

**No. 11-2130**

*In the*

**UNITED STATES COURT OF APPEALS**

*For the*

**EIGHTH CIRCUIT**

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LITTLE ROCK SCHOOL DISTRICT  
PLAINTIFF-APPELLANT,

vs.

STATE OF ARKANSAS, et. al.,  
DEFENDANT-APPELLEES

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**APPELLEE STATE OF ARKANSAS'S RESPONSE  
IN OPPOSITION TO APPELLANT'S EMERGENCY MOTION  
FOR STAY PENDING APPEAL AND EXPEDITED APPEAL  
AND A TEMPORARY STAY PENDING DECISION ON THIS MOTION**

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Respectfully submitted:

DUSTIN MCDANIEL  
Attorney General of Arkansas

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The State of Arkansas, Arkansas Department of Education, et al. (“State”), by and through their attorneys, state for their Response in Opposition to Appellant’s Emergency Motion for Stay Pending Appeal and Expedited Appeal and a Temporary Stay Pending Decision of this Motion:

1. The United States District Court for the Eastern District of Arkansas, Judge Brian Miller, issued its Findings of Fact and Conclusions of Law on May 19, 2011. D.E. 4507.

2. Little Rock School District (“LRSD”) filed a Motion for Stay Pending Appeal on May 23, 2011. D.E. 4512. It filed an Amended Motion for Stay Pending Appeal on May 24, 2011. D.E. 4517.

3. In its Amended Motion for Stay, LRSD requested that the District Court expedite the time allowed for the Response of the State and other parties, and asked the District Court itself to commit to decide LRSD's Motion no later than May 27, 2011. While LRSD allowed itself four days to draft and file its initial Motion for Stay Pending Appeal, and a fifth day before filing its Amended Motion, it demanded that the State and other parties respond within less than forty eight hours and demanded that the District Court itself must then act immediately.

4. On May 25, the District Court, through email correspondence from chambers, denied LRSD’s request for an expedited ruling on its Amended Motion for Stay Pending Appeal. The Court indicated that it would allow other parties to

file their responses to LRSD's motion for stay within the normal time provided by the rules, i.e. 14 days (although the State intends to file its response sooner) and that the Court would rule after reviewing those responses.

5. The denial of expedited review was proper because LRSD did not demonstrate good cause to deviate from the standard timeline established under the Federal Rules of Civil Procedure and local rules. Adherence to the standard response time provides adequate opportunity for all interested parties to respond to LRSD's motion and the District Court to rule on it prior to LRSD incurring any alleged harm.

6. LRSD now petitions this Court seeking the same relief as in the motion pending before the District Court. For the reasons set out herein, the Court should deny the LRSD's premature request. The Court should allow LRSD's request for a stay pending appeal to be addressed first in the District Court, as provided in Rule 8 of the Federal Rules of Appellate Procedure.

7. LRSD has failed to demonstrate that allowing the District Court to rule on its Amended Motion for Stay Pending Appeal is impracticable.

8. LRSD has been entirely unitary since 2007. In the past four years, LRSD has publicly grappled with the realization that State desegregation disbursements would cease. Dr. Morris Holmes, LRSD's Superintendent said well before the District Court's May 19, 2011 ruling that he and other LRSD officials

have been preparing budgets for the coming school year to enable LRSD to meet its education obligations within its financial means based on the assumption that some or all of its special desegregation disbursements would soon end. Former Little Rock School Board Member Baker Kurrus, who recently ended his tenure after twelve years on the Board, has also publicly stated that LRSD has ample financial resources to provide quality education for all of its students without the special desegregation disbursements. Kurrus stated that the loss of funding will no longer allow LRSD to tolerate waste, which he sees as a positive impact of the District Court's ruling. For LRSD's lawyers now to blame the trial court for "disruption" or "irreparable harm" is disingenuous and it contradicts the public statements of the School District's elected and appointed officials. There is absolutely no need, nor any likelihood, that any Little Rock school will be forced to close, that mass layoffs of teachers will occur, or that the plans of students and their parents for the next school year will be disrupted. Those things will only happen if LRSD itself chooses such a course of action rather than a more prudent approach.

9. The schedule upon which desegregation disbursements have been made to LRSD does not necessitate an expedited ruling. Desegregation disbursements are ordinarily made on or about the twentieth day of the month. *See Affidavit of William J. Goff, Arkansas Department of Education, attached as*

*Exhibit A.* The disbursements for the month of May have already been distributed.

*Exhibit A.* The disbursements for the month of June would not have been released to LRSD until approximately June 20, 2011. *Exhibit A.* The District Court will have ample time to weigh the arguments and issue a ruling prior to the date when LRSD would receive its June desegregation disbursements.

10. Under the regular schedule, no desegregation disbursements go out during the month of July. *Exhibit A.* Therefore, LRSD's total disbursements between now and August 20, 2011, would only be reduced by approximately \$2.6 million. *Exhibit A.*

11. In addition, under the District Court's order, approximately \$21 million dollars in M-to-M funding will continue until the Court addresses that issue. Therefore, the change in desegregation disbursements to LRSD is not \$38 million per year as alleged but considerably less, because M-to M funding will continue.

12. In addition, the LRSD's operating budget for the 2010-2011 school year projects that LRSD will end this year with an operating fund balance of \$21,147,944. *See LRSD 2010-2011 Budget, a relevant excerpt of which is attached as Exhibit B.* LRSD has reported to ADE as of April 30, 2011, that it has an operating fund balance of \$21,765,638. *Exhibit A.* Therefore, the surplus funds that Little Rock keeps in its accounts would cover nearly a full year of the

desegregation disbursements it was previously receiving from the State. It is simply unsupportable for LRSD to claim that the potential loss of one monthly disbursement of roughly \$2.6 million before August 2011 creates a fiscal emergency when it routinely carries fund balances of well over \$20 million.

13. Finally, even without the desegregation disbursements, LRSD receives more than enough money to provide for its educational and operational needs. During 2009-2010, the most current school year for which complete data is available, LRSD took in \$213,775,740.02 in total unrestricted revenue from state and local sources. That number does not include state categorical funds (which include supplemental NSLA funds for students in poverty, Alternative Learning Environment (“ALE”) funds, English Language Learners (“ELL”) funds, and professional development funds), federal grant revenue, bond or loan proceeds, desegregation disbursements from the State, or any other state revenue restricted for a specific purpose. Based upon its reported number of 22,750 students, LRSD received \$9,396.52 per student in unrestricted revenue from state and local sources. The statewide average per student in unrestricted revenue from state and local sources was \$7,489.44. LRSD therefore has more than sufficient funding, without the desegregation disbursements, to provide quality education to all its students. LRSD’s claim that an emergency stay is necessary in order to keep school doors open is simply not supported by the facts.

14. Given that the District Court has more than enough time to rule on the identical motion pending before it well before even one month's desegregation disbursements would normally be made, there is no legitimate reason for LRSD to ask for premature intervention from this Court on an emergency basis. LRSD's Emergency Motion is premature and should be denied. LRSD does not stand to suffer any harm from allowing time for action on the Amended Motion for Stay pending before the District Court. FRAP 8 reflects the understanding that the District Court has superior knowledge of the record and is in the best position to evaluate a motion to stay its ruling. Where, as here, no emergency prevents the District Court from deciding a motion for stay pending appeal, this Court should not allow LRSD to bypass that step.

15. In the unlikely event that this Court allows LRSD to proceed on its Motion for Stay Pending Appeal prior to determination of that issue by the District Court, the State requests the opportunity to provide the Eighth Circuit with briefing on the merits, demonstrating that LRSD is not entitled to a stay pending appeal.

WHEREFORE, the State Appellees respectfully request that the Court deny LRSD's Emergency Motion for Stay Pending Appeal and Expedited Appeal and a Temporary Stay Pending Decision on this Motion, allow the District Court to rule on the pending Amended Motion for Stay currently before it, and issue all other just and proper relief to which it may be entitled.

Respectfully submitted,

DUSTIN McDANIEL  
Attorney General

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ATTORNEYS FOR STATE OF ARKANSAS  
AND ARKANSAS DEPARTMENT OF  
EDUCATION

**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following:

Mr. Clayton R. Blackstock  
cblackstock@mbbwi.com

Mr. Mark Terry Burnette  
mburnette@mbbwi.com

Mr. John Clayburn Fendley, Jr  
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[johnwalkeratty@aol.com](mailto:johnwalkeratty@aol.com)

Office of Desegregation Monitor  
[andreeroaf@odmemail.com](mailto:andreeroaf@odmemail.com); [aroaf@seark.net](mailto:aroaf@seark.net); paramer@odmmail.com

I, Ali Brady, Assistant Attorney General, do hereby certify that I have served the foregoing and a copy of the Notice of Electronic Filing by depositing a copy in the United States Mail, postage prepaid, on May 26, 2011, to the following non-CM/ECF participants:

Mr. Robert Pressman  
22 Locust Avenue  
Lexington, Mass. 02173

/s/ Ali Brady  
Ali M. Brady

State of Arkansas

County of Pulaski

**AFFIDAVIT OF WILLIAM J. GOFF**

I, William J. Goff, am the Assistant Commissioner for Fiscal and Administrative Services at the Arkansas Department of Education (“ADE”). I have been with ADE for approximately six years.

I am competent to testify and have personal knowledge regarding the statements contained in this affidavit.

Based on my knowledge and experience, immediate implementation of the district court’s May 19, 2011, ruling does not necessitate that Little Rock School District (“LRSD”) close the doors on any of its magnet schools or prevent the district from providing quality education to all its students.

Prior to the district court’s May 19, 2011, ruling in this case, the Arkansas Department of Education released desegregation disbursements to the three Pulaski County school districts on a monthly basis on or about the twentieth day of the month. The disbursements for the month of May have already been distributed. Under this schedule, the disbursements for the month of June would not have been released to LRSD until approximately June 20, 2011. That disbursement would have included \$1,341,597 in magnet funding and \$1,278,978 in teacher health insurance and retirement funding that will not be distributed pursuant to the court’s order. The disbursement was set to include \$351,311 in M-to-M funding, which will continue to be disbursed pursuant to the court’s order. Therefore, the June disbursement to LRSD will be reduced by approximately \$2,620,575.



During 2009-2010, the most current school year for which complete data is available, LRSD took in \$213,775,740.02 in total unrestricted revenue from state and local sources. That number does not include state categorical funds (which include supplemental NSLA funds for students in poverty, Alternative Learning Environment (“ALE”) funds, English Language Learners (“ELL”) funds, and professional development funds), federal grant revenue, bond or loan proceeds, desegregation disbursements from the State, or any other state revenue restricted for a specific purpose. Because the funding was based upon an average daily membership (“ADM”) of 22,750.53 students, LRSD received \$9,396.52 per student in unrestricted revenue from state and local sources. The statewide average per student in unrestricted revenue from state and local sources was \$7,489.44. LRSD therefore has more than sufficient funding, without the desegregation money, to provide quality education to all its students.

LRSD projected an operating fund balance at the end of the 2010-2011 school year of \$21,147,944. As of April 30, 2011, LRSD reported to ADE that it has an operating fund balance of \$21,765,638.

Therefore, immediate implementation of the United States District Court’s May 19, 2011, order terminating a portion of State desegregation disbursement does not necessitate the closing of any of LRSD’s magnet schools or prevent the district from providing all of its students with a quality education.

In witness whereof, I hereunto set my hand this 26 day of May, 2011.



Before the undersigned notary public, duly qualified and acting in and for said county and state, appeared William J. Goff, who is to me well known to be or who has sufficiently proven to be the affiant herein, who signed this affidavit under oath.

Subscribed to and sworn to before me this 26th day of May, 2011.

  
Notary Public



My Commission Expires: 12-10-14

# LITTLE ROCK SCHOOL DISTRICT

## DETAILED BUDGET

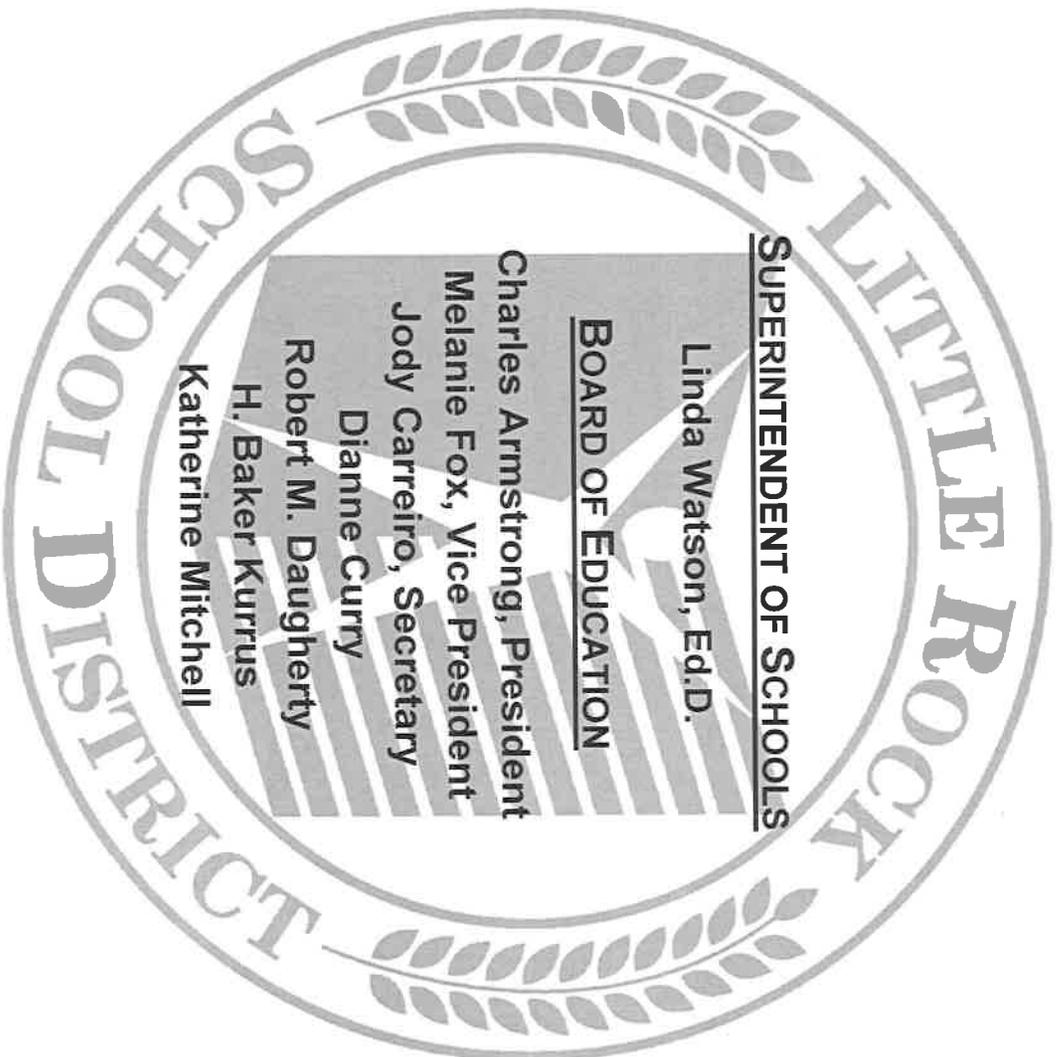
2010-2011



September 23, 2010

PENGAD 800-631-6989

EXHIBIT  
**B**



**SUPERINTENDENT OF SCHOOLS**

Linda Watson, Ed.D.

**BOARD OF EDUCATION**

Charles Armstrong, President

Melanie Fox, Vice President

Jody Carreiro, Secretary

Dianne Curry

Robert M. Daugherty

H. Baker Kurrus

Katherine Mitchell

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# LITTLE ROCK SCHOOL DISTRICT

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## OFFICE OF THE SUPERINTENDENT

September 23, 2010

Dear Board of Directors:

I am forwarding for your consideration a proposed balanced budget that fully supports the mission of the Little Rock School District and our commitment to advancing student learning for each child in every school.

This budget proposal adequately funds the educational priorities established by the LRSD Board of Directors and financially reinforces the strategies that will enable our District to continue making gains in student academic achievement. In addition, the budget supports our teachers' skills with the continued development of strategies and best practices which enhance our students' learning environments.

The 2010-2011 proposed budget funds a step increase of approximately three (3) percent for all eligible employees and a \$2,000 stipend for teachers who are at the top of the pay schedule. The Administration will continue to review the budget in an effort to provide assistance for health insurance and/or a salary increase. Budget revisions will be forwarded to the Board.

Sincerely,

A handwritten signature in black ink that reads "Linda Watson, Ed.D.".

Linda Watson, Ed.D.  
Superintendent of Schools

# LITTLE ROCK SCHOOL DISTRICT

## EXECUTIVE SUMMARY

### OVERVIEW

The Little Rock School District (LRSD) 2010-2011 projected budget contains revenues of \$348,550,616 and projected expenses of \$352,428,280 leaving a projected ending fund balance of \$23,057,386. The projected fund balance in the Operating Fund is \$21,147,944 of which \$1,810,136 is restricted for future QZAB payments. This is a decrease of \$2,269,332 under the 2009-2010 ending fund balance. The Federal Programs fund balance is projected to be \$1,909,443 which is a decrease of \$311,245 under the 2009-2010 ending fund balance. Felder Alternative Learning Academy fund balance is projected to be \$0 which is a decrease of \$124,362 under the 2009-2010 ending fund balance.

### MAJOR HIGHLIGHTS

#### **The 2009-2010 actual revenues and expenditures reflect:**

- Total operating revenues of \$245,156,389 which is \$6,038,515 over the original budgeted amount.
- Total operating expenses of \$239,099,726 which is \$536,096 over the original budgeted amount.
- Revenues of \$6,929,273 and expenditures of \$6,271,191 in the Dedicated Maintenance and Operations Fund, leaving a fund balance of \$1,172,723 to be expended in 2010-11.
- An experience step for all eligible employees. A raise of 1.25% for teachers, principals, and assistant principals. A raise of 2.0% for bus drivers, custodians, food service workers, school based security officers, and instructional aides/paraprofessionals. A 1.0% raise for all other personnel groups.

#### **The 2010-2011 budgeted revenues and expenditures reflect:**

- An increase of \$118 of state foundation funding per student.
- A decrease of \$35 of the enhanced education funding per student.
- An increase of 0.9% in operating local revenue.
- An increase of 2.1% in state revenue.
- An experience step increase for all eligible employees.
- An increase in projected FTEs due to the opening of Don R. Roberts Elementary.
- An increase in federal grant revenue and expenditures due to ARRA funding.