

The Law Firm of
BEQUETTE & BILLINGSLEY
A Professional Association

GEORGE J. BEQUETTE, JR.
jbequette@bbpalaw.com

KEITH I. BILLINGSLEY
kbillingsley@bbpalaw.com

Simmons Bank Tower
425 West Capitol Avenue, Suite 3200
Little Rock, Arkansas 72201-3469
www.bbpalaw.com

Telephone
(501) 374-1107

Telecopier
(501) 374-5092

April 22, 2015

Via Email and U.S. Mail
(jeremy.lasiter@arkansas.gov)

Jeremy C. Lasiter, General Counsel
Arkansas Department of Education
Four Capitol Mall
Room 404-A
Little Rock, Arkansas 72201

Re: Act 560 of 2015

Dear Jeremy:

This firm represents the Blytheville School District ("District"). The District's Board of Directors has determined that the District not participate in school choice under the School Choice Act of 2013, as amended in 2015 by the General Assembly in passing Act 560 (collectively, the "Acts"). The reason is that the District is a party to the following desegregation lawsuits that are still active: mandates issued in 1971 by the U.S. Department of Justice and the U.S. Department of Health, Education and Welfare; *Franklin, et al. v. Blytheville School District No. 5*, U.S.D.C. No. J-71-C-35; and *Harvell, et al. v. Blytheville School District, et al.*, U.S.D.C. No. J-C-89-225, 126 F.3d 1038 (8th Cir. 1997). The desegregation obligations of these cases prohibit the District from taking any action, or refraining from taking any action, the natural and probable consequence of which would be a segregative impact within the District (*i.e.*, the creation, maintaining, or increasing of racially identifiable schools). Permitting school choice under the Acts would have such an impact. Allowing school choice would, therefore, be in conflict with the District's desegregation obligation still outstanding. The District further relies upon Ark. Code Ann. § 6-18-317(a), which prohibits transfers if either the resident or residing district has ever been under a desegregation-related court order. See *Edgerson on behalf of Edgerson v. Clinton*, 86 F.3d 833 (8th Cir. 1996).

In that same regard, I am enclosing orders from both cases to support this letter. I believe all the information specified by Ark. Code Ann. § 6-13-113(b) is included in the enclosures. If not, please let me know and I will furnish it. I know review of these old desegregation lawsuit files is impractical, and sometimes impossible, because of their age and volume.

Jeremy C. Lasiter, Esq.
April 22, 2015
Page 2

Thank you for your cooperation. Please do not hesitate to contact me should you have questions concerning this matter.

Very truly yours,


Jay Bequette

Enclosures

cc: Mr. Richard Atwill

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

FILED
JUL 7 1971

MRS. EMANUEL FRANKLIN, on behalf
of her minor children, GERALDINE
FRANKLIN and TERRY WAYNE FRANKLIN;

W. H. McLELLAN, CLERK
BY: *[Signature]*
Dep. Clerk

MRS. JOHNETTA MCKINNEY, on behalf
of her minor children, ALPHONSO
MCKINNEY and JOYCE MCKINNEY;

and

MRS. BERTHA THIGPEN, on behalf of
her minor children, ROSEMARY
THIGPEN and BERTHA LEE THIGPEN,

CIVIL ACTION

NO. J-71 C-35

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE BLYTHEVILLE,
ARKANSAS, SCHOOL DISTRICT NO. 5, a
public body corporate, and L. D. HARRIS,
Superintendent of Schools of the
Blytheville, Arkansas, School District
No. 5.

Defendants.

COMPLAINT

I.

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1343(2)(4) and 28 U.S.C. §2201, this being a suit in equity authorized by law, Title 42 U.S.C. §1981, to be commenced by any citizen of the United States or other person thereof to redress the deprivation under color of law of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities herein sought to be redressed are those secured by the due process and equal protection clauses of the Constitution of the United States.

II.

This is a class action proceeding for injunctive relief enjoining defendants from continuing to operate a dual school system in any and all respects and requiring defendants to implement a totally unitary school system which utilizes not only the

class action

facilities heretofore attended by whites but the facilities heretofore attended by blacks as well. Plaintiffs allege that the relief should be total, covering all facets of school operation, including

(1) school administrative staff, (2) administrative personnel within each of the schools, and (3) coaching, (4) band and other quasi-teaching personnel.

This is also a proceeding for a declaratory judgment to establish the validity of a rule or regulation of the school district which limits participation in certain extracurricular activities to persons who achieve a certain (85 out of 100) grade average.

III.

Plaintiffs bring this action as a class action on behalf of themselves and others similarly situated in defendant school district pursuant to Rule 23(a) and (b) (3) of the Federal Rules of Civil Procedure. Members of the class on behalf of whom plaintiff sues are so numerous that joinder of all members is impracticable. However, there are common questions of law and fact affecting the right of black persons to be free from all vestiges of racial discrimination in the public school systems. The claims of plaintiffs are typical of the claims of the class, and plaintiffs fairly and adequately protect the interests of the class. Defendants have acted and/or refused to act on grounds generally applicable to the class plaintiffs represent, thereby making appropriate final injunctive relief in favor of plaintiffs and the class.

IV.

Plaintiffs are Mrs. Emanuel Franklin, who sues on behalf of her minor children, Geraldine Franklin and Terry Wayne Franklin; Mrs. Johnetta McKinney, who sues on behalf of her minor children, Alphonso McKinney and Joyce McKinney; and Mrs. Bertha Thigpen, who sues on behalf of her minor children, Rosemary Thigpen and Bertha Lee Thigpen. Plaintiffs are all black citizens of the United States who reside in the State of Arkansas.

No longer
Rule 23
M. A. J.
defendant

ASK TO explain
to
So As

Admit

V.

Defendants are the Board of Education of the Blytheville, Arkansas School District No. 5, a public body corporate; and L. D. Harris, Superintendent of Schools of the Blytheville, Arkansas, School District No. 5. The individual defendant and the members of the defendant Board of Education are citizens of the United States and of the State of Arkansas, and are sued in their official capacities.

VI.

On information and belief, during the 1970-71 school year, the district's pupil population was 2466 white pupils and 2411 black pupils, or 50% white and 49% black. The black population of Blytheville is located in the southern part of the city which the white population is located in the central and northern part of the city. The schools of the district have been constructed on a neighborhood basis. The district provides a degree of pupil transportation.

VII.

The administrative staff of the defendants, the members of which are located within the district's main office, is totally white. The racial composition of said staff is a relic of the dual school system.

VIII.

Defendants have not fully, totally, nor fairly dismantled any or all of their dual school system as required by the Fourteenth Amendment.

A. Elementary Schools.

1. During the 1970-71 school year, the defendants maintained two elementary schools, Franklin and Robinson, as black schools which were attended by approximately three-fourths of the black elementary population. During the same year, defendants operated the central and ^{Fairview} Fairfax Elementary Schools as 90% or more white schools. Two other formerly all-white schools--Lange and Sudbury--had 30-to-40% black enrollments during the 1970-71 school year.

Adm.

5608 Total / p
2366 - Black
3242 - Remainder
Exhib. b. +
M & P

8 70% / white
7 10% / white
deny
clerk's
Mary
No deny
L of Fairview
Adm. & School

deny
M. J. and Mary
USE
Date 1/8/71

2. The elementary school faculties were also racially segregated as reflected by the following table.

SCHOOL	WHITE TEACHERS	BLACK TEACHERS	%WHITE
Central	17	2	86%
Fairview	22	1	95%
Lange	10	2	84%
Sudbury	10	3	77%
Robinson	4	15	21%
Franklin	3	15	23%

B. Secondary Schools.

During the 1970-71 school year, Blytheville made an attempt to unite the secondary schools. The process used was discriminatory in that the result was the closing of the all-black Harrison Junior-Senior High School and the reassignment of all of the Harrison pupils to one of the three predominantly white junior or senior high schools. Thus, black students in grades 7 to 12 bore all of the burden of desegregation at the secondary level. Moreover, said school closing resulted in the overcrowding of at least one of the three schools retained at the secondary level.

Furthermore, the procedure adopted by defendants resulted in total emasculation of the (black administrators, coaches, band directors, etc.) without the application by the defendants of any objective standards in comparing their qualifications with the qualifications of the persons named in each of their respective positions. The process also resulted in a reduction of a number of black teachers. [On information and belief, approximately 35% of the teaching personnel at the secondary level was black during the 1965-66 school year.] Only 28% of the teaching personnel at the secondary level was black for the 1970-71 school year and, on information and belief, the percentage of blacks at the secondary level will be less for the 1971-72 school year.

C. On information and belief, the criteria used by defendants in facilitating the closing of the black school and in terminating, demoting and/or reducing black personnel in status were subjective and racially discriminatory. Moreover, on information and belief, defendants have followed and follow a procedure,

Use proposed faculty by H&W

accepted by H&W
 New Jr. High
 called East

Letter 5 - parents
 objection
 was to the
 contents of
 the letter

was taking out
 of the
 1965-66
 65-66 31 Black
 66-67-34 Black
 67-68-34 Black
 68-69-33 Black
 69-70-33
 70-71-3
 71-72-30

No termination

practice, custom and usage of recruiting and soliciting applications for vacancies primarily from white persons and have actually filled vacancies as they have occurred since the initiation of desegregation with a disproportionate number of white persons.

IX.

The school district does not have a definite plan of action which will eliminate the dual school system which they operate. The district, through its authorized representatives, has rejected offers of assistance made by undersigned counsel and plaintiffs to (a) aid in the development of a comprehensive, conditionally acceptable desegregation plan and to (b) otherwise avoid litigation.

X.

The aforementioned and described situations and conditions are well known to defendants. Plaintiffs and/or persons purporting to represent the class interests have sought to effect relief without resort to litigation but have had their efforts thwarted by the bad faith actions of defendants. Plaintiffs' rights to relief under the 14th Amendment and federal statutes are well known to all and should be acknowledged and granted without resort to litigation. Plaintiffs and their class have no adequate remedy at law by which to be made whole for the injustice perpetrated against them by defendants. Their only effective recourse is to this Court for the equitable remedy requested herein.

WHEREFORE, plaintiffs pray that this Court advance this matter on its calendar, and after hearing grant them preliminary and permanent injunctive and declaratory relief which;

(a) declares the grade point rule referred to in paragraph II, supra, to be invalid under the circumstances;

(b) declares the process by which secondary desegregation (and faculty demotions, etc.) was achieved to be violative of the equal protection and due process clauses of the 14th Amendment;

deny - have
actually solicited
for K applications

day with called
the school district
they would be
paid -

(c) enjoins defendants from operating a school system which retains any vestige of racial segregation;

(d) mandatorily enjoins them to disestablish their pre-existing dual school system in all respects including reopening of the Harrison High School and using it as a component of the desegregation program, and

(e) mandatorily enjoins defendants to affirmatively recruit black teachers, coaches, band directors, administrators, etc., and to give them preference in filling vacancies up to the point of the pupil racial ratio in the school system or, at the least, up to the point when the desegregation process began; and which requires them to keep detailed records of their recruiting efforts, their applications received by race and by subject matter, etc.

Plaintiffs further pray that the Court require defendants to immediately provide the Court and plaintiffs with a copy of their current plan of desegregation along with copies of all alternate plans, if any, now being considered for implementation in the future, and upon examination thereof, if said plan is found to be defective in any way, require defendants to prepare for prompt submission to the Court acceptable alternatives which meet judicial standards.

Plaintiffs further pray that this Court grant them their costs, attorney's fees, and such other equitable relief as appears to the Court to be fit and proper under the circumstances.

Respectfully submitted,

WALKER, KAPLAN & MAKS, P.A.
1820 West 13th Street
Little Rock, Arkansas 72202

JACK GREENBERG
JAMES M. HARRIT, III
Suite 2030
10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

By

John H. Walker

FILED

APR 20 1971

W. H. MCCLELLAN, CLERK

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

Ad
Dep. Clerk
Copy to: John H. Walker
J. H. Stinson
J. C. Bessie
PLAINTIFFS

MRS. EMANUEL FRANKLIN, et al.

v. No. J-71-C-35

BOARD OF EDUCATION OF THE BLYTHEVILLE,
ARKANSAS, SCHOOL DISTRICT NO. 5, et al.

DEFENDANTS

ORDER

It is hereby ordered as follows:

1. Defendants' desegregation plan with respect to student assignments in the high school of The Blytheville School District No. 5 is approved.

2. Defendants' desegregation plan with respect to student assignments in the junior high schools of The Blytheville School District No. 5 is approved.

3. Defendants' desegregation plan with respect to student assignments in the elementary schools of The Blytheville School District No. 5 is approved.

4. Defendants' desegregation plan with respect to the faculty assignments in all grades, both elementary and secondary, in The Blytheville School District No. 5, is approved, except as specifically reserved herein below.

5. The Court reserves, for future determination, its ruling with respect to the following issues:

(a) The alleged racial imbalance of the administrative staff.

(b) The alleged racial imbalance of faculty assignments in the one school facility of the former Burdette District, which is now incorporated into The Blytheville School District No. 5.

(c) The alleged racial imbalance of student and faculty assignments at the Harrison Learning

1970-71 yr
 47-B 38-W
 2nd-1st
 4-3

*Tests conducted
 out of court -
 parents are co-located &
 placement
 of the court*

Center in The Blytheville School District No. 5

with respect to "Special Education" classes only.

(d) The application of the plaintiffs for an award of reasonable attorney's fees and their costs.

6. All portions of the desegregation plan submitted by defendants not herein above specifically reserved or modified are hereby approved.

The court retains jurisdiction of this case for the purpose of reviewing at a later date those issues specifically reserved herein. The defendants are permitted to proceed with the implementation of their entire plan for the desegregation of The Blytheville School District No. 5, including those proposals which have been herein reserved for future determination. Defendants are required to make a comprehensive report to the Court as to the actual implementation of their plan on or before October 31, 1971.

Dated this 19th day of August, 1971.

(s) GARNETT THOMAS EISELE
 United States District Judge

C. R. 6, Page 587

1971-72 Assign

Adm	H/S	J/H	Elem	Budget
1B 7W	2W 1B	2W 2B	3B 2W	1W

Principles + Draw of students



OFFICE OF
THE REGIONAL DIRECTOR

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGIONAL OFFICE
1114 COMMERCE STREET
DALLAS, TEXAS 75202

OFFICE FOR CIVIL RIGHTS

July 19, 1968

Superintendent J. K. Williams
Blytheville School District #51
614 West Chickasawha
Blytheville, Arkansas 72315

Dear Superintendent Williams:

Thank you for your letter of July 5, 1968, in which you submitted a plan for the complete elimination of the dual school system in the Blytheville Public Schools.

Under this plan, it is our understanding that:

1. The Promised Land Elementary School will be closed in September 1968. One half of its students will be assigned temporarily to the Robinson Elementary School; the other half will be assigned temporarily to the Yarbrow Elementary School which will be expanded into a six teacher, grade 1-6 facility, having about a 50% white and a 50% Negro racial composition.
2. A bond issue will be submitted to the voters in March 1969 for the construction of additional elementary schools. Should the bond issue be approved, Franklin Elementary and Robinson Elementary Schools would be utilized respectively as a Special Education School and as a unitized kindergarten. All elementary students would be completely integrated, using the remaining old elementary schools with the newly constructed schools. Should the bond issue be defeated, geographic attendance zones will be drawn around the existing facilities so as

to integrate all the elementary students. In either case, students from the area of the Promised Land School who were temporarily assigned to the Yarbrow School will be assigned to elementary schools closer to their homes.

3. Beginning in September 1969, all high school students pursuing an academic program will attend Blytheville High School. The present Harrison Junior-Senior High School plant will be converted into a vocational high school for all high school students desiring this type of curriculum. No vocational courses will be offered at Blytheville High School.

4. Beginning in September 1969, all junior high school students will be assigned to either the Blytheville Junior High School or a new junior high school presently being built.

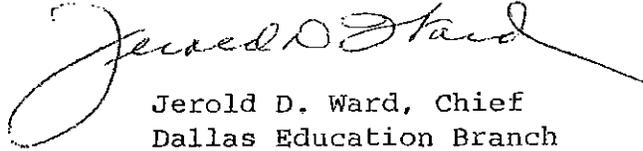
5. School bus routes will be established without regard to race.

6. The recruiting, hiring, assigning, paying, promoting, demoting, and dismissing of the professional staff will be done without discrimination on the ground of race, color, or national origin.

It appears that the implementation of this plan should eliminate all vestiges of the dual school system in the Blytheville Public Schools. Therefore, based on the submission and implementation of this plan, your district will be in compliance with the requirements of Title VI of the Civil Rights Act of 1964 for the coming year, thereby remaining eligible to receive Federal financial assistance. However, it has been the experience of this office that in those cases where academic subjects are offered at a full-time vocational school there is a tendency to reestablish the school as being intended for students of a minority race. We would, therefore, hope that your district will exercise caution in assuring that such a condition does not occur.

We commend you and your board for the leadership you have taken. Please do not hesitate to call upon us if we can be of any further service to you.

Sincerely,

A handwritten signature in cursive script, reading "Jerold D. Ward". The signature is written in dark ink and is positioned above the typed name and title.

Jerold D. Ward, Chief
Dallas Education Branch
Office for Civil Rights

cc: Chief State School Officer



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

February 11, 1971

*Received Feb 16, 1971
Address 7th + D Courts SW
G.A. Region Office
Bldg No. 3*

Mr. L. D. Harris
Superintendent
Blytheville School District #5
614 W. Checkasaw La.
Blytheville, Arkansas 72315

Dear Superintendent Harris:

By letter dated October 21, 1970, Dr. John Bell, Education Branch Chief of the Dallas Regional Office for Civil Rights, notified you that because of the failure of the Blytheville School District to convert to a unitary school system the matter was being referred to this office with a recommendation that appropriate enforcement action be initiated.

By letter dated July 19, 1968 the Regional Office for Civil Rights in Dallas accepted your terminal desegregation plan as follows:

- A: The Promised Land Elementary School would be closed in September 1968, with one half of its students to be assigned temporarily to the Robinson School and the other half to be assigned temporarily to the Yarbro School.
- B: A bond issue would be submitted to the voters in March, 1969 for the construction of additional elementary schools. If the bond issue were approved, Franklin Elementary and Robinson Elementary would be utilized respectively as a special education school and a consolidated kindergarten. All elementary schools would be completely integrated. If the bond issue were defeated, geographic attendance zones would be drawn around the existing elementary facilities so as to integrate all elementary students.

2-8-71 talked to Linda Brown
2-11-71 talked to Linda Brown
2-12-71 6663
HANDSON - 202 - 962 - 0668

- C. Beginning in September, 1969, all high school students pursuing an academic program would attend Blytheville High School and the Harrison Junior-Senior High School would become a vocational high school serving the entire district.
- D. Beginning in September 1969, all junior high school students would be assigned to either the Blytheville Junior High School or a new junior high school under construction when the plan was accepted.
- E. School bus routes would be established without regard to race.
- F. The recruiting, hiring, assigning, paying, promoting, demoting, and dismissing of the professional staff would be done without discrimination on the ground of race, color, or national origin.

Thus, according to your plan, the Blytheville School District was to be completely desegregated by the beginning of the 1970-71 school year. However, the on-site audit of your district which was made on October 6, 1970, revealed that your commitment to a desegregated system had not been implemented in that the Robinson and Franklin Elementary Schools remain identifiably Negro schools. Under the freedom of choice plan which is still in effect in your elementary schools, there are no white students in either of these schools. In addition, there are sixteen Negro and three white teachers at Franklin School, and sixteen Negro and four white teachers at Robinson School. Negroes do not constitute a majority of the faculty in any other school except the Harrison Learning Center, where a majority of the student enrollment is Negro. This indicates that teachers are assigned on the basis of race.

In a telephone conversation of October 15, 1970, a member of the Dallas Regional Office staff discussed with you various methods of desegregating your district. Since you refused to adopt these or other effective methods of desegregating, I am forced to conclude that compliance with Title VI cannot be secured by voluntary means.

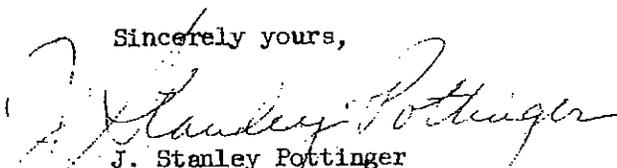
Accordingly, pursuant to 45 CFR 80.8(d), I hereby notify you that we are referring this matter to the Department of Justice for appropriate legal action to enforce Title VI of the Civil Rights Act of 1964.

Page 3 Mr. L. D. Harris

Pursuant to the Regulation, Section 80.8(d), no legal action will be taken for at least ten days following the mailing of this letter, during which period members of my staff are available for further discussion of your apparent violations. This will provide an opportunity for you to take corrective action and come into voluntary action.

If this Office can be of assistance to you, please call Dr. Lloyd R. Henderson, Director, Education Division, Area Code (202) 962-0868.

Sincerely yours,


J. Stanley Pottinger
Director, Office for Civil Rights

cc: Regional Civil Rights Director
Chief State School Officer
Mr. Jerris Leonard



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

JUN 18 1971

Address Reply to the
Division Indicated
and Refer to Initials and Number

LN:EAO:rlg
J 169-73-3
#42-113-237

AIR MAIL - SPECIAL DELIVERY

Mr. L. D. Harris
Superintendent
Blytheville School District
Blytheville, Arkansas 72315

Dear Mr. Harris:

This is in reply to your letter of May 12, 1971 requesting a one-year continuance of the present freedom of choice plan of school desegregation for the elementary schools in the Blytheville School District. The purpose of this letter is to inform you that we are unable to approve the district's continued operation under a freedom of choice plan of school desegregation.

The present school statistics clearly demonstrates that the district's freedom of choice plan has failed to disestablish the dual school structure in the Blytheville School System. Our information reveals that the present student and faculty statistics at your elementary schools is as follows:

<u>Schools</u>	<u>Students</u>		<u>Faculty</u>	
	<u>W</u>	<u>B</u>	<u>W</u>	<u>B</u>
Central	502	31	17	3
Fairview	694	9	18	3
Franklin	0	527	3	16
Lange	245	73	11	2
Robinson	0	496	4	16
Sudbury	191	107	11	3

Under the present status of the law, as enumerated in the most recent U.S. Supreme Court decision, Swann v. Charlotte-Mecklenburg Board of Education, No. 349, U.S. _____, (April 20, 1971), Slip Opinion pp. 10-12, the objective today still remains to eliminate from public schools all vestiges of state imposed segregation. School authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." The U.S. Supreme Court in Green v. New Kent County, 391, U.S. 420 (1968) has found that freedom of choice plans are unacceptable if there are reasonably available alternatives such as zoning or pairing which promise a speedier and more effective conversion to a unitary non-racial school system.

You stated in your letter as a reason for seeking a year's continuation of freedom of choice, the recent disruption of the secondary schools in the system and the possible community opposition to a change in the elementary school structure. I am sure that you know that the full implementation of school desegregation laws cannot be delayed because of opposition by persons in the community or temporary disruption of education.

Under Title VI of the Civil Rights Act of 1964, the Attorney General has authority to institute legal proceedings unless the Blytheville School District takes prompt action to completely disestablish the dual system which necessary includes its faculty and staff.

We therefore request that you advise this Department within ten days what plans the Blytheville School Board has taken and what procedures have been adopted to insure that such plans will be implemented at the beginning of the 1971-72 school year; for full conversion of the Blytheville School District to a unitary non-racial system.

We would suggest that the Board seek technical assistance from the Office of Education of the Department of Health, Education and Welfare in preparation of desegre-

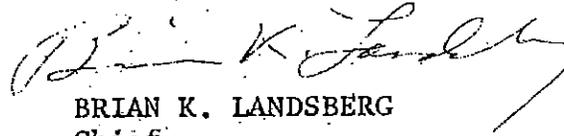
gation plans. That Office has had considerable experience in this field, and I can assure you that they will approach any problems that arise with responsibility and understanding.

It is our hope that the Blytheville School Board will not delay in their obligation to convert to a unitary system and that compliance can be brought about by voluntary means rather than by resort to the coercion of the courts. Our concern is that the work be started now, so as to avoid the imposition of abrupt changes at the eleventh hour. If you have any questions about this letter, do not hesitate to call upon us.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

By:



BRIAN K. LANDSBERG
Chief
Education Section