

NOTICE LETTER



Division of Elementary and Secondary Education

Transforming Arkansas to lead the nation in student-focused education

Johnny Key
Secretary

June 23, 2020

Brian Golden, Superintendent
Malvern School District
1620 South Main St.
Malvern, AR 72104
bgolden@malvernleopards.org

Alessa Thomason, Parent
[REDACTED]
Malvern, AR 72104
[REDACTED]@gmail.com

**State Board
of Education**

Diane Zook
*Melbourne
Chair*

Shawn Cook, Superintendent
Lakeside School District
2837 Malvern Ave.
Hot Springs, AR 71901
shawn_cook@lakesidesd.org

Charisse Dean
*Little Rock
Vice Chair*

Re: School Choice Appeal: Jacob Thomason

Susan Chambers
Bella Vista

Everyone:

Dr. Fitz Hill
Little Rock

This letter is to notify you that the Arkansas State Board of Education is scheduled to hear the above-referenced appeal on **July 9, 2020**. The action item is set for the **10:00 a.m.** agenda in the Auditorium of the Arch Ford Education Building, Four Capitol Mall, Little Rock, Arkansas. Any additional materials any party chooses to submit should be provided to my office **no later than 12:00 noon on Monday, June 29, 2019**.

Kathy McFetridge
Springdale

Dr. Sarah Moore
Stuttgart

The parent filed a petition appealing the decision of the Lakeside School District to deny the application made pursuant to the Arkansas Public School Choice Act of 1989. The parent filed the appeal under the Public School Choice Act as it exists in 2020, however the current Garland County desegregation order in the case of *Davis et al. v Hot Springs School District et al.*, Case No. 6:89-cv-06099, as clarified by D.E. #168 on June 10, 2013, requires school choice transfers in Garland County to be conducted in accordance with the provisions of the Arkansas Public School Choice Act of 1989. Please see the enclosed Commissioner's Memo, Garland County eligibility data chart, and copy of the Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Public School Choice Act, 2007 (repealed).

Ouida Newton
Poyen

R. Brett Williamson
El Dorado

The Arkansas State Board of Education has requested the parent, the non-resident district, and the resident district attend this meeting and be available for questions. Thank you in advance for your cooperation in this matter. Please do not hesitate to contact me at 501-683-0960 if you have any questions.

Warmly,

Mary Claire Hyatt
Staff Attorney
Division of Elementary and Secondary Education
Four Capitol Mall, Room 301-A
Little Rock, AR 72201
maryclaire.hyatt@arkansas.gov

Four Capitol Mall
Little Rock, AR
72201-1019
(501) 682-4475
ArkansasEd.gov

*An Equal
Opportunity
Employer*



Arkansas Department of Education

Johnny Key, Commissioner

Transforming Arkansas to lead the nation in student-focused education

Commissioner's Memo
3/26/2020

Garland County School Choice

Memo Information

Memo Number **COM-20-107**
Memo Date 3/26/2020
Memo Type Informational
Unit Legal Services
Regulatory Authority Ark. Code Ann. §6-18-206 (Repealed)
Response Required NO
Attention Superintendents; Assistant Superintendent; Principals; School Counselors; Equity Coordinators
(Disability/Race/Gender/National Origin)

Primary Contact Information

Name Jennifer Dedman
Phone Number 501-682-4585
Email Jennifer.Dedman@arkansas.gov

Secondary Contact/s Information

Name Oliver Dillingham
Phone Number 501-682-4212
Email Oliver.Dillingham@arkansas.gov

Memo Reference

No references available.

Memo Text

The following memo applies to school choice eligibility for school districts located in Garland County. By court order, Garland County School Districts will continue to adhere to rules and regulations under the Arkansas Public School Choice Act of 1989. The

Arkansas Department of Education continues to calculate and provide necessary data to enable Garland County school districts to participate in school choice under provision.

Attached:

- Garland County School Choice Application and
- Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Public School Choice Act of 1989

The Garland County School District Eligibility Chart may be found at the link below.

<https://adedata.arkansas.gov/statewide/ReportList/State/SchoolChoiceEligibility.aspx>

This applies only to requests involving school districts in Garland County.

Attachments

- [ARKANSAS DEPARTMENT OF EDUCATION - ADE Rules Governing School Choice Act 150](#)
- [Garland County School Choice Application_152130_112719.pdf](#)

GARLAND COUNTY

LEA	District	Participant	Eligibility Codes	% K-12 Students						
				2 or More Races	Asian	Black	Hispanic	Native American/ Native Alaskan	Native Hawaiian/ Pacific Islander	White
2601000	CUTTER-MORNING STAR SCHOOL DISTRICT	Y	1	7.39%	0.74%	3.1%	9.45%	1.03%	0%	78.29%
2602000	FOUNTAIN LAKE SCHOOL DISTRICT	Y	1	4.75%	0.3%	0.59%	10.02%	0.45%	0%	83.89%
2603000	HOT SPRINGS SCHOOL DISTRICT	Y	1	9.16%	0.87%	35.57%	19.64%	0.42%	0%	34.34%
2604000	JESSIEVILLE SCHOOL DISTRICT	Y	1	3.24%	0.84%	2.04%	4.56%	0.48%	0.36%	88.48%
2605000	LAKE HAMILTON SCHOOL DISTRICT	Y	1	5.98%	0.39%	3.98%	11.91%	0.53%	0.09%	77.12%
2606000	LAKESIDE SCHOOL DIST(GARLAND)	Y	1 2	4.85%	1.64%	8.16%	11.17%	0.63%	0.17%	73.37%
2607000	MOUNTAIN PINE SCHOOL DISTRICT	Y	1	7.53%	1.03%	6.51%	3.77%	0.17%	0.68%	80.31%
	County Percentages			6.34%	0.85%	12.21%	12.58%	0.52%	0.11%	67.37%
	Acceptable Ranges			5.55% - 7.14%	0.75% - 0.96%	10.68% - 13.73%	11.01% - 14.16%	0.46% - 0.59%	0.1% - 0.13%	58.95% - 75.79%

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE GUIDELINES, PROCEDURES, AND ENFORCEMENT OF THE
ARKANSAS PUBLIC SCHOOL CHOICE ACT
October 2007

1.00 PURPOSE

1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Public School Choice Act.

2.00 AUTHORITY

2.01 The Arkansas State Board of Education's authority for promulgating these rules is pursuant to Ark. Code Ann. §§ 6-11-105, 6-15-429, 6-18-206 and Act 552 of 2007.

3.00 DEFINITIONS

3.01 Student – for purposes of this rule means any person legally enrolled or entitled to be enrolled in a public school district in Arkansas.

3.02 Resident district - for purposes of this rule means the public school district where a student is considered to reside pursuant to Ark. Code Ann. § 6-18-202.

3.03 Non-resident district - for purposes of this rule means the public school district a student last made legal application to attend pursuant to the Arkansas Public School Choice Act for the current school year.

3.04 Application - for purposes of this rule means a request submitted to a non-resident district to transfer from a student's resident district to a non-resident district on the official form approved by the Arkansas Department of Education.

3.05 Board - for purposes of this rule means the Arkansas State Board of Education.

3.06 Department - for purposes of this rule means the Arkansas Department of Education.

3.07 Minority - for purposes of this rule minority includes the following racial groups: African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.

3.08 Majority - for purposes of this rule majority includes the following racial group: Caucasian.

4.00 PROCESS AND PROCEDURES FOR SCHOOL DISTRICT PARTICIPATION IN PUBLIC SCHOOL CHOICE PROGRAM

4.01 Each school district shall participate in public school choice consistent with this section.

4.02 Every school district must adopt a resolution setting forth specific standards for acceptance and rejection of applications.

4.02.1 Such standards may include the capacity of a school program, class, grade level, or school building.

4.02.2 School districts shall not be required to add teachers, staff, or classrooms or in any way exceed current requirements or standards established by existing law when considering whether to accept an application.

4.02.3 A school district's standards shall include a statement that priority will be given to applications of siblings or step-siblings residing in the same residence or household of students already attending the district by choice where an application has been filed.

4.02.4 A school district's standards for acceptance and rejection of applications shall not include a student's previous academic achievement, athletic or extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings except that an expulsion from another school district may be included as a standard.

4.03 A district shall make public announcements over the broadcast media and in print media at such times and in such manner so as to inform parents or guardians of students in adjoining districts of the availability of the program, the July 1 application deadline, and the requirements and procedure for nonresident students to participate in the program.

5.00 PROCESS AND PROCEDURES FOR APPLICATIONS FOR TRANSFER
PURSUANT TO THE PUBLIC SCHOOL CHOICE PROGRAM

5.01 Any student may make application to enroll and attend a school in a district in which the student does not reside, subject to the restrictions and procedures contained in this rule and regulation and Arkansas law.

5.01.1 Before a student may attend a school in a nonresident district, the student's parent or guardian must submit an application on the form approved by and provided by the Department (see attached application) to the nonresident district.

5.01.2 The application to the nonresident district must be postmarked no later than July 1 of the year the student would begin the fall semester in the nonresident school district.

5.02 Any student attending a resident district classified as being in academic distress shall be eligible and entitled to apply to transfer to another geographically contiguous nonresident district not in academic distress during the time period a district is classified as being in academic distress subject to the restrictions allowed in 5.02.1 and 8.00.

5.02.1 Any student submitting an application under this section shall not be required to file the petition by the July 1 deadline, but shall meet all other requirements and conditions of this rule.

5.03 Within thirty (30) days of receipt of an application for public school choice transfer from a nonresident student, the nonresident district shall notify the parent or guardian and the resident district in writing (via first class United States mail) as to whether the nonresident district accepted or rejected the student's application.

5.03.1 If the application is rejected, the nonresident district must state in the notification letter the specific reasons for rejection.

5.03.2 If the application is accepted, the nonresident district shall state in the notification letter:

- a. An absolute deadline for the student to enroll in the district, or the acceptance notification is null; and
- b. Any instructions for the renewal procedures established by the district.

5.04 Any student who accepts a school choice transfer may return to his or her school district during the course of the school year.

5.04.1 If a transferred student returns to his or her resident district during the school year, the student's transfer is voided and the student shall reapply for any future transfer.

5.05 Any student that submitted a valid application for transfer, which was denied a transfer by the nonresident district, may petition the Board to reconsider the application for transfer. The petitioning party shall set forth its arguments and evidence supporting the request for the Board's reconsideration of the application along with a copy of the nonresident district's notification of rejection letter.

5.05.1 The petition for reconsideration before the Board shall be in writing and shall be postmarked (via certified first class United States mail, return receipt requested) no later than ten (10) days after the student or student's parents or guardian receives notice of rejection from the nonresident district. Any request for a hearing before the Board must be made in the petition for reconsideration.

5.05.2 The petitioning party must mail or personally file their petition for reconsideration of the application to the nonresident district with the Office of the Director of the Department.

5.05.3 The nonresident district may submit in writing additional information, evidence or arguments supporting its rejection of the student's application.

- 5.05.4 The Board, at its sole discretion, may grant a public hearing on the petition for reconsideration or consider without a public hearing the petition, briefs and evidence submitted in writing before issuing its final decision on the petition for reconsideration of the application.
- 5.05.5 The Board may require the nonresident district to reconsider its rejection of the student application by a date established by the Board before deciding whether to grant the petition for reconsideration of the application.
- 5.05.6 The Board, at its discretion, shall have the authority to require any person associated with the student application (i.e. student, parent, guardian, etc.), the nonresident district or the resident district to appear in person or by pleading before the Board as a witness on the matter of a petition for reconsideration of an application.

6.00 TRANSPORTATION OF STUDENTS IN PUBLIC SCHOOL CHOICE PROGRAM

- 6.01 Transportation of a student from the resident district to a nonresident district is the responsibility of the student or the student's parents or guardians.
 - 6.01.1 When a student transfers under section 5.02, the cost of transportation of a student from the resident district to the nonresident district shall be the responsibility of the resident district.
- 6.02 The nonresident district may enter into a written agreement with the student, student's parents or guardians, or resident school district to provide transportation to or from any place in the resident district to the nonresident district, or both.
- 6.03 A nonresident district shall terminate transportation services to a student upon receipt of written notice (via certified first class United States mail, return receipt requested) from the Department to cease and desist transporting a student from the student's resident district.

7.00 NONRESIDENT DISTRICT'S RESPONSIBILITIES

- 7.01 The nonresident district shall accept all credits toward graduation of a student that were awarded by another district.
- 7.02 The nonresident district shall award a diploma to a nonresident student accepted for transfer under the Public School Choice Program if that student meets the nonresident district's graduation requirements.
- 7.03 The nonresident student accepted for transfer under the Public School Choice Program shall be counted as a part of the average daily membership of the nonresident district to which the student transferred.

8.00 PROVISIONS FOR AND LIMITATIONS ON PUBLIC SCHOOL CHOICE TRANSFERS

- 8.01 No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district, except as provided in 8.01.1 and 8.01.2.
- 8.01.1 A transfer is permitted if (1) the transfer is between districts within the same county; and (2) if the transfer does not result in either district exceeding the acceptable range of variance for representation of minority/majority students. The acceptable range of variance is determined as provided in Section 8.02, or
- 8.01.2 A transfer is permitted if each school district affected by the transfer does not have a critical mass of minority percentages of more than ten percent (10%) of any single.
- 8.02 The Department shall each year compute the minority/majority racial percentage(s) of the public school population for each county from the October Annual School Report. School districts may vary in the under-representation or over-representation of minority/majority students by a maximum of twenty-five percent (25%) of the difference in majority/minority percentages for the county as determined by the Department. For example, when the Department has calculated the county's racial balance for each student race category, each district is allowed an over-representation or under-representation of minority or majority students of a range of up to twenty-five (25%) of the county's racial balance.
- 8.03 No student transfer shall be permitted under the Public School Choice Program when such a transfer would conflict with a district's desegregation court order or a district's court-approved desegregation plan.

9.00 REPORTING AND MONITORING OBLIGATIONS

- 9.01 The Department shall monitor school districts for compliance with the Public School Choice law (Ark. Code Ann. § 6-18-206) and these rules.
- 9.02 Each school district shall provide to the Department, within thirty (30) working days of receipt of a written request from the Department, any information or reports the Department deems necessary for review and determination of the school district's compliance with the Public School Choice law and these rules.
- 9.03 All school districts shall report to the Equity Assistance Center of the Department on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.
- 9.04 The reports may be on those forms that are prescribed by the Department, or the data may be submitted electronically by the district using a format authorized by the Department.
- 9.05 The Department may withhold state aid from any school district that fails to file its report each year or fails to file any other information with a published

deadline requested from school districts by the Equity Assistance Center, so long as thirty (30) calendar days are given between the request for the information and the published deadline, except when the request comes from a member or committee of the General Assembly.

10.00 DISPUTES

- 10.01 Any school district may petition the State Board of Education to resolve alleged disputes arising under subsections (b) – (f) of Ark. Code Ann. § 6-18-206.
- 10.02 Any school district seeking to petition the State Board of Education must submit with its petition proof of public notice of the district's intent to petition the State Board. The public notice shall be published at least once per week for two consecutive weeks in a newspaper of general circulation in all the school districts impacted or involved in the alleged dispute.
- 10.03 The school district shall file its written petition with the Office of the Director of the Department at least thirty (30) working days prior to the State Board of Education meeting where the petition will be heard.
- 10.04 The school district shall provide proof in the petition that they have served (via certified first class United States mail, return receipt requested) a copy of their petition to the superintendent of all other school districts involved in the alleged dispute.
- 10.05 The petition shall set forth in writing the particular issues of dispute under the Public School Choice Program, the specific relief for which the petitioning party is requesting the Board to address, and shall list all school districts and other relevant parties in the dispute.
- 10.06 The petition shall set forth what efforts have been attempted by all relevant school boards and superintendents of the involved school districts to resolve the alleged dispute.
- 10.07 The petition shall state in writing whether the petitioning school district requests a hearing before the Board.
- 10.08 The Board, in its sole discretion, shall determine whether to grant a public hearing on a petition or to take action on the petition and pleadings submitted without granting a public hearing.
- 10.09 Any school district that is listed as a party in a petition to resolve a dispute shall file a written response with the Office of the Director of the Department. The written response shall be submitted for the Board's consideration along with the petition within ten (10) working days of receipt of notice of the petition.
- 10.10 The Board shall issue a written decision regarding all issues of alleged dispute mentioned in the petition, and the written decision shall be served on all the school districts listed as parties of dispute in the petition (via certified first class United States mail, return receipt requested) within twenty (20) working days of the Board's final decision.

- 10.11 Except for the procedures specifically set forth in Ark. Code Ann. § 6-18-206 and these rules, all hearings conducted by the Board shall be conducted pursuant to the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et. seq..

APPEAL

May 18, 2020

Arkansas Department of Education
Four Capital Mall
Little Rock, AR 72201

To Whom It May Concern:
Office of Legal Services / School Choice / Lakeside School District
Office of Special Education

On Thursday, May 14, 2020, I received a rejection letter from Lakeside School District in Hot Springs, AR. This letter was sent to inform me that the School Choice application that I had recently submitted to them was rejected based on the sole reason that my son's race is White. Please try to imagine my surprise as I was reading this letter. I would have never thought that a child could be rejected from a school based on race while also not taking into account his access to special services.

My son is a special needs student. The services he is receiving at his current school (Malvern – Wilson Intermediate School) are falling extremely short in efforts to provide him with the education and structure that he needs. Lakeside School District has an impeccable Special Education Program that would be greatly beneficial to my son. However, despite my efforts, he was rejected. It is extremely discouraging that my son will not be able to participate in the program that Lakeside offers and receive a better education that will offer up a multitude of opportunities for him in the future just because of his race. It is vital for all students, special needs or not, to have a solid postsecondary transition plan. My son will not be able to participate in the solid partnerships that Lakeside School District has established with local entities such as Abilities Arkansas, Arkansas Career Technical Institute, as well as local hospitals since his current school district does not take part in these opportunities.

I am pleading with you as a parent, who raises a child with special needs, to please appeal to Lakeside School District. I ask you to take the needs of a very bright student with mounds of potential into consideration and help him receive an excellent education.

I appreciate your time and consideration.



Alessa Thomason

Malvern, AR 72104

@gmail.com

RECEIVED
LEGAL SERVICES

MAY 26 2020

DEPARTMENT OF EDUCATION
CENTRAL ADMINISTRATION



May 12, 2020

Alessa Thomason
389 Looper Rd
Malvern, AR 72104

Dear Ms. Thomason:

I received your application for "School Choice" for Jacob Thomason. Based on the data you provided on the enclosed application, it appears the student(s) are being presented as White student(s).

The provisions of Section 6-18-206 A.C.A. and information provided by the Arkansas Department of Education in Commissioner's Communication COM-20-107 appear to prohibit transfers from Malvern School District to Lakeside School District. If the minority percentages contained in the attachment to the ADE communication referenced above are accurate, it appears the White percentage in Lakeside is 73.78% while a corresponding percentage in Malvern is 52.58%. Other provisions covering within-county transfers and the acceptable ranges do not appear to change the basic prohibition upon transfers of this type.

Thank you for your interest in the Lakeside School District. If I can be of further assistance please don't hesitate to call. You may reach me at my office at 501-262-1880 Monday – Friday 8:00 - 4:00.

Sincerely,

A handwritten signature in black ink that reads 'Rick McLaughlin'.

Rick McLaughlin
Assistant Superintendent

**APPLICATION FOR TRANSFER TO A NON-RESIDENT DISTRICT
"ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 1989"
2020-2021 School Year**

APPLICANT INFORMATION	
Applicant Name <u>Jaedo Thomasen</u>	
Date of Birth [REDACTED]	Gender Male <input checked="" type="checkbox"/> Female <input type="checkbox"/>
GRADE <u>7th</u> (in Fall)	
Does the applicant require special needs or programs? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Is applicant currently under expulsion? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
ETHNIC ORIGIN (ONLY CHECK ONE)	
2 or More Races <input type="checkbox"/>	
African American <input type="checkbox"/>	Asian <input type="checkbox"/>
Native American/ Native Alaskan <input type="checkbox"/>	Native Hawaiian/ Pacific Islander <input type="checkbox"/>
	Hispanic <input type="checkbox"/>
	White <input checked="" type="checkbox"/>
RESIDENT SCHOOL DISTRICT OF APPLICANT	
District Name <u>Malvern School District</u>	County Name <u>Hot Spring County</u>
Address <u>1517 S. Main St. Malvern, AR 72104</u>	
Phone <u>501-332-7500</u>	
NON-RESIDENT SCHOOL DISTRICT APPLICANT WISHES TO ATTEND	
District Name <u>Lakeside School District</u>	County Name <u>Garland</u>
Address <u>2837 Malvern Ave. Hot Springs, AR 71901</u>	
Phone <u>501-262-1880</u>	
PARENT OR GUARDIAN INFORMATION OF APPLICANT	
Name <u>Alessa Thomasen</u>	Home Phone [REDACTED] <u>(cell)</u>
Address [REDACTED]	Work Phone [REDACTED]
City, State and Zip Code <u>Malvern, AR 72104</u>	
Parent/Guardian Signature <u>Alessa Thomasen</u>	Date <u>5/7/2020</u>
<p>Pursuant to standards adopted by a non-resident school board a non-resident district may reserve the right to accept and reject applicants based on capacity of programs, class, grade level, or school building. Likewise, a non-resident district's standards may provide for the rejection of an applicant based upon the submission of false or misleading information to the above listed request for information when that information directly impacts the legal qualifications of an applicant to transfer pursuant to the School Choice Act. However, a non-resident district's standards shall not include an applicant's previous academic achievement, athletic or other extra curricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district may be included pursuant to Ark. Code Ann. §6-18-510. Priority will be given to applicants with siblings attending the district. The non-resident district shall accept credits toward graduation that were awarded by another district and award a diploma to a non-resident applicant if the applicant meets the non-resident district's graduation requirements. This application must be filed in the non-resident district or postmarked no later than July 1 of the year in which the applicant would begin the fall semester at the non-resident district.</p>	
DISTRICT USE ONLY	
Application Accepted <input type="checkbox"/>	Rejected <input checked="" type="checkbox"/>
Date Notification Sent to Parent/Guardian of Applicant	
Date Notification Sent to Resident District <u>5.12.20</u>	

Please return the original copy of the application to:
Lakeside Administration Office 2837 Malvern Ave. Hot Springs, AR 71901

**For Questions about Spanish
Translations please call
501.262.1880 - Central Office (0)**

*received
5-11-20*

RESPONSE

Subject: Re: School Choice Appeal

Date: Friday, June 5, 2020 at 12:36:33 PM Central Daylight Time

From: Shawn Cook

To: Mary Claire Hyatt (ADE)

CC: Brian Golden

If the Department of Education is able to change the Federal Court Order or the provisions of it we will gladly accept Jacob. We believe students should not be accepted or denied based on race. We feel so strongly about it that we took the matter to court and lost. We are mandated to follow the court order as outlined in the letter to Ms. Thomason from Mr. McLaughlin.

Shawn Cook
Lakeside School District Superintendent

On Fri, Jun 5, 2020 at 12:04 PM Mary Claire Hyatt (ADE) <MaryClaire.Hyatt@arkansas.gov> wrote:

Good afternoon,

Please see attached a school choice appeal filed with the Department. The family appeals the Lakeside School District's decision to deny school choice from Malvern School District based on the desegregation order. The resident district is Malvern.

The applicable ADE rules state that districts must file any response to the appeal within ten (10) days of receipt of the appeal. You can send me any response via e-mail, or by mail to:

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

I will send all parties a formal notification letter once any response is received (or if the ten-day time period passes without a response from you). Please let me know if you have any questions. Have a nice weekend.

Warmly,

Mary Claire Hyatt
Attorney Specialist
Arkansas Department of Education
Division of Elementary and Secondary Education
Legal Services
Four Capitol Mall, 301-A
Little Rock, AR 72201
P: (501) 683-0960

This email and any files transmitted with it are confidential and intended solely for the use of the addressee. If you are not the intended addressee, then you have received this email in error and any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. Please notify us immediately of your unintended receipt by reply and then delete this email and your reply. Lakeside School District will not be held liable to any person resulting from the unintended or unauthorized use of any information contained in this email or as a result of any additions or deletions of information originally contained in this email.

ASSOCIATED DOCUMENTS



Arkansas Department of Education

Johnny Key, Commissioner

Transforming Arkansas to lead the nation in student-focused education

Commissioner's Memo
3/26/2020

Garland County School Choice

Memo Information

Memo Number **COM-20-107**
Memo Date 3/26/2020
Memo Type Informational
Unit Legal Services
Regulatory Authority Ark. Code Ann. §6-18-206 (Repealed)
Response Required NO
Attention Superintendents; Assistant Superintendent; Principals; School Counselors; Equity Coordinators
(Disability/Race/Gender/National Origin)

Primary Contact Information

Name Jennifer Dedman
Phone Number 501-682-4585
Email Jennifer.Dedman@arkansas.gov

Secondary Contact/s Information

Name Oliver Dillingham
Phone Number 501-682-4212
Email Oliver.Dillingham@arkansas.gov

Memo Reference

No references available.

Memo Text

The following memo applies to school choice eligibility for school districts located in Garland County. By court order, Garland County School Districts will continue to adhere to rules and regulations under the Arkansas Public School Choice Act of 1989. The

Arkansas Department of Education continues to calculate and provide necessary data to enable Garland County school districts to participate in school choice under provision.

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2607000	MOUNTAIN PINE SCHOOL DISTRICT	Y	1	7.53%	1.03%	6.51%	3.77%	0.17%	0.68%	80.31%
	County Percentages			6.34%	0.85%	12.21%	12.58%	0.52%	0.11%	67.37%
	Acceptable Ranges			5.55% - 7.14%	0.75% - 0.96%	10.68% - 13.73%	11.01% - 14.16%	0.46% - 0.59%	0.1% - 0.13%	58.95% - 75.79%

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A.C.A. § 6-18-206

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*** Legislation is current through the 2012 Fiscal Session and updates ***
*** received from the Arkansas Code Revision Commission through ***
*** August 1, 2012. ***

Title 6 Education
Subtitle 2. Elementary And Secondary Education Generally
Chapter 18 Students
Subchapter 2 -- Attendance

A.C.A. § 6-18-206 (2012)

6-18-206. Public school choice.

(a) (1) This section may be referred to and cited as the "Arkansas Public School Choice Act of 1989".

(2) The General Assembly finds that the students in Arkansas's public schools and their parents will become more informed about and involved in the public educational system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no right school for every student, and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students will stay in school and that other, more motivated students will find their full academic potential.

(3) The General Assembly further finds that giving more options to parents and students with respect to where the students attend public school will increase the responsiveness and effectiveness of the state's schools since teachers, administrators, and school board members will have added incentive to satisfy the educational needs of the students who reside in the district.

(4) The General Assembly therefore finds that these benefits of enhanced quality and effectiveness in our public schools justify permitting a student to apply for admission to a school in any district beyond the one in which the student resides, provided that the transfer by this student would not adversely affect the desegregation of either district.

(5) A public school choice program is hereby established to enable any student to attend a school in a district in which the student does not reside, subject to the restrictions contained in this section.

(b) (1) (A) Before a student may attend a school in a nonresident district, the student's parent or guardian must submit an application on a form approved by the Department of Education to the nonresident district by submitting the application to the superintendent of the school district. This application must be postmarked not later than July 1 of the year in which the student would begin the fall semester at the nonresident district.

(B) (i) Within thirty (30) days of the receipt of an application from a nonresident student seeking admission under the terms of this section, the superintendent of the nonresident district shall notify the parent or guardian and the resident district in writing as to whether the student's application has been accepted or rejected.

(ii) If the application is rejected, the superintendent of the nonresident district must state in the notification letter the reason for rejection.

(iii) If the application is accepted, the superintendent of the nonresident district shall state in the notification letter:

(a) An absolute deadline for the student to enroll in the district, or the acceptance notification is null; and

(b) Any instructions for the renewal procedures established by the district.

(iv) (a) Any student who accepts a school choice transfer may return to his or her resident district during the course of the school year.

(b) If a transferred student returns to his or her resident district during the school year, the student's transfer is voided, and the student shall reapply for any future transfer.

(2) (A) The school board of directors of every public school district must adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Nothing in this section requires a school district to add teachers, staff, or classrooms or in any way to exceed the requirements and standards established by existing law. Standards shall include a statement that priority will be given to applications from siblings or stepsiblings residing in the same residence or household of students already attending the district by choice. Standards may not include an applicant's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings except that an expulsion from another district may be included pursuant to § 6-18-510.

(B) (i) Any student who applies for a transfer under this section and is denied a transfer by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer.

(ii) A request for a hearing before the state board shall be in writing and shall be postmarked no later than ten (10) days after notice of rejection of the application under subdivision (b)(1)(B) of this section is received by the student.

(3) Each school district shall participate in public school choice consistent with this section.

(c) The responsibility for transportation of a student from the student's resident school district to a nonresident school district shall be borne by the student or the student's parents. The nonresident school district may enter into a written agreement with the student, the student's parents, or the resident school district to provide transportation to or from any place in the resident district to the nonresident district, or both.

(d) (1) A nonresident district shall accept credits toward graduation that were awarded by another district.

(2) The nonresident district shall award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.

(e) For purposes of determining a school district's state equalization aid, the nonresident student shall be counted as a part of the average daily membership of the district to which the

student has transferred.

(f) The provisions of this section and all student choice options created in this section are subject to the following limitations:

(1) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district except in the circumstances set forth in subdivisions (f)(2) and (3) of this section;

(2) (A) A transfer to a district is exempt from the restriction set forth in subdivision (f)(1) of this section if the transfer is between two (2) districts within a county and if the minority percentage in the student's race and majority percentages of school enrollment in both the resident and nonresident district remain within an acceptable range of the county's overall minority percentage in the student's race and majority percentages of school population as set forth by the department.

(B) (i) By the filing deadline each year, the department shall compute the minority percentage in the student's race and majority percentages of each county's public school population from the October Annual School Report and shall then compute the acceptable range of variance from those percentages for school districts within each county.

(ii) (a) In establishing the acceptable range of variance, the department is directed to use the remedial guideline established in *Little Rock School District v. Pulaski County Special School District* of allowing an overrepresentation or underrepresentation of black or white students of one-fourth (1/4) or twenty-five percent (25%) of the county's racial balance.

(b) In establishing the acceptable range of variance for school choice, the department is directed to use the remedial guideline of allowing an overrepresentation or underrepresentation of minority or majority students of one-fourth (1/4) or twenty-five percent (25%) of the county's racial balance;

(3) A transfer is exempt from the restriction set forth in subdivision (f)(1) of this section if each school district affected by the transfer does not have a critical mass of minority percentage in the student's race of more than ten percent (10%) of any single race;

(4) In any instance in which the provisions of this subsection would result in a conflict with a desegregation court order or a district's court-approved desegregation plan, the terms of the order or plan shall govern;

(5) The department shall adopt appropriate rules and regulations to implement the provisions of this section; and

(6) The department shall monitor school districts for compliance with this section.

(g) The state board shall be authorized to resolve disputes arising under subsections (b)-(f) of this section.

(h) The superintendent of the district shall cause public announcements to be made over the broadcast media and in the print media at such times and in such a manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

(i) (1) All superintendents of school districts shall report to the Equity Assistance Center on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.

(2) The reports may be on those forms that are prescribed by the department, or the data may be submitted electronically by the district using a format authorized by the department.

(3) The department may withhold state aid from any school district that fails to file its report each year or fails to file any other information with a published deadline requested from school districts by the Equity Assistance Center so long as thirty (30) calendar days are given between the request for the information and the published deadline except when the request comes from a member or committee of the General Assembly.

(4) A copy of the report shall be provided to the Joint Interim Oversight Committee on Educational Reform.

(j) (1) The department shall develop a proposed set of rules as it determines is necessary or desirable to amend the provisions of this section.

(2) The department shall present the proposed rules in written form to the House Interim Committee on Education and the Senate Interim Committee on Education by October 1, 2006, for review and consideration by the committees for possible amendments to this section and to the Arkansas Public School Choice Program by the Eighty-sixth General Assembly.

HISTORY: Acts 1989, No. 609, §§ 1-13; 1991, No. 214, § 1; 1991, No. 284, §§ 1-3; 1993, No. 655, § 1; 1995, No. 109, § 1; 1997, No. 112, § 10; 1999, No. 391, § 10; 1999, No. 1241, § 1; 2001, No. 1788, § 1; 2003, No. 1272, § 1; 2003 (2nd Ex. Sess.), No. 110, § 1; 2005, No. 2148, § 1; 2007, No. 552, § 1.

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APPLICATION FOR TRANSFER TO A NON-RESIDENT DISTRICT "ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 1989"

APPLICANT INFORMATION			
Applicant Name			
Date of Birth	Gender	Male <input type="checkbox"/>	Female <input type="checkbox"/>
GRADE			
Does the applicant require special needs or programs? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Is applicant currently under expulsion? Yes <input type="checkbox"/> No <input type="checkbox"/>			
ETHNIC ORIGIN (CHECK ONE)			
2 or More Races <input type="checkbox"/>			
African American <input type="checkbox"/>	Asian <input type="checkbox"/>	Hispanic <input type="checkbox"/>	
Native American/ Native Alaskan <input type="checkbox"/>	Native Hawaiian/ Pacific Islander <input type="checkbox"/>	White <input type="checkbox"/>	
RESIDENT SCHOOL DISTRICT OF APPLICANT			
District Name		County Name	
Address			
Phone			
NON-RESIDENT SCHOOL DISTRICT APPLICANT WISHES TO ATTEND			
District Name		County Name	
Address			
Phone			
PARENT OR GUARDIAN INFORMATION OF APPLICANT			
Name		Home Phone	
Address		Work Phone	
Parent/Guardian Signature			Date
<p>Pursuant to standards adopted by a non-resident school board a non-resident district may reserve the right to accept and reject applicants based on capacity of programs, class, grade level, or school building. Likewise, a non-resident district's standards may provide for the rejection of an applicant based upon the submission of false or misleading information to the above listed request for information when that information directly impacts the legal qualifications of an applicant to transfer pursuant to the School Choice Act. However, a non-resident district's standards shall not include an applicant's previous academic achievement, athletic or other extra curricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district may be included pursuant to Ark. Code Ann. §6-18-510. Priority will be given to applicants with siblings attending the district. The non-resident district shall accept credits toward graduation that were awarded by another district and award a diploma to a non-resident applicant if the applicant meets the non-resident district's graduation requirements. This application must be filed in the non-resident district or postmarked no later than July 1 of the year in which the applicant would begin the fall semester at the non-resident district.</p>			
DISTRICT USE ONLY			
Application	Accepted <input type="checkbox"/>	Rejected <input type="checkbox"/>	
Date Notification Sent to Parent/Guardian of Applicant			
Date Notification Sent to Resident District			

ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE GUIDELINES, PROCEDURES, AND ENFORCEMENT OF THE
ARKANSAS PUBLIC SCHOOL CHOICE ACT
October 2007

1.00 PURPOSE

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Public School Choice Act.

2.00 AUTHORITY

- 2.01 The Arkansas State Board of Education's authority for promulgating these rules is pursuant to Ark. Code Ann. §§ 6-11-105, 6-15-429, 6-18-206 and Act 552 of 2007.

3.00 DEFINITIONS

- 3.01 Student – for purposes of this rule means any person legally enrolled or entitled to be enrolled in a public school district in Arkansas.
- 3.02 Resident district - for purposes of this rule means the public school district where a student is considered to reside pursuant to Ark. Code Ann. § 6-18-202.
- 3.03 Non-resident district - for purposes of this rule means the public school district a student last made legal application to attend pursuant to the Arkansas Public School Choice Act for the current school year.
- 3.04 Application - for purposes of this rule means a request submitted to a non-resident district to transfer from a student's resident district to a non-resident district on the official form approved by the Arkansas Department of Education.
- 3.05 Board - for purposes of this rule means the Arkansas State Board of Education.
- 3.06 Department - for purposes of this rule means the Arkansas Department of Education.
- 3.07 Minority - for purposes of this rule minority includes the following racial groups: African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.
- 3.08 Majority - for purposes of this rule majority includes the following racial group: Caucasian.

4.00 PROCESS AND PROCEDURES FOR SCHOOL DISTRICT PARTICIPATION IN
PUBLIC SCHOOL CHOICE PROGRAM

- 4.01 Each school district shall participate in public school choice consistent with this section.

- 4.02 Every school district must adopt a resolution setting forth specific standards for acceptance and rejection of applications.
- 4.02.1 Such standards may include the capacity of a school program, class, grade level, or school building.
- 4.02.2 School districts shall not be required to add teachers, staff, or classrooms or in any way exceed current requirements or standards established by existing law when considering whether to accept an application.
- 4.02.3 A school district's standards shall include a statement that priority will be given to applications of siblings or step-siblings residing in the same residence or household of students already attending the district by choice where an application has been filed.
- 4.02.4 A school district's standards for acceptance and rejection of applications shall not include a student's previous academic achievement, athletic or extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings except that an expulsion from another school district may be included as a standard.
- 4.03 A district shall make public announcements over the broadcast media and in print media at such times and in such manner so as to inform parents or guardians of students in adjoining districts of the availability of the program, the July 1 application deadline, and the requirements and procedure for nonresident students to participate in the program.

5.00 PROCESS AND PROCEDURES FOR APPLICATIONS FOR TRANSFER
PURSUANT TO THE PUBLIC SCHOOL CHOICE PROGRAM

- 5.01 Any student may make application to enroll and attend a school in a district in which the student does not reside, subject to the restrictions and procedures contained in this rule and regulation and Arkansas law.
- 5.01.1 Before a student may attend a school in a nonresident district, the student's parent or guardian must submit an application on the form approved by and provided by the Department (see attached application) to the nonresident district.
- 5.01.2 The application to the nonresident district must be postmarked no later than July 1 of the year the student would begin the fall semester in the nonresident school district.
- 5.02 Any student attending a resident district classified as being in academic distress shall be eligible and entitled to apply to transfer to another geographically contiguous nonresident district not in academic distress during the time period a district is classified as being in academic distress subject to the restrictions allowed in 5.02.1 and 8.00.

- 5.02.1 Any student submitting an application under this section shall not be required to file the petition by the July 1 deadline, but shall meet all other requirements and conditions of this rule.
- 5.03 Within thirty (30) days of receipt of an application for public school choice transfer from a nonresident student, the nonresident district shall notify the parent or guardian and the resident district in writing (via first class United States mail) as to whether the nonresident district accepted or rejected the student's application.
- 5.03.1 If the application is rejected, the nonresident district must state in the notification letter the specific reasons for rejection.
- 5.03.2 If the application is accepted, the nonresident district shall state in the notification letter:
- a. An absolute deadline for the student to enroll in the district, or the acceptance notification is null; and
 - b. Any instructions for the renewal procedures established by the district.
- 5.04 Any student who accepts a school choice transfer may return to his or her school district during the course of the school year.
- 5.04.1 If a transferred student returns to his or her resident district during the school year, the student's transfer is voided and the student shall reapply for any future transfer.
- 5.05 Any student that submitted a valid application for transfer, which was denied a transfer by the nonresident district, may petition the Board to reconsider the application for transfer. The petitioning party shall set forth its arguments and evidence supporting the request for the Board's reconsideration of the application along with a copy of the nonresident district's notification of rejection letter.
- 5.05.1 The petition for reconsideration before the Board shall be in writing and shall be postmarked (via certified first class United States mail, return receipt requested) no later than ten (10) days after the student or student's parents or guardian receives notice of rejection from the nonresident district. Any request for a hearing before the Board must be made in the petition for reconsideration.
- 5.05.2 The petitioning party must mail or personally file their petition for reconsideration of the application to the nonresident district with the Office of the Director of the Department.
- 5.05.3 The nonresident district may submit in writing additional information, evidence or arguments supporting its rejection of the student's application.

- 5.05.4 The Board, at its sole discretion, may grant a public hearing on the petition for reconsideration or consider without a public hearing the petition, briefs and evidence submitted in writing before issuing its final decision on the petition for reconsideration of the application.
- 5.05.5 The Board may require the nonresident district to reconsider its rejection of the student application by a date established by the Board before deciding whether to grant the petition for reconsideration of the application.
- 5.05.6 The Board, at its discretion, shall have the authority to require any person associated with the student application (i.e. student, parent, guardian, etc.), the nonresident district or the resident district to appear in person or by pleading before the Board as a witness on the matter of a petition for reconsideration of an application.

6.00 TRANSPORTATION OF STUDENTS IN PUBLIC SCHOOL CHOICE PROGRAM

- 6.01 Transportation of a student from the resident district to a nonresident district is the responsibility of the student or the student's parents or guardians.
 - 6.01.1 When a student transfers under section 5.02, the cost of transportation of a student from the resident district to the nonresident district shall be the responsibility of the resident district.
- 6.02 The nonresident district may enter into a written agreement with the student, student's parents or guardians, or resident school district to provide transportation to or from any place in the resident district to the nonresident district, or both.
- 6.03 A nonresident district shall terminate transportation services to a student upon receipt of written notice (via certified first class United States mail, return receipt requested) from the Department to cease and desist transporting a student from the student's resident district.

7.00 NONRESIDENT DISTRICT'S RESPONSIBILITIES

- 7.01 The nonresident district shall accept all credits toward graduation of a student that were awarded by another district.
- 7.02 The nonresident district shall award a diploma to a nonresident student accepted for transfer under the Public School Choice Program if that student meets the nonresident district's graduation requirements.
- 7.03 The nonresident student accepted for transfer under the Public School Choice Program shall be counted as a part of the average daily membership of the nonresident district to which the student transferred.

8.00 PROVISIONS FOR AND LIMITATIONS ON PUBLIC SCHOOL CHOICE TRANSFERS

- 8.01 No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district, except as provided in 8.01.1 and 8.01.2.
- 8.01.1 A transfer is permitted if (1) the transfer is between districts within the same county; and (2) if the transfer does not result in either district exceeding the acceptable range of variance for representation of minority/majority students. The acceptable range of variance is determined as provided in Section 8.02, or
- 8.01.2 A transfer is permitted if each school district affected by the transfer does not have a critical mass of minority percentages of more than ten percent (10%) of any single.
- 8.02 The Department shall each year compute the minority/majority racial percentage(s) of the public school population for each county from the October Annual School Report. School districts may vary in the under-representation or over-representation of minority/majority students by a maximum of twenty-five percent (25%) of the difference in majority/minority percentages for the county as determined by the Department. For example, when the Department has calculated the county's racial balance for each student race category, each district is allowed an over-representation or under-representation of minority or majority students of a range of up to twenty-five (25%) of the county's racial balance.
- 8.03 No student transfer shall be permitted under the Public School Choice Program when such a transfer would conflict with a district's desegregation court order or a district's court-approved desegregation plan.

9.00 REPORTING AND MONITORING OBLIGATIONS

- 9.01 The Department shall monitor school districts for compliance with the Public School Choice law (Ark. Code Ann. § 6-18-206) and these rules.
- 9.02 Each school district shall provide to the Department, within thirty (30) working days of receipt of a written request from the Department, any information or reports the Department deems necessary for review and determination of the school district's compliance with the Public School Choice law and these rules.
- 9.03 All school districts shall report to the Equity Assistance Center of the Department on an annual basis the race, gender, and other pertinent information needed to properly monitor compliance with the provisions of this section.
- 9.04 The reports may be on those forms that are prescribed by the Department, or the data may be submitted electronically by the district using a format authorized by the Department.
- 9.05 The Department may withhold state aid from any school district that fails to file its report each year or fails to file any other information with a published

deadline requested from school districts by the Equity Assistance Center, so long as thirty (30) calendar days are given between the request for the information and the published deadline, except when the request comes from a member or committee of the General Assembly.

10.00 DISPUTES

- 10.01 Any school district may petition the State Board of Education to resolve alleged disputes arising under subsections (b) – (f) of Ark. Code Ann. § 6-18-206.
- 10.02 Any school district seeking to petition the State Board of Education must submit with its petition proof of public notice of the district's intent to petition the State Board. The public notice shall be published at least once per week for two consecutive weeks in a newspaper of general circulation in all the school districts impacted or involved in the alleged dispute.
- 10.03 The school district shall file its written petition with the Office of the Director of the Department at least thirty (30) working days prior to the State Board of Education meeting where the petition will be heard.
- 10.04 The school district shall provide proof in the petition that they have served (via certified first class United States mail, return receipt requested) a copy of their petition to the superintendent of all other school districts involved in the alleged dispute.
- 10.05 The petition shall set forth in writing the particular issues of dispute under the Public School Choice Program, the specific relief for which the petitioning party is requesting the Board to address, and shall list all school districts and other relevant parties in the dispute.
- 10.06 The petition shall set forth what efforts have been attempted by all relevant school boards and superintendents of the involved school districts to resolve the alleged dispute.
- 10.07 The petition shall state in writing whether the petitioning school district requests a hearing before the Board.
- 10.08 The Board, in its sole discretion, shall determine whether to grant a public hearing on a petition or to take action on the petition and pleadings submitted without granting a public hearing.
- 10.09 Any school district that is listed as a party in a petition to resolve a dispute shall file a written response with the Office of the Director of the Department. The written response shall be submitted for the Board's consideration along with the petition within ten (10) working days of receipt of notice of the petition.
- 10.10 The Board shall issue a written decision regarding all issues of alleged dispute mentioned in the petition, and the written decision shall be served on all the school districts listed as parties of dispute in the petition (via certified first class United States mail, return receipt requested) within twenty (20) working days of the Board's final decision.

- 10.11 Except for the procedures specifically set forth in Ark. Code Ann. § 6-18-206 and these rules, all hearings conducted by the Board shall be conducted pursuant to the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et. seq..

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