# FORREST CITY PUBLIC SCHOOLS

OFFICE OF THE SUPERINTENDENT
625 Irving St Forrest City, AR 72335



Member of North Central Association since 1924

SUPERINTENDENT:
*Dr. Tiffany Hardrick*
*phone: (870)633-1485*
*fax: (870) 633-1415*

April 14, 2015

Office of the Commissioner
ATTN: Arkansas Public School Choice Act
Four Capitol Mall
Little Rock, AR 72201



Dear Mr. Dillingham:

Sam Jones has forwarded to me your e-mail of April 6, 2015 advising that we should examine Act 560 of 2015. Your e-mail to Mr. Jones was prompted by the actions of the Forrest City School District, about which Mr. Jones advised you on March 31, 2015, that the Forrest City School District once again claimed an exemption to the Act both as previously promulgated and/or as it might become law and provided a copy of the Resolution of the Forrest City School District claiming an exemption.

I believe your e-mail to Mr. Jones of April 6th acted as the acknowledgement he requested that you had received the referenced items from the Forrest City School District.

You have invited our attention to Act 560 of 2015. In response to that, we attach a copy of a pending Complaint by the Forrest City Special School District against the Palestine Wheatley School District and the Wynne School District seeking monetary damages from both of those districts. In the Complaint, which was filed August 22, 2014, Forrest City described the still pending federal court case of *McKissick et al. Forrest City School District No. 7 et al.*, filed on November 6, 1969. A copy of the McKissick Complaint is attached to the Forrest City suit (which was brought in state court but was subsequently removed to federal court) as Exhibit 2.

Among other matters, the Plaintiffs in the *McKissick* Complaint noted that Forrest City was relying upon "Freedom of Choice," noted in paragraph 26 the Order of Judge Oren Harris of January 16, 1970 attached as Exhibit 3 and that Forrest City had failed to take the necessary steps to effectively implement a desegregated unitary school system, and in paragraph 27 noted that Forrest City had been ordered to file a plan to become unitary. Judge Harris specifically stated that: "all vestiges of 'Freedom of Choice' shall be eliminated no later than the beginning of the second semester of the present school year."

At page 4, paragraph 28, the Complaint notes that the federal court was retaining continuing jurisdiction reserving the right to approve, modify or reject any plan submitted.

Paragraph 29 of the Complaint notes that Forrest City submitted a new plan which contained "no choice elements" and this plan was approved by Judge Harris on August 16, 1971.

Since that time, as is explained in paragraph 31, the court noted in 1990 that Forrest City was continuing its operation of its schools in compliance with the orders of the court referring to the 1971 Order.

In paragraph 40, you will note that Forrest City requests a declaration by the federal court that any school choice transfers are in conflict with both the *McKissick* decree and the state court Order of August 14, 2003 involving litigation between the Palestine Wheatley and Forrest City School Districts.

Written discovery has begun in that case, and it is set for trial on September 29, 2015.

We submit the foregoing in compliance with the provisions of Act 560 of 2015 and reiterate our contention that Forrest City should be regarded as exempt from all forms of school choice under the state law as amended and pursuant to its ongoing federal court decree.

Sincerely,

Tiffany Hardrick
Superintendent

CC: Mr. Jeremy Lasiter

**IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY ARKANSAS**



FORREST CITY SPECIAL SCHOOL DISTRICT

Plaintiffs

v. Case No. 62CV-14-160-4

PALESTINE-WHEATLEY SCHOOL DISTRICT; AND WYNNE SCHOOL DISTRICT

Defendants



**COMPLAINT**

Forrest City Special School District No. 7 (hereafter Forrest City) for its Complaint states:

1. This is a civil action seeking declaratory relief pursuant to A.C.A. 6-111-101 et. seq., money damages in the form of reimbursement for improperly diverted foundation and other state school aid as has been or will be improperly paid to both the Palestine Wheatley School District and the Wynne School District and for unjust enrichment. As is explained below, the prior pending case of *In Re: The matter of the Forrest City School District and Palestine Wheatley School District*, which was numbered E-2000-58 should be reopened and consolidated with this case for complete and efficient disposition of the issues raised herein.

2. As the facts alleged below explain, this is a matter of which this court has jurisdiction.

3. As the facts alleged below establish, venue is properly laid in this court.

**BACKGROUND**

4. Litigation between the Forrest City and the Palestine-Wheatley School District (hereafter Palestine Wheatley) regarding school choice began after passage of the 1989 School Choice Act codified at ACA 6-18-206. To resolve the litigation at that time, an Agreed Order

was submitted by the two districts to the Honorable Kathleen Bell who entered the Agreed Order on August 14, 2003. This order is attached as Exhibit 1.

5. In the litigation, Forrest City contended both that Palestine Wheatley was illegally accepting transfer of students who resided within the Forrest City School District in violation of both A.C.A. §6-18-202 (the School Residence Statute) and §6-18-206, the then prevailing version of the "School Choice Act." Forrest City obtained summary judgment and then by agreement, after discovery, Forrest City School District was granted judgment against PalestineWheatley in the amount of $80,000.

6. Specific findings applicable to the current controversy were made and agreed to. For instance, paragraph 6 of the Agreed Order states in full that:

> "Each party is ordered and directed to advise all persons inquiring of the District, as to parties to this action under A.C.A. §6-18-206 "School Choice," that the District is not eligible and will not enroll any student residing in the other District for the school year 2003-2004 or any future year, unless eligibility standards shall change or unless the Arkansas Department of Education shall approve participation, and in no event unless the other District shall have been given notice of such intent to participate and ninety (90) days for response."

7. Further, agreed paragraph 7 provides in full that:

> "The Palestine Wheatley School District shall, within twenty (20) days of entry of this Order, notify the parents, guardians, or other persons in loco parentis, of each student listed on Exhibit "A" currently enrolled, and/or any other student residing in the Forrest City School District, that Palestine Wheatley School District is not eligible under the provisions of A.C.A. §6-18-206 to participate in School Choice in relation to residents of the Forrest City School District and that the student will not be allowed to enroll for the 2003-2004 school year absent full compliance with applicable law."

8. Paragraph 8 of the Agreed Order is also important. It requires that:

> "Neither District shall enroll any student transferring from the other District unless residency shall be established and verified. Upon such enrollment, the enrolling District shall give notice to the other District within ten (10) days, including all documents and other information provided in relation to verification of residency."

9. The Agreed Order goes on in paragraph 9 to set forth the manner and time for payment of the $80,000 due from Palestine Wheatley to Forrest City.

10. Paragraph 10 dismissed the Palestine Wheatley claims against the Forrest City School District with prejudice while at the same time dismissing the remaining Forrest City claims without denominating that dismissal to be with prejudice.

**COUNT I**

11. Upon information and belief, Palestine Wheatley has, within and during the past several years, improperly accepted transfers from the Forrest City School District pursuant to now repealed A.C.A §6-18-206 and should, consistent with the Agreed Order and Arkansas law, notify these students, to the extent they remain within the Palestine Wheatley School District, that their transfer was improperly granted.

12. Palestine Wheatley should likewise reimburse the Forrest City School District for that amount of state aid generated and paid to Palestine-Wheatley for each such student with interest at six percent (6%). Discovery will be commenced to determine the number of students, the identities of the students, and the number of years they were improperly granted transfer to Palestine Wheatley.

13. Upon information and belief, some students have likewise been allowed by the Wynne School District to transfer to Wynne pursuant to A.C.A. §6-18-206 now repealed.

14. Just as in the case of Palestine Wheatley, discovery should be had to identify the number, identities and period of time those students were permitted to improperly transfer to the Wynne School District and the Wynne Should District should be ordered to reimburse the Forrest City School District for the state aid, with six percent (6%) interest, received by the Wynne School District for these students.

15. Because of the substantial overlap in the issues, stipulations and adjudications made in E-2000-58, it should be reopened and consolidated with this action for disposition.

**COUNT II**

16. A.C.A. §6-18-206 was repealed and replaced by The School Choice Act of 2013, codified as 6-18-1901 et. seq. Forrest City declared an exemption against transfer of students to any other district pursuant to the School Choice Act of 2013, as permitted by the 2013 Act.

17. To the extent that either Palestine Wheatley, Wynne or both accepted transfers during the last two school years pursuant to the School Choice Act of 2013, then Forrest City should be reimbursed for the state aid generated by those students in the fashion described above.

**COUNT III**

18. The high school and middle school in the Forrest City School District were declared to be in academic distress by the State Board of Education on July 10, 2014. Pursuant to the Opportunity Choice Act of 2004, in certain instances not applicable here, students are permitted to transfer from an academically distressed school to a neighboring school that is not in academic distress.

19. The State Board of Education required all school districts in Arkansas that were in academic distress or which had schools in academic distress to notify parents and students of the opportunity to transfer by July 30, 2014.

20. However, A.C.A. 6-18-227 § (e)(1) and §(e)(2) of that Act prohibit transfers from Forrest City to any other school district.

21. A.C.A. 6-18-227 refers to now repealed A.C.A. 6-18-206(d). However, 6-18-206(d) was replaced with the School Choice Act of 2013 which contains the exemption against transfer declared by the Forrest City School District prohibiting transfer of students from the

Forrest City School District to Palestine Wheatley, Wynne or any other district, described in Count II of this Complaint.

22. A.C.A. 6-18-227(e)(2) provides that if any part of the Opportunity Choice Act conflicts with the provisions of a federal desegregation court order, the provisions of the federal desegregation court order shall govern. Such a conflict exists in this case.

**COUNT IV**

23. The desegregation case still pending against the Forrest City School District is styled *McKissick et al v. Forrest City School District No. 7 et al*, and was filed on November 6, 1969. A copy of the *McKissick* Complaint is attached as Exhibit 2.

24. In paragraph VI A of the *McKissick* Complaint the Plaintiffs noted that: "the pupil desegregation procedure adopted by defendants is commonly known as "freedom of choice."

25. Plaintiffs' prayer for relief in *McKissick* sought a permanent injunction enjoining Forrest City from operating a dual school system and enjoining it from refusing to implement a plan of total unification of the district by the use of zoning and pairing.

26. In an order filed January 16, 1970, attached as Exhibit 3, the district court concluded that Forrest City was operating identifiable schools under a traditional policy of dual school systems contrary to law and in violation of the Constitution of the United States and that it had failed to take the necessary steps to effectively implement a desegregated unitary school system.

27. The court ordered Forrest City to file a plan for conversion of its public schools to a unitary, non-racial system. Significantly, in listing the elements of the plan to be presented, the court specifically stated that: "all vestiges of 'freedom of choice' shall be eliminated no later than the beginning of the second semester of the present school year."

28. At page 4, paragraph 5, the court noted it was retaining continuing jurisdiction and reserving the right to approve, modify or reject any plan submitted. The order was affirmed by the United States Court of Appeals for the Eighth Circuit on June 5, 1970.

29. Forrest City submitted a new plan on July 12, 1971 in an effort to comply with the guidelines of the court but it was rejected at a hearing on July 27, 1971 and a new plan ordered. The court noted its Order of August 16, 1971 attached as Exhibit 4, carefully scrutinized the revised plan (which had no choice elements within it) and concluded that it complied with the guidelines and teachings of the Supreme Court.

30. At page 7 of its August 13, 1971 opinion, the court reiterated that it was retaining jurisdiction to see that compliance was had with the orders of the court.

31. The next court proceeding was on December 4, 1990 in which the court considered the addition of a magnet school program as part of the Forrest City desegregation plan. The court noted at page 2 of its 1990 opinion that "magnet schools must be approved by this court in order to modify the court's previously approved plan." It was approved along with the court's observation that the school district had monitored and continued the operation of the Forrest City Schools in compliance with the orders of the court "since that time," referring to 1971. A copy of the 1990 opinion is attached as Exhibit 5.

**COUNT V**

32. The now repealed School Choice Act of 1989, the School Choice Act of 2013 and the Opportunity School Choice Act of 2004 all conflict with the prohibition contained in the orders entered regarding the Forrest City School District that freedom of choice could not be relied upon as regards Forrest City School District.

33. The order of the circuit court entered on August 14, 2003 (See Exhibit A) as an agreed order recognized this concept as well.

34. Thereafter, the School Choice Act of 2013 replaced the 1989 School Choice Act and the Opportunity School Choice Act was enacted and became effective after the circuit court's order of August 14, 2003.

35. None of these statutes are enforceable against the Forrest City School District and no choice transfers of any kind are to be permitted or sanctioned absent approval of the federal district court as an amendment to the Forrest City desegregation plan to be presented and approved by that court.

36. This court should respect and enforce not only the orders entered in McKissick but the August 14, 2003 order of this very court.

**COUNT VI**

37. All of the foregoing satisfies the requirements for recovery by Forrest City from the Defendants under principles of unjust enrichment as defined and sanctioned by the common law of Arkansas.

**RELIEF REQUESTED**

38. After a brief period of discovery, this court should determine, absent a stipulation to that effect, the number of children who have transferred to the Palestine-Wheatley School District who resided at the time of transfer within the boundaries of the Forrest City School District, calculate the state aid generated by each such child and order reimbursement by the Palestine-Wheatley School District to the Forrest City School District for each such child improperly allowed to transfer, together with prejudgment interest of six percent (6%)

39. After a brief period of discovery, the Wynne School District should be ordered to reimburse the Forrest City School District for all state aid generated by any child the Wynne School District allowed to transfer under any of the school choice acts, together with prejudgment interest of six percent (6%).

40. This court should declare that any such transfers were in conflict with both the *McKissick* Decree and the August 14, 2003 order of this court and direct that Palestine-Wheatley and Wynne School District terminate those impermissible transfers.

WHEREFORE, Forrest City prays that it have judgment against Palestine Wheatley in an amount to be determined but which amount is in excess of the minimum requirements for federal court jurisdiction, that it have judgment against the Wynne School District in an amount to be determined but in an amount in excess of the minimum requirements to establish federal court jurisdiction, for prejudgment interest at the constitutional rate of six percent (6%) calculated from the date of receipt of each improperly received state aid payment by the Defendants, for its attorney's fees and for a declaration that both districts have improperly permitted transfers pursuant to choice in the past and that the court should declare that no further choice transfers shall be allowed and for all proper relief.

Respectfully submitted,

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
M. Samuel Jones III (76060)

SHARPE, BEAVERS, CLINE & WRIGHT
P.O. Box 924
Forrest City, AR 72336-0924
Telephone: 870-633-3141
Facsimile: 870-633-3594
Email: brbeavers@sbcglobal.net

*/s/ Brad J. Beavers*
Brad J. Beavers (81012)

*/s/ R. Alan Cline*
R. Alan Cline (87035)

*Attorneys for Forrest City School District*

IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY, ARKANSAS

IN RE: THE MATTER OF THE
FORREST CITY SCHOOL DISTRICT
and PALESTINE WHEATLEY SCHOOL DISTRICT No. E-2000-58

**AGREED ORDER**

On this 14th day of August, 2003, comes to be heard this cause of action on Joint Petition of the parties. The Forrest City School District appearing by and through its attorney, Brad J. Beavers, of Sharpe, Beavers & Cline, P.O. Box 924, Forrest City, AR 72336-0924, and Palestine Wheatley School District appearing by and through its attorney, W. Frank Morledge, P.O. Box 912, Forrest City, AR 72336-0912. The Court, after reviewing all pleadings filed herein, hearing statements of counsel and being well and sufficiently advised, finds that:

1. That the Forrest City School District has been granted Summary Judgment against the Palestine Wheatley School District based upon violation of A.C.A. §6-18-202 for the 1999-2000, 2000-2001, and 2001-2002 school years as to certain students as is more specifically set forth in said Summary Judgment dated the 1st day of July, 2002, and filed the 9th day of July, 2002. The Forrest City School District has been granted Partial Summary Judgment against the Palestine Wheatley School District in the amount of $45,175.85.

2. The Court further finds that the provisions of A.C.A. §6-18-206, commonly referred to as "School Choice", do not apply as to transfer of students between the Forrest City School District and the Palestine Wheatley School District. Specifically, the Palestine Wheatley School District is not eligible to accept students who are residents of

EXHIBIT
"I"

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CIRCUIT CLERK

the Forrest City School District (as defined by the provisions of A.C.A. §6-18-202) under the provisions of A.C.A. §6-18-206.

3. Certain students listed on Exhibit "A" hereto are found to have been enrolled by the Palestine Wheatley School District in violation of both A.C.A. §6-18-202 and §6-18-206 for the school year 2001-2002, under the "School Choice" provisions.

4. The Forrest City School District is, by agreement, granted Judgment against the Palestine Wheatley School District, as a compromised settlement, the amount of $80,000.00, inclusive of the amount of $45,175.85 Summary Judgment filed July 9, 2002.

5. Exhibit "A" contains information concerning individual students. Exhibit "A" shall be attached to this Order in the sealed portion of the Court file. Any copy of this Judgment released to any person other than the parties, or open for public inspection, shall not contain Exhibit "A" hereto.

6. [redacted]

7. The Palestine Wheatley School District shall, within twenty (20) days of entry of this Order, notify the parents, guardians, or other persons in loco parentis, of each student listed on Exhibit "A" currently enrolled, and/or any other student residing in

the Forrest City School District, that Palestine Wheatley School District is not eligible under the provisions of A.C.A. §6-18-206 to participate in School Choice in relation to residents of the Forrest City School District and that the student will not be allowed to enroll for the 2003-2004 school year absent full compliance with applicable law.

8. Neither District shall enroll any student transferring from the other District unless residency shall be established and verified. Upon such enrollment, the enrolling District shall give notice to the other District within ten (10) days, including all documents and other information provided in relation to verification of residency.

9. The Palestine Wheatley School District shall, within thirty (30) days, pay the Forrest City School District the total amount of Judgment recited herein, $80,000.00. In the event that such payment shall not be received within said thirty (30) day period, the Forrest City School District shall be authorized to petition the Arkansas Department of Education, pursuant to A.C.A. §6-18-205(a)(1)(3), to satisfy the liability created by this Agreed Order, in the sum of $80,000.00, with credit for any amount paid, by transferring that amount to the Forrest City School District from funds which the Department would have next distributed to the Palestine Wheatley School District, as the liable school district, until such time as the full liability is paid. The Department is ordered to determine that the amount of the liability is as set forth in this Agreed Order and shall satisfy the liability by such transfer from the next available funds due to the Palestine Wheatley School District. If not paid, the Forrest City School District may collect said Judgment in any way allowed by Arkansas law.

10. The Palestine Wheatley School District has requested dismissal of all pending claims against the Forrest City School District and all such claims are hereby

dismissed with prejudice. The Forrest City School District has requested dismissal of all remaining pending claims against the Palestine Wheatley School District (except as reduced to Judgment herein) and all such remaining claims are hereby dismissed.

**IT IS SO ORDERED** this 14th day of August, 2003.

KATHLEEN BELL, JUDGE

Judge Kathleen Bell
Fourth Division
Bench Trial
Non-Trial

APPROVED AS TO FORM AND CONTENT:

W. FRANK MORLEDGE, Attorney for
Palestine Wheatley School District

BRAD J. BEAVERS, Attorney for
Forrest City School District

FILED

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

ERIC McKISICK, SHELENTA GAIL McKISICK, SANDRA McKISICK by their mother and next friend, TERESA McKisick; EARNEST WILLIAMS, JR., CAROLYN WILLIAMS, by their father and next friend, REV. E. A. WILLIAMS, SR.; EARLY CRAWFORD, JR., DIANE CRAWFORD, DARRELL CRAWFORD, by their guardian and next friend, REV. E. A. WILLIAMS, SR.; PEGGY ANN FORD, LINDA MARIE FORD, by their mother and next friend, MRS. GEORGIA LEE FORD; DORRELL HANCOCK, MARSIE ELLEN HANCOCK, LAUDERICK HANCOCK, KENNETH HANCOCK, by their mother and next friend, MRS. N. A.HANCOCK; DIANNE YOUNG, by her mother and next friend, ONA LEE YOUNG; ARTHUR LEE JONES, HENRY EARL JONES, by their father and next friend, HENRY JONES; LARRY BRYANT, by his guardian and next friend, HENRY JONES; ROBERT LEEKENDRICK, ALBERT LAVERN RHODES, ALVINA REA RHODES, by their mother and next friend, WERDENE MAE RHODES,

Plaintiffs,

Vs.

FORREST CITY SPECIAL SCHOOL DISTRICT NO. 7; WILLIAM IRVING, Superintendent of the Forrest City School District No. 7; and JAMES DeROSSITT, President of the School Board of the Forrest City School District No. 7,

Defendants.

CIVIL ACTION NO. H-69-C-42

COMPLAINT

I

The jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C., §§1343(3)(4). This is an action in equity, authorized by law, Title 42 U.S.C., §§ 1981 and 1983. The rights, privileges and immunities sought to be secured by this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

II

This is a proceeding for a preliminary and permanent injunction to enjoin defendant Forrest City School District No. 7 and defendants Irving and DeRossitt from continuing their policy, practice, custom and

EXHIBIT "2"

usage of operating a dual system of public schools for Negro and white pupils in defendants' school district. Plaintiffs are Negro citizens of the United States and the State of Arkansas who reside within defendants' school district.

III

Minor plaintiffs are all eligible to attend the public schools of defendants' district.

IV

Minor plaintiffs bring this action on behalf of themselves and all other parties similarly situated pursuant to Rule 23(a) and (b)(1)(B) of the Federal Rules of Civil Procedure. The class of persons affected or which may be affected by the practices herein complained of is so numerous that joinder of all members is impracticable; there are common questions of law or fact common to the class; the representative parties will fairly and adequately protect the interests of the class and adjudications with respect to individual members of the class would as a practical matter, be dispositive of the interests of all other parties.

V

Defendants are the Forrest City School District No. 7, located in Forrest City, St. Francis County, Arkansas; and defendant, William Irving, Superintendent of Schools of defendant school district; and James DeRossitt, President of the School Board of defendant School District. Defendant School District is charged under the Arkansas law with the responsibility for operating and maintaining the public schools of the Forrest City School District. The facilities under its control and management are as follows:

a. The predominantly white Forrest City High School operated for pupils in grades ten through twelve;

b. The all Negro Lincoln High School operated for pupils in grades ten through twelve.

c. The predominantly white Sam Smith Jr. High School operated for pupils in grades seven through nine.

d. The all-Negro Lincoln Jr. High School operated for pupils in grades seven through nine.

e. The predominantly white Caldwell, Madison, Forrest City

Primary, Alta McDaniel and Forrest City Elementaryand Forrest Hills Schools.

f. The all-Negro Stewart, Eldridge Butler, Evans and DeRossitt Elementary Schools.

Defendant William Irving, as Superintendent of Schools, is the chief administrative officer of defendant school system.

VI

A. Prior to September, 1965, all Negroes within the defendant school district were required to attend the public schools operated for Negroes. White pupils were required to attend the public schools operated for white pupils. In September, 1965, the district began a program of pupil desegregation in order to comply with the Guidelines on school desegregation of the Department of Health, Education and Welfare (hereinafter Department of HEW) so that said school district could continue receiving federal financial assistance. The pupil desegregation procedure adopted by defendants is commonly known as "freedom of choice." No white pupils have ever chosen to attend any of the Negro schools. There are currently approximately 120 black students at Forrest City High School and 800 white students. A majority of the district is made up of black students.

B. Defendant School District continues to operate a dual school system which retains many vestiges of complete segregation including:

(1) all-Negro schools;

(2) substantially segregated faculty and racially identifiable staffs;

(3) black students bearing the total burden of desegregation;

(4) inferior facilities and services for black students.

VII

Minor plaintiffs are eligible to attend all grades of the public schools operated by defendants. Defendants have nullified this right by dilatory tactics and are committed to prolonging the process of pupil desegregation.

VIII

Some of the minor plaintiffs attend all-Negro schools operated by defendant school district. The all-Negro schools are substandard, inadequate, and inferior to the predominantly white schools operated by defendant.

Minor plaintiffs are injured by defendants' policy, practice, custom and usage of faculty segregation and defendants' other policies.



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practices, customs and usages of racial discrimination. Plaintiffs have no plain or complete remedy at law to redress these wrongs and this suit for injunction is their only means for securing adequate relief. Plaintiffs stand to suffer irreparable damage unless the practices herein complained about are enjoined by this court.

WHEREFORE, plaintiffs respectfully pray that this court advance this case on the docket, order a speedy hearing at the earliest practicable date, and upon such hearing enter a preliminary and permanent injunction enjoining defendants from:

1. Operating a dual school system;

2. Refusing to implement immediately a plan for total unification of the district.

Plaintiffs further pray that this court order defendants to convert immediately to a unified school system by the use of zoning, pairing, continued use of existing transportation facilities and any other techniques available. Plaintiffs pray that this court award them a reasonable attorney's fee and any other relief which may be appropriate.

Respectfully submitted,

WALKER, ROSENBERRY, KAPLAN, LAVEY & HOLLINGSWORTH
1820 West 13th Street
Little Rock, Arkansas 72202

JACK GREENBERG
NORMAN CHACHKIN
10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

By _____
JOHN W. WALKER

By _____
Philip E. Kaplan

FILED

JAN 16 1970

W. H. McCLELLAN, CLERK
By: _____ Dep. Clerk

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

ERIC MORISICK, ET AL., Plaintiffs,

v. NO. H 69-C-42

FORREST CITY SPECIAL SCHOOL DISTRICT NO. 7, ET AL., Defendants.

ORDER

On this 14th day of January, 1970, this cause comes on for hearing to the Court as scheduled. The parties filed the complaint against the Forrest City School District on November 6, 1969. It was scheduled for a hearing on January 7, 1969, but due to inclement weather resulting in extremely hazardous conditions of the roads, the case of necessity was postponed and rescheduled this date. The plaintiffs appearing by their attorney, Philip E. Kaplan, of the law firm of Walker, Rotenberry, Kaplan, Lavey & Hollingsworth, and the defendants appearing in person and by their attorneys, E. J. Butler and Harold Sharpe, and the parties announced ready for trial of the case.

From the pleadings, interrogatories, ore tenus testimony, exhibits, statements of counsel, and the entire record, the Court issued its decision from the bench at the conclusion of the trial.

Jurisdiction is admitted and established.

As stated by the Court, at the conclusion of the hearing, the Forrest City Public Schools are presently operating identifiable schools under a traditional policy of dual school systems contrary to law and in violation of the Constitution of the United States. Although, the school district has a planned program of operation

EXHIBIT "3"

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toward compliance, it has failed to take necessary steps to effectively implement a desegregated unitary school system.

This is the first time the district has been required to act by court decree. The school district contends that it has developed a plan of desegregation in consultation with and in cooperation by the Department of Health, Education and Welfare to be fully, effectively and completely implemented no later than the commencement of the 1970-71 school year. It further contends that to require immediate unitization of their multiple schools, as will be fully accomplished with the beginning of the next school year, would be impractical and detrimental to a well planned and operated school program and would be educationally unsound in that it would make ineffectual the educational processes during the second semester. Such claims shall no longer serve as deterrents to immediate compliance with the constitutional standards. Christian, et al. v. Board of Education of Strong School District No. 83 of Union County, et al., Eighth Circuit, December 9, 1969; Alexander v. Holmes, Supreme Court No. 632, October 29, 1969.

It is the duty of school boards to voluntarily accomplish an end to segregation without judicial prodding. The burden on the school board is to develop and present a plan that promises realistically to work at once. Green v. County School Board, New Kent County, 391 U.S. 438-39, Christian, et al. v. Board of Education of Strong School District No. 83 of Union County, et al., supra. See Brown v. Board of Education, 349 U.S. 294 (1955) Brown II.

In compliance with the ruling of the Court, entered herein at the conclusion of the trial, the Court is of the opinion that

the defendants, Forrest City Special School District No. 7, Superintendent of Schools and the Forrest City School Board, should file with the Court an appropriate plan for immediate conversion of the public schools to a unitary, non-racial system.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the Forrest City Special School District No. 7, its officers and members of the board, shall file with the Court within ten days from the date of the hearing a plan to convert the present organization of the district's public schools to a unitary, non-racial system. The plan shall provide as the Court directs herein, inter alia, and be implemented as set forth below:

1. The present system of dual bussing of some students shall be eliminated and a unitary bussing system established no later than beginning with the second semester of the present school year.

2. The assignment of students to schools and classes therein shall be made without regard to race commencing no later than the beginning of the second semester of the present school year. The assignments and reassignments of students shall continue and the new plan for the attendance of students on a non-racial basis shall be fully implemented no later than the 1970-71 school year.

3. The employment and assignment of faculty and other personnel shall be made without regard to race and color commencing no later than the second semester of the present school year. The plan shall further provide for the transfer of faculty and other personnel on a continuing basis to eliminate all vestiges of segregation and fully implemented no later than the commencement of the 1970-71 school year.

4. All vestiges of "freedom of choice" shall be eliminated no later than the beginning of the second semester of the present school year.

5. The Court retains continuing jurisdiction and reserves the right to approve, modify or reject any plan submitted toward the establishment of an effective and fully implemented unitary, non-racial system of the district's public schools.

DATED: January 15, 1970.

UNITED STATES DISTRICT JUDGE

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AUG 16 1971

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

ERIC McKISICK, ET AL., ]
]
Plaintiffs, ]
]
v. ] NO. H-69-C-42
]
FORREST CITY SPECIAL SCHOOL ]
DISTRICT NO. 7, ET AL., ]
]
Defendants. ]

MEMORANDUM AND ORDER

This proceeding was originally brought by the plaintiffs against the defendants in their individual capacities and as a class action pursuant to Rule 23(a)(b)(1)(B) of the Federal Rules of Civil Procedure. The plaintiffs and their class they propose to represent are black citizens of the defendant school district. The plaintiffs seek relief by requiring the school district to eliminate its dual system of operation and all vestiges of segregation and to require the defendant school district to operate a unitary system without regard to race.

Jurisdiction having been established, this Court entered an order January 16, 1970, requiring the Defendant Forrest City Special School District No. 7, its officers and members of the board, to submit a plan of operation to a unitary, non-racial system in compliance with constitutional standards.

Pursuant thereto, the defendant school district submitted a proposed plan for the operation of its schools on January 24, 1970. In the meantime, the plaintiffs appealed to the Circuit Court of Appeals for the Eighth Circuit the order of the Court entered January 16, 1970. The plaintiffs sought summary reversal

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of the Court's order, which was denied and the Clerk of the Court of Appeals was directed to prepare a briefing schedule for oral argument and submission to the Court of Appeals at its April, 1970 session.

On June 5, 1970, the appeal was heard by the appellate court and on the original files of the United States District Court for the Eastern District of Arkansas, and arguments of counsel, judgment was entered affirming the order of the district court entered January 16, 1970, in accordance with per curiam opinion filed at that time.

Pursuant to the per curiam opinion of the Circuit Court of Appeals, Eighth Circuit, June 5, 1970, this Court entered an order dated July 6, 1970, approving the proposed plan of operation for the public schools of the defendant, Forrest City Special School District No. 7, submitted and entered January 24, 1970.

On timely motion of the plaintiffs to reconsider the court-approved plan of the defendant school district, the Court entered an order denying the plaintiffs' motion for reconsideration on August 21, 1970. The plaintiffs filed timely notice of appeal of this Court's orders dated July 6, 1970, and August 21, 1970, respectively to the United States Court of Appeals for the Eighth Circuit.

In the interim period, the Supreme Court of the United States decided and filed opinions in the following cases: Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1; Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33; North Carolina State Board of Education v. Swann, 402 U.S. 43; McDaniel, Superintendent of Schools v. Barresi, 402 U.S. 39.



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Pursuant to the above-mentioned opinions, the Eighth Circuit Court of Appeals vacated this Court's orders of July 6, 1970, and August 21, 1970, and remanded the cause to the district court with directions. As a result, this Court entered an order June 1, 1971, directing the defendant school district to file with the Court a plan for the operation of its elementary schools which complies with the guidelines and teachings of the opinions of the United States Supreme Court in the above-cited cases. The school district was directed to submit the plan no later than July 12, 1971, and the plaintiffs were given ten days after the filing of the plan by the school board to respond or otherwise plead in connection with the proposal. At the same time, the Court scheduled a hearing on the proposal for Tuesday, July 27, 1971.

In compliance with the Court's order, the defendant school district on July 12, 1971, submitted proposed plan adopted by the school board revising the previously desegration proposal in an effort to comply with the guidelines as previously directed. The plaintiffs filed no formal objection or other response.

As scheduled, the court held a hearing on the school district's revised plan July 27, 1971. The plaintiffs appeared with their attorney, Honorable Phillip E. Kaplan, and the defendants appeared with their attorneys, Honorable Harold Sharpe and Honorable E. J. Butler. After opening statements of counsel, testimony was presented by Mr. William Irving, Superintendent of Schools, and in addition to the plan proposed by the district in detail, numerous exhibits were presented as an explanation of its operation. Following the testimony and the presentation of exhibits and further statements of counsel, the Court concluded

that the plan proposed failed to meet the guidelines and teachings of the recent opinions of the Supreme Court of the United States. The school board was directed to file a revised plan within ten days that would meet the objection of the Court as shown from the evidence presented during the course of the hearing. In compliance with the Court's order, the school district submitted the revised plan with detailed information as to the distribution of the students in all of its schools, teacher assignment, exhibits showing proposed bus routes and attendance areas adopting a combination of pairing of certain schools and zoning as applicable to its elementary schools.

The plaintiffs filed objections to the defendant's revised plan and contend that the elementary schools of the district would still be racially identifiable and that the plan would not achieve a unitary status. The plaintiffs further contend that since the school district has over 50% black enrollment a racial balance should be required in all of its schools. Further objection is made to the faculty assignment, contending that the proposed faculty distribution remain racially identifiably.

This Court did not propose, and does not do so now, to require the school district to achieve a racial balance. It is not required as a matter of substantive constitutional right. Swann v. Board of Education, 402 U.S. 1, 24.

On this question the Supreme Court made it clear in Swann that the objective sought does not and cannot embrance all the problems of racial prejudice. The District Court established a norm for the various schools of a 71-29 ratio. It was acknowledged that variations from that norm may be unavoidable. Mr. Justice

Burger stated, commencing at page 24 as follows:

> "If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." See also United States v. Watson Chapel School District No. 24, et al., No. 20,699, United States Court of Appeals for the Eighth Circuit, August 7, 1971, pages 9 and 10.

With reference to faculty assignment, the plan calls for 122 teachers, 61 black and 61 white. In addition thereto, the district will have a number of special teachers as speech therapy, art, music, physical education and so forth of both black and white who will serve two or more schools. It appears the school district has sufficiently achieved faculty desegregation and an acceptable assignment of its faculty that reasonably complies with the law.

No question or objection is raised to the school district's proposed operation of the Forrest City High School and the Forrest City Junior High School, grades 7-12. It was stipulated by the parties to the Court this arrangement was acceptable.

There are four rural elementary schools and five city elementary schools which are to accommodate 3167 students, 1829 black and 1338 white. No elementary school has less than 25% white or less than 30% black, except DeRossitt, an elementary school in a remote area of the district with pre-dominantly black population. 8% of the students to be assigned will be white



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with a faculty composed of 50% black and 50% white. The Court concludes that from the record, and under the circumstances, this proposed arrangement complies with (No. 2) of the problem areas discussed in Swann, supra, pages 25 and 26. The Court is satisfied that the racial composition of this elementary school is not the result of present or past discriminatory action on the part of the school authorities.

The Court also takes note that due to the proposed teacher assignments, it will be necessary to purchase additional portable buildings by the school district. Additions will be required at Forrest Hills School (2 buildings) and Stewart Elementary (1 building). Ultimately to meet the requirements of the plan, the school district may be required to purchase one or two other portable buildings to serve the needs of the district. In that these additional buildings will be necessary as a part of the plan, it follows that the school district will be required to provide these additional facilities.

It is also noted that the original plan submitted by the district in 1970, effective with the commencement of the 1970-71 school year, had the approval of the Department of Health, Education and Welfare. The instant plan proposed by the district achieves a greater degree of desegregation than did the proposed plan approved by H.E.W.

The Court has carefully scrutinized the revised plan submitted herein on August 5, 1971, and pursuant to the record, the Court is of the opinion that the proposed plan submitted by the school board of the Forrest City Special School District No. 7 for its elementary schools complies with the guidelines and teachings of the United States Supreme Court of April 20,



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1971, in the Swann and other cases cited hereinabove and should be approved.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the plan of operation of the public schools of the Forrest City Special School District No. 7, Forrest City, Arkansas, submitted on August 5, 1971, be and the same is hereby approved.

IT IS FURTHER ORDERED that this Court retains jurisdiction for further consideration of any problem that might arise in connection with the operation of the Forrest City Schools and compliance with the orders of this Court.

DATED: August 13, 1971.

UNITED STATES DISTRICT JUDGE

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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

DEC 04 1990

JAMES W. McCORMACK, CLERK
By: _____ DEP. CLERK

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

ERIC McKISSIC, ET AL. PLAINTIFFS

v. Civil No. H-69-C-42

FORREST CITY SCHOOL DISTRICT NO. 7
(formerly Forrest City Special School
District No. 7), ET AL. DEFENDANTS

**O R D E R**

The court is in receipt of a petition in this ancient case on behalf of the Forrest City School District No. 7. Jurisdiction of the court in this case commenced in 1969 by the filing of civil rights relief in the name of Eric McKissic et al. v. Forrest City Special School District No. 7 et al., Case No. H-69-C-42. Pursuant to the extended complications in the problems facing the court at that time, the court specifically concluded and ordered that "this Court retain jurisdiction for further consideration of any problems that might arise in connection with the operation of the Forrest City Schools and compliance with the orders of this Court. Dated: August 13, 1971."

The School District has monitored and continued the operation of the Forrest City Schools in compliance with orders of this court since that time. Therefore, the court has had continuing jurisdiction for an indefinite period of time.

This petition of the defendant School District is in relation to the establishment of a "Magnet School proposal" (Magnet School

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EXHIBIT
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plaintiffs are students, parents-next friend, student teachers or employees of the school.

In the petition on behalf of the Forrest City School District No. 7, the School District at this time is seeking approval of a proposed Magnet School Plan. The petition provides that the Plan is to be effective in promoting voluntary desegregation and to generate more positive student activities towards school. The Plan has been approved and will be monitored by the Arkansas State Board of Education.

There is a requirement of the U.S. Department of Education which provides, in part, that grants by U.S. Department of Education to eligible schools in support of magnet schools must be approved by this court in order to modify the court's previously approved plan. The Forrest City School District No. 7 is requesting the approval of the proposed Plan for a magnet school to become a part of the School District program.

After carefully scrutinizing the proposed Magnet School Plan of the Forrest City School District No. 7, it is therefore the order and judgment of this court that the Magnet School Plan be adopted and authorized by appropriate officials of the District,

the Arkansas Department of Education, and the U.S. Department of Education as requested by the Forrest City School District No. 7.

IT IS SO ORDERED.

Dated this 3rd day of December, 1990.

UNITED STATES DISTRICT JUDGE

**IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY ARKANSAS**



FORREST CITY SPECIAL SCHOOL DISTRICT

Plaintiffs

v.

Case No. 62CV-14-160-4

PALESTINE-WHEATLEY SCHOOL DISTRICT; AND WYNNE SCHOOL DISTRICT

Defendants



**MOTION TO REOPEN AND TO CONSOLIDATE**

Forrest City Special School District (hereafter Forrest City) for its motion states:

1. Exhibit 1 to this action is an Agreed Order that was entered August 14, 2003 in Case Number E-2000-58. That litigation was between the Forrest City School District and Palestine Wheatley School District.

2. In that action, it was determined and adjudged that Palestine Wheatley violated A.C.A. §6-18-206, the 1989 School Choice Act, as well as A.C.A. §6-18-202 by permitting students who resided within the boundaries of the Forrest City School District to transfer to the Palestine Wheatley School District.

3. The court determined and adjudged that Palestine Wheatley, as a violator of A.C.A. §6-18-206 and §6-18-202 was liable to Forrest City for damages, calculated as the amount of state aid generated by the improperly transferred students, and owed this state aid to the Forrest City School District. Judgment for $80,000 was entered accordingly.

4. This court further ordered that no further transfers should be permitted under A.C.A. §6-18-206 unless the Arkansas Department of Education shall approve participation and only after ninety days of giving such intent. (See paragraph 6 of Exhibit 1 to Complaint).

5. Because there is significant overlap between the issues adjudicated in E-2000-58, and because it is alleged in the new Complaint that Palestine Wheatley violated the terms and conditions of the Agreed Order it would promote judicial efficiency and consistency for the current action to be consolidated with E-2000-58 and Forrest City moves that pursuant to Rule 81 (c) of the Arkansas Rules of Civil Procedure that E-2000-58 be reactivated and consolidated for disposition with this case.

WHEREFORE, Forrest City prays for an order of this court reactivating E-2000-58 and consolidating it with the instant action for disposition and for all proper relief.

Respectfully submitted,

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
M. Samuel Jones III (76060)

SHARPE, BEAVERS, CLINE & WRIGHT
P.O. Box 924
Forrest City, AR 72336-0924
Telephone: 870-633-3141
Facsimile: 870-633-3594
Email: brbeavers@sbcglobal.net

*/s/ Brad J. Beavers*
Brad J. Beavers (81012)

*/s/ R. Alan Cline*
R. Alan Cline (87035)

*Attorneys for Forrest City School District*

**IN THE CIRCUIT COURT OF**
**ST. FRANCIS COUNTY ARKANSAS**

FORREST CITY SPECIAL SCHOOL DISTRICT

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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
M. Samuel Jones III (76060)

SHARPE, BEAVERS, CLINE & WRIGHT
P.O. Box 924
Forrest City, AR 72336-0924
Telephone: 870-633-3141
Facsimile: 870-633-3594
Email: brbeavers@sbcglobal.net

/s/ Brad J. Beavers
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/s/ R. Alan Cline
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*Attorneys for Forrest City School District*

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FORREST CITY SPECIAL SCHOOL DISTRICT

Plaintiffs

v.

Case No. 62CV-14-160-4

PALESTINE-WHEATLEY SCHOOL DISTRICT; AND WYNNE SCHOOL DISTRICT

Defendants

FILED
AUG 22 2014
TIME 9:00A
BETTE S GREEN, CLERK
ST FRANCIS COUNTY

**MEMORANDUM IN SUPPORT OF MOTION TO REOPEN AND TO CONSOLIDATE**

This motion is brought pursuant to the provisions of the Arkansas Rules of Civil Procedure, particularly Rule 81 (c).

Respectfully submitted,

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
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*Attorneys for Forrest City School District*