

MEETING SUMMARY
JOINT MEETING
OF THE
HOUSE AND SENATE INTERIM COMMITTEES ON EDUCATION

ADEQUACY

Tuesday, October 15, 2013
9:00 A.M.
Room 171, State Capitol
Little Rock, Arkansas

Senator Johnny Key, the Chair of the Senate Interim Committee on Education, announced that the start of the meeting would be delayed until 9:30 a.m. He called the meeting to order at 9:30 a.m.

MEMBERS OF THE SENATE INTERIM COMMITTEE ON EDUCATION IN ATTENDANCE: Senator Johnny Key, Chair; Senator Eddie Cheatham; Senator Uvalde Lindsey; and Senator Jason Rapert.

MEMBERS OF THE HOUSE INTERIM COMMITTEE ON EDUCATION IN ATTENDANCE: Representative James McLean, Chair; Representative Ann Clemmer, Vice Chair; Representative Charles Armstrong; Representative Les Carnine; Representative John Catlett; Representative Bruce Cozart; Representative Robert Dale; Representative Jody Dickinson; Representative Charlotte Vining Douglas; Representative Jon Eubanks; Representative Debra Hobbs; Representative Karen Hopper; Representative Sheilla Lampkin; Representative Mark Lowery; and Representative Brent Talley.

NON-VOTING MEMBERS OF THE HOUSE INTERIM COMMITTEE ON EDUCATION IN ATTENDANCE: Representative Randy Alexander; Representative Harold Copenhaver; Representative Jim Dotson; Representative Reginald Murdock; and Representative Chris Richey.

OTHER MEMBERS OF THE GENERAL ASSEMBLY IN ATTENDANCE: Senator Jonathan Dismang; Senator Jane English; Senator Michael Lamoureux; Representative Eddie Armstrong; Representative Duncan Baird; Representative John Burris; Representative Kim Hammer; Representative John Hutchison; Representative Joe Jett; Representative Andrea Lea; Representative Walls McCrary; Representative Mark McElroy; Representative Jim Nickels; Representative Betty Overbey; Representative Frederick Smith; Representative Wes Wagner; Representative John Walker; and Representative Tommy Wren.

Review of Pending Litigation That Could Impact Educational Adequacy

Presenter & Synopsis:

The Honorable Dustin McDaniel, Attorney General, State of Arkansas, was recognized. General McDaniel stated he came into office in 2007 with three primary education goals: to get us out of Lake View, to keep us out of Lake View, and to bring about a tangible end to the Pulaski County desegregation litigation. He said we successfully resolved Lake View in the summer of 2007, we have successfully remained out of Lake View, and now we are poised to bring about a tangible end to the Pulaski County desegregation case. General McDaniel gave a brief background to the case. He said that U.S. District Court Judge Brian Miller ordered an immediate end to most of the payments made by the state to the three districts, Pulaski County Special School District (PCSSD), the North Little Rock School District (NLRSD), and the Little Rock School District (LRSD), under the 1989 settlement agreement. On appeal, the Eighth Circuit Court of Appeals in St. Louis said that before payments could end, proper notice to all parties and a proper hearing on whether or not the state could be released from its obligations had to take place. He said the Attorney General's Office filed a motion for the release of our obligations under the 1989 settlement agreement and we have been seeking a hearing for that purpose. Judge

Price Marshall, a U.S. District Court Judge in Little Rock, is now the presiding judge. The hearing is set for December 9. He said the Attorney General's Office has dedicated enormous resources to this hearing in anticipation of the opportunity to bring about a final end to this case. He stated we expect to demonstrate that the state has met its obligations under the settlement agreement and should no longer be required to pay the roughly \$70 million per year to these three districts. Absent of settlement, and of a stay of the hearing requested in a motion filed by LRSD to the Eighth Circuit in anticipation of a ruling on the charter school issue, we will be going forward with the hearing on December 9. General McDaniel said he believes it is long past time for the supplemental payments to come to an end and the districts have had years to prepare for it. He said that until quite recently, the districts have expressed no willingness to contemplate a settlement. LRSD's new superintendent, Dr. Dexter Suggs, has indicated that he would like to get serious about a settlement; but, it remains to be seen whether he can convince either of the other two districts, or his counsel, or the majority of his board on how to approach a settlement. General McDaniel said that the actual dollar amount is a flexible issue; but, what we want the most is a *date certain* to end this ongoing litigation and ongoing supplemental funding obligation. General McDaniel commented on the most recent settlement offer from the school districts. He said it requires seven years of payment in full starting next year and a number of conditions, all of which would be ripe for litigation forever. He said he has expressed to the districts that he is still interested in settling, if possible. He added that, unless he is ordered to do so by the legislature, he will not accept any settlement that includes conditions other than a simple dollar amount. He said that the inclusion of conditions can't be considered anything short of an invitation for future litigation. He said he was trying to contemplate a response to the settlement offer.

Presenter and Synopsis:

Mr. Scott Richardson, Senior Assistant Attorney General, Office of the Attorney General, was recognized. Mr. Richardson stated that Deer/Mt. Judea School District filed a lawsuit in December, 2010, that challenged the adequacy and equity of the state's funding of education. He said we responded to that with a motion to dismiss, and Judge Chris Piazza granted our motion to dismiss, the legal doctrine is called *res judicata*, saying that all of this was litigated in Lake View. Mr. Richardson commented that through a fair amount of procedural wrangling, it finally arrived at the Supreme Court this year, the question of whether or not their claims were barred by *res judicata*, whether they could litigate new claims. He said what the Supreme Court held is that 2007 is a breakpoint. Things that could have been litigated before 2007 cannot be re-litigated. Facts and circumstances that arise after 2007, however, can be litigated. He said the Supreme Court pointed out some of the acts or omissions complained of occurred after we had released the mandate in Lake View 2007. They held the Circuit Court should not have dismissed those claims. They identified seven claims that the school districts had made, that are not barred: 1) whether or not the legislature had complied with Act 57, which establishes the parameters of the biennial Adequacy Study; 2) a challenge to the cost of living increases to foundation funding and categorical funding that the General Assembly authorized in 2009 and 2011, 3) a challenge to student transportation and how the legislature funds transportation for students in schools, and 4) a challenge to facilities funding that they receive. He noted there were three other claims: on isolated funding, on whether school districts were using their NSLA funds as had been recommended by Mr. Lawrence Picus prior to 2007, and whether or not the state's professional development met a certain standard. The Supreme Court held that all three of those claims were barred. Mr. Richardson stated the appeal was handed down last Thursday, October 10, 2013. He said we have 18 days from that date to decide whether or not to file a petition for reconsideration, then the mandate will issue at some point after that, depending on what action we take. It will come back down to the Circuit Court and then we'll start litigating other issues in that complaint. You may have heard some suggestion that this opinion called into question the constitutionality of the state's education funding system. That is not the case. All it said was that they can proceed on these claims. It didn't make any decisions on the merits of the claims. Mr. Richardson stated that, as it stands, our education system remains constitutionally firm. He said one school district, however, has called that into question in court, and they are going to be allowed to litigate those claims.

Issues Included in the Discussion:

- ◆ base justification of the claim,
- ◆ aspects of isolated funding that were litigated out,

- ◆ financial benefit for individuals who filed the lawsuit,
- ◆ substance for a complaint over transportation,
- ◆ subpoenas requesting documents on distribution of student transportation funds based on route miles,
- ◆ comparison of Arkansas with other states engaged in Adequacy litigation,
- ◆ status of Odden and Picus recommendations in litigation,
- ◆ clarification of language on page 19 of court ruling regarding the contention that “...acts or omissions of the General Assembly violate the Arkansas Constitution,” and
- ◆ clarification of decision on school choice.

Exhibit:

Exhibit B – Supreme Court Ruling

Discussion of Issues Related to Academic Facilities and Transportation

Ms. Nell Smith, Administrator, Policy Analysis and Research Section, Bureau of Legislative Research, was recognized. Ms. Smith referred to highlighted items on a handout of Adequacy Study responsibilities that would be covered in today’s meeting. She first reviewed Exhibit C2, a Bureau Brief on Facilities Distress, and then Exhibit C1, a Bureau Brief on Academic Facilities and the Partnership Program.

Presenter & Synopsis:

Dr. Charles Stein, Director, Division of Public School Academic Facilities and Transportation, was recognized. Dr. Stein, in addressing questions prepared by the Bureau of Legislative Research (BLR) for the Arkansas Department of Education (ADE), discussed slides in a PowerPoint presentation, including Partnership Program Funding, 2013-2015 Partnership Program Project Data, and Partnership Program Funding Prioritization Process.

Contributor to the Discussion:

Mr. Tony Wood, Deputy Commissioner, Arkansas Department of Education

Issues Included in the Discussion:

- clarification of “growth district,”
- growth factors which bring about inequality between districts irrespective of any other consideration,
- wealth index factor,
- rationale for providing new spaces, and
- districts failing to maintain facilities or systems in order to qualify for replacements.

PowerPoint Presentation:

Educational Facilities Partnership Funding

Exhibits:

Exhibit C1 – Academic Facilities and the Partnership Program, Bureau Brief

Exhibit C2 – Facilities Distress, Bureau Brief

Exhibit C3 – Condition of Academic Facilities

Handouts:

Adequacy Study Statutory Responsibilities

Educational Facilities Partnership Funding

Questions on the Partnership Program and Facilities Distress, Memo

Discussion of Issues Related to Academic Facilities and Transportation from an Outside Perspective

Presenter & Synopsis:

Ms. Jerri Derlikowski, Director of Education Policy and Finance, Arkansas Advocates for Children and Families, was recognized. Ms. Derlikowski discussed her knowledge and understanding of disparities in educational facilities across the state. She noted annual expenditures are above what is annually being replaced. She said that in light of the proposal to shift additional funds earmarked for school facilities to help school employees with health insurance costs, she was making a request that the Committees closely examine the school facilities funding issue and that an evaluation be made as part of the Adequacy process. Ms. Derlikowski introduced Ms. Bailey Perkins, a student in the Masters Program of Public Policy at the University of Oklahoma, and creator of a documentary on disparities in educational facilities to be shown to the Committees.

Ms. Bailey Perkins, Southern Education Foundation Intern, Arkansas Advocates for Children and Families, was recognized, and introduced the documentary.

Contributor to the Discussion:

Mr. Tony Wood, Deputy Commissioner, Arkansas Department of Education

Issues Included in the Discussion:

- funding sources to help school districts with facilities,
- delaying goals with the removal of funds,
- fixing recurring situations concerning inadequate funding, and
- clarification of the application process and whether criteria is in place to take care of the greatest need first.

Video Presentation:

Arkansas Advocates for Children and Families Facilities Video

Exhibit:

Exhibit D – Why School Facilities Matter

Next Scheduled Meeting:

Monday, November 4, 2013, at 10:00 a.m. in Room 171 of the State Capitol in Little Rock

Adjournment:

The meeting adjourned at 11:18 a.m.

Approved: 11/04/13