HSSD
HOT SPRINGS SCHOOL DISTRICT

April 1, 2015

Mr. Johnny Key, Commissioner
Arkansas Department of Education
Four Capitol Mall
Little Rock, Arkansas 72201

Re: Act 560 of 2015 – School Choice conflict

Dear Mr. Key:

This letter is written pursuant to the requirements of sections 6-18-1906 (a)(1) and (a)(2) of the Public School Choice Act of 2015 (Act 560).

The provisions of the Act are in conflict with enforceable Court Orders and a court-approved Desegregation Settlement Plan and Agreement, all of which Hot Springs School District No. 6, as well as six (6) other Garland County school districts, are governed by.

Enclosed as proof of said conflict are copies of the court-approved Settlement Agreement, the Court Order of April 28, 1992 approving the agreement, the Court Order of June 10, 2013 finding the Settlement Agreement constitutes a court-approved desegregation plan and should remain in effect, The Court Order of March 31, 2015 denying the request that the Settlement Agreement be terminated. The Settlement Agreement entered into by all Garland County School Districts remains in full force and effect, being approved and upheld by Federal Court Orders.

As a result, the interdistrict school choice provisions of Act 560 of 2015 do not apply to Hot Springs School District No. 6.

Sincerely,

Joyce Craft

Mrs. Joyce Craft
Superintendent
Hot Springs School District No. 6

Encs: Settlement Agreement and Court Order of April 28, 1992
Court Orders of June 10, 2013 and March 31, 2015

400 Linwood Street · Hot Springs, Arkansas 71913 · phone 501-624-3372 · fax 501-620-7829

Original order + settlement

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

W.T. DAVIS, ET AL. PLAINTIFFS

VS. NO. 89-6088

HOT SPRINGS SCHOOL DISTRICT, ET AL. DEFENDANTS

ORDER AND MEMORANDUM

Introduction

This action was commenced on August 18, 1989. After a period of discovery and settlement negotiations, the parties entered into the Comprehensive Garland County School Desegregation Settlement (the Settlement Agreement) on November 25, 1991. The Agreement was filed with the court on November 25, 1991 and the Court, on February 3, 1992, issued its order scheduling a fairness hearing to consider the agreement.

The parties caused notice of the hearing to be published in the Hot Springs Sentinel Record on February 16, 1992. The notice summarized the essential terms of the settlement agreement. Thereafter, the fairness hearing was conducted on March 30, 1992.

Findings of Fact

1. The fairness hearing was appropriately noticed and reasonable opportunity for objections to be filed and heard was provided.

2. The notice of the hearing drew but a single written response, which response, while not necessarily posed as an objection, nevertheless was addressed by the parties and considered by the Court.

3. No persuasive objections were made to the Settlement Agreement or presented to the Court.

4. The Court has considered the Settlement Agreement in its entirety, the oral and written presentations of the parties, a reaction to the Settlement Agreement filed March 13, 1992 and the comments of those who appeared at the fairness hearing. Based upon all the foregoing, the Court finds that the Settlement Agreement is fair and reasonable, that it affords appropriate relief to the plaintiff class and that it is hereby approved as written and submitted by the parties.

5. The Court has considered the Release proposed by the parties, finds it to be fair, reasonable and appropriate, directs that the parties enter into it and that a fully signed copy be filed with the Clerk.

6. The court has considered the attorneys fee to be paid to counsel for the plaintiff class, finds it to be fair and reasonable under all of the circumstances of this case, and approves its payment as outlined in the Settlement Agreement.

Conclusions of Law

1. The United States Court of Appeals for the Eighth Circuit has squarely addressed the standards applicable to a

district court's consideration of a proposed settlement agreement in a desegregation case. "A strong public policy favors agreements, and courts should approach them with a presumption in their favor." Little Rock School District v. Pulaski County Special School District, et al., 921 F.2d 1371 at 1383, 1388 (8th Cir. 1990). Nothing has been presented to this court to vitiate this presumption of constitutionality and appropriateness outlined by the Court of Appeals.

2. All parties with a direct stake in the outcome of this litigation have been represented and have been heard by the court and are bound not only by the terms of the agreement but by the dismissal of this action.

3. The Court has previously entered its order finding that the plaintiff class and counsel are appropriate representatives of those for whom relief was sought in this action. While there was no appeal from that order and those findings, the Court nevertheless reconfirms the vitality of that order for purposes of this agreement.

4. The plaintiff class as approved has agreed to release the districts and the State from all liability for issues which have been raised in this litigation and has committed there will be no further litigation among or between the parties other than proceedings necessary, if any, to enforce the terms of this Agreement.

6. Accordingly, this action should be dismissed with prejudice on the merits but without prejudice to any of the parties to petition this court to reopen this case solely to enforce the terms of the Settlement Agreement.

7. In all other respects, dismissal of this action represents a final order terminating these proceedings and extinguishing all claims which have been raised or which could have been raised in this action.

Conclusion

For all of the foregoing reasons, and subject to the provisions above described, this action is hereby dismissed with prejudice, each party to bear its own costs.

SO ORDERED this 28th day of April, 1992.

H. Franklin Waters
United States District Judge

GARLAND COUNTY SCHOOL DESEGREGATION CASE
COMPREHENSIVE SETTLEMENT AGREEMENT

I.

Introduction

On August 18, 1989, the NAACP and individuals desiring to represent a class of black patrons and students filed this action seeking the consolidation of all of the public school districts in Garland County, Arkansas. Also joined as defendants were the Garland County Board of Education and the State Board of Education.

The parties are persuaded that the principle result toward which they should aspire in this case is quality education for all children of Garland County. The parties are further persuaded that the settlement terms expressed herein should facilitate the end product of quality education and that consolidation of the school districts in Garland County is not necessary to achieve this common goal.

The parties desire to avoid expensive, divisive and protracted litigation in this matter. They have, accordingly, evaluated their respective positions and come to agreement regarding essential terms and conditions designed to further the quality of education in Garland County and to end this litigation. They believe that the settlement of the issues is in the best interest of the students, patrons, staffs of the districts and the people of the State of Arkansas.

The Superintendents of the districts support the settlement and agree to recommend it to their respective boards of directors. The black plaintiffs ("Davis"), the black intervenors, and the Garland County Chapter of the NAACP pledge and endorse its support to this settlement. The Arkansas Department of Education and the State Board of Education are supported in the settlement by the Governor of the State of Arkansas.

II.

Act 609, The School Choice Act

The Hot Springs School District, Lakeside School District, Mountain Pine School District, Cutter Morning Star School District, Jessieville School District, Fountain Lake School District, and Lake Hamilton School District (hereafter the "districts") agree to implement, or have already implemented as a show of good faith, Act 609 of the 1989 Regular Session of The Arkansas General Assembly, better known as the School Choice Act. The parties recognize that the implementation of this Act will facilitate the movement of students, both black and white, who desire to avail themselves of the diverse educational offerings offered by the respective school districts in Garland County. The districts pledge to facilitate implementation in accordance with the terms and conditions embodied within Act 609.

The State Board of Education and the Arkansas Department of Education (hereafter "ADE") agree to provide the funding specified pursuant to Act 609.

III.

The Garland County Education Consortium

The districts agree to organize a Garland County Education Consortium. The Consortium shall meet at least semi-annually and shall, among other matters as may be agreed to by its members, discuss and examine the following issues:

1. Enrollment fluctuations between and among the districts.
2. The ratio of black students to white students in each district and any changes that occur in those ratios.
3. The compliance of each district and each school therein with the Arkansas Educational Standards as established by the Arkansas Department of Education as well as any pertinent statutes adopted or as may be adopted by the Arkansas General Assembly.
4. Any issues related to consolidation of one or more of the school districts in Garland County, Arkansas, including the impact upon teacher and staff salary schedules, the impact upon student transportation, the impact upon community influence and patron access to elected school board representatives, the impact upon per pupil expenditures and any impact upon issues of diversity and differing philosophies as may exist among the respective school districts.
5. The potential for joint and/or bulk purchasing to the

not any magnet school Waldrip expert

extent such may be economically feasible.

6. The sharing of programs and personnel between and among the districts as appropriate considering all reasonable logistical issues including transportation and personnel compensation.

7. The hiring of minority teachers and staffs in compliance with all pertinent standards and statutes. To that end, the Arkansas Department of Education agrees to study and determine and to report to the parties in this case, the composition of the available labor pool for black teachers and staffs for Garland County.

The Board of Directors of the Garland County Education Consortium shall consist of the superintendents of the seven school districts, or their designated representatives, and one Board member from each district. The president of the local chapter of the NAACP will be an ex-officio, non voting, member of the Garland County Education Consortium and will be invited to all meetings and will have he right to express opinions or thoughts to said group. The President or designated representative shall be informed of each and every meeting and may attend and participate in all activities of the consortium except the voting on specific measures. The Consortium's recommendations to the respective school boards shall be by majority vote with final action authorized by the concurrence of all affected individual school boards.

IV.

State Board of Education Responsibilities

The State Board of Education, through the Department of Education, agrees to perform and fund the following acts or to provide the following described services to the school districts in order to assist these districts in providing quality desegregated education for all of their students.

A. Staff Development

To ensure that the staffs of every school district receive necessary and appropriate staff development, the State Board of Education agrees, upon request of any district, to waive two student interaction days from the school calendar for the firs two full school years following the execution of this agreement. The districts agree to use the two days waived to provide extensive staff development in areas selected from the staff development activities listed below, or which may be available in the future, which the Department of Education agrees to provide at its expense, except for the expense of substitute teachers. This agreement does not alter the districts' in-service obligations under the Standards but should be viewed as additional staff development. The programs listed below can be offered on the districts' regularly scheduled staff development days.

The Department of Education agrees to provide the following staff training programs to the school districts during the first

two years following the execution of this agreement and to provide these programs, at its expense, periodically after that time to new staff members of the school districts.

1. Teacher Assistance Team Training - a building level skill development program by selected consultants and ADE staff designed to reach teachers, as a team, how to intervene with students who are at risk of school failure. This program is designed to reduce the number of students who may be mistakenly referred to special education because of disciplinary problems. Teachers are taught to intervene in ways which address the cause of behavior problems.

2. Civil Rights Awareness Training - a workshop program by ADE staff and selected consultants designed to educate staff members regarding the districts' civil rights obligations under the law and to provide practical information and direction on compliance.

3. Race Relations Seminar - an awareness and skill development program designed to assist staff in understanding race relations issues and to teach them problem solving skills in managing race relations problems.

4. Multicultural Counseling Strategies - a two-day skills development program by ADE staff and selected consultants for the districts' counselors designed to teach counselors multicultural counseling strategies.

B. CURRICULUM

The Department of Education agrees to provide, at its expense, the following curriculum development to the school districts:

1. Multicultural Education Seminar - an awareness program by ADE staff and selected consultants designed to educate staff about multicultural education philosophy. This program will be followed with a series of Multicultural Curriculum Development Workshops, with smaller numbers of staff, which are designed to provide the technical assistance necessary for a district to develop its own multicultural curriculum.

2. Textbook and Instructional Material Selection Assistance - when the districts' textbook selection committees meet to select books for the district, the Arkansas Department of Education will provide a specialist in the curriculum area to assist the committees in selecting textbooks which reflect the multicultural curriculum established by the district.

3. Self-Esteem Curriculum - the Arkansas Department of Education will assist the districts in developing a self-esteem curriculum which is infused and integrated into the regular curriculum to raise the self-esteem of students who are at risk for school failure.

C. TESTING AND ASSESSMENT

The focus of any school district's desegregation plan should be upon reducing the disparity between the test scores of African American students and white students as groups. To adequately measure a district's progress toward this goal it is necessary for the district to collect and analyze students' test score data. To assist the districts in conducting this activity in a nondiscriminatory, unbiased manner, the Department of Education agrees to provide the following assistance:

1. Testing and Assessment For Multicultural Schools - an awareness seminar designed to teach staff about sex and race bias in assessment and how to avoid it in testing and assessing students.

2. The Diagnostic Use of EPSF Survey - training for kindergarten and first grade teachers designed to teach the correct diagnostic use of the Early Prevention of School Failure survey in order to prevent the early sorting and labeling of students that sometimes contributes to their failure.

3. Assessment as Diagnosis - a skill development workshop designed to train staff in the appropriate diagnostic use of test and assessment instruments to improve student achievement.

D. SPECIAL EDUCATION AND GIFTED AND TALENTED

The Department of Education agrees to assist the districts, at its expense, with problems of over identification of special education students, over identification of minority students in special education and the under identification of minority students in gifted and talented programs by providing the following programs:

1. Over representation of Students in Special Education - an education and skill development workshop designed to teach staff how to identify over representation of minority students, male students and students with particular handicapping conditions in special education, and to design and implement programs to alleviate over representation. This workshop will be followed up with specific technical assistance in developing and implementing corrective action plans as needed.

2. Under representation of Students in Gifted and Talented Education - an education and skill development workshop designed to teach staff how to identify under representation of minorities and children from lower socio-economic backgrounds in gifted and talented education and how to design and implement programs to alleviate under representation. This workshop will be followed up by specific technical assistance in developing and implementing corrective action plans as needed.

E. STUDENT/TEACHER INTERACTION

The most critical factor affecting the individual achievement of students is the day to day relationship between the student and the teacher. Recognizing the importance of this relationship, the Department of Education agrees to provide, at its expense, the following programs aimed at improving student/teacher interaction.

1. Teacher Expectations for Student Achievement - an awareness and skills development program designed to teach teachers how their expectations affect student achievement and how to alter their expectations in order to improve student achievement. School districts agree to provide release time for teachers to participate in this training and follow up. This program is especially effective in reducing the differential treatment of students which sometime exists in the classroom.

2. Effective Schools Management - a school management program designed to help administrators identify the characteristics of an effective school and to assist them in developing management skills which will produce those characteristics in their schools.

3. Parental Involvement - a technical assistance program by ADE staff in which a parent involvement program, which will effectively involve parents in the desegregated setting, is developed for the districts and implemented. Training is provided to parents.

4. Classroom Management - a skills development program designed to teach teachers how to maintain classroom control and create a classroom environment conducive to learning.

5. Establishing a School Volunteer Program - A skills and program development seminar which provides a "how to" guide for establishing an effective school volunteer program.

6. Cooperative Learning - an instructional skills strategy which is designed to teach teachers and administrators how to teach students who are grouped heterogeneously by race, gender, socioeconomic level, and ability level. This program helps eliminate the need for "tracking" or "ability grouping" students which sometimes leads to segregated classes. Successfully implemented, Cooperative Learning produces significant gains in self-esteem, academic achievement and social skills.

7. The Provision of Equity: Evaluating for Standard XV Compliance - a technical assistance program by ADE staff designed to assist the districts in conducting their self-evaluation and compliance plans.

F. GRANTS

1. The Department of Education will fund the attendance of one representative, selected by the Consortium, to the Annual Institute For Special Education Law on the conditions that: (1) the school districts provide release time for the person to attend and (2) the districts agree to have the person who attends conduct a workshop for building principals, counselors and

special education supervisors and teachers, in which the seminar materials are disseminated and discussed.

2. The Department of Education agrees to assist the school districts in applying for and securing Drug-Free schools and communities grants, and to develop programs concerning drug abuse awareness, education, and prevention.

3. The Department of Education agrees to assist the school districts in applying for and securing Effective Schools Grants.

4. The Department of Education agrees to assist the school districts in applying for and securing Math and Science grants.

5. The Department of Education agrees to assist the school districts in applying for and securing Classroom Management Grants.

6. The Department of Education agrees to assist the school district in applying for and securing an Alternative School Grant to develop an alternative school which could be used by all districts within the county.

7. The Department of Education agrees to assist the school districts in applying for and securing a Middle Level School Grant upon the condition that the Department receives the grant funds for which it has applied.

G. MONITORING

The Arkansas Department of Education agrees to provide equity monitoring in compliance with Standard 15 of the Arkansas

Educational Standards in order to determine if the districts are providing a quality, desegregated education to all of their students.

Each defendant, school district shall appoint to its equity committee and retain one member of the Garland County Chapter of the NAACP. The representative so appointed shall be provided a copy of the school district's annual review by the equity committee, including any and all supporting data.

H. PARTICIPATION IN CONSORTIUM

The Arkansas Department of Education agrees to send a designated representative to at least one (1) meeting annually of the Garland County Education Consortium. It is specifically understood that at that time enrollment, attendance, and black/white ratios in the schools of Garland County will be discussed with the understanding that all parties hereto will be working to achieve a quality education in each school district and to prevent a depreciation in the quality of education in school districts in which there is an unequal racial balance.

I.

The Arkansas Department of Education agrees that the Garland County Schools shall have the highest priority in those programs identified in paragraphs A, B, C, D, E, F, G, and H of this Agreement.

V.

Attorney Fees

The Districts and the State Defendants agree to pay the total sum of $30,000.00 as attorneys fees and expenses to counsel for Davis. Such sums will be due and payable within ten (10) days of final Court approval of this Agreement. Of that sum, the State of Arkansas shall contribute 50% with the balance being paid by the respective school district in proportion to their respective average daily memberships for the 1990-91 school year.

VI.

Release and Dismissal

Within ten (10) days of final Court approval of this Agreement, each party shall deliver to the other a release in the form set forth as Exhibit "A" to this Agreement.

The parties condition this settlement upon their dismissal from this litigation with prejudice in accordance with the terms of Exhibit "A". The parties pledge to diligently pursue acceptance of the settlement by the Court.

VII.

Class Certification

The settlement is contingent upon a final determination that the settlement is binding upon the classes of all current, past and future black students, their parents and next friends in Garland County. As part of this settlement, the parties will stipulate that the Davis plaintiffs are proper class representatives under, and otherwise meet the requirements of

Rule 23(A) and (b)2 of the Federal Rules of Civil Procedure, and will support their certification.

VIII.

Agreement Regarding Litigation

The Davis plaintiffs release the Districts and the State of all liability for issues which have been raised in this litigation and commit that there will be no further litigation among or between plaintiffs, the State and any of the Districts, other than proceedings to enforce the terms of this settlement as finally approved by the court.

IX.

It is the intent of this Agreement that the parties hereto act promptly and expeditiously in implementing the terms of this settlement. It is agreed that the Garland County Education Consortium will be immediately organized and will conduct an organizational meeting no later than forty-five (45) days from the date of final approval by the Court of this comprehensive settlement agreement. The State Board of Education and the Arkansas Department of Education agree to have their part of this comprehensive settlement agreement in effect, or substantially in effect, prior to the commencement of the 1991 fall school term.

IX.

Execution

The Garland County school desegregation case comprehensive settlement agreement is executed this 25th day of November, 1991.

WITNESSED AND APPROVED:
Hurst Law Offices
201 Woodbine
Hot Springs, Arkansas 71901

By: _____
Q. Byrum Hurst, Jr.
Its Attorney

HOT SPRINGS, ARKANSAS BRANCH OF THE NAACP:

By: _____
Its President

****

EXECUTED this 11th day of September, 1991 by:

WITNESSED AND APPROVED:
Evans, Farrar, Reis & Love
600 West Grand, Suite 201
Hot Springs, Arkansas 71901

By: _____
Bryan J. Reis
One of its Attorneys

HOT SPRINGS SCHOOL DISTRICT

By: _____
President, Board of Directors

****

EXECUTED this 11th day of September, 1991 by:

WITNESSED AND APPROVED:
Wood, Smith, Schnipper & Clay
123 Market Street
Hot Springs, Arkansas 71901

By: _____
Don Schnipper
One of its Attorneys

LAKESIDE SCHOOL DISTRICT

By: Janet A. Porter
President, Board of Directors

****

EXECUTED this 16th day of October, 1991 by:

WITNESSED AND APPROVED:
Hargraves & McCrary, P.A.
P. O. Box 519
Hot Springs, Arkansas 71902

By: _____
Robert Hargraves
One of its Attorneys

MOUNTAIN PINE SCHOOL DISTRICT

By: _____
President, Board of Directors

****

EXECUTED this 16th day of October, 1991 by:

WITNESSED AND APPROVED:
Laser, Sharp, Mayes, Wilson
Bufford & Watts, P.A.
One Spring Street, Suite 300
Little Rock, Arkansas 72201

By: _____
Dan Bufford
One of its Attorneys

CUTTER MORNING STAR SCHOOL DISTRICT

By: _____
President, Board of Directors

****

EXECUTED this 16th day of October, 1991 by:

WITNESSED AND APPROVED:
McMillan, Turner & McCorkle
929 Main Street
P. O. Box 607
Arkadelphia, Arkansas 71923

By: _____
Ed McCorkle
One of its Attorneys

JESSIEVILLE SCHOOL DISTRICT

By: _____
President, Board of Directors

****

EXECUTED this 16th day of October, 1991 by:

WITNESSED AND APPROVED:
Smith, Stroud, McClerkin,
Dunn & Nutter
Suite #6, State Line Plaza
Texarkana, Arkansas 75502

By: Hayes McClerkin by Carol Dalby.
Hayes McClerkin
One of its Attorneys

FOUNTAIN LAKE SCHOOL DISTRICT

By: [signature]
President, Board of Directors

****

EXECUTED this 16th of October, 1991 by:

WITNESSED AND APPROVED:
Wright, Lindsey & Jennings
2200 Worthen Bank Building
Little Rock, Arkansas 72201

By: M. Samuel Jones
M. Samuel Jones, III
One of its Attorneys

LAKE HAMILTON SCHOOL DISTRICT

By: Don Hamilton
President, Board of Directors

****

EXECUTED this _____ day of _____, 1991 by:

WITNESSED AND APPROVED:

THE DAVIS PLAINTIFFS

By: _____
Hot Springs Class Representative

By: _____
Lakeside Class Representative

By: _____
Mountain Pine Class
Representative

By: _____
Cutter Morning Star Class
Representative

By: _____
Jessieville Class Representative

By: _____
Fountain Lake Class
Representative

By: _____
Lake Hamilton Class
Representative

****

EXECUTED this 23rd day of September, 1991 by:

WITNESSED AND APPROVED:
Ray Owen, Jr.
Attorney at Law
123 Central Avenue
Suite 20
Hot Springs, Arkansas 71901

By: _____
Ray Owen, Jr.
Its Attorney

GARLAND COUNTY BOARD OF EDUCATION

By: _____
Its President

****

ARKANSAS STATE BOARD OF EDUCATION

By: _____
Chairman, Board of Directors

By: _____
Sharon Streett
One of its Attorneys

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

W.T. DAVIS, Individually; AARON GORDON and CARLTON R. BERRY on Behalf of a Class of Taxpayers of Garland County, Arkansas, similarly situated; and THE GARLAND COUNTY CHAPTER OF THE N.A.A.C.P. **PLAINTIFFS**

v. **Civil No. 89-6088**

HOT SPRINGS SCHOOL DISTRICT; STATE OF ARKANSAS; ARKANSAS STATE BOARD OF EDUCATION; THE COMMISSIONER OF THE STATE BOARD OF EDUCATION; CUTTER MORNING STAR SCHOOL DISTRICT; FOUNTAIN LAKE SCHOOL DISTRICT; JESSIEVILLE SCHOOL DISTRICT; LAKE HAMILTON SCHOOL DISTRICT; LAKESIDE SCHOOL DISTRICT; and MOUNTAIN PINE SCHOOL DISTRICT **DEFENDANTS**

O R D E R

Now on this 10th day of June 2013, comes on for consideration the **Petition for Declaratory Relief** (document #161), brought by Cutter Morning Star School District, Fountain Lake School District, Jessieville School District, Lake Hamilton School District, Lakeside School District, and Mountain Pine School District (collectively, the "petitioning districts"). The Court, being well and sufficiently advised, finds and orders as follows with respect thereto:

1. This action was originally filed on August 18, 1989, seeking to remedy the effects of racial segregation in Garland County public schools.

2. On November 25, 1991, the parties entered into the Garland County School Desegregation Case Comprehensive Settlement Agreement ("Settlement Agreement"), in which they agreed -- among other things -- to implement the provisions of the **School Choice Act of 1989, Ark. Code Ann. § 6-18-206 (repealed 2013)**, with regard to the transfer of students between resident and non-resident districts.

3. Following a fairness hearing held on March 30, 1992, the Court approved the Settlement Agreement, finding it to be "fair and reasonable, [and] that it affords appropriate relief to the plaintiff class." (Order and Memorandum, p. 2, document #82). Noting that the Eighth Circuit Court of Appeals has favored such agreements in desegregation cases, the Court further concluded that "[n]othing has been presented to this court to vitiate [the] presumption of constitutionality and appropriateness" of the Settlement Agreement. (Order and Memorandum, p. 3, document #82).

4. On May 22, 2013, the petitioning districts filed the present Petition for Declaratory Relief, seeking the Court's approval to continue operating under the Settlement Agreement despite recent changes in the law.

Specifically, the petitioning districts point to the Court's 2012 decision in Teague, et al. v. Arkansas Board of Education, et al., Case No. 6:10-cv-6098-RTD, in which it found the School Choice Act of 1989 to be unconstitutional because it contained

race-based restrictions.

Moreover, in its most recent session, the Arkansas General Assembly repealed the 1989 Act by passing the **Public School Choice Act of 2013, Ark. Code Ann. §§ 1901-1909**, which contains no race-based restrictions.

5. Pursuant to the Public School Choice Act of 2013,

> If the provisions of [the Act] conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past racial segregation in student assignment, the provisions of the order or plan shall govern.

Ark. Code Ann. § 6-18-1906(a).

The petitioning districts contend that the Settlement Agreement in this case is a court-approved desegregation plan and, thus, it is unaffected by the new law. They seek to maintain the status quo.

6. In response to the Petition, the plaintiffs and the remaining defendants agree that judicial clarification is warranted, and they ask the Court to grant the declaratory relief requested by the petitioning districts.

7. Upon review of the record, the Court first notes that some of the original parties are no longer necessary to this action and should be formally dismissed. While the Arkansas State Board of Education remains an essential party, its individual members -- who were made parties solely due to their membership -- are no longer members of that entity and, therefore, should be

dismissed.

Likewise, the Garland County Board of Education and its individual members should be dismissed as parties, as all county boards of education were abolished by Act 2190 of 2005, codified at Ark. Code Ann. § 6-12-317.

8. Regarding the merits of the Petition, the Court finds that the Settlement Agreement constitutes a court-approved desegregation plan that should remain in effect despite recent changes to the law on which the Settlement Agreement was partly based.

The provisions of the Settlement Agreement consist of more than the mere implementation of the 1989 Act. It is a contract that also addresses the districts' staff development, curricula, testing and assessments, special education and gifted-and-talented programs, student-teacher interactions, and other services designed to enhance and improve public education in Garland County.

The Settlement Agreement was approved by the Court after an appropriately noticed fairness hearing and reasonable opportunity for the filing and consideration of any objections to the plan. The 1992 Order and Memorandum reflects that the Court considered the Settlement Agreement in its entirety, as well as the presentations of the parties and the response from the community, before finding that it afforded the parties appropriate relief and

was reasonable in all aspects.

As such, the Settlement Agreement will remain in effect, and the parties will remain bound to enforce and comply with its terms.

IT IS THEREFORE ORDERED that the Garland County Board of Education, its individual members, and the individually named members of the Arkansas State Board of Education are hereby **dismissed as parties** to this action.

IT IS FURTHER ORDERED that the **Petition for Declaratory Relief** (document #161) is **granted,** and the Court hereby declares that:

* The import of the Garland County School Desegregation Case Comprehensive Settlement Agreement and the Court's approval thereof was not simply a declaration that the parties would obey Arkansas law as it might from time to time be set forth in the School Choice Act of 1989;

* Rather, the import of those actions was to incorporate by reference the language, terms, and provisions of the 1989 Act as a consent desegregation plan of the Court applicable to all public school districts within Garland County, Arkansas, for the purpose of remedying the vestiges of prior de jure racial segregation within the public education system of that county;

* Accordingly, neither the judicial decision declaring the 1989 Act to be unconstitutional, nor the repeal of the 1989 Act,

have any impact per se on the efficacy of the Settlement Agreement; and

* The Court retains supervisory jurisdiction over the enforcement of the Settlement Agreement subject only to subsequent modifications or termination thereof by the Court.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE

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

W.T. DAVIS, *et al.* PLAINTIFFS

v. Case No. 89-CV-06088

HOT SPRINGS SCHOOL DISTRICT, *et al.* DEFENDANTS

AARON GORDON, *et al.* INTERVENORS

MEMORANDUM OPINION AND ORDER

Currently before the Court are a Motion for Relief from Judgment (Doc. 174) and Brief in Support (Doc. 175) filed by six Separate Defendant school districts: Cutter Morning Star School District, Fountain Lake School District, Jessieville School District, Lake Hamilton School District, Lakeside School District, and Mountain Pine School District ("Movants"); a Response (Doc. 177) filed by Separate Defendants the State of Arkansas, the Arkansas State Board of Education, and the Commissioner of Education; a Response in Opposition (Doc. 178) and Brief (Doc. 179) filed by Separate Defendant Hot Springs School District; and a Response in Opposition (Doc. 183) and Brief (Doc. 184) filed by Plaintiffs.[1] The Court held a hearing on March 27, 2015, to permit the parties to present their

[1] Throughout this Order, references to "Plaintiffs" includes all Plaintiffs and Intervening Plaintiffs.

arguments in connection with the Motion. All parties were represented by counsel in open court.

This matter originated as a class action lawsuit filed in this Court on August 18, 1989, alleging that Garland County maintained a racially segregated public school system in violation of the Fourteenth Amendment and 42 U.S.C. §§ 1981-1983. (Doc. 1). Two years later, on November 25, 1991, the parties entered into the Garland County School Desegregation Case Comprehensive Settlement Agreement (the "Agreement"). The Agreement included a provision whereby the parties would implement the Arkansas School Choice Act of 1989, Ark. Code Ann. § 6-18-206 (repealed 2013). The 1989 Act established a public school choice program that allowed students to apply to attend a school outside their resident district, but included a race-based limitation on such transfers. After a fairness hearing, the Court entered an order (Doc. 82) on April 28, 1992[2] approving the Agreement and dismissing the case with prejudice on the merits.

On May 22, 2013, Movants filed a petition for declaratory relief following the Arkansas legislature's repeal of the 1989 Act with the Arkansas Public School Choice Act of 2013.[3] The

[2] The order approving the Agreement and dismissing the case was signed by Judge Waters on April 28, 1992 and filed on the record on May 1, 1992.

[3] The repeal of the 1989 Act followed this Court's June 12, 2012 decision in *Teague v. Arkansas Board of Education*, 873 F. Supp. 2d 1055 (W.D. Ark. 2012),

2013 Act removed the race-based limitation on public school choice transfers and included a provision that the receiving district shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability. However, it only permitted nonresident transfers "provided that the transfer by the student does not conflict with an enforceable judicial decree or court order remedying the effects of past racial segregation in the school district." Ark. Code Ann. § 6-18-1901(b)(3).

In the 2013 petition, Movants argued that "the import [of entering the settlement agreement and obtaining Court approval thereof] was to incorporate by reference the language, terms and provisions of the 1989 Act as a consent desegregation plan of the Court applicable to all public school districts within Garland County, Arkansas, for the purpose of remedy [sic] the vestiges of prior *de jure* racial segregation within the public education system of Garland County, Arkansas." (Doc. 161, p. 6). They also argued that neither the judicial decision nor the 2013 Act has any impact on the efficacy of the Court's 1992 Order. The Court agreed and granted Movants the requested declaratory relief on June 10, 2013, finding that "the

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vacated sub nom. Teague v. Cooper, 720 F.3d 973 (8th Cir. 2013), which held that the race-based transfer limitation in the 1989 Act violated the Equal Protection Clause of the Fourteenth Amendment. The District Court's decision was rendered moot by the Eighth Circuit following the passage of the School Choice Act of 2013.

Settlement Agreement constitutes a court-approved desegregation plan that should remain in effect despite recent changes to the law on which the Settlement Agreement was partly based." (Doc. 168, p. 4).

On August 25, 2014, the same Movants then filed the instant Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b)(5), seeking termination of the Agreement and relief from the Court's 1992 Order in its entirety on grounds that it is no longer just or equitable to give the 1992 Order or the Agreement prospective application in light of the repeal of the 1989 Act.

"Federal Rule of Civil Procedure 60(b)(5) permits a party to obtain relief from a judgment or order if, among other things, 'applying [the judgment or order] prospectively is no longer equitable.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). Under this Rule, "a party can ask a court to modify or vacate a judgment or order if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Id.*

Although the Court's 1992 Order terminated the case and reflected that the parties could only petition to reopen the case for the purpose of enforcement of the Agreement, "[a] court of equity always retains discretion to modify an injunction,

including a consent decree, 'when changed factual conditions make compliance with the decree substantially more onerous . . . when a decree proves to be unworkable because of unforeseen obstacles . . . or when enforcement would be detrimental to the public interest.'" *Smith v. Bd. of Educ. of Palestine-Wheatley Sch. Dist.*, 769 F.3d 566, 572 (8th Cir. 2014) (quoting *Rufo*, 502 U.S. at 391). "*Rufo* and its progeny grant federal courts of equity substantial flexibility to adapt their decrees to changes in the facts or law, particularly in institutional reform litigation, where the public interest is paramount." *Id.*

Movants have made clear in their filings and at the hearing that they are not seeking a modification of the Agreement. Rather, they seek to "terminate finally the 1992 Order, and relieve the parties of their obligations under the Settlement Agreement." (Doc. 175, p. 23).[4]

Courts may "relinquish continuing jurisdiction to ensure compliance with a desegregation consent decree when the moving party has demonstrated full compliance." *Smith*, 769 F.3d at 572. The "core of the termination standard" is "whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." *Id.*

[4] At the hearing, Movants' Counsel expressed his belief that relief from the Court's 2013 Order providing declaratory relief was not necessary or particularly relevant to the pending Motion for Relief.

After consideration of the record and arguments presented, the Court finds that Movants have not established that termination of the Agreement and relief from the 1992 Order is warranted. Movants assert that they have fully complied with the Agreement and the Court's 1992 Order. However, an assertion of compliance does not justify the remedy of termination. Movants have not submitted any evidence to demonstrate full compliance with the Agreement, nor have they offered any proof that the vestiges of past discrimination have been eliminated.[5] Accordingly, Movants have not met the standard for termination of a desegregation decree under *Smith*.

Although Movants argue that continued application of the Agreement would be unjust, the only example provided is the situation of one Garland County resident whose children's public school choice applications were denied by Mountain Pine School District in 2014 under the 1989 Act. The Court cannot conclude that this single example justifies the termination of a settlement agreement that has been in place for decades.

For the reasons set out above, the Motion for Relief from Judgment (Doc. 174) filed by Separate Defendants Cutter Morning Star School District, Fountain Lake School District, Jessieville

[5] Also, Defendant Hot Springs School District has provided evidence that the Garland County school districts remain racially identifiable. These documents include comparison tables that present Garland County School Districts' enrollment by race for school years 2004-05, 2010-11, 2011-12, 2012-13, and 2013-14 (Doc. 179-1) and the Arkansas Department of Education's Public School Choice Act of 2013 Net/Gain Loss Report (Doc. 179-2).

School District, Lake Hamilton School District, Lakeside School District, and Mountain Pine School District is **DENIED.**

Furthermore, the Motion for Relief from Making a Personal Appearance (Doc. 192) filed by Plaintiffs' Counsel is **DENIED AS MOOT.**

IT IS SO ORDERED this 31st day of March, 2015.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge