

**IN THE 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

**PCSSD'S RESPONSE TO STATE'S MOTION FOR
RELEASE FROM 1989 SETTLEMENT AGREEMENT**

The PCSSD for its Response to the State's Motion for Release from 1989 Settlement Agreement states:

1. It admits the allegations contained in paragraph 1.
2. It denies the allegations contained in paragraph 2 but states that although it agrees that the LRSD and NLRSD have achieved complete and final unitary status, the PCSSD has not. It lacks unitary status in nine of the twelve areas outlined in its desegregation plan known as Plan 2000.
3. Admits the allegations contained in paragraph 3.
4. Paragraph 4 appears to state a legal conclusion and is vague and ambiguous. Accordingly, as this allegation is not directed to the PCSSD, it will adopt the response of the LRSD to paragraph 4.
5. Admits the allegations contained in paragraph 5.

6. Admits that that statement was made in 2002 but denies that such statement substitutes for a final judicial declaration of unitary status.

7. Admits the allegations contained in paragraph 7.

8. Unfortunately, must deny the allegations contained in paragraph 8.

9. Admits the allegations contained in paragraph 9, but states that, for the most part if not in total, these changes lack legal relevance and significance regarding the question of whether or not the State should be released from its obligations assumed under the 1989 Settlement Agreement.

10. Upon information and belief, admits the allegations contained in paragraphs 10 a – f, although noting that upon information and belief, the State has or will request a waiver respecting the obligations placed upon it as described in paragraph 10 d.

11. Because neither the District Court nor the United States Court of Appeals for the Eighth Circuit granted the PCSSD unitary status in student assignment to schools, the PCSSD must deny the allegations contained in paragraph 11.

12. Admits that the State has paid the sums required or ordered pursuant to the 1989 Settlement Agreement and subsequent orders of the Court, but it remains to be seen and proven whether or not the State has substantially complied with the remaining obligations, tasks, and endeavors it voluntarily assumed pursuant to the 1989 Settlement Agreement and the “Allen Letter”.

13. While admitting that one of the primary obligations of the State assumed under the 1989 Settlement Agreement was to pay money, the PCSSD must deny that this necessarily represents the primary obligation and states that the State’s other voluntarily assumed tasks,

endeavors and responsibilities as clarified by the “Allen Letter” represent important obligations that may not have been completely discharged.

14. Admits that the United States Court of Appeals for the Eighth Circuit once mentioned this figure but denies that the school districts anticipated that the settlement agreement was so limited, particularly when it became necessary to make later claims against the State for its various and sundry violations of the Settlement Agreement, which lead to much of the additional sums from which the State currently seeks to escape payment.

15. Admits the allegations contained in paragraph 15.

16. Denies the allegations contained in paragraph 16.

17. Denies each and every other allegation contained in the State’s Motion not specifically admitted to or acknowledged in this Response.

Counter Motion

18. PCSSD proposes its own modification of the 1989 Settlement Agreement, which is more particularly set forth in paragraph 8 *et seq.* of PCSSD’s brief filed herewith. This proposal suggests a path to unitary status in student assignment and facilities for PCSSD with state aid and court monitoring that is procedurally separate from the unitary LRSD and NLRSD. It also proposes an orderly and reasonable, but certain, end to the desegregation funding for PCSSD. Finally, PCSSD proposes as part and parcel of achieving unitary status the detachment of the Jacksonville area into a separate school district. PCSSD respectfully submits that this approach is appropriate for consideration and adoption by the Court as a complete alternative to the approach proposed and relief sought by the State’s motion. However, the following paragraphs to PCSSD’s counter motion are offered in the alternative in the event the Court is persuaded to follow the State’s proposed approach and grant in whole or in part its requested relief.

19. Should this Court be persuaded to grant some relief to the State, it should nevertheless preserve as much of the 1989 Settlement Agreement as the Court deems feasible, including without limitation the obligation to fund programs in these three districts at least equivalent to the State's funding in other districts, the provision precluding retaliatory measures against these three districts, the sovereignty provisions respecting the NLRSD and the PCSSD, and the other remaining non-monetary obligations which the Court may find have not been fully honored or discharged by the State.

20. If the Court is inclined to modify or refocus the 1989 Settlement Agreement, it should be done in a way that advances the original purposes of the decree in a more efficient and productive way, including providing the means, financial and otherwise, for the PCSSD to more quickly and efficiently achieve unitary status, particularly in the area of facilities, which will require extraordinary funding and will also likely require imaginative and non-traditional approaches to facilities construction, remodeling, and enhancement.

21. As respects the PCSSD, the overarching task of this Court remains that of monitoring the progress of the PCSSD toward attainment of unitary status and eventual release from this Court's supervision. Accordingly, as part of the process initiated by the State with its motion, the Court should consider modifications to the consent decree that promote the attainment of full unitary status.

22. In any event, if this Court is persuaded by the State to modify, in whole or in part, the State's financial obligations concerning payment for the Majority to Minority Transfer Program, the Stipulation Magnet School Program, or the transportation obligations associated with both, then it should grant the PCSSD relief concerning the expense side of that equation and not require the PCSSD to assume the financial responsibility for the Majority to Minority

Transfer Program, the Stipulation Magnet School Program, or the transportation associated with each but should make other modifications of those programs that at least relieve the expense side of those obligations in a manner equivalent to any financial relief it grants to the State.

23. The teacher retirement and health insurance award should continue through the foreseeable future because the State has not alleged any change of circumstances warranting relief from those obligations. Indeed, these sums were awarded originally and continue to be paid yearly to place the three Pulaski districts on a par with all other school districts in the State concerning the proportion of sums the State pays school districts for teacher retirement and health insurance. This has not and has never been a windfall for the three Pulaski districts.

24. Because the State's Motion affects the whole dynamic of the PCSSD's pursuit of complete unitary status, then the Court should entertain such strategies as the creation or authorization of a separate Jacksonville school district if the Court concludes that such an adjustment to the boundaries of the PCSSD, which must be consented to by the PCSSD, would advance the attainment of unitary status, particularly in the area of facilities, in a more efficient and productive way. (*See Exhibit 1*)

WHEREFORE, the PCSSD prays that the relief sought by the State be denied or, in the alternative, that the 1989 Settlement Agreement be modified in the ways that promote the attainment of unitary status and for all proper relief.

Respectfully submitted,

ALLEN P. ROBERTS
P. O. Box 280
Camden, AR 71711
Telephone: (870) 836-5310
Facsimile: (870) 836-9962
E-mail: allen@aprobertslaw.com
Arkansas Bar 64036

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.
425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201
Telephone: (501) 688-8800
Facsimile: (501) 688-8807
E-mail: sjones@mwlaw.com

/s/ M. Samuel Jones, III
M. Samuel Jones III (76060)

Attorneys for Pulaski County Special School
District

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

- **Mark Terry Burnette**
mburnette@mbbwi.com
- **John Clayburn Fendley , Jr**
clayfendley@comcast.net
- **Christopher J. Heller**
heller@fec.net
- **Stephen W. Jones**
sjones@jlj.com
- **Office of Desegregation Monitor**
paramer@odmemail.com
- **Scott P. Richardson**
scott.richardson@arkansasag.gov, agcivil@arkansasag.gov
- **John W. Walker**
johnwalkeratty@aol.com, lorap72297@aol.com, jspringer@gabrielmail.com
- **Allen P. Roberts**
allen@aprobertslaw.com
- **Jeremy Christopher Lasiter**
jeremy.lasiter@arkansas.gov

/s/ M. Samuel Jones, III

MITCHELL || WILLIAMS

CORRECTED MEMORANDUM

TO: PCSSD Board of Directors
FROM: Sam Jones
DATE: July 28, 2009
RE: Creation of a New School District by Agreement

Creation of a New School District by Agreement

1. Arkansas Code Ann. §6-13-1501 sets out most of the statutory process for creation of a new school district by detaching territory from an existing school district. While the statute contains the steps for creating a new district absent agreement of the existing Board of Directors, I will omit that portion and simply discuss the steps if the Board giving up the territory agrees to the new school district creation. However, the process is virtually the same whether by petition or resolution.
2. The district giving up the territory by agreement must have at least 15,000 students but not more than 20,000 students in the school year immediately preceding the detachment.
3. The new school district to be created must have at least 4,000 students.
4. The Board of Directors of the school district giving up the territory must do so by resolution. (While the Resolution passed by the PCSSD Board in September of 2008 partially satisfies statutory requirements, a more complete Resolution is necessary to complete the initial detachment process and is explained in the next paragraph.)
5. The Resolution must state: (a) the purpose for which it is being submitted to the State Board of Education; (b) contain a map of the proposed new school district; (c) contain an independent feasibility study covering; (i) the costs of operation of the new school district including the tax base, debt service and division of assets to the new school district; (the tax base and debt service issues are probably covered by Dr. Don Stewart's study) (ii) a list of the public



school assets to be transferred from the existing school district to the new school district; (iii) the size of the new school district; and, (iv) the effect of detachment on court ordered desegregation.

6. The Resolution must be signed by at least 10% of the registered voters of the area proposed for detachment.

7. If the state board determines that the Resolution is valid and does not hamper, delay or negatively affect desegregation efforts, an election may be ordered.

8. Before entering its order for an election, the state board must seek an advisory opinion from the Attorney General concerning the impact on desegregation.

9. If all of these conditions are satisfied, then the state board may order an election on the proposed detachment to be held at the next annual school election or general election.

10. The election shall be held in the area proposed to be detached and the clerk shall determine the names and addresses of the qualified electors residing within that area.

11. The ballot shall be printed to permit voting for or against creation of a new school district and shall adequately describe the property to be detached.

12. If all of these requirements are met and a majority of the votes are cast in favor of detachment, then the State Board of Education shall order the creation of a new school district.

13. At the time the state board creates the district it shall appoint a board of directors of seven (7) members for the new school district who shall serve until the next regular election.

14. After the order is entered creating the new district, but before assets and territory are transferred, the new district shall petition the federal court for approval. (Of course, this assumes that the PCSSD is still in federal court and has not yet been declared unitary or released from federal court supervision.)

15. It would appear that 6-13-1505 requires the state board to approve any agreement concerning the territory to be detached and the debt to be transferred.

16. The millage rate of any new district shall remain the same unless or until changed by vote in the new district.

Comments

It appears that these steps are required whether or not detachment is by petition, which is what occurred earlier this decade, or by agreed Resolution. It also seems reasonably clear that many of the major issues would have to be negotiated and set out in the Resolution to be presented to the State Board of Education before the state board can take action.

Even though Act 395, which covers issues such as the phase out of state funding and the creation of a new school district in Pulaski County addresses creation of a Jacksonville school district, it does not appear to amend or modify the requirements of the statutes I have discussed above.

Again, determination of the boundaries is merely the first step. However, determination of the boundaries will dictate the area and the voters eligible to ultimately vote upon the detachment. Further, the larger the area proposed for detachment, at least in terms in population, the more registered voters it will take to satisfy the 10% requirement specified in the statutes.

Finally, it seems reasonably clear that before a resolution can be circulated for signature, the resolution must address the map, feasibility study, cost of operation, tax base, debt service, division of assets to the new school district, and contain a statement concerning the effect of detachment on court ordered desegregation if the PCSSD has not yet been declared unitary.

cc: Rob McGill
Brenda Bowles