

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

LITTLE ROCK SCHOOL DISTRICT

PLAINTIFF

v.

No. 4:82-cv-866 DPM

**PULASKI COUNTY SPECIAL SCHOOL
DISTRICT NO. 1, et al.**

DEFENDANTS

MRS. LORENE JOSHUA, et al.

INTERVENORS

KATHERINE KNIGHT, et al.

INTERVENORS

**ADE'S RESPONSE TO PCSSD'S MOTION FOR DECLARATORY
JUDGMENT REGARDING THE PULASKI
ASSOCIATION OF CLASSROOM TEACHERS**

The Arkansas Department of Education (ADE), by and through its attorneys, Attorney General Dustin McDaniel and Assistant Attorney General Scott P. Richardson, state for their *Response to PCSSD's Motion for Declaratory Judgment Regarding the Pulaski Association of Classroom Teachers*:

PCSSD has requested (DE #4732) that the Court issue a declaratory judgment “adjudicating the propriety and enforceability of the actions of the Arkansas Commissioner of Education” exercising his authority under State law to direct PCSSD to withdraw recognition of PACT and PASS as the collective bargaining units for the district’s licensed and classified staff and to implement recommendations to stabilize the PCSSD’s budget. As will be explained below, the PCSSD has asked the Court to rule on whether State officers have complied with State law, which this Court does not have jurisdiction to do. *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 102 fn. 11, 104 S.Ct. 900, 911 (1984). PCSSD’s request also falls outside of the parameters of this desegregation case because nothing in the 1989

Settlement Agreement or the portions of Plan 2000 that remain under Court supervision controls the actions taken by the Commissioner of Education.

As the ADE has explained on several occasions, the presence of this case grants this Court only the authority necessary to complete the purposes of the case. See DE # 4465 Response to Little Rock School District's Motion to Enforce 1989 Settlement Agreement filed June 18, 2010; DE # 4557, Response to Court's Order Requesting Briefing on the M to M Program Funding filed June 27, 2011; DE # 4576, Reply to Responses to Motion for Order filed July 8, 2011; DE # 4631, Response to Order (DE 4608) Soliciting Views on Periodic Review of 1989 Settlement Agreement, filed Sept. 30, 2011; DE 4659, Response to Little Rock School District's Motion for Protective Order, filed Nov. 11, 2011; DE 4712 ADE's Response to LRSD and Joshua's Motion for Summary Judgment filed March 12, 2012; DE 4724, Brief in Support of Motion for Release from 1989 Settlement Agreement, filed March 26, 2012. ADE incorporates by reference these pleadings to the extent that they address the jurisdiction of this Court. Fed. R. Civ. Pro. 10(c). Suffice it to say: "[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Milliken v. Bradley*, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758 (1977) ("*Milliken II*"). Federal consent decrees must be limited to "reasonable and necessary implementations of federal law" so that they do not "improperly deprive future officials of their designated legislative and executive powers." *Horne v. Flores*, 129 S.Ct. 2579, 2595 (2009) quoting *Frew v. Hawkins*, 540 U.S. 431, 441, 124 S.Ct. 899 (2004).

The factual background of the PCSSD's fiscal distress status can be found in the State's Reply to Responses to Motion for Order filed July 8, 2011. (DE 4576).

Here, there is direct authority in this case that counsels against the review suggested by PCSSD. *Knight v. Pulaski County Special School District*, 112 F.3d 953 (1997). Neither the 1989 Settlement Agreement nor PCSSD's Plan 2000 give the Court authority to review the Commissioner of Education's decisions regarding PCSSD's budget and how to reform the district's fiscal practices to produce a fiscally stable district.

The fact that the case has been settled does not make the three school districts involved wards of the Court. They are not in receivership. Except as provided in the settlement agreement, or by reasonable implication therefrom, the rights and duties of the three school districts and those with whom they do business, including employees and organizations of employees, are governed by other applicable law, primarily state law.

* * *

The jurisdiction of the District Court to enforce that agreement does not include the authority to resolve other disputes among the parties or to adjust their legal rights and responsibilities arising from other sources. No independent basis of jurisdiction has been suggested. In these circumstances, and especially in view of the fact that an earlier-filed case is now pending in the state courts, we think it best to leave issues of state law and contract interpretation to those courts.

Id. at 954.

Nothing in the 1989 Settlement Agreement promises the PCSSD teacher unions continued recognition as bargaining units at the district. Nothing in the 1989 Settlement Agreement subjects the State's budgetary and financial decisions regarding a fiscally distressed school district to supervision of this Court. It is worth noting as well, the State's fiscal distress laws did not come into existence until fourteen years after the 1989 Settlement Agreement. See Act 1467 of 2003, codified at Ark. Code Ann. § 6-20-1901, et seq. PCSSD, in its motion and brief makes no suggestion that either the 1989 Settlement Agreement or the portions of Plan 2000 that remain under court supervision are impaired or impeded by the Commissioner's actions noted in the motion and brief. As such, this Court does not have jurisdiction to review

the propriety of the decisions of the Commissioner of Education noted in PCSSD's motion and brief.

So long as the settlement agreement is complied with, the [PCSSD] must make its own way through the ordinary difficulties of life as an employer.

Knight, 112 F.3d at 955.

That said the Knight Intervenors are parties to this case. They were granted intervention by the Eighth Circuit approximately twenty-eight years ago when all three school districts recognized teacher unions as collective bargaining agents in the districts and when consolidation of the school districts was anticipated as the remedy to be imposed by the District Court. *Little Rock School Dist. v. Pulaski County Special School Dist.*, 738 F.2d 82 (8th Cir. 1984). Accordingly, the Court certainly has jurisdiction to consider whether the employee unions in PCSSD retain standing as intervenors in this case in light of the termination of the professional negotiations agreement (PNA) and the ending of recognition of the unions as the collective bargaining agents for employees in the PCSSD.

WHEREFORE, the ADE requests that the Court deny PCSSD's Motion for Declaratory Judgment Regarding the Pulaski Association of Classroom Teachers to the extent that it asks the Court to "adjudicate[e] the propriety and enforceability of the actions of the Arkansas Commissioner of Education in taking the actions respecting PACT and PASS and the contract known as the PNA and in directing the PCSSD to implement the mandatory and binding instructions of the Commissioner of Education," and for all other relief to which it is entitled.

Respectfully submitted,

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ATTORNEYS FOR STATE OF ARKANSAS AND
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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2012, 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:

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I, Scott P. Richardson, 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 4, 2012, to the following non-CM/ECF participants:

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/s/ Scott P. Richardson
SCOTT P. RICHARDSON