

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

LITTLE ROCK SCHOOL DISTRICT

PLAINTIFF

v.

No. 4:82-cv-866 DPM

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

DEFENDANTS

MRS. LORENE JOSHUA, et al.

INTERVENORS

KATHERINE KNIGHT, et al.

INTERVENORS

RESPONSE TO STATEMENT OF FACTS

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 Response to LRSD and Joshua's Statement of Facts:

1. Admitted. The M to M Stipulation was entered in response to the Eighth Circuit's 1985 decision in this case. *LRSD 1985*, 778 F.2d 404, 436 (8th Cir. 1985).
2. Admitted.
3. Admitted, however, "racial majority" is determined by comparing the percentage of black students to the percentage of non-black students in the district. When the M-to-M Stipulation was entered, NLRSD was majority non-black. NLRSD became majority black almost ten years later in the 1994-1995 school year. Docket Entry ("DE") 4684, ODM Enrollment Report, p. 46. When the M-to-M Stipulation was entered, PCSSD was close to 20% black. It is now twice that at 43% black. DE 4684, ODM Enrollment Report, p. 17.
4. Admitted.
5. Admitted.

6. Admitted. The M-to-M Stipulation's funding provisions (like the 1989 Settlement Agreement and the Magnet Stipulation) is based on an education funding system that has long since been abandoned. From the 1987-88 school year through the 2009-10 school year (23 years) the LRSD received from the State over \$71 million in M-to-M Incentive Funding; over \$65 million in Magnet and M-to-M transportation costs; and over \$247 million in magnet school funding. ADE Ex. 1, Summary of State Cost; ADE Ex. 2, Payment History.

7. Admitted that the payment of the financial incentive was ordered to entice the school districts to participate in the M-to-M program.

8. Admitted. The Magnet Stipulation was adopted by the Court on March 4, 1987. *LRSD v. PCSSD*, 659 F.Supp. 363 (E.D.Ark. 1987).

9. Admitted in part. The six stipulation magnet schools existed and were functioning in LRSD long before the magnet stipulation was entered. The magnet stipulation designated those schools as the chosen "stipulation magnets." *Clark v. Board of Educ. of Little Rock School Dist.*, 705 F.2d 265, 269-270 (8th Cir. 1983).

10. Admitted.

11. Admitted.

12. Admitted, although, as noted above, the funding provisions in the Magnet Stipulation refer to an education funding system that has long been abandoned by the State.

13. Admitted. ADE notes that the primary goal was to improve racial balance in LRSD. *But see, Clark v. Board of Educ. of Little Rock School Dist.*, 705 F.2d 265, 269 fn. 6 (8th Cir. 1983).

14. Denied, The 1989 Settlement Agreement incorporates portions of the Magnet and M-to-M Stipulations. The primary purpose of the 1989 Settlement Agreement was to settle what

financial liability would be required of the State relative to the districts' unitary status efforts in the wake of the 1985 decision by the Eighth Circuit. *LRSD v. PCSSD*, 921 F.2d 1371, 1376 (8th Cir. 1990)(“[The parties] also submitted a separate but related document called the ‘settlement agreement,’ settling the financial liability of the State of Arkansas for something over one hundred million dollars.”).

15. Denied. While the 1989 Settlement Agreement mentions the then existing desegregation plans of the school districts, it did not incorporate those plans. They and the Interdistrict Desegregation Plan were separate agreements to which the State was not a party or a signatory.

16. The 1989 Settlement Agreement speaks for itself. The ultimate goal was to support the school districts' unitary status efforts, in particular with regard to student assignments.

17. Admitted.

18. Admitted. ADE notes that the 1989 Settlement Agreement also does not include any provision pertaining to continuation of funding for the districts beyond unitary status of the districts.

19. Admitted, what compensatory education programs would be adopted was left to the discretion of the school districts.

20. Admitted.

21. Admitted.

22. Admitted.

23. ADE admits that the 1989 Settlement Agreement contained provisions related to “Continuation of Existing Funding” and “Prohibition of Punitive Action” and denies the remainder of paragraph 23 of LRSD and Joshua’s Statement of Facts.

24. ADE admits that the 1989 Settlement Agreement contains the quoted language and denies the remainder of paragraph 24 of LRSD and Joshua’s Statement of Facts.

25. Admitted that the 1989 Settlement Agreement was approved and adopted by the District Court on January 18, 1991. DE 1418, Jan. 18, 1991 Order approving settlement agreement. As noted above, however, the M-to-M Stipulation and the Magnet Stipulation had been adopted by the Court five years prior to that. *LRSD v. PCSSD*, 659 F.Supp. 363, 369 (E.D. Ark. 1987).

26. ADE admits that the Court held in 1984 that the State of Arkansas had violated the Constitution and that the State Board of Education and the ADE agreed to continuing obligations under the 1989 Settlement Agreement; ADE denies the remainder of paragraph 26 of LRSD and Joshua’s Statement of Facts. In particular, ADE denies LRSD’s suggestion that the State of Arkansas is currently acting in violation of the equal protection provisions of the U.S. Constitution as relates to students in Pulaski County.

27. ADE admits that the District Court found in 1984 that the State of Arkansas had violated the Constitution. Most of the violations by the State found by the Court predated the 1984 opinion by twenty to thirty years. *LRSD v. PCSSD*, 778 F.2d 404, 443 (8th Cir. 1985)(Arnold, J. concurring in part and dissenting in part)(“Even were it correct that pro-segregation turmoil of the late 1950’s somehow fostered white flight, this phenomenon ended long before the 1973 implementation of desegregation and could at most account for the increase in the percentage of black students to 48%, which was the black percentage in LRSD in 1973”).

28. Admitted. *But see LRSD v. PCSSD*, 237 F.Supp.2d 988, 1008 (E.D.Ark. 2002)(quoting Judge Susan Webber Wright: “Yet the major complainer, the chief whiner, the number one barrier to a legitimate declaration of a unitary desegregated school system is the victorious complaining party, the Little Rock School District.”)

29. Admitted to the extent that LRSD has not been formally released from participating in the Magnet and M-to-M programs.

30. Admitted. Act 890 of 1999.

31. Admitted.

32. Admitted in part, the type of entities authorized by law to operate open-enrollment charter schools is more limited than LRSD and Joshua suggest. Ark. Code Ann. § 6-23-103.

33. Admitted. ADE notes, however, that LRSD appears to be citing a superseded version of the code. The current law that relates to this paragraph is now codified at Arkansas Code Annotated § 6-23-103(8)(A)(ii) (Repl. 2011).

34. Admitted. Public school districts are authorized to operate Conversion Charter Schools and Limited Charter Schools. Ark. Code Ann. § 6-23-201, *et seq.* & 6-23-601. LRSD currently operates one conversion charter school (Cloverdale Aerospace Conversion Charter School) and NLRSD operates one as well (Ridgeroad Conversion Charter School). LRSD has operated another conversion charter school: Felder Academy. PCSSD has applied to operate conversion charter schools, but those applications have not been approved.

35. Admitted.

36. Admitted.

37. Admitted, except as to conditions that may be placed on a charter upon approval by the State Board. The law governing the State Board's approval of open-enrollment charter schools is Arkansas Code Annotated § 6-23-303. The statute does not authorize the State Board to place "conditions" on charter applications. The statutes do authorize the State Board to notify an applicant of reasons for disapproval of a charter and give the applicant another opportunity to resubmit its application to the State Board. Ark. Code Ann. § 6-23-305. The State Board approved a revised set of regulations for charter schools on December 12, 2011. Ex. 3, Revised Charter School Rule. The new regulations go into effect March 12, 2012. The conditions language in the superseded version of the State Board Regulations was based upon the former wording of Ark. Code Ann. § 6-23-103(1) and is no longer valid. Former Ark. Code Ann. § 6-23-103(1), in pertinent part, defined "Charter" as a "performance-based contract for an initial five-year period that converts a public school to a charter school or authorizes the creation and *conditional operation* of an open-enrollment charter school . . ." (emphasis added). However, the phrase, "conditional operation" was removed by Act 736 of 2007.

38. Denied. State law does not authorize the State Board to, in effect, rewrite a charter application as suggested by LRSD and Joshua. The code provision that LRSD and Joshua partially quote does not provide the State Board authority to unilaterally select the location of a charter school. In addition, State and Federal law have specific requirements regarding enrollment of students in charters, i.e. it must be open to all students. See, e.g., Ark. Code Ann. § 6-23-306(6), (14); 20 U.S.C. § 7221i(1)(G), (H); 34 C.F.R. § 100.3,

39. Arkansas Code Annotated section 6-23-106 speaks for itself.

40. Admitted, except as to conditions.

41. Denied, the State Board has authorized seventeen open-enrollment charter schools that are *currently operating* in the State (including the Arkansas Virtual Academy). The State Board has authorized at least six open-enrollment charter schools whose charters were later revoked by the State Board or who voluntarily surrendered their charters and are no longer operating in the State; including at least one in Pulaski County (Urban Collegiate Public Charter School).

42. Admitted.

43. LRSD objected to the following charter schools: Friends Academy of Health and Environmental Sciences Charter School; Little Rock Preparatory Academy; Little Rock Urban Collegiate Prep for Young Men; e-STEM Elementary, Middle and High Public Charter Schools; Life Academy Charter School; Covenant Keepers College Preparatory Charter School; LISA Academy; Academics Plus Charter School; and Wings of Eagle Charter School Academy. The applications for Friends Academy, Life Academy, and Wings of Eagle Charter Schools were denied by the State Board. LRSD supported the Dreamland and SIATech Charter School applications which were granted by the State Board. ADE is not aware of records indicating that NLRSD has objected to any open-enrollment charter schools. PCSSD opposed the Jacksonville Lighthouse Charter School and LISA North Little Rock Charter School. PCSSD applied for one conversion charter school (STAR Academy) and the application was denied by the State Board. ADE Ex. 4, LRSD Charter Written Objections.

44. Admitted.

45. Admitted.

46. ADE denies that the State has engaged in any form of segregation since before the 1989 Settlement Agreement.

47. Admitted. ADE denies that this violates the U.S. Constitution in any way. *See Missouri v. Jenkins*, 515 U.S. 70, 212-213, 115 S.Ct. 2038, 2065 (1995)(Thomas, J. concurring)(“there is no reason to think that black students cannot learn as well when surrounded by members of their own race as when they are in an integrated environment”).

48. ADE admits that the M-to-M and Magnet programs are a type of limited, voluntary school choice in Pulaski County. ADE, however, understands the purpose of these programs to have been to attract non-black students into LRSD from PCSSD and NLRSD and for LRSD to be able to send black students to PCSSD and NLRSD in order to stabilize the overall percentage of African-American students in LRSD. ADE denies the remainder of paragraph 48 of LRSD and Joshua’s Statement of Facts.

49. Admitted. ADE notes however that open-enrollment charter schools can, and often do, draw their students from anywhere in the State. Magnet and M-to-M, however, are limited to Pulaski County.

50. Denied. The magnet stipulation provided a *limited* system of interdistrict choice. The Magnet Stipulation allocates seats in the stipulation magnet schools according to a set schedule, including agreed upon percentages allocated for students in each district. *LRSD v. PCSSD*, 659 F.Supp. 363, 371 (E.D.Ark. 1987). It also limits enrollment on a binary classification of black and non-black. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 734, 127 S.Ct. 2738, 2760 (2007)(stating that “[c]lassifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of our precedents and our Nation’s history of using race in public schools, and requires more than such an amorphous end to justify it.”).

51. Denied. The M-to-M program is a *limited* system of interdistrict choice. It limits participation solely by a binary (black/non-black) classification of students. African-American students in PCSSD and NLRSD cannot participate in M-to-M with LRSD. Non-black students in LRSD cannot participate in M-to-M with PCSSD or NLRSD.

52. Admitted in part. ADE notes, for example, that African-American students who live in PCSSD and attend Jacksonville Lighthouse are prohibited from participating in the M-to-M Program and may only participate in the Magnet program to the extent that space is available for African-American students from their district. This effect exists for all students relative to these programs. Also, as will be explained below, every LRSD school is in competition with these programs due to the policies of the LRSD.

53. ADE admits that open-enrollment charter schools must compete for students like all other schools in Pulaski County. Neither LRSD nor Joshua, however, have presented any proof that any students who attend open-enrollment charter schools would have chosen to attend a stipulation magnet school or to participate in the M-to-M program if the open-enrollment charter school had not been available. Similarly, neither LRSD nor Joshua have presented any proof that any students currently attending open-enrollment charter schools would choose to attend a stipulation magnet school or participate in the M-to-M program if the charter school were no longer available. The limits on students' ability to choose to participate in the stipulation magnet and M-to-M programs limit the manner in which the open-enrollment charter schools "compete" for students with these programs, and vice-versa.

- a. Admitted. ADE notes that this assumes that all of these open-enrollment charter schools will remain open through 2014-15.

b. Admitted in part. This figure does not include the School for Integrated Academics and Technologies (“SIATech”) that began operation in the current (2011-12) school year with the approval of LRSD. SIATech’s October 1 enrollment was 168 students, 77.9% of whom were African-American, 100% of whom qualified for free or reduced lunches.

<https://adedata.arkansas.gov/statewide/>

c. Admitted, except as to the Free and Reduced Lunch rates of the open-enrollment charter schools. For the 2011-12 school year, forty-six (46%) of the students enrolled in open-enrollment charter schools in Pulaski County were identified as free and reduced lunch students. The total numbers are as follows:

School	FRL Percentage
Academics Plus	33.71%
Covenant Keepers*	80.25%
Dreamland Academy*	95.65%
eSTEM Elementary	35.19%
eSTEM Middle	29.42%
eSTEM High	30.53%
Jacksonville Lighthouse	57.78%
Lisa Academy	35.56%
Lisa Academy North	28.67%
LR Preparatory Academy*	80.37%
SIA Tech*	100%

*Open-enrollment public charter schools with higher FRL % than LRSD
<https://adedata.arkansas.gov/statewide/>

d. Denied. ADE data indicates that 331 students transferred from stipulation magnet schools to open-enrollment charter schools in the State. 324 students transferred from stipulation magnet schools to Pulaski County charter schools. Of these 324 students, 140 (43.21%) were African-American and 184 (56.79%) were not. ADE notes that this is 324 students over six years (avg. of 54 students per year) from six schools (avg. of 9 students per school per year) with multiple grade levels per

school and multiple classrooms per grade level. ADE notes also that 126 of these students were fifth graders who transferred or graduated from stipulation magnet elementary schools and chose to attend open-enrollment charter schools for middle school. Twenty (20) of these students were eighth graders who left middle school to attend high school at an open-enrollment charter school. Thus, approximately 139 of these students matriculated out of the schools and LRSD and Joshua have produced no evidence that any of them would have continued in one of the magnet secondary schools. Accordingly only 185 students (about 30 per year and 5 per school) can be identified with certainty who transferred out of a stipulation magnet school to attend an open-enrollment charter school in Pulaski County. ADE Ex. 7, Summary Magnet to Charter Transfers.

- e. Admitted. ADE notes however, this is twenty (20) students over six years or, approximately, three students per year. Since only non-black students may transfer to LRSD schools in the M-to-M program, the only students leaving would be non-black. ADE notes also that of these twenty students, four left an LRSD elementary school for an open-enrollment charter middle school; five left an LRSD middle school for an open-enrollment charter high school. ADE notes, finally, that it could not determine how many students left open-enrollment charter schools to attend a traditional public school via the M-to-M program.
- f. Objection, LRSD relies for this assertion on a document that was never provided in discovery and that appears to have been authored in part by a person never identified as a potential expert witness in discovery. As such, this document is inadmissible hearsay, and a surprise to ADE. ADE admits, however, that the

percentage of students in the Stipulation Magnets participating in the free and reduced lunch program has increased from 2006-07 to 2010-11. ADE denies that this is in any way related to or caused by open-enrollment charter schools or that it is different from the statewide increase in the percentage of students eligible for free and reduced lunch status. Moreover, the numbers in this paragraph do not appear to be accurate, and the purported percentage increases do not appear to be accurate either or based on any sound statistical methodology. The table below sets forth the increases in percentage of free and reduced lunch students at the stipulation magnet schools according to **data at the ADE Child Nutrition Office**. These are based on October 1, counts. The percentage African-American is from the latest ODM enrollment report. DE 4684.

	October 2006 % FRL	% A-A 06-07	October 2010 %FRL	% A-A 10-11	FRL Percentage Point change
Booker	65.66%	52%	74.19%	58%	+ 8.53
Carver	51.64%	54%	72.79%	60%	+ 21.15
Gibbs	41.11%	54%	41.20%	54%	+ 0.09
Williams	36.88%	51%	44.23%	52%	+ 7.35
Mann	43.82%	51%	56.33%	53%	+ 12.51
Parkview	31.11%	50%	44.17%	54%	+ 13.06
LRSD	62.23%	68%	70.07%	67%	+ 7.84

- g. ADE admits that LRSD is in violation of the magnet stipulation at Booker Elementary, Carver Elementary, and Mann Middle Schools. According to the ODM's latest enrollment report, the six LRSD stipulation magnets have exceeded the maximum percentage allowed of African-American students twenty-six times since the 88-89 school year; only nine times have occurred since the 2003-04 school year. DE 4684.

- h. Denied. ADE is not aware of the author of these tables. The tables labeled “Enrollment 2001-02” through “Enrollment 2007-08” denote as their “source” a website that no longer exists and that may or may not have contained reliable enrollment data. Attached as exhibits 8 through 14 are tables based on data produced in discovery in this proceeding that show the enrollment of the open-enrollment charter schools in Pulaski County. The enrollment of the traditional public schools is contained in ODM’s yearly enrollment report filed in this case. DE 4684. ADE does not recognize the “magnet charter” term; this appears to be the creation of LRSD.
- i. Admitted. ADE does not recognize the term “magnet charter.” ADE notes, however, that LRSD did not include SIATech in its table of 2011-12 charter school enrollment. According to the ADE Data Center, SIA Tech’s 2011-12 enrollment as of October 1, 2011, was as follows:

Asian	Black	Hispanic	Other	White	Free/Reduced	Total
0 (0%)	131 (78%)	5 (3%)	5 (3%)	27 (16%)	168 (100%)	168

<https://adedata.arkansas.gov/statewide/>

- j. ADE admits that Exhibit 15 to DE 3761 is a document dated November 21, 2002, purporting to be a “Feasibility Study” for forming a Jacksonville or Northeast Pulaski County school district. ADE admits that this document included three different possible scenarios for the proposed school district that range in projected enrollment from 5,750 to 6,159. These numbers were projections, not actual enrollment numbers. ADE cannot vouch for the accuracy of these numbers or agree what the actual enrollment would have been in the proposed Jacksonville school district.

- i. ADE admits that this representation is made on page 15 in Exhibit 15 to DE 3761.
- ii. Denied. Exhibit 15 did not contain any projections for magnet or M-to-M participation.
- iii. Admitted.
- iv. ADE admits that the students that attend open-enrollment charter schools in Pulaski County have chosen not to attend their attendance zone school, and denies the remainder of paragraph 53.j.(iv). of LRSD and Joshua's Statement of Facts. LRSD and Joshua have not presented any evidence that any of these students would have chosen to participate in the stipulation magnet or M-to-M programs (or would have even attended a traditional public school) if the open-enrollment charter schools had not been available. ADE notes also that a significant number of students have attended open-enrollment charter schools inside Pulaski County from outside the County, from private schools, and home school.

54. Admitted in part and Denied in part. The State does not require any school or school district to provide transportation to students. The State provides funding to all schools on a per student basis. The Arkansas General Assembly determines the per student amount (i.e. foundation funding) based on a matrix of costs associated with operating a prototypical 500 student school. *See Lake View School Dist. No. 25 v. Huckabee*, 358 Ark. 137, 142, 189 S.W.3d 1, 4-5 (2004). Within the matrix, the General Assembly has allotted a certain amount of money to student transportation. However, foundation funding and the matrix are part of a revenue model not a spending model. Thus, it is not expected that every district will spend on

transportation the amount allotted to student transportation in the matrix. The funding system assumes that some districts will spend more in some areas covered by the matrix and less in others. LRSD Ex. 84, 2010 Adequacy Study p. 5-6. So, LRSD's assertion in this paragraph depends on a misconstruing of the State's education funding system. ADE notes that open-enrollment charter schools, unlike traditional school districts, are not eligible for facilities funding and have not been granted authority to levy taxes.

55. ADE admits that open-enrollment charter schools do not transport students on yellow school busses, and denies the remainder of paragraph 55 of LRSD and Joshua's Statement of Facts. ADE notes, however, that some charter schools, e.g. Academics Plus, have been designated as schools of choice under the NCLB and students are provided transportation to the charter school by the district as required by NCLB. ADE Ex. 18, McGill Dep. p. 23-24.

- a. Denied that Mr. Morris testified to this. ADE admits, however, that open-enrollment charter schools do not transport students on yellow school busses. But notes that many charter schools do provide transportation options to students.
- b. Admitted.
- c. Admitted.
- d. Admitted.

56. Denied. Neither LRSD nor Joshua have presented any reliable proof of the effect that the open-enrollment charter schools' transportation policies may (or may not) have on African-American students. ADE notes, as well, that the deposition testimony does not support this conclusion.

- a. Denied.

57. This statement is confusing. ADE cannot determine what LRSD or Joshua mean by “formally evaluate” or “cumulative impact.” Moreover, it misrepresents the record. When charter applications are submitted to the State Board for initial approval or denial, for reauthorization, or for changes sought in the charter, ADE currently provides to the State Board a desegregation analysis. ADE’s desegregation analysis contains cumulative enrollment numbers for charter schools and school districts. In recent years, ADE has also included in the desegregation analysis data on how many students have transferred from magnet or M-to-M programs to the charter schools. Desegregation impact analysis are attached hereto as ADE exhibits 22-25.

- a. ADE admits that Commissioner Kimbrell did not have this number memorized.
- b. ADE admits that Dr. Mary Ann Duncan is the Charter School Program Coordinator and that she is not the person at ADE responsible for monitoring compliance with the 1989 Settlement Agreement. See LRSD Ex. 94, Duncan Dep. p. 59.
- c. Admitted in part and Denied in part. Dr. Duncan, while not a lawyer and not familiar with the details of the 1989 Settlement Agreement, testified that as part of the charter school approval process all applicants, including those that propose to locate in a school area where there is a desegregation order, are required to address the potential desegregation impact of the proposed charter. The ADE reviews that statement, the ADE’s own desegregation analysis, and any desegregation analysis done by the school district in which the charter school proposes to locate. LRSD Ex. 94, Duncan Dep. p. 53, 57-58.

- d. Admitted. ADE notes, however, that Dr. Duncan has not been assigned responsibility with respect to the stipulation magnet schools.
- e. Objection, this statement is confusing in that LRSD and Joshua have not identified what is meant by their term “cumulative impact.” Denied. LRSD Ex. 94, Duncan Dep. p. 59-60.
- f. omitted
- g. ADE admits that this is not Dr. Duncan’s responsibility.

58. ADE admits that there is a gap in achievement between African-American and white students in Pulaski County. This gap is present statewide and nationwide. LRSD Ex. 78; *LRSD v. PCSSD*, 237 F.Supp.2d 988, 1037 (E.D.Ark. 2002)(“Sociologists and educators have recognized for over a decade that there are a host of factors, completely unrelated to the effects of *de jure* segregation, that also are responsible for the minority student achievement gap.”). Neither LRSD nor Joshua have offered any proof that the present achievement gap relates in any way to the prior *de jure* segregation found by this Court in 1984. *Id.* In LRSD, the Court ruled in 2002 that the then existing achievement gap could not be traced to past segregation. *Id.*

59. Denied.

60. Denied.

61. ADE admits that at one time the “Allen Letter” was part of the ADE’s responsibilities under the 1989 Settlement Agreement, and denies the remainder of paragraph 61 of LRSD and Joshua’s Statement of Facts. The Court ruled on May 12, 2000, that due to changed circumstances monitoring by the State should have been changed and encouraged the parties to agree on a new monitoring plan for the State to follow. DE 3360. The parties and the State never reached agreement on what that new monitoring plan should be.

62. ADE admits that the last semi-annual monitoring report filed in this case was filed on February 2, 1998; the Allen Letter otherwise speaks for itself; and ADE denies the remainder of paragraph 62 of LRSD and Joshua's Statement of Facts.

63. Admitted.

64. Admitted.

65. ADE admits that the September 1, 2011, PMT contains the quoted language, and denies the remainder of paragraph 65 of LRSD and Joshua's Statement of Facts.

66. ADE admits that none of the parties, including LRSD and Joshua, came to the August 2002 meeting, and denies the remainder of paragraph 66 of LRSD and Joshua's Statement of Facts. LRSD was declared unitary in almost all of its operations the next month, September 13, 2002, and was released from court supervision in all areas but one. *LRSD v. PCSSD*, 237 F.Supp.2d 988 (E.D.Ark. 2002).

67. ADE admits that Dr. Kimbrell is one of the persons responsible for determining whether the State is meeting the requirements of the 1989 Settlement Agreement. However, many people at ADE are responsible for carrying out the requirements of the 1989 Settlement Agreement and subsequent orders. LRSD Ex. 79, Kimbrell Dep. p. 18

68. Dr. Kimbrell testified that he understood that the State had been declared by the Court to have violated the Constitution in this case, and that the 1989 Settlement Agreement was adopted to remedy the State's constitutional violations, and denies the remainder of paragraph 68 of LRSD and Joshua's Statement of Facts.

69. Admitted.

70. Denied. Mr. Morris is the monitor for desegregation and leads the desegregation implementation phase working group at ADE and has held those positions since 2001.

71. ADE admits that Mr. Morris is not part of the charter school review process; Ark. Code Ann. § 6-23-106 speaks for itself; and ADE denies the remainder of paragraph 71 of LRSD and Joshua's Statement of Facts.

72. ADE admits that Mr. Morris testified to these statements. ADE notes also that LRSD is a unitary school district.

73. See response to ¶ 71.

74. Admitted.

75. Admitted.

76. ADE admits that paragraphs 76-78 do not relate responsibilities of Mr. Dillingham and the Equity Assistance Center. See Ark. Code Ann. §§ 6-10-111, 6-17-1902

77. See Response to ¶ 76

78. See Response to ¶ 76.

79. ADE admits that Mr. Dillingham's office deals with equity issues in school districts; admits that Mr. Morris's office deals with desegregation monitoring; and denies the remainder of paragraph 79 of LRSD and Joshua's Statement of Facts.

80. Objection, this Statement is not relevant to any of the issues in LRSD's Motion to Enforce 1989 Settlement Agreement.

81. ADE admits that this is not a part of Mr. Dillingham's job responsibilities, and denies the remainder of paragraph 81 of LRSD and Joshua's Statement of Facts.

82. Objection, this Statement is not relevant to any of the issues in LRSD's Motion to Enforce 1989 Settlement Agreement; moreover, this issue was dismissed by the Court on August 15, 2011. DE 4608 Order p. 7-8 ("The motion may go forward, however, on the State's actions

about charter schools and remediation of the achievement disparity.” ADE specifically denies that it has “retaliated” against the Pulaski County school districts in any way.

83. See Response to Paragraph 82.
84. See Response to Paragraph 82.
85. See Response to Paragraph 82.
86. See Response to Paragraph 82.
87. See Response to Paragraph 82.
88. See Response to Paragraph 82.
89. See Response to Paragraph 82.
90. See Response to Paragraph 82.
91. See Response to Paragraph 82.
92. See Response to Paragraph 82.
93. See Response to Paragraph 82.
94. See Response to Paragraph 82.
95. See Response to Paragraph 82.
96. See Response to Paragraph 82.
97. See Response to Paragraph 82.
98. See Response to Paragraph 82.
99. See Response to Paragraph 82.
100. See Response to Paragraph 82.
101. See Response to Paragraph 82.
102. See Response to Paragraph 82.
103. See Response to Paragraph 82..

104. See Response to Paragraph 82.

105. See Response to Paragraph 82.

106. See Response to Paragraph 82.

107. See Response to Paragraph 82.

108. See Response to Paragraph 82.

109. See Response to Paragraph 82.

110. See Response to Paragraph 82.

111. See Response to Paragraph 82.

112. See Response to Paragraph 82.

113. See Response to Paragraph 82.

114. See Response to Paragraph 82.

115. See Response to Paragraph 82.

116. See Response to Paragraph 82.

117. See Response to Paragraph 82.

118. See Response to Paragraph 82.

119. See Response to Paragraph 82.

120. ADE admits that Ms. Barksdale testified that this was her impression, but notes that Ms. Barksdale did not have specific data regarding the transfers from Carver or what effect transfers from Carver to schools other than open-enrollment charter schools might have on Carver.

121. ADE admits that the percentage of free and reduced lunch students at Booker Magnet School has increased in recent years and denies the remainder of paragraph 121 of LRSD and Joshua's Statement of Facts.

122. Admitted.

ADE's Statement of Facts

123. ADE data indicates that 109 students transferred from an open-enrollment charter school in Pulaski County (excluding the Arkansas Virtual Academy (“ARVA”)) to a stipulation magnet school from 2005-06 to 2010-11. Of these 109 students, 45 (41.28%) were black and 64 (58.72%) were non-black. ADE Ex. 6, Charter to Magnet Transfers by Year.

124. ADE data indicates that 151 students transferred from an open-enrollment public charter school in Pulaski County (excluding ARVA) to Little Rock’s Central High School from 2005-06 to 2010-11. Of these 151 students, 33 (21.85%) were black and 118 (78.15%) were non-black. Source: ADE Legal Request 3 Draft 5.

125. ADE data indicates that 240 students transferred from a stipulation magnet elementary school to an open-enrollment public charter school in Pulaski County (excluding ARVA) from 2005-06 to 2010-11. Of those students, 125 (52.08%) left as 5th graders, the highest grade in the stipulation magnet elementary schools. ADE Ex. 7, Magnet to Charter Transfers by Year.

126. ADE data indicates that 65 students transferred from Mann Magnet Middle (the only stipulation magnet middle school) to an open-enrollment public charter school in Pulaski County (excluding ARVA) from 2005-06 to 2010-11. Of those students, 27 (41.54%) left as 6th graders, 18 (27.69%) left as 7th graders, and 20 (30.77%) left as 8th graders. Source: ADE Legal Request 4 Draft 4.

127. Cheryl Carson is the principal of Booker Magnet School. She has held that position since 1991. LRSD Ex. 101, Carson Dep. p. 5-6.

128. In the 2007-08 school year Booker was classified as a school in its second year of school improvement because not enough of its students achieved proficient or advanced on the State's Benchmark test in prior years. LRSD Ex. 101, Carson Dep. p. 51-53.

129. The staff at Booker developed strategies that were implemented school-wide that focused instruction on areas where students needed help. The school's after-school tutoring program became more targeted towards the needs of individual students based on what the assessment data indicated their needs were. LRSD Ex. 101, Carson Dep. p. 52-53.

130. As a result, Booker made "adequate yearly progress" or AYP, meaning that a sufficient number of students achieved proficient or advanced on Benchmark testing to meet the school's NCLB targets for the 2008-09 and 2009-10 school years. LRSD Ex. 101, Carson Dep. p. 53.

131. Because Booker made AYP for those two years it was no longer classified as a school on school improvement for the 2010-11 school year. LRSD Ex. 101, Carson Dep. p. 53.

132. For the 2005-06 school year one (1) student transferred from Booker to an open-enrollment charter school. For the 2006-07 and 2007-08 school years (when Booker did not make AYP), no (0) students transferred from Booker to open-enrollment charter schools. For the 2008-09 school year (when Booker did make AYP) twenty-seven (27) students transferred from Booker to open-enrollment charter schools. For the 2009-10 school year (when Booker did make AYP) fourteen (14) students transferred from Booker to open-enrollment charter schools. ADE Ex. 7, Magnet to Charter Transfers by Year.

133. LRSD and each of the stipulation magnet schools are able to offer a quality curriculum. ADE LRSD Ex. 100, Barksdale Dep. p. 19-20; ADE LRSD Ex. 101, Carson Dep. p. 13; ADE Ex. 16, Hobbs Dep. p. 11, 14; ADE Ex. 19, Register Dep. p. 16-18. Open-enrollment

charter schools have not changed this. ADE LRSD Ex. 100, Barksdale Dep. p. 43; ADE LRSD Ex. 101, Carson Dep. p. 37; ADE Ex. 16, Hobbs Dep. p. 30; ADE Ex. 19, Register Dep. p. 28; ADE Ex. 33 – 37, Magnet School ACSIPs (describing curriculum, assessments, and interventions utilized at each school to deliver quality, equitable education).

134. LRSD and each of the stipulation magnet schools are able to assess the academic achievement of their students. LRSD Ex. 100, Barksdale Dep. p. 11-12; 76-77; LRSD Ex. 101, Carson Dep. p. 17, 22; ADE Ex. 16, Hobbs Dep. p. 13, 19; ADE Ex. 19, Register Dep. p. 18-19. Open-enrollment charter schools have not changed this ability. LRSD Ex. 101, Carson Dep. p. 37-38;

135. LRSD and each of the stipulation magnet schools are able to offer programs, interventions, and assistance to students who do not perform on grade level to assist those students in increasing their academic achievement. LRSD Ex. 100, Barksdale Dep. p. 21-22, 24; LRSD Ex. 101, Carson Dep. p. 20-21; LRSD Ex. 102, Boykin Dep. p. 48-49; ADE Ex. 16, Hobbs Dep. p. 16-17, 36-37, 39-40; ADE Ex. 19, Register Dep. p. 21-23. Open-enrollment charter schools have not changed this ability. LRSD Ex. 100, Barksdale Dep. p. 43-45; LRSD Ex. 101, Carson Dep. p. 39; ADE Ex. 19, Register Dep. p. 44-45.

136. Student test scores on the Benchmark test have improved over the last five years at Booker Magnet. LRSD Ex. 101, Carson Dep. p. 39-40.

137. LRSD has changed how students are identified as eligible for Free and Reduced price lunches in the last several years. The District's increased efforts to identify these students has resulted in more students in the District registered as eligible for these services. LRSD Ex. 102, Boykin Dep. p. 62-64; ADE Ex. 16, Hobbs Dep. p. 27-28.

138. The LRSD has recognized that it has problems attracting parents to its middle schools. LRSD Ex. 102, Boykin Dep. p. 19; ADE Ex. 16, Hobbs Dep. p. 22-23; ADE Ex. 19, Register Dep. p. 36-37.

139. One of the concerns that parents have about the middle schools is the safety and security of the schools. LRSD Ex. 102, Boykin Dep. p. 19-20.

140. LRSD is working on improving its middle schools. LRSD Ex. 102, Boykin Dep. p. 19-20.

141. Most parents who transfer their children from the stipulation magnet schools to other schools do so to avoid sending their children to LRSD middle schools. LRSD Ex. 100, Barksdale Dep. p. 81-83; LRSD Ex. 101, Carson Dep. p. 36; ADE Ex. 19, Register Dep. p. 33-34.

142. From the 2005-06 school year to the 2010-11 school year 115 students transferred from open-enrollment charter schools to the stipulation magnet schools. ADE Ex. ___, Charter to Magnet Summary By Year. When compared to the number of students who transferred from stipulation magnet schools to open-enrollment charter schools over the same time period (excluding fifth and eighth grade transfers), this leaves a net of 70 students transferring from stipulation magnet schools to open-enrollment charter schools from the 2005-06 school year to the 2010-11 school year.

143. Attached as exhibit 4 are true and accurate copies of all of the written objections to open-enrollment charter schools submitted to the State Board of Education by LRSD.

144. Over the last twenty years, the State has become much more involved in guiding curriculum, assessments, and interventions in the classrooms. The changes brought about by the State have been beneficial for education and have focused educators on, among other things,

improving the academic performance of low performing students. ADE Ex. 19, Register Dep. p. 9-13.

WHEREFORE, the ADE requests that the Court deny LRSD's Motion for Summary Judgment and deny LRSD's Motion to Enforce 1989 Settlement Agreement, and for all other relief to which it is entitled.

Respectfully submitted,

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ATTORNEYS FOR STATE OF ARKANSAS AND
ARKANSAS DEPARTMENT OF EDUCATION

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2012, 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 March 12, 2012, to the following non-CM/ECF participants:

Mr. Robert Pressman
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Lexington, Mass. 02173

/s/ Scott P. Richardson
SCOTT P. RICHARDSON