

MINUTES

**DESEGREGATION LITIGATION OVERSIGHT SUBCOMMITTEE
and
PUBLIC SCHOOL DESEGREGATION LAWSUIT RESOLUTION TASK FORCE**

**Thursday, June 16, 2011
3:00 P.M.
Room 171, State Capitol
Little Rock, Arkansas**

Senator Robert Thompson, the Senate Chair of the Desegregation Litigation Oversight Subcommittee and the Public School Desegregation Lawsuit Resolution Task Force, called the meeting to order at 3:00 p.m.

MEMBERS OF THE DESEGREGATION LITIGATION OVERSIGHT SUBCOMMITTEE IN ATTENDANCE: Senator Robert Thompson, Chair; Representative Barry Hyde, Chair; Senator Linda Chesterfield; Senator Johnny Key; Senator Mary Anne Salmon; Representative Allen Kerr; Representative Fredrick Love; and Representative Darrin Williams.

NON-LEGISLATIVE MEMBERS OF THE DESEGREGATION LITIGATION OVERSIGHT SUBCOMMITTEE IN ATTENDANCE: Dr. Michele Ballentine-Linch; and Ms. Sherrie Mays.

MEMBERS OF THE JOINT PUBLIC SCHOOL DESEGREGATION LAWSUIT RESOLUTION TASK FORCE IN ATTENDANCE: Senator Robert Thompson, Chair; Representative Barry Hyde, Chair; Senator Gilbert Baker; Senator Linda Chesterfield; Senator Kim Hendren; Senator Jimmy Jeffress; Senator Johnny Key; Senator Mary Anne Salmon; Senator Ruth Whitaker; Representative Les Carnine; Representative David Fielding; Representative Allen Kerr; Representative Fredrick Love; Representative Leslee Milam Post; Representative Darrin Williams; and Representative Marshall Wright.

NON-LEGISLATIVE MEMBERS OF THE JOINT PUBLIC SCHOOL DESEGREGATION LAWSUIT RESOLUTION TASK FORCE IN ATTENDANCE: Dr. Michele Ballentine-Linch; and Ms. Sherrie Mays.

OTHER MEMBERS OF THE GENERAL ASSEMBLY IN ATTENDANCE: Representative Tommy Lee Baker; Representative Ann Clemmer; Representative Jon Hubbard; Representative Gary Stubblefield; Representative John Walker; and Representative Butch Wilkins.

Without objection, the minutes of September 29, 2010, were approved as written.

Senator Thompson announced that this would be the first meeting of 2011. He recognized the new legislative members and requested that they introduce themselves to their colleagues:

Senator Linda Chesterfield, District 34
Representative David Fielding, District 5
Representative Fredrick Love, District 35

Representative Leslee Milam Post, District 83
Representative Marshall Wright, District 51

Senator Thompson next recognized the non-legislative members:

Dr. Michele Ballentine-Linch, Little Rock
Ms. Sherrie Mays, North Little Rock

Update on Status of Desegregation Litigation

Mr. Scott Richardson, Assistant Attorney General, Office of the Attorney General, was recognized. Mr. Richardson introduced himself as the lead litigation attorney for the state on the Pulaski County desegregation case and said he also handled education issues for the Office of the Attorney General (OAG). Mr. Richardson presented an overview of developments in the desegregation case since U.S. District Judge Brian Miller's recent decision, a copy of which was included in the members' packets. He said that on:

May 19 – Judge Miller handed down his *Findings of Fact and Conclusions of Law* based on petitions for unitary status filed by the North Little Rock School District (NLRSD) and the Pulaski County Special School District (PCSSD), two of the three school districts that are involved in this litigation, and the two districts that had remaining desegregation obligations. An Act passed by the General Assembly in 2007, and consultations of the OAG with those districts helped prompt them to file petitions for unitary status, that is, petitions asking the court to recognize that they have complied with their desegregation plans and should be released from further court supervision of the implementation of those plans. Trials took place in February and March of 2010. The *Findings of Fact* came on May 19, 2011, releasing NLRSD from all but one of its obligations under its plan, and releasing PCSSD from some of its obligations, but retaining jurisdiction over them for a number of others.

The District Court released the state from its obligations to fund the desegregation obligations, except as to the M-to-M program, that is, to the majority to minority transfer program, which is basically a system where students are able to transfer across district lines to schools in one or the other districts. The goal of that program is to try and help bring some balance to the percentage of the races in the corresponding school districts.

May 20 – Little Rock School District (LRSD) filed a notice of appeal from that decision releasing the state.

May 23 – LRSD filed a motion to stay the effect of that order releasing the state from desegregation payment obligations, pending appeal in the District Court.

May 25 – LRSD filed a motion for stay and for an expedited appeal with the Eighth U.S. Circuit Court of Appeals.

May 26 – The OAG, with the help of the Arkansas Department of Education (ADE), filed a response in opposition to that motion for a stay.

LRSD replied.

June 3 – The Eighth U.S. Circuit Court of Appeals issued an order denying the motion for stay as prematurely filed. The Eighth U.S. Circuit Court of Appeals held, as the rules of appellate procedure state, that the district should have filed its motion first in the District Court instead of the Eighth U.S. Circuit Court of Appeals.

There was an order by Judge Miller that was issued. LRSD had asked for an expedited briefing and expedited ruling on its motion for stay filed in the District Court. Judge Miller notified the parties that he was not going to do that and would give everybody the normal time to respond. Judge Miller denied the LRSD motions.

June 6 – The state filed its response in opposition to the LRSD's motion to stay in the District Court.

June 9 – Judge Miller denied the motion to stay the effect of his ruling in the District Court.

That afternoon the LRSD filed another motion to stay in the Eighth U.S. Circuit Court of Appeals.

The OAG's response to the motion to stay is due June 10.

Mr. Richardson stated that this concluded the current state of affairs in the litigation.

Senator Thompson thanked Mr. Richardson and requested, for the benefit of the new members, that he give a brief description of the desegregation litigation from the time the settlement was entered into by the state until the present.

Mr. Richardson said that this version of the case was originally filed by LRSD in 1982. In 1984, U.S. District Judge Henry Woods found that the PCSSD, the NLRSD, and the state were responsible for segregative acts going on that were causing segregative effects within the LRSD. The Eighth U.S. Circuit Court of Appeals affirmed that order and ordered a remedy for those acts which got embodied in what is the 1989 settlement agreement to the case. Both the parties and the state have been operating under that agreement. There are some other orders and things that are applicable, as well, but the districts adopted desegregation plans for their individual districts to try and become unitary, so that segregation wasn't a part of the curriculum in those school districts. Everything proceeded along under those agreements.

The next big change for the state came in 1996 when the state changed how it funded teacher retirement and health insurance to the districts. Instead of the funding going directly to the Office of Personnel Management (OPM) and the Arkansas Teacher Retirement System (ATRS), that funding was sent to the districts and the districts had to pay from that funding. These three districts filed motions in federal court saying that that violated the 1989 settlement agreement and the state should be required to pay them extra money for teacher retirement and health insurance that lost revenue. Ultimately, they were successful in those motions and the court entered an order requiring the state to pay. That became a significant portion of the payments that the state makes every year.

In 2002, the LRSD was declared unitary as to the majority of their obligations under their desegregation plan. In 2007, U.S. District Judge William Wilson declared them unitary as to the last remaining portion of their desegregation obligations. In 2009, the Eighth U.S. Circuit Court affirmed that order so that LRSD is completely unitary and has no more desegregation obligations except for a few things that support desegregation in the other two districts, and that's participation in the M-to-M program and running the magnet schools. In 2007, the PCSSD and the NLRSD filed their motions for unitary status. They had been released to a few areas of operations before, but the majority of their obligations remained in place until March 19, 2011 when Judge Miller issued his order releasing them. PCSSD remains under supervision for a number of obligations, but has been released to a few of them.

Following the summation, a discussion ensued. The topics included:

- Ways the motion to stay could play out, and the length of time it would take to get a ruling;
- Options for the \$70 million appropriation;
- The amount of money spent to date on the litigation by school districts and by the state;
- Summary of the audit findings from the Joint Audit Committee;
- Cutting off funding vs. phasing out funding;
- Other constitutionally acceptable options for continuing funding;
- Taking this case out of the court's hands and settling it to reduce the state's exposure;
- Explanation of the proposal for a phase-out that had been offered and had been rejected;
- Appealing the decision to the U.S. Supreme Court;
- The necessity of the state following whatever federal court order is in place;
- Restating the mission of the Subcommittee; and
- The difficulty of the negotiations prior to Judge Miller's ruling.

Senator Thompson thanked Mr. Richardson for today's testimony.

The Honorable Linda Chesterfield, State Senator, District 34, was recognized, and requested, with the permission of the Chair, that representatives present from the school districts involved in the litigation introduce themselves for the record:

Little Rock School District:

Mr. Christopher Heller, Attorney, Friday, Eldredge & Clark
Ms. Dianne Curry, Board Member
Mr. Charles Armstrong, Board Member
Mr. Kelsey Bailey, Chief Financial Officer (CFO)
Dr. Morris Holmes, Superintendent
Ms. Melanie Fox, President, Board of Directors
Mr. Jody Carreiro, Board Member

North Little Rock School District:

Mr. Kenneth Kirspel, Superintendent
Mr. Scott Teague, Board Member
Mr. Scott Miller, Vice President, Board of Directors
Mr. Bobby Acklin, Assistant Superintendent for Desegregation and Student Services
Mr. Stephen W. Jones, Attorney, Jack, Nelson, Jones, Fink, Jiles & Gregory, P.A.
Ms. Debbie Linton, Attorney, Jack, Nelson, Jones, Fink, Jiles & Gregory, P.A.

Pulaski County Special School District: (voices inaudible)

Dr. Brenda Bowles, Assistant Superintendent for Equity and Pupil Services

Senator Chesterfield additionally requested that the Subcommittee and Task Force hear testimony at some point during the discussion from Ms. Marjorie Powell, Office of Desegregation Monitoring, who represented the court and was present at the meeting.

Discussion of the Fiscal Impact of the May 19, 2011, Ruling in *Little Rock School District et al. v. Pulaski County Special School District et al.*

Ms. Lori Bowen, Fiscal Analyst, Bureau of Legislative Research, was recognized. Ms. Bowen, speaking from a handout, *Pulaski County Court-Ordered Desegregation*, testified on the fiscal impact of the May 19, 2011 ruling. She commented that the report provides a look at where we stand in terms of total outlays that have been made to date for the desegregation agreements that were reached in 1989. The schedule, which has been maintained by the Bureau of Legislative Research (BLR) for some time, includes preliminary estimates and actual expenditures.

In the brief discussion that followed, an interest was expressed in getting figures showing recent activity for FY2011.

Mr. John Kunkel, Associate Director for Agency Finance, Division of Fiscal and Administrative Services, Arkansas Department of Education, was recognized. Mr. Kunkel took a different approach than Ms. Bowen, who had gone over total funds, and chose to point out areas where the funds have gone over the years. Mr. Kunkel spoke from a worksheet prepared by the ADE, *Desegregation Settlement, Summary of State Cost for Fiscal Years 1989-2011*.

Mr. Timothy Gauger, Chief Legal Counsel, Office of the Governor, and **Mr. Richard Weiss**, Chief Fiscal Officer, Director, Arkansas Department of Finance and Administration, were recognized, and participated in the discussion that ensued. The topics included:

- ◆ The level of funding vis-à-vis providing an adequate education,
- ◆ The state's funding for magnet schools,
- ◆ The state's obligation for teacher retirement and insurance following Judge Miller's order,
- ◆ The funding for M-to-M transfers as a result of the order,
- ◆ The specificity of the law as to the funding stream from the state treasury,
- ◆ Additional school districts in the state under a desegregation order,
- ◆ Crisis situation in 2013 with a pending Medicaid shortfall,
- ◆ The impact of the \$70 million not flowing to the districts, and
- ◆ How some of the expenditures were intended to deal with desegregation issues.

Senator Thompson thanked Ms. Bowen, Mr. Kunkel, Mr. Gauger, and Mr. Weiss.

Remarks by the Parties Involved in the Litigation

Senator Thompson invited parties involved in the litigation, including those representing the school districts and the intervenors, to come forward to make statements or to answer questions.

The Honorable John Walker, State Representative, District 34, was recognized, and made several observations about constitutional violations and the resulting state financial obligations from a legislator's perspective.

Senator Thompson next asked if any members had questions for the representatives from LRSD, the NLRSD, or the PCSSD. There were no questions.

Senator Chesterfield was recognized, and expressed concern that the one school district that had the most findings sent the fewest people to the meeting. She said that it was interesting to her that LRSD and NLRSD felt it important enough for their superintendents and attorneys to come, but, the group that had the most findings did not see fit to give it the same level of consideration. She welcomed Dr. Bowles and said she appreciated the efforts she has made over the years toward desegregation.

Senator Thompson commented that the school districts were not required to send representatives to the meeting.

Senator Thompson asked Ms. Marjorie Powell if she wanted to come forward to make a statement.

Ms. Marjorie Powell, Federal Monitor, Office of Desegregation Monitoring, was recognized. Ms. Powell, who works directly with Judge Miller, said she had no statement. She said she had no role in the litigation and is not a party to this case. She said she works with the districts to help them implement their desegregation plans. She has met with two districts since the Judge's current ruling, and together they have arrived at a plan to address some of the issues raised in the Judge's ruling and to help the districts negotiate their way out of court. She said that because of the Judge's pending rule, she had not done a report this year on where the districts stand regarding plan implementation. She did do an enrollment report.

Senator Thompson thanked Ms. Powell.

Senator Thompson remarked that issues raised today will be addressed at the next meeting.

There being no further business, the meeting adjourned at 4:52 p.m.

Approved: 11/14/13