

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

LITTLE ROCK SCHOOL DISTRICT

PLAINTIFF

v.

4:82-CV-0866-DPM

PULASKI COUNTY SPECIAL SCHOOL
DISTRICT NO. 1, ET AL

DEFENDANTS

MRS. LORENE JOSHUA, ET AL

INTERVENORS

KATHERINE KNIGHT, ET AL

INTERVENORS

LRSD'S AND JOSHUA'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Little Rock School District ("LRSD") and the Joshua Intervenors ("Joshua") for their Motion for Summary Judgment state:

1. LRSD incorporates by reference its Motion to Enforce 1989 Settlement Agreement, *DN 4440*, the exhibits (1-74) attached thereto, and its Memorandum Brief in Support of Motion to Enforce 1989 Settlement Agreement, *DN 4442*.

2. This Court should grant the LRSD and the Joshua summary judgment finding as a matter of law that the State of Arkansas, the State Board of Education ("State Board") and/or the Arkansas Department of Education ("ADE") (collectively, the "State") violated the consent decree by:

a. Authorizing open-enrollment charter schools in Pulaski County without Court approval;

b. Failing to identify or develop programs to remediate the racial

achievement disparity;

c. Abandoning its monitoring responsibilities;

d. Adopting a new system of transportation funding that funds the Pulaski County districts to a lesser degree than other districts in the state; and,

c. Retaliating against the Pulaski County districts by:

(1) Failing to adopt a standards-based formula for the distribution of transportation funding;

(2) Failing to reimburse LRSD for its attorneys' fees incurred in obtaining unitary status; and,

(3) Passing Act 701 of 2011 and subjecting the Pulaski County districts to "forensic audits" purportedly to ensure that settlement funds are being spent on "desegregation."

Events Occurring After Filing of the Motion to Enforce¹

3. **Jacksonville Lighthouse Expansion.** On January 14, 2011, the Arkansas State Board of Education ("State Board") approved an amendment to the charter of Jacksonville Lighthouse Charter School to expand its enrollment from 644 to 1019 by the 2015-2016 school year.

4. **NACSA Report.** On February 14, 2011, the National Association of Charter School Authorizers ("NACSA") submitted a report to the State Board. The report identified a number of shortcomings in the State Board's charter approval process. It also found that the State had no comprehensive system for monitoring charter schools and recommended that a

¹This motion incorporates, amends and supplements LRSD's Motion to Enforce 1989 Settlement

system be adopted that would allow the State Board “to make rigorous and standards-based renewal, revocation, and intervention decisions.” *LRSD Ex. 97, NACSA Report, p. 8.*

5. **STEM Expansion.** On March 14, 2011, the State Board approved an amendment to the charter of STEM Elementary to expand its enrollment from 360 to 462 students.

6. **Revocation of UCPC Charter.** Also on March 14, 2011, the State Board revoked the charter of Urban Collegiate Public Charter (“UCPC”) due to inadequate enrollment and inaccurate reporting of the school’s enrollment.

7. Jackie Jackson, UCPC’s founder and board chairman, reported that enrollment dropped by 100 students after school started because parents and students did not like the school’s rules. As reported in the *Arkansas Democrat-Gazette* (24 February 2011), Jackson stated that some parents did not want to pay for the school’s uniform which included a blazer. Other parents balked at the school’s demand that they actively monitor their child’s homework. And still other families thought the all-boys school was an alternative school or a school for students who don’t do well in a traditional academic setting. Those boys were “weeded out,” Jackson said. *LRSD Ex. 98.*

8. Jackson’s comments confirm that charter schools can and do “weed out” economically disadvantaged students and other students who are difficult to educate.

9. **Retaliation.** The General Assembly passed Act 395 of 2007 to provide a means for modifying the 1989 Settlement Agreement to end the State’s funding obligations. Since the passage of Act 395, LRSD has engaged in efforts to preserve key components of the 1989

Agreement. *DN 4440 and 4442.*

Settlement Agreement and to challenge the State Board's unconditional approval of open-enrollment charter schools in Pulaski County as a violation of the 1989 Settlement Agreement. The State has retaliated against LRSD in violation of Section II, Paragraph L of the 1989 Settlement Agreement.

10. LRSD's efforts to preserve and enforce the 1989 Settlement Agreement include, but are not limited to, appearing before committees of the Arkansas General Assembly, appearing before the State Board, making public statements in support of the 1989 Settlement Agreement, and filing its Motion to Enforce 1989 Settlement Agreement.

11. The State has committed the following acts of retaliation against LRSD:

(a) The Attorney General has failed and refused to reimburse LRSD for its attorneys' fees incurred to achieve unitary status as authorized by Ark. Code Ann. § 6-20-416(c);

(b) At the request of the Attorney General and during the stay of discovery ordered by this Court (*DN 4493*), the General Assembly passed Act 701 of 2011 forcing the three Pulaski County districts to submit to a "forensic audit" directed by the Attorney General under the threat of being declared in "fiscal distress." The audit included recorded interviews of numerous LRSD administrators by representatives (including lawyers) of Navigant, the company hired by the Attorney General to conduct the audit, sometimes in the presence of lawyers from the Attorney General's office;

(c) During the 2011 legislative session, the General Assembly refused to adopt a transportation funding formula based on route miles developed by the Bureau of Legislative Research ("BLR") that BLR testified was 98 percent accurate in predicting school districts transportation costs because the three Pulaski County districts would receive the greatest

proportion of new funding required if the formula was adopted and transportation was fully funded; and,

(d) The Attorney General and other state actors, including the University of Arkansas, Department of Education Reform, Office of Educational Policy (“OEP”), along with private persons and entities, have engaged in an orchestrated public relations campaign designed to discredit desegregation efforts in Pulaski County generally and LRSD specifically that has created something like the “hysterical political atmosphere” surrounding desegregation reminiscent of the 1960’s, *see Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 778 F.2d 404, 416 (8th Cir. 1985).

Transportation Funding

12. The State adopted its current method of funding transportation in 2005 (Act 2138 of 2005). Beginning in 1961 (Act 242 of 1961), transportation was funded based on the number of students transported. In 1997 (Act 1133 of 1997), the State enacted a more complicated funding system, but the system was still based on the number of students transported. *DN 4440, LRSD Ex. 69, pp. 4-5*. In 2005, the State abandoned its transportation funding program and made transportation funding a component of foundation funding and distributed transportation funding to school districts on a per student basis regardless of the number of students transported or the amount of route miles. *DN 4440, LRSD Ex. 69, pp. 4-5*.

13. Transportation funding was a “program” pursuant to Section II, Paragraph E of the 1989 Settlement Agreement. *See Docket No. 2967* (“In addition, the State funded other programs such as Transportation Aid . . .”). Section II, Paragraph E(6) requires the State to continue to pay LRSD the “State’s share of any and all programs for which the Districts now

receive State funding.” As interpreted by the Court of Appeals for the Eighth Circuit, this provision is violated when a change in the funding system “funds the Pulaski County districts to a lesser degree than other districts in the state.” *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 83 F.3d 1013, 1018 (1996).

14. The transportation funding system adopted in 2005 is neither fair nor rational and funds LRSD to a lesser degree than other districts in the state. 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.*

15. 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.*

16. 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.*

17. LRSD’s higher than average transportation cost results from its implementation of the 1989 Settlement Agreement and efforts to mitigate the adverse impact of continuing residential segregation within Little Rock caused by the acts and omissions of the State and defendant districts.

Summary Judgment

18. As to each of the State's violations, the material facts are not in dispute, and the Court may construe the consent decree as a matter of law. Accordingly, LRSD and Joshua should be granted summary judgment. Fed.R.Civ.P. 56(a).

19. LRSD submits the following additional exhibits in support of its Motion for Summary Judgment (numbered consecutively with the exhibits submitted with LRSD's and Joshua's Motion to Enforce 1989 Settlement Agreement):

LRSD Ex. 75, Pulaski County Charters Authorized Enrollment;

LRSD Ex. 76, Enrollment 2010-11 and 2011-12;

LRSD Ex. 77, Richards, et al, Interdistrict Choice Research;

LRSD Ex. 78, Armor Achievement Report;

LRSD Ex. 79, Kimbrell Deposition;

LRSD Ex. 80, Allen Letter;

LRSD Ex. 81, Morris Deposition;

LRSD Ex. 82, ADE Annual Statistical Report, 2009-10, excerpt;

LRSD Ex. 83, BLR Transportation Power Point, 1 December 2010;

LRSD Ex. 84, Joint Committee Adequacy Report, 1 November 2010;

LRSD Ex. 85, Act 1075 of 2011;

LRSD Ex. 86, ADE Rules on Supplemental Transportation Funding;

LRSD Ex. 87, AG Press Release, 21 April 2011;

LRSD Ex. 88, Act 701 of 2011;

LRSD Ex. 89, LRSD Attorney Fee Correspondence;

LRSD Ex. 90, LRSD Magnet to Charter Transfers;

LRSD Ex. 91, M-to-M to Charter Transfers;

LRSD Ex. 92, Stipulation Magnet Schools Research and Evaluation Report, 2010-2011;

LRSD Ex. 93, Bacon Deposition;

LRSD Ex. 94, Duncan Deposition;

LRSD Ex. 95, Bednar Deposition;

LRSD Ex. 96, Goff Deposition;

LRSD Ex. 97, NACSA report;

LRSD Ex. 98, ADG 24 February 2011, UCPC Problems;

LRSD Ex. 99, Dillingham Deposition;

LRSD Ex. 100, Barksdale Deposition;

LRSD Ex. 101, Carson Deposition;

LRSD Ex. 102, Boykin Deposition.

20. LRSD's and Joshua's Memorandum Brief in Support of Motion for Summary Judgment is hereby incorporated by reference as if set forth word for word herein.

WHEREFORE, LRSD and Joshua respectfully request:

1. That LRSD's Motion to Enforce 1989 Settlement Agreement be amended and supplemented as stated herein;
2. That LRSD's and Joshua's Motion for Summary Judgment be granted;
3. That the State Board be enjoined from approving any new open-enrollment charter school in Pulaski County or authorizing an increase in enrollment of any existing open-enrollment charter school in Pulaski County, except upon approval of the Court and on such terms and conditions necessary to ensure compliance with the "terms and spirit" of the consent

decree;

4. That a remedial hearing be scheduled and that at the conclusion of such hearing the State Board be directed to amend the charters of open-enrollment charter schools in Pulaski County to include such terms and conditions determined by the Court to be necessary to ensure compliance with the "terms and spirit" of 1989 Settlement Agreement;

5. That the State be directed, retroactively and until otherwise ordered by the Court, to pay LRSD, PCSSD and NLRSD the sending district incentive payment required by the M-to-M Stipulation for their students who attend(ed) an open-enrollment charter school in Pulaski County;

6. That ADE be directed to identify or develop programs, policies and/or procedures designed to remediate the racial achievement disparity in Pulaski County;

7. That ADE be directed to develop a revised plan for monitoring remediation of the racial achievement disparity including, but not limited to, assisting the districts with the preparation of formal, written evaluations of the programs being implemented by them to remediate the racial achievement disparity;

8. That ADE be directed to pay LRSD, PCSSD and NLRSD the same percentage of their transportation costs that it paid to other Arkansas school districts from 2005-06 through 2010-11;

9. That ADE be directed to pay transportation aid to LRSD, PCSSD and NLRSD based on BLR's standards-based formula for 2011-12 and future years;

10. That ADE be directed to pay LRSD \$250,000.00 as reimbursement for its attorneys' fees expended in attaining unitary status as authorized by Ark. Code Ann. § 6-20-

416(c);

11. That ADE and the Attorney General be enjoined from enforcing Act 701 of 2011 against LRSD, PCSSD and NLRSD;

12. That ADE and the State Board be enjoined from consolidating, annexing or reconstituting LRSD, PCSSD or NLRSD under state law except as authorized by this Court after notice and hearing;

13. That the State be directed to pay LRSD and Joshua their costs and attorneys' fees expended herein; and,

14. That LRSD and Joshua be awarded all other just and proper relief to which they may be entitled.

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