

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

RON AND KATHY TEAGUE, et al.

PLAINTIFFS

v.

CASE NO. 6:10-CV-6098

ARKANSAS BOARD OF EDUCATION, et al

DEFENDANTS

AMENDED MOTION FOR STAY PENDING APPEAL

Appellants Ron and Kathy Teague and Rhonda Richardson, for their motion for stay pending appeal, state:

1. On June 8, 2012, this Court entered its Judgment and Memorandum Opinion and Order granting the relief that Appellants requested: “Accordingly, the Court finds that Ark. Code Ann. § 6-18-206(f)(1) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and hereby permanently enjoins the State of Arkansas from applying . . . § 6-18-206(f)(1) to transfer applications under the Arkansas Public School Choice Act of 1989.” Opinion at p. 28.

2. However, later in the same Opinion this Court effectively defeated Appellants’ statutory right of transfer by granting an additional

injunction against the State of Arkansas from “applying the Arkansas Public School Choice Act of 1989.” Memorandum Opinion and Order at page 31.

3. No party in this case properly requested the additional injunction against the entire Act.

4. The State of Arkansas expressly took no position on the issue of severability in this action. This would not have been possible if severability had been raised properly as a claim for relief. The State would have been required to admit or deny severability in response to a proper claim, and the issue would have been joined and litigated by the State and all parties.

5. According to Stipulated Exhibit 34, at table 3, the number of students identified by the State of Arkansas as choice transfer students (defined as students who had transferred under one of several different statutes, including but not limited to the Arkansas Public School Choice Act of 1989) for school year 2010-11 was 15,682, comprising 3.35% of the total number of public school students in the State of Arkansas.

6. According to the same Exhibit and table, the number of students identified by the State of Arkansas as choice transfer students has increased steadily from school year 2005-06, when the number was 8,717, comprising 1.88% of the total student enrollment in public schools in the

State of Arkansas. The number of choice transfer students has increased every year since 2005.

7. The State of Arkansas is not able to determine how many students have transferred under the Arkansas Public School Choice Act of 1989, rather than other school choice statutes, as set forth in paragraph four of the affidavit of James Boardman, Stipulated Exhibit 34. See also brief in support of state defendants' motion for summary judgment, document 72, at page 13.

8. Although it is not possible to know the number with particularity, it is safe to say that there are thousands of school children who have transferred to districts other than their residential district under the Arkansas Public School Choice Act of 1989 and plan to attend their transferee schools next year.

9. In addition to the students who have previously transferred under the Arkansas Public School Choice Act of 1989, there are hundreds if not thousands of students who have applied for transfers under this Act for the fiscal year beginning July 1, 2012.

10. Transfers of students under the Arkansas Public School Choice Act of 1989 also involve the transfer of state foundation funding for public

school students, which in the fiscal year beginning July 2012 will exceed \$6,600 per student.

11. Permitting students to continue to attend school under previous transfers under the Arkansas Public School Choice Act of 1989 would require the State to apply that Act notwithstanding this Court's injunction.

12. Because the State of Arkansas "is enjoined from applying the Arkansas Public School Choice Act of 1989" during the pendency of this appeal, this Court's injunction against the entire Act will create unnecessary stress and uncertainty for students and their families for the coming school year as well as monumental problems of logistics and funding for the school districts which have received transfer students under this Act and for the Arkansas Department of Education, and which must now determine how to comply with this Court's injunction.

13. The thousands of unknown public school students who have transferred under the Arkansas Public School Choice Act of 1989 and who are immediately and irreparably harmed by this Court's injunction against the entire Act are not parties to this case and have not been heard.

14. Appellants have filed a Notice of Appeal from this Court's Judgment and Memorandum Opinion and Order entered June 8, 2012.

15. As shown in the attached brief in support of their motion for stay pending appeal, appellants have made a strong showing that they are likely to succeed on the merits of their appeal, which will focus on this Court's severability ruling and its striking of the entire Act when no party had filed a complaint seeking that relief. This Court's injunction against the entire Act reached issues that were not framed by the pleadings and were not properly before the Court.

16. Without a stay of the injunction against the entire Act pending appeal, Appellants are irreparably harmed by denial of the ability to transfer pursuant to the injunction that they requested and received at p. 28 of the Opinion.

17. Without a stay of this Court's injunction against the entire Act pending appeal, thousands of students attending public schools in Arkansas, as well as their families and the districts which have received those students, will suffer irreparable harm.

18. By contrast, appellants are aware of no person or entity who will or may suffer irreparable harm if this Court's injunction against the entire Act is stayed pending appeal.

19. Staying the injunction against the entire Act pending appeal will serve the public interest by allowing the State of Arkansas, the students

who have transferred under the Arkansas Public School Choice Act of 1989, their families and the districts to which they have transferred, to continue to operate under transfers previously made pursuant to the Arkansas Public School Choice Act of 1989. It will also permit Appellants to enjoy the injunction they sought and obtained at p. 28 of the Opinion.

20. In the circumstances of this appeal, there is no public interest opposing a stay of the injunction against the entire Act pending appeal.

21. This Court has authority to grant this stay pending appeal pursuant to Rule 62(c) of the Federal Rules of Civil Procedure. This Court should grant the stay without a bond or other security.

22. This Court's injunction issued on June 8, 2012 went into effect immediately and will remain in effect unless stayed. Fed. R. Civ. P. 62(a)(1).

23. This amended motion is supported by the brief filed herein on June 12, 2012 (Doc. No. 102) and by stipulated exhibit 34.

WHEREFORE, and for the reasons set forth in the accompanying brief, appellants Ron and Kathy Teague and Rhonda Richardson respectfully request that this Court stay the injunction issued in this action on June 8, 2012 against the entire Act, and keep in force the Court's injunction against

Ark. Code Ann. § 6-18-206(f)(1), pending a decision on appeal by the
United States Court of Appeals for the Eighth Circuit.

Andi Davis #2008056
ANDI DAVIS LAW FIRM, P.A.
534 Ouachita Avenue, Suite 2
Hot Springs, AR 71901
(501) 622-6767 - phone
(501) 622-3117 - fax

And

WILLIAMS & ANDERSON PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201

Telephone: (501) 372-0800
Facsimile: (501) 372-6453

By: /s/ Jess Askew III
Jess Askew III, Ark. Bar No. 86005
jaskew@williamsanderson.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 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:

- **William C. Brazil**
bamo@conwaycorp.net, lanaymoney@gmail.com
- **Andrea L. Davis**
andidavis32@gmail.com, kimbabb10@gmail.com
- **Whitney Foster**
wfoster@fc-lawyers.com, tsims@fc-lawyers.com

- **David M. Fuqua**
dfuqua@fc-lawyers.com,bgaines@fc-lawyers.com
- **Scott P. Richardson**
scott.richardson@arkansasag.gov,agcivil@arkansasag.gov,
danielle.williams@arkansasag.gov
- **Allen P. Roberts**
allen@aprobertslaw.com,ashley@aprobertslaw.com

/s/ Jess Askew III