11-20.*

a. Open-enrollment charter schools in Pulaski County, excluding the Arkansas Virtual Academy, are authorized to enroll 5518 students in the 2011-12 school year and 5618 students through the 2014-15 school year. *LRSD Ex. 75.*

b. As of October 1, 2011, open-enrollment charter schools in Pulaski County reported enrollment of 4398 students. *LRSD Ex. 76.*

c. Seventy-one percent (71%) of LRSD students receive free or reduced priced lunches, compared to forty-three percent (43%) of open-enrollment charter school students in Pulaski County. Four Pulaski County charter schools enroll these disadvantaged students at about half the rate that LRSD does: Academics Plus (34%); Lisa Academy (36%); Estem (32%); and Lisa NLR (29%). *LRSD Ex. 76*

d. Data supplied by ADE indicates that 331 students transferred directly from a Stipulation Magnet school to an open-enrollment charter school charter school in Pulaski County from 2005-06 to 2010-11. Of these 331 students, 142 (42.95%) were black and 189 (57.1%) were nonblack. *LRSD Ex. 90, LRSD Magnet to Charter Transfers.*

e. Data supplied by ADE indicates that 20 M-to-M students transferred from an LRSD school to an open-enrollment charter school in Pulaski County from 2005-06 to 2010-11. All 20 were non-black. *LRSD Ex. 91, M-to-M to Charter Transfers*.

f. The percentage of economically disadvantaged students enrolled in the Stipulation Magnets has increased significantly from 2006-07 to 2010-11: Booker Elementary, 62% to 74.19% (+19.66%); Carver Elementary, 50% to 73.5% (+53.41%); Gibbs Elementary, 44% to 45.42% (+3.23%); Williams Elementary, 34% to 44.23% (+30.09%); Mann Middle, 41% to 56.33% (+37.40%); Parkview High, 28% to 44.71% (+59.68%). *LRSD Ex. 92, Stipulation Magnet Schools Research and Evaluation Report, 2010-2011*.

g. Booker (59% black), Carver (59% black) and Mann (56% black) are out of compliance with the requirement of the Magnet Stipulation, as interpreted by the Eighth Circuit, that Stipulation Magnets be between 50 and 55 percent black. *DN 4440, Ex. 2, p.5; Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 839 F.2d 1296,1312 (8th Cir. 1988) (Stipulation Magnets may be up to 55% black); *DN 4684, ODM 2011-12 Racial Balance Report, pp. 22 and 31*.

h. LRSD Ex. 15 is a true and correct summary of the enrollment statistics for the Pulaski County districts and open-enrollment charter schools in Pulaski County, excluding the Arkansas Virtual Academy, from 2001-02 through 2009-10 school years.

i. LRSD Ex. 76 is a true and correct summary of the enrollment statistics for the Pulaski County districts and open-enrollment charter schools in Pulaski County, excluding the Arkansas Virtual Academy, from 2010-11 through 2011-12 school years.

j. The proposed Jacksonville splinter district would have enrolled between

5,750 and 6,159 students, depending on the proposed district's final boundaries. *DN 3761, PCSSD Ex. 15, pp. 9-13.*

(i) The proposed Jacksonville splinter district enrollment projections were “based on the number of students residing in the alternative areas and attending the schools in the area,” *DN 3761, PCSSD Ex. 15, p. 15;*

(ii) Only about five percent (approximately 300) of students residing in the proposed Jacksonville splinter district would have been expected to participate in the magnet or M-to-M programs. *See (iii) below;*

(iii) For 2011-12, 2936 students transferred districts through the magnet and M-to-M programs – only 5.6% of the 52,201 students in LRSD, PCSSD and NLRSD combined. *See DN 4684, ODM 2011-12 Racial Balance Report, pp. 55-56;*

(iv) All 4398 open-enrollment charter school students in Pulaski County chose not to attend their attendance zone school, and but for charter schools, might have participated in the magnet or M-to-M programs.

54. The State Board has not required open-enrollment charter schools in Pulaski County to provide student transportation to and from school. (*LRSD Ex. 79, Kimbrell Dep. p. 39, ln 22-25*), even though charter schools receive the same amount of transportation funding per student that traditional public schools receive. *Kimbrell Dep. p. 41, ln 1-4.*

55. Open-enrollment charter schools in Pulaski County do not offer student transportation to and from school like that offered by the traditional public school in Pulaski County. *See paragraph 90, infra (districts' transportation expenditures).*

a. No open-enrollment charter school in Pulaski County transports students

to and from school on a traditional school bus operated by the charter school. *LRSD Ex. 81, Morris Dep. p. 24, ln 6-8.*

b. Estem spends approximately \$20,000 per year for between 80 and 100 students to ride Central Arkansas Transit busses to get to and from school. *Bacon Dep. p. 33, ln 21 to p. 34, ln 9.*

c. Academics Plus spends between \$3,000 and \$5,000 per year for between 7 and 15 students to ride Central Arkansas Transit busses to get to and from school. *McGill Dep. p. 22, ln 14 to p. 23, ln 25.*

d. LISA Academy and LISA Academy NLR do not provide student transportation to and from school. *DN 4440, Ex. 23, LISA App., p. 45; DN 4440, Ex. 32, LISA NLR App., p. 36.*

56. The lack of transportation has a greater impact on African-American students because they are more likely to be economically disadvantaged, and economically disadvantaged students are more likely to lack the means to provide their own transportation. *LRSD Ex. 79, Kimbrell Dep. p. 51, ln 2-23; DN 4440, Ex. 17* (“[Economically disadvantaged students] do not live in the area nor do they have the means to get to our school. Many have expressed interest but [do] not have the means to get to our school.”); *LRSD Ex. 81, Morris Dep. p. 24, ln 1-12. See generally, LRSD Ex. 77, Meredith P. Richards, Kori J. Stroub and Jennifer Jellison Holme, Can NCLB Choice Work? Modeling the Effects of Interdistrict Choice on Student Access to High-Performing Schools* (Century Foundation 2011) (“A growing body of research highlights the importance of transportation inequities, finding that transportation is a significant barrier to accessibility, particularly for non-white and low-income individuals, who are less likely to own

personal vehicles and more likely to rely on public transportation.”).

a. As a result of open-enrollment charter schools’ failure to provide transportation to and from school, many of the poorest children in Pulaski County have no way to attend a charter school. *LRSD Ex. 81, Morris Dep. p. 24, ln 1-12.*

57. Neither the State Board nor ADE has made any effort to formally evaluate the cumulative impact of open-enrollment charter schools in Pulaski County on the magnet and M-to-M programs or traditional public schools in Pulaski County.

a. Commissioner Kimbrell does not know how many students left LRSD schools for charter schools. *LRSD Ex. 79, Kimbrell Dep. pp. 28-30.*

b. Dr. Mary Ann Duncan is ADE’s Coordinator of Charter Schools. *LRSD Ex. 94, Duncan Dep. pp 9-10.* Dr. Duncan read the 1989 Settlement Agreement for the first time in preparation for her deposition and does not believe it has anything to do with her work at ADE. *Ex. 94, Duncan Dep. pp. 50-51.*

c. Duncan has never taken the requirements of the 1989 Settlement Agreement into account in any of the work she has done at the ADE. *Ex. 94, Duncan Dep. p. 51.*

d. She does not know whether or not the state has any obligations with respect to magnet schools. *Ex. 94, Duncan Dep. p. 53.*

e. She has never sought information to help her understand cumulative impact of charter schools on LRSD. *Ex. 94, Duncan Dep. p. 56.*

g. Duncan’s office does not make any effort to measure the likely impact of any charter school. *Ex. 94, Duncan Dep. p. 60.*

IV. Remediation of the Racial Achievement Disparity.

58. There continues to be a significant racial achievement disparity in Pulaski County. *LRSD Ex. 78, Armor Ach. Rpt., pp. 3-6; LRSD Ex. 79, Kimbrell Dep. p. 108, ln 11-20, p. 109, ln 16-21; Morris Dep. p. 28, ln 11-19.*

59. The State has not identified or developed programs that successfully remediate the racial achievement disparity in Pulaski County. *LRSD Ex. 79, Kimbrell Dep. p. 112, ln 2 to p. 113, ln 24; p. 115, ln 16 to p. 116, ln 15; p. 117, ln 1-5.*

60. ADE has no programs in place specifically designed to remediate the racial achievement disparity in Pulaski County. *LRSD Ex. 79, Kimbrell Dep. p. 112, ln 2 to p. 113, ln 24; p. 115, ln 16 to p. 116, ln 15; p. 117, ln 1-5; LRSD Ex.95, Bednar Dep. p. 71, ln 9-14.*

V. Monitoring the Districts' Efforts to Remediate the Racial Achievement Disparity.

61. The consent decree includes the Allen Letter as a substantive obligation of ADE related to the vindication of constitutional rights. *See DN 3360, p. 2* (“Thus, the Allen letter contains substantive terms of a consent decree, which relate to the vindication of constitutional rights.”).

62. ADE has not produced a monitoring report as required by the Allen Letter since 2 February 1998 (*DN 3119*), although the Allen Letter required ADE to “provide a written report to the parties and the Court on a semiannual schedule . . . on February 1 (or nearest workday) and July 15 (or nearest workday).” *LRSD Ex. 80, Allen Letter, p. 8.*

63. ADE does still file a monthly “project management tool” (“PMT”) intended to “enable ADE to stay on track as it sets in motion both the development phase and the subsequent action steps that constitute the implementation phase.” *DN 2045, p. 5.*

64. The PMT is not a monitoring report. *See LRSD Ex. 81, Morris Dep. p.34.*

65. The 1 September 2011 PMT documents ADE's failure to follow-through on developing a revised monitoring plan. It includes the following entry:

XVIII. Work with the Parties and ODM to Develop Proposed Revisions to ADE's Monitoring and Reporting Obligations

* * *

A court decision regarding the LRSD Unitary Status is expected soon. . . . The next meeting about the Desegregation Monitoring and Assistance Plan will be held in August, 2002, after school starts.

DN 4615, p.355.

66. The 1 September 2011 PMT documents the fact that the August 2002 meeting never occurred and that ADE took no additional steps to develop a monitoring plan to replace the Allen Letter. *DN 4615, p.355.*

67. Commissioner Kimbrell is the person primarily responsible for determining whether the State is meeting the requirements of the 1989 Settlement Agreement. *LRSD Ex. 79, Kimbrell Dep. p. 18.*

68. Kimbrell understands that the State is a constitutional violator and that the consent decree is part of the remedy for the State's constitutional violations, but he has never received a report about the status of ADE's compliance with the 1989 Settlement Agreement. *LRSD Ex. 79, Kimbrell Dep. p. 23-24.*

69. William Morris is the Associate Director for Desegregation and the Director of Federal and State Monitoring for the Arkansas Department of Education. *See LRSD Ex. 81, Morris Dep. pp.26, 35 and 60.*

70. Within ADE, Morris has had primary responsibility for the Pulaski County desegregation case since 2001. *LRSD Ex. 81, Morris Dep. p. 10.*

71. Although Ark. Code Ann. § 6-23-106(a) requires that “the State Board of Education shall carefully review the potential impact of an application for a public charter school on the efforts of a public school district or public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools,” Morris has never been a part of that required effort. *LRSD Ex. 81, Morris Dep. p. 13.*

72. Although Ark. Code Ann. § 6-23-106(b) requires that “[t]he state board shall attempt to measure the likely impact of a proposed public charter school on the efforts of public school districts to achieve and maintain a unitary system,” Morris had no role in determining whether Estem, for example, would have any potential impact on the ability of LRSD to create and maintain a unitary system of public schools. *LRSD Ex. 81, Morris Dep. p. 13.*

73. Morris cannot explain why the person responsible for desegregation at ADE would have no role in these desegregation related decisions about charter schools “other than I wasn’t asked.” *LRSD Ex. 81, Morris Dep. p. 13-14.*

74. Morris is not a member of the in-house team at ADE that reviews charter applications. *Duncan Dep. p. 61-62.*

75. Oliver Dillingham is the Program Manager of the Equity Center at the ADE. *Dillingham Dep. p. 6, ln 11-16.* Dillingham is one of the State’s representatives on the Magnet Review Committee. *Dillingham Dep. p. 14, ln 23 – p. 15, ln 1.* Dillingham believes that the six Stipulation Magnet Schools are a valuable asset and should be continued. *Dillingham Dep. p.16, ln 3-11.*

76. Dillingham has never been asked to participate in the ADE's required review of the impact of charter schools on any school district's ability to create and maintain a unitary system of desegregated public schools. *Dillingham Dep. p. 19, ln 4-8.*

77. Dillingham has never been asked to participate in the ADE's required effort to measure the likely impact of a proposed charter school on a school district's ability to achieve and maintain a unitary school system. *Dillingham Dep. p. 19, ln 9-13.*

78. Dillingham has never been involved in the effort required of the State Board to determine whether any charter school will have a negative effect on any Pulaski County school district. *Dillingham Dep. p. 19, ln 17-22.*

79. Dillingham's office deals with equity. Morris' office deals with desegregation. There is no other office in the ADE that deals with desegregation issues or equity issues. *Dillingham Dep. p. 19, ln 23 – p. 20, ln 3.*

80. Dillingham and Morris, both African-Americans, work in the only majority African-American department at the ADE. *Dillingham Dep. p. 7, ln 12-19.*

81. Like Morris, Dillingham has never been consulted concerning whether any charter school should be approved or rejected, and he plays no role on the ADE's Charter Review Council. *Dillingham Dep. p. 26, ln 21 – p. 27, ln 3; p. 28, ln 1-5.*

VI. Anti-Retaliation Clause – Transportation Funding.

82. At the time of the 1989 Settlement Agreement, the State funded student transportation as a separate grant based on the number of students transported. *DN 4440, Ex. 69, p. 3.*

83. In 1997, the State adopted a more complex formula for calculating transportation

aid but that formula continued to be based on the number of students transported with adjustments for population density and other factors. *DN 4440, Ex. 69, p. 3; see Act 1133 of 1997.*

84. Effective July 1, 2005, the State stopped distributing transportation aid as a separate grant and made transportation aid a component of foundation funding distributed based on the number of students -- average daily membership ("ADM"). *DN 4440, Ex. 69, p. 3; LRSD Ex. 72, pp. 61, 72 and 79; see Act 2138 of 2005.*

85. At the time of the 1989 Settlement Agreement, transportation aid was a "program" for purposes of section II, paragraphs E and L, of the 1989 Settlement Agreement.

86. Transportation is an expense that districts must bear. *DN 4440, Ex. 71, p. 56* ("The Education Committees have determined that state-funded transportation for public education may be a necessary component to providing students with an equitable opportunity for an adequate education to the extent that a student would not otherwise be able to realize this opportunity but for such transportation being provided by the state."); *LRSD Ex. 79, Kimbrell Dep. p. 128, ln 25 to p. 129, ln 1-5.*

87. Assuming finite funds, transportation costs decrease the funds available for more direct educational programs. *See LRSD v. PCSSD*, 83 F.3d at 1018.

88. The State's current method of distributing transportation aid violates the anti-retaliation clause because it funds the Pulaski County districts to a lesser degree than other districts in the state. *LRSD v. PCSSD*, 83 F.3d at 1018; *LRSD v. PCSSD*, 148 F.3d at 966-67.

89. Using ADE's 2009-10 Annual Statistical Report, school districts statewide received 73.82 percent of their actual transportation cost in transportation funding 2009-10 while

LRSD received 54.61 percent, PCSSD received 42.48 percent and NLRSD received 41.50 percent. *LRSD Ex. 82, p. 5.*

90. In 2009-10, the Pulaski County districts' actual transportation cost was \$32,276,147.82, but the districts only received \$14,073,641.15 in transportation aid. *LRSD Ex. 82, p. 7.*

91. If Pulaski County districts received the same percentage of their transportation cost as districts statewide, they would have received \$23,827,114.28 in transportation funding -- \$9,753,473.13 more than they actually received. *LRSD Ex. 82, p. 5.*

VII. Retaliation – Transportation Funding -- Failure to Increase State Aid.

92. After the Arkansas Supreme Court recalled its mandate in 2005, *see Lake View Sch. Dist. No. 25 v. Huckabee*, 220 S.W.3d 645 (Ark. 2005), the State retained Lawrence O. Picus and Associates ("Picus") "to recalibrate the existing school funding model and provide estimates of the amount of money needed to fund the system for the 2007-08 school year." *DN 4440, Ex. 72, p. 1.*

93. In their August 30, 2006 "Recalibration Report," Picus noted its recommendation that transportation funding be removed from foundation funding; that districts receive transportation funding "as separate grant" and that transportation aid should remain in foundation funding only "until the state creates a more standards- and research-based transportation funding formula." *DN 4440, Ex. 72, p. 79.*

94. Picus based this recommendation on the need to "find a way to allocate transportation funds that more accurately reflects the realities of individual school districts." *DN 4440, Ex. 72, p. 61.*

95. Picus anticipated “proposing a method of funding transportation costs that will vary by district depending on district characteristics (i.e. population density, road conditions, distances and number of students transported, etc.)” *DN 4440, Ex. 72, p. 61*.

96. The State, by all indications, accepted Picus’ recommendation. *DN 4440, Ex. 69, p. 6, citing Ex. 72, p. 80*. (noting Picus’ recommendation that transportation aid be included in foundation funding for 2007-08 “AND to be replaced by a standards-based formula in the future.” (emphasis in original)).

97. The 2007 and 2009 regular legislative sessions passed without the State adopting a standards-based transportation funding formula, although representations were made that the Bureau of Legislative Research (“BLR”) was working on a standards-based formula. *See DN 4440, Ex. 71, p. 56*.

98. Before the 2011 Legislative Session, BLR developed a standards-based formula based on route miles that was 98 percent accurate in predicting districts’ actual transportation cost. *LRSD Ex. 83, p. 12*.

99. BLR presented the formula to the House and Senate Interim Committees on Education (“Joint Committee”) on December 1, 2010. *LRSD Ex. 83 (email from Wilson)*.

100. BLR’s presentation made it clear that the Pulaski County districts, and LRSD in particular, would benefit the most from the State adopting BLR’s route miles formula. *LRSD Ex. 83, p. 11*.

a. In explaining what has been identified as LRSD Ex. 83, p. 11, to the Joint Committee, BLR identified the three districts furthest above the line representing current funding as the Pulaski County districts.

b. Even if BLR had not pointed out the three Pulaski County districts, they could be identified on LRSD Ex. 83, p. 11 based on their ADM.

c. BLR's Statewide Summary showed that, under the current formula for 2011-12, approximately \$137 million would be included in the funding matrix for transportation; however, Arkansas school districts' 2010 actual transportation cost was approximately \$176 million – a difference of approximately \$40 million. *LRSD Ex. 83, p. 11.*

d. Of that additional \$40 million in transportation funding that would be paid if the State adopted BLR's formula and fully funded transportation, approximately \$9 million would go to LRSD. *LRSD Ex. 83, p. 11.*

101. The Joint Committee recommended that only the two percent cost of living adjustment ("COLA") for transportation funding be distributed pursuant to BLR's formula. *LRSD Ex. 84, p.66.*

102. The General Assembly rejected this recommendation and adopted instead section 32 of Act 1075 of 2011. *LRSD Ex. 85, Act 1075 of 2011.*

103. Act 1075 appropriates \$500,000.00 for "supplemental education funding" that will be distributed to school districts based on the extent to which districts' transportation costs exceed the transportation component of foundation funding. *LRSD Ex. 86, ADE Rules, §§ 3 and 4.*

104. No rational basis supports the State's decision to reject BLR's standards-based funding formula for transportation.

105. School districts have widely varying transportation costs. *DN 4440, Ex. 69, p. 4, citing Ex. 72, p. 72; LRSD Ex. 96, Goff Dep. p. 45, ln 25 to p. 46, ln 9.*

106. In 2006, Picus found that per student (ADM) transportation cost varied “from a low of \$67 to a high of \$695.” *DN 4440, Ex. 69, p. 4, citing Ex. 72, p. 72.*

107. In 2008-09, the State paid \$286 per student for transportation; the statewide average transportation cost per student was \$369; and LRSD spent \$646 per student. *DN 4440, Ex. 73, p. 5.*

108. Assuming finite funds, every dollar spent on transportation is a dollar that cannot be spent on direct educational programs needed to remediate the racial achievement disparity. *See LRSD v. PCSDD, 83 F.3d at 1018.*

VIII. Retaliation – Reimbursement of Attorneys Fees.

109. ADE has failed to reimburse LRSD for its attorneys’ fees incurred to achieve unitary status as authorized by Ark. Code Ann. § 6-20-416(c).

110. LRSD first demanded payment on or about 23 December 2008 and most recently 29 July 2011. *LRSD Ex. 89, pp. 1 and 5.*

111. Neither ADE nor the AG has offered any legitimate reason for refusing to reimburse LRSD its attorneys’ fees as authorized by Ark. Code Ann. § 6-20-416(c). *LRSD Ex. 89.*

IX. Retaliation – Act 701 of 2011.

112. The State adopted Act 701 of 2011 forcing the three Pulaski County districts to submit to “forensic audits” of their desegregation funding under threat of being identified by State as in “fiscal distress” and subject to State takeover. *LRSD Ex. 88, Act 701 of 2011.*

113. ADE made no request for this additional oversight and had no evidence that additional oversight was needed. *LRSD Ex. 79, Kimbrell Dep. p. 130, ln 2-24; LRSD Ex. 96,*

Goff Dep. p. 61, ln 15 to p. 62, ln 11.

114. Act 701 was part of the Attorney General's legislative package, and it was understood that it would only apply to the Pulaski County districts. *LRSD Ex. 87, AG News Release 21 April 2011.*

115. Bill Goff was ADE's Assistant Commissioner for Fiscal and Administrative Services from July of 2008 to October of 2011. During Goff's tenure at ADE, ADE did not hire forensic accountants to review the expenditures of any Arkansas school districts other than LRSD, PCSSD and NLRSD. *LRSD Ex. 96, Goff Dep. p. 61-62.*

116. The AG released the audit reports of NLRSD and PCSSD and criticized the districts for not spending settlement funding "on desegregation purposes," *see LRSD Ex. 87, AG News Release 21 April 2011*, even though the districts have no obligation to spend settlement funding on "desegregation." *See LRSD v. PCSSD*, 921 F.2d at 1390.

117. Goff testified that only two of the twenty-five (25) districts which ADE identified as being in "fiscal distress" during his tenure did not have declining fund balances – PCSSD and NLRSD. *LRSD Ex. 96, Goff Dep. p. 17. See Ark. Code Ann. § 6-20-1901 to 1911.*

118. The State Board identified PCSSD and NLRSD as districts in fiscal distress even though they had balanced budgets and did not have declining fund balances. *LRSD Ex. 96, Goff Dep. p. 15-17. See Ark. Code Ann. § 6-20-1904.*

119. The State Board must "consolidate, annex, or reconstitute any school district that fails to remove itself from the classification of a school district in fiscal distress within two (2) consecutive school years" Ark. Code Ann. § 6-20-1908(i).

120. The transfer of more affluent students to charter schools has had an impact on

Carver Magnet School. *Barksdale Dep. p. 44, ln 25 – p. 46, ln 7.* The increase in the percentage of free and reduced lunch students at Carver from 50 percent to about 74 percent is at least partly the result of more affluent parents leaving Carter for charter schools. *Barksdale Dep. p. 44, ln 3 – 15.* Students who are able to provide their own transportation, for example, have been replaced by students who ride the bus, are economically disadvantaged, and are less able to participate in the PTA. *Barksdale Dep. p. 45, ln 10 – 19.*

121. The percentage of free and reduced lunch students has been increasing recently at Booker Magnet School as well. *Carson Dep. p. 40, ln 15 – 24.* In addition to the increase of percentage of poverty students at Booker, students leaving Booker are more likely to be proficient on the state benchmark exams, leaving Booker with a greater concentration of students who are not proficient on the benchmark exams. *Carson Dep. p. 50, ln 11 – 19.*

122. The free and reduced lunch rate at Mann Magnet has also increased in recent years. *Boykin Dep. p. 58, ln 25 – p. 59, ln 5.*

Respectfully submitted,

LITTLE ROCK SCHOOL DISTRICT

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CERTIFICATE OF SERVICE

I certify that on February 14, 2012, 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 parties of record.

/s/ Christopher Heller