IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

LARRY MILTON, *et al.* PLAINTIFFS

v. Case No. 1:88-cv-1142

MIKE HUCKABEE, *et al.* DEFENDANTS

**ORDER**

Before the Court is the Camden-Fairview School District's ("Camden-Fairview") Motion for Temporary Restraining Order and Preliminary Injunction. (ECF No. 284). Plaintiffs have filed a response in support of the motion.[1] (ECF No 287). A response in opposition to the motion has been filed by the Governor of the State of Arkansas, the Arkansas Department of Education ("ADE"), the Arkansas State Board of Education ("SBE"), and the Members of the Arkansas State Board of Education (collectively, "State Defendants"). (ECF No. 291). Camden-Fairview has filed a reply. (ECF No. 294). On August 1, 2018, the Court held a hearing on the matter. The Court finds this matter ripe for consideration.

## I. BACKGROUND

Before proceeding to the merits of the instant motion, the Court finds it necessary to provide a brief overview of this litigation. On December 16, 1988, Plaintiffs—a group of African-Americans residing in Ouachita County, Arkansas—filed this action on behalf of their school-aged

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[1] In their response, Plaintiffs state that they join Camden-Fairview in the instant motion, but also independently move for a temporary restraining order or preliminary injunction enjoining Camden-Fairview from participating in school choice. However, Plaintiffs have not briefed the issue and, therefore, the Court cannot consider Plaintiffs' independent request for injunctive relief. *See* Local Rule 7.2(e) (providing that motions for preliminary injunctions shall not be considered unless accompanied by a separate brief). Accordingly, the Court will simply consider the instant motion to be a joint motion for injunctive relief.

children against State Defendants; the Board of Directors of the Camden Arkansas Housing Authority; the City of Camden, Arkansas; the Board of Education of the Camden, Arkansas School District; the Camden, Arkansas Fairview School District; and the Board of Education of the Harmony Grove School District. Plaintiffs' Complaint alleged that Defendants acted in concert to deny African-American children equal educational opportunities by establishing, maintaining and perpetuating racially discriminatory school systems. Among other forms of relief, Plaintiffs sought an order consolidating the three defendant school districts or an effective desegregation plan.

On October 16, 1990, the Camden School District and Fairview School District were consolidated. On November 27, 1990, the Court entered a consent order (hereinafter the "*Milton* Order") which provided, in pertinent part, that:

> Harmony Grove shall maintain an open admission policy in regard to non-resident black students. Harmony Grove shall not permit the transfer of white students from Fairview into the district without the written permission of Fairview. Acceptance of transfer students by Harmony Grove is subject to existing space and transfer limitations. Harmony Grove will also refrain from engaging in any other act or conduct tending directly or indirectly to have a segregative impact in the Fairview School District. Any student transferring to Harmony Grove in compliance with this order and other legal requirements will be immediately eligible for all school activities without any of the limitations imposed by A.C.A. § 6-18-206.

(ECF No. 262-1, p. 2). The *Milton* Order further states as follows:

> The consolidated Camden-Fairview School District and the Harmony Grove School District . . . are desirous of avoiding further litigation and controversy. While both of these districts are separate and autonomous and intend to operate independently in exercising governmental authority, these two districts agree that further costly litigation can be avoided by inter-district agreements. These agreements include but are not limited to the following:
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> 1. Both school districts shall refrain from adopting student assignment plans or programs that have an inter-district segregative effect on either district.

*Id*. at 3. The *Milton* Order further states that this Court "will retain jurisdiction to supervise all

aspects of this and subsequent orders of this Court until such time as this Court issues a declaration of unitary status." *Id.*

On May 8, 1991, the Court issued an order tentatively approving a settlement agreement between Plaintiffs, Camden-Fairview and Defendants. (ECF No. 220). The Court entered a consent order declaring Camden-Fairview unitary in status on February 1, 2002. (ECF No. 254). The consent order further provided that State Defendants, the City of Camden, the Housing Authority of Camden, Harmony Grove School District, and Camden-Fairview had complied with the obligations imposed by the 1991 settlement agreement and court orders and dismissed them from the suit with prejudice.

On December 14, 2009, an action was removed to this Court from the Circuit Court of Ouachita County, Arkansas, alleging that a student at Camden-Fairview was denied permission to transfer to Harmony Grove High School in violation of the Fourteenth Amendment of the United States Constitution, the Arkansas Constitution and Arkansas common law. *See Lancaster v. Guess*, Case No. 1:09-cv-1056. The parties to the *Lancaster* action later entered into a settlement agreement and jointly moved to dismiss, which was granted by the Court on July 26, 2010 (hereinafter the "*Lancaster* Order"). (ECF No. 262-5). The *Lancaster* Order states that the Court retains jurisdiction of the case for the sole purpose of enforcing the parties' settlement agreement; as well as for the purpose of enforcing its orders in the present action.

On May 4, 2018, Camden-Fairview filed a Motion for Declaratory Judgment, or Alternatively, for Clarification of Previous Orders, or Alternatively, for Modification of Previous Orders (hereinafter "Motion for Declaratory Judgment"). (ECF No. 262). In that motion, Camden-Fairview states that it is still subject to the obligations imposed by the *Milton* and *Lancaster* Orders. Accordingly, Camden-Fairview states that it has a conflict with taking part in

school choice pursuant to the Arkansas Public School Choice Act of 2015, as amended by Act 1066 of the Regular Session of 2017 (hereinafter the "2017 Act").[2] Camden-Fairview states further that the ADE and SBE have ordered Camden-Fairview to participate in school choice for the 2018-19 school year. Camden-Fairview's Motion for Declaratory Judgment seeks, by various alternative means, a finding that Camden-Fairview is prohibited from taking part in school choice and/or a declaration that portions of the 2017 Act are unconstitutional. On May 17, 2018, Plaintiffs filed a response supporting Camden-Fairview's Motion for Declaratory Relief. (ECF No. 264).

On May 23, 2018, the Court issued an order certifying Camden-Fairview's constitutional challenge and sending notice to the Arkansas Attorney General's Office pursuant to Federal Rule of Civil Procedure 5.1(b). (ECF No. 269). On June 15, 2018, the ADE and SBE filed their response in opposition to Camden-Fairview's Motion for Declaratory Relief. (ECF No. 276). On June 22, 2018, the Court held a status conference in which Camden-Fairview, Plaintiffs, and counsel from the Arkansas Attorney General's Office participated.

On July 12, 2018, Camden-Fairview filed the instant motion. Camden-Fairview seeks injunctive relief "restraining the [ADE] and the [SBE] from enforcing the [SBE's] March 26, 2018 order . . . requiring [Camden-Fairview] to participate in the Arkansas Public School Choice Act of 2015, as amended by Act 1066 of 2017" or, alternatively, "that the Court enjoin [Camden-Fairview] from participating in school choice pursuant to the SBE's Order." (ECF No. 284, ¶ 1). Camden-Fairview requests that injunctive relief remain in effect until an evidentiary hearing may be held on the issue of whether Camden-Fairview's desegregation obligations conflict with

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[2] The 2017 Act provides, in relevant part, that each Arkansas school district must participate in a school choice program wherein students may apply to attend a school in a nonresident district, subject to certain limitations. Ark. Code Ann. § 6-18-1903. School districts may apply for exemptions from participating in school choice by producing evidence that the district has a genuine conflict under a federal court's active and enforceable desegregation order or plan that explicitly limits the transfer of students between school districts. Ark. Code Ann. § 6-18-1906(a). The ADE decides a school district's application for an exemption from participating in school choice and the SBE hears appeals of the ADE's decisions on the same. *See id.*

participation in school choice. Camden-Fairview also requests that, if injunctive relief is granted, that the Court waive the bond requirement. On July 20, 2018, Plaintiffs filed a response in support of the instant motion. (ECF No. 287). State Defendants oppose the motion.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary restraining orders. "The primary function of a preliminary injunction is to preserve the status quo until, upon final hearing, a court may grant full, effective relief." *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 593 (8th Cir. 1984). It is well established that "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

The determination of whether a preliminary injunction is warranted involves consideration of: "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties . . . ; (3) the probability that [the] movant will succeed on the merits; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). Although no single factor in itself is dispositive, the probability of success on the merits is the most significant. *Barrett v. Claycomb*, 705 F.3d 315, 320 (8th Cir. 2013). "The burden of proving that a preliminary injunction should be issued rests entirely with the movant." *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995).

## III. DISCUSSION

The Court will first address whether Camden-Fairview will be irreparably harmed absent an injunction, and then will turn to the other *Dataphase* factors, if necessary.

Although the probability of success on the merits is the predominant *Dataphase* factor, the Eighth Circuit has "repeatedly emphasized the importance of a showing of irreparable harm." *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). A party seeking injunctive relief must demonstrate that the injury is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm. *Packard Elevator v. Interstate Commerce Comm'n*, 782 F.2d 112, 115 (8th Cir. 1986). To carry its burden, a party must demonstrate that a cognizable danger of a future violation exists and is more than a mere possibility. *See Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982) (citing *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)). The failure to demonstrate irreparable harm is an independently sufficient ground to deny injunctive relief. *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003).

Camden-Fairview argues that if students are allowed to transfer, it is unlikely those students will ever return to its district. Camden-Fairview claims that this will cause irreparable harm in that it will suffer a segregative impact, as well as the financial impact caused by the loss of fifteen students. At the preliminary injunction hearing, Camden-Fairview also argued that it could suffer irreparable harm by being required to violate the *Milton* and *Lancaster* Orders by participating in school choice until the Court rules on Camden-Fairview's underlying Motion for Declaratory Judgment.

In response, State Defendants argue that the harm Camden-Fairview cites is "certainly not irreparable." (ECF No. 291, p. 26). State Defendants assert that if Camden-Fairview were to ultimately prevail it is "entirely possible" that the Court would order that students that had transferred must return to Camden-Fairview and "order the restitution of the per-student funding that [Camden-Fairview] lost by virtue of the unconstitutional application of the school-choice

law." (ECF No. 291, p. 26). Furthermore, State Defendants assert that the only harm that would result from a denial of preliminary injunctive relief would be the loss of fifteen students and that—if Camden-Fairview ultimately prevailed—future losses would be prevented through permanent injunctive relief. Finally, State Defendants argue that the "difference a denial of injunctive relief [and, accordingly, the loss of fifteen students] would make is a mere 0.3% increase in the black percentage of its student body." (ECF No. 291, p. 26). According to State Defendants, this change would be *de minimis*, no student would notice such a change, and no parent's "perception of [Camden-Fairview's] racial identity would be affected." (ECF No. 291, p. 26).

Upon consideration, the Court finds that Camden-Fairview has failed to carry its burden of establishing that, absent preliminary injunctive relief, it will suffer irreparable harm. Specifically, the Court is not persuaded that Camden-Fairview will suffer imminent financial harm if the approved student transfers leave Camden-Fairview. Mark Keith, superintendent at Camden-Fairview, testified at the August 1, 2018, hearing that Camden-Fairview's funding for the 2018-2019 school year is already in place. Likewise, Mr. Keith testified that Camden-Fairview will not suffer any immediate financial harm if it lost the fifteen students who are seeking transfers. Taken together with the testimony offered by other superintendents in the other school desegregation cases before the Court, it becomes clear that Camden-Fairview will not suffer imminent financial harm from the loss of certain transferring students. Although Mr. Keith's testimony indicated that Camden-Fairview might suffer financial harm in the future due to the reduction in students, this potential harm is too far removed from the present to support a finding of irreparable harm. *See Rogers*, 676 F.2d at 1214 (stating that a preliminary injunction "may not be used simply to eliminate a possibility of a remote future injury").

Moreover, the Court is not convinced that the loss of certain students, in and of itself, constitutes irreparable harm to Camden-Fairview. Camden-Fairview cites no authority supporting this proposition, and the Court is unaware of any. Absent any such authority, the Court cannot find that Camden-Fairview will suffer irreparable harm solely from the loss of certain students.

The Court is also unpersuaded by Camden-Fairview's argument that it will suffer irreparable harm by being required to participate in school choice until the Court rules on Camden-Fairview's underlying Motion for Declaratory Judgment. At the preliminary injunction hearing, Camden-Fairview argued that if the Court were to eventually rule in Camden-Fairview's favor on the Motion for Declaratory Judgment, it will have violated the terms of the *Milton* and *Lancaster* Orders by participating in school choice in the meanwhile. To be fair, this could constitute harm in certain circumstances. However, this notion is predicated on the idea that the Court will eventually grant Camden-Fairview's Motion for Declaratory Judgment. If, on the other hand, the Court denies the instant motion and eventually denies Camden-Fairview's Motion for Declaratory Judgment, Camden-Fairview will not have suffered any harm from participating in school choice, as the Court will have determined that the district may do so without violating the *Milton* and *Lancaster* Orders. It is well established that irreparable harm must be certain and cannot be speculative. *See S.J.W. v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 779 (8th Cir. 2012) ("Speculative harm does not support a preliminary injunction."). This argument, at this point, is purely speculative and the mere possibility of harm is inadequate to support a finding of irreparable harm.

In sum, the Court finds that Camden-Fairview has not satisfied its burden of making a clear showing that it would suffer irreparable harm absent injunctive relief. *Mazurek*, 520 U.S. at 972. Accordingly, the Court need not proceed to the remaining *Dataphase* factors, as failure to show

irreparable harm is an independently sufficient ground to deny injunctive relief.[3] *Watkins*, 346 F.3d at 844.

## IV. CONCLUSION

For the foregoing reasons, the Court finds that Camden-Fairview's Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 284) should be and hereby is **DENIED**.

**IT IS SO ORDERED**, this 8th day of August, 2018.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

[3] The Court also finds that Camden-Fairview has not satisfied its burden to obtain a temporary restraining order, as the *Dataphase* factors are also used to determine whether to issue a temporary restraining order. *See Williams v. Silvey*, No. 4:09-cv-211-FRB, 2009 WL 1920187, at *1 (E.D. Mo. July 1, 2009) (applying the *Dataphase* factors in denying a motion for a temporary restraining order). Thus, the Court's analysis for whether to grant a request for a temporary restraining order is the same as for a preliminary injunction.