

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

ROSIE L. DAVIS, ET AL

PLAINTIFFS

v.

CASE NO. 4:88-cv-4082

WILLIAM DALE FRANKS, ET AL

DEFENDANTS

MOTION FOR DECLARATORY JUDGMENT

Comes the Hope School District (Hope), through its attorneys Allen P. Roberts and Whitney F. Moore, and for its Motion for Declaratory Judgment, states:

1. Hope requests a declaration from this Court confirming that it has a conflict with participating in state law school choice programs due to Hope's continuing desegregation obligations.

2. Hope is a public school district operating in Hempstead County, Arkansas. Its 2016-17 total enrollment was 2,349 students. The 2016-17 enrollment was comprised of 1,081 black students (46.0%) and 1,268 non-black students (54.0%).¹ Hope enrolls 2,349 of the 3414 total students (68.8%) enrolled in public schools in Hempstead County. Hope enrolls 1,081 of the 1,165 total black students (92.8%) enrolled in public schools in Hempstead County.

3. Hope is bordered by school districts with enrollments comprised of higher percentages of non-black students: Spring Hill ("Spring Hill"), Blevins, and Prescott. The 2016-17 total enrollment of Spring Hill was 584 students, which included 4 black

¹ In undersigned counsel's experience, desegregation cases typically use the terms black and non-black when discussing race because black students were subject to the state laws mandating segregation in schools. Other minorities were not expressly prohibited from attending the "white" schools. Hope believes black and non-black are the appropriate classifications for use in a desegregation case. Additional demographic information is contained in Hope's brief in support of this motion.

students (0.7%) and 580 non-black students (99.3%). The 2016-17 total enrollment of Blevins was 481 students, which included 80 black students (16.6%) and 401 non-black students (83.4%). The 2016-17 total enrollment of Prescott was 999 students, which included 385 black students (38.5%) and 614 non-black students (61.5%).

4. This case originated in 1988 as an action by black plaintiffs who alleged racial discrimination against Hope regarding, among other things, staffing, board zoning, and student assignment. This case has not been closed, and Hope remains subject to this Court's jurisdiction and supervision.

5. Changes in Arkansas law regarding students who desire to transfer to a school district outside their resident district, and recent changes in how the State Board of Education ("SBE") applies certain laws to Hope and districts like it, lead Hope to the conclusion that declaratory relief from this Court is necessary.

6. The specific laws at issue are the Arkansas Public School Choice Act of 2013 (the "2013 Act"), the Arkansas Public School Choice Act of 2015 (the "2015 Act"), Act 1066 of the Regular Session of 2017 (the "2017 Act"), and the Opportunity Public School Choice Act of 2004 (the "Opportunity Choice Act").

7. On July 13, 2017, the SBE allowed a student to transfer from Hope to Spring Hill via an opportunity choice transfer, despite Hope's objection that such transfers have a segregative impact in Hope and, as such, violate Hope's desegregation obligations.

8. Hope believes it is similarly situated to the El Dorado School District ("EDSD") and the finding in EDSD's desegregation case – *Kemp v. Beasley*, Case No. No. 1:89-cv-1111, U.S. Dist. Ct., W.D. Ark., El Dorado Division, that EDSD had "a

continuing constitutional obligation to avoid taking any action the natural and probable consequence of which would be a segregative impact in EDSO.” (See Exhibit 22, ¶ 8). Hope believes the proposition advanced in the EDSO order – that high probability of white flight also violates a desegregation order initially imposing an intra-district remedy for racial segregation – extends to it as well.

9. The bases for this motion are more specifically set forth in the supporting brief filed in conjunction with this motion.

10. Hope requests that the Court set this motion for a hearing at its earliest convenience.

WHEREFORE, Hope respectfully requests that this Court issue a declaratory judgment confirming the following.

a. First, that Hope has a conflict with participating in school choice – under the 2015 Act, the 2017 Act, and/or the Opportunity Choice Act – based on the “intent of [the 1990 consent decree] to remedy any past discrimination based upon race and to prevent any like discrimination from occurring in the future,” (see Exhibit 2, ¶ 3), as well as the Decree’s prohibition on Hope “hereinafter engaging in any policies, practices, customs or usages of racial discrimination in any of its school operations including, but not limited to . . . student assignments. (See Exhibit 2, ¶ 4);

b. Second, that Hope has a continuing constitutional obligation to avoid taking any action the natural and probable consequence of which would be a segregative impact in Hope;

c. Third, that participation in the 2015 Act, the 2017 Act, and/or the Opportunity Choice Act would allow inter-district movement of students between Hope and its surrounding districts, and if allowed, based on the demographics of Hope and the surrounding districts, said movement would have a segregative impact in Hope;

d. Fourth, that under the rationale of the EDSO order, inter-district school choice transfers between Hope and other school districts violate Hope's desegregation orders and obligations;

e. Fifth, that Hope's desegregation case is an enforceable desegregation court order regarding the effects of past racial segregation in student assignment and that the orders filed herein are "still active and enforceable" for purposes of the school choice acts, including but not limited to the 2015 Act, the 2017 Act, and the Opportunity Choice Act;

f. Sixth, that Hope has a conflict with participating in school choice under the school choice acts, and that conflict means that Hope is not a participant in or subject to the school choice transfers contemplated by the school choice acts, including but not limited to the 2015 Act, the 2017 Act, and the Opportunity Choice Act;

g. Seventh, that Hope's conflict with participating in school choice and opportunity school choice will continue until further order of this Court finding that (1) participation in school choice would not cause Hope to create, maintain, or increase racially identifiable schools in Hope and (2) school choice would not impair Hope's ability to attain unitary status;

h. Eighth, that this Court continue to maintain jurisdiction over this matter until it finds that Hope should be released from Court supervision.

Respectfully submitted,

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By: **/s/ Whitney F. Moore**
Whitney F. Moore

Attorneys for Hope School District

CERTIFICATE OF SERVICE

I, Whitney F. Moore, do hereby certify that on September 7, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to:

All counsel of record

/s/ Whitney F. Moore
Whitney F. Moore