

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

LITTLE ROCK SCHOOL DISTRICT'S MOTION TO DISMISS

For its Motion to Dismiss the State's Motion for Release from 1989 Settlement Agreement, the Little Rock School District ("LRSD") states:

1. The State of Arkansas ("State") makes the following points in support of its Motion for Release from the 1989 Settlement Agreement:

a. The Settlement Agreement is twenty-four years old (Motion for Release ¶ 1);

b. LRSD, NLRSD and PCSSD are unitary "in the majority of their operations," including student assignments (Motion for Release ¶ 2-8);

c. The State delivers education in new ways including ACTAAP, ACSIP, APSCN and NCLB (Motion for Release ¶ 9-10);

d. Education funding has increased and now includes "categorical funds" for

at-risk students (Motion for Release ¶ 10);

e. The *districts* have eliminated the vestiges of segregation in student assignments (Motion for Release ¶ 11);

f. The State has “substantially complied” with the 1989 Settlement Agreement (Motion for Release ¶12) and;

g. The State’s “primary obligation” is the “payment of money” and it has spent more than one billion dollars, (Motion for Release ¶ 13-15).

Those reasons are insufficient as a matter of law to justify releasing the State from its obligations under the 1989 Settlement Agreement, the Magnet Stipulation and the M-to-M Stipulation.

2. LRSD relies for its Motion to Dismiss on the most recent decision by the Eighth Circuit Court of Appeals in this case, *Little Rock School District v. State of Arkansas*, 664 F.3d 738 (8th Cir. 2011). Barely four months ago, the Eighth Circuit emphasized the following points which undermine the State’s Motion for Relief:

a. The State is a constitutional violator. *Id.* At 758 (Referring to the district court’s 2011 decision to relieve the State’s funding obligations without a hearing: “[N]otice and a formal hearing are required before the Court terminates a constitutional violator’s desegregation obligations.”).

b. A constitutional violator seeking relief from a desegregation consent decree must show *both* that it “complied in good faith with the desegregation decree since it was entered” *and* that “the vestiges of past discrimination ha[ve] been eliminated to the extent practicable.” *Id.* at 749.

c. The “good faith” aspect of compliance with a desegregation decree is more

specific than in contract law and requires the constitutional violator to demonstrate its good faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance. *Id.* at 745.

4. Improved educational outcomes for students do not justify lack of good-faith compliance with a consent decree. *Id.* at 748. *See also, Id.* at 754 (“[O]utcomes alone are insufficient; PCSSD must also show that it complied in good faith with the desegregation decree since it was entered.”); *Id.* at 756 (“In any event, we must note again that outcomes are not determinative of good-faith compliance.”)

5. The fact that good-faith compliance might not yield the desired results is also no excuse for failure to meet one's obligations under a consent decree. *Id.* at 756-57 (“Regardless of whether the specific intervention programs required by Plan 2000 eventually bear fruit, however, PCSSD cannot disavow its agreed-upon obligation to make a good-faith effort.”)

6. The State's argument that changes in the Arkansas Education system “are sufficient to warrant release of the State from the 1989 Settlement Agreement” and its efforts to shift the Court's attention away from the State's performance of its settlement obligations (*e.g.* State Brief, p. 5 (“... plan compliance is not the touchstone of consent decree release decisions.”) and p. 39 (the Court is not required to closely analyze “the State's record of compliance”)) are misguided. The Eighth Circuit Court of Appeals described those same arguments, when made by the PCSSD, as “PCSSD's novel legal theory for avoiding its desegregation obligations.” *LRSD v. State*, 2012 U.S. App. LEXIS 6138 *13-*14 (8th Cir. 2012).

7. Without mentioning good faith, the State alleges at paragraph 12 of its Motion for Relief that it has “substantially complied with its obligations under the 1989 Settlement Agreement

and subsequent orders of the Court.” A constitutional violator seeking relief from a consent decree must show that it complied in good faith with the decree since it was entered. *LRSD v. State*, 664 F.3d at 744 and 749. The “good faith” aspect of compliance is “more specific than in contract law” and depends upon whether the constitutional violator has demonstrated its good faith commitment to the whole of the Court’s decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first place. *Id.* at 744.

8. The State’s past and present failures to comply with the 1989 Settlement Agreement, as described in LRSD’s Motion to Enforce and Motion for Summary Judgment, belie the notion of good-faith compliance. Judge Wolman told the State’s lawyer at the most recent Eighth Circuit oral argument that he was struck by “the State’s continuing effort to avoid meeting its requirements under the terms of the 1989 Settlement Agreement” and pointed out that the State has “not exactly been a willing partner through this.” www.ca8.uscourts.gov/oralargs, No. 11-2130.

9. The State’s contention that its “primary obligation under the 1989 Settlement Agreement is the payment of money” (Motion for Release, ¶ 13) ignores all of section III of the Settlement Agreement which is titled “State’s Role in the Desegregation Process.” That section describes the State’s responsibilities in thirteen separate areas, including monitoring compensatory education, test validation, in-service training, recruitment of minority teacher candidates, minority recruitment for ADE staff, school construction and remediation of disparities in academic achievement. The State’s responsibilities go well beyond the payment of money.

10. The States Motion for Release should be dismissed for the following reasons:

a. The State is a constitutional violator but the Motion for Release contains no allegation that the State has eliminated the vestiges of its constitutional violations to the extent

practicable. Fed. R. Civ. P. 12(b)(6); *See Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008);

b. The State is a constitutional violator subject to a consent decree but it has not alleged and cannot show that it has complied in good faith with the decree since its inception. Fed. R. Civ. P. 12(b)(6); *See Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008); and

c. The State's argument that changes in the Arkansas education system generally, rather than good-faith compliance with the consent decree, are sufficient to warrant release of the State from its obligations was rejected by the Eighth Circuit Court of Appeals when PCSSD attempted to make the same arguments in support of release from its desegregation obligations. *LRSD v. State*, 664 F3d 738 (8th Cir. 2011).

WHEREFORE, for the reasons set forth above and in the accompanying Brief, LRSD prays that the State's Motion for Release be denied; that LRSD be awarded its costs and attorneys' fees expended herein; and that LRSD be awarded all other just and proper relief to which it may be entitled.

Respectfully submitted,

LITTLE ROCK SCHOOL DISTRICT

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CERTIFICATE OF SERVICE

I certify that on April 30, 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