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

UNITED STATES OF AMERICA PLAINTIFF

v. Case No. 1:66-cv-1095

JUNCTION CITY SCHOOL
DISTRICT NO. 75, *et al*. DEFENDANTS

ARKANSAS DEPARTMENT OF EDUCATION and
ARKANSAS STATE BOARD OF EDUCATION INTERVENORS

ORDER

Before the Court is the Junction City School District's ("Junction City") Motion for Temporary Restraining Order and Preliminary Injunction. (ECF No. 22). The Arkansas Department of Education and the Arkansas State Board of Education (the "ADE and SBE") have filed a response in opposition. (ECF No. 32). Junction City has filed a reply. (ECF No. 34). 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 February 7, 1966, Plaintiff United States of America ("United States") filed this action against Junction City seeking to dismantle the district's operation of a dual school system. (*See* ECF No. 20-1). On June 21, 1966, the United States filed a Motion for Preliminary Injunction requesting that Junction City and other defendants be enjoined from continuing to assign students to particular schools because of their race; operating separate school buses for black and white students; segregating faculty and staff based on race; and maintaining

any distinctions in the operation and management of Junction City based on race or color. (*See* ECF No. 20-2, p. 5). On August 15, 1966, the Court granted the United States' Motion for Preliminary Injunction and issued an order enjoining Junction City from "maintaining and operating racially segregated public schools" and directing Junction City to eliminate its dual school system "with all deliberate speed." (ECF No. 20-3, p. 3). On September 8, 1966, Junction City responded by filing a "freedom-of-choice" desegregation plan to which the United States objected and proposed its own plan. (ECF No. 2-4). On November 29, 1966, the Court entered an order finding that neither proposed plan was acceptable and directing Defendants to "institute a good faith freedom of choice plan for desegregation of the 11th and 12th grades beginning in January 1967." (ECF No. 1, p. 3). The Court further ordered Junction City and other defendants to submit a report to the Court regarding its implementation of the freedom-of-choice plan. On August 14, 1967, the Court issued a decree requiring Junction City to implement a freedom-of-choice plan and setting forth the procedural framework for implementing the plan. (*See* ECF No. 20-4).

On May 24, 1968, the United States moved the Court for an order requiring the consolidation of the Junction City schools. After a hearing on the motion, the Court cancelled its decree dated August 14, 1967, and ordered Junction City to "propose an alternate plan for the conversion of the school system to a unitary system in accordance with the decisions of the Supreme Court made May 27, 1968, for all students in attendance." (ECF No. 2-1, p. 3). The Court allowed Junction City to begin operating schools in September 1968 under the freedom-of-choice plan until the district filed a consolidation plan in January 1969. (ECF No. 2-3). The Court then issued several orders directing Junction City to allow certain grades to attend school under the freedom-of-choice plan and further directing the district to consolidate all students in certain grades. (*See id.*; *see also* ECF No. 2-5 (assigning students grade 9-12 to Junction City High School

and permitting students from other grades to attend either Junction City Elementary or Rosenwald School)).

On October 23, 1970, the United States moved for further relief against Junction City on the grounds that Junction City failed to remedy its within-school segregation and its segregated transportation system. (ECF No. 2-6). On November 20, 1970, the Court entered an Order enjoining Defendants from maintaining any homeroom, classroom, or other school-related activity on the basis of race, color or national origin. (*See* ECF No. 2-7). The Court's Order further directed Defendants to redraw their bus routes and reassign students to the busses on a non-racial basis. *Id*.

On May 17, 1974, the Court entered an order dismissing a companion desegregation case brought by private plaintiffs against Junction City, *Love v. Junction City Sch. Dist.*, No. ED-70-C-51. (ECF No. 2-8). The Court's order further moved this action to its inactive docket. *See id*. In addition, the order provided that the Court retained jurisdiction over this action so that it could be "re-opened at any time by appropriate and meritorious petition." *Id*.

On May 14, 2018, Junction City 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. 2). In that motion, Junction City states that it is still subject to its desegregation obligations imposed by the Court's prior orders. Accordingly, Junction City asserts 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").[1] Junction City states further that the ADE and SBE have

[1] 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

ordered Junction City to participate in school choice for the 2018-19 school year. Junction City's Motion for Declaratory Judgment seeks, by various alternative means, a finding that Junction City is prohibited from taking part in school choice and/or a declaration that portions of the 2017 Act are unconstitutional.

On June 15, 2018, the Court issued an order certifying Junction City's constitutional challenge and sending notice to the Arkansas Attorney General's Office of the same, pursuant to Federal Rule of Civil Procedure 5.1(b). (ECF No. 5). On June 21, 2018, the ADE and SBE filed a motion to intervene in this case for the limited purpose of opposing Junction City's Motion for Declaratory Judgment. (ECF No. 13). On June 22, 2018, the Court held a status conference in which Junction City, the United States, and counsel from the Arkansas Attorney General's Office participated. On July 3, 2018, the United States filed its response to Junction City's Motion for Declaratory Judgment. (ECF No. 20). On July 9, 2018, the Court granted the ADE and SBE's motion to intervene, thereby allowing those parties to intervene for the limited purpose of opposing Junction City's Motion for Declaratory Judgment. (ECF No. 21). On July 20, 2018, the ADE and SBE filed their response in opposition to Junction City's Motion for Declaratory Judgment. (ECF No. 26).

On July 19, 2018, Junction City filed the instant motion. Junction City seeks preliminary injunctive relief "restraining the [ADE] and the [SBE] from enforcing the [SBE's] March 26, 2018 order . . . requiring [Junction City] to participate in the Arkansas Public School Choice Act of 2015, as amended by Act 1066 of 2017" or, alternatively, "that the Court enjoin [Junction City] from participating in school choice pursuant to the SBE's Order." (ECF No. 22, ¶ 1). Junction City requests that injunctive relief remain in effect until an evidentiary hearing may be held on the

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.*

issue of whether Junction City's desegregation obligations conflict with participation in school choice. Junction City also requests that, if injunctive relief is granted, that the Court waive the bond requirement. The ADE and SBE 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 Junction City has shown that it 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).

Junction City argues that if students are allowed to transfer, it is unlikely those students will ever return to its district. Junction City claims that this will cause irreparable harm in that Junction City will suffer a segregative impact, as well as the financial impact caused by the loss of five students. At the preliminary injunction hearing, Junction City also argued that it could suffer irreparable harm by being required to participate in school choice until the Court rules on Junction City's underlying Motion for Declaratory Judgment, thereby violating the Court's previous orders during that period.

In response, the ADE and SBE argue that the harm Junction City cites is "certainly not irreparable." (ECF No. 32, p. 19). The ADE and SBE assert that if Junction City ultimately prevails on its underlying Motion for Declaratory Judgment, it is "entirely possible" that the Court would order that the students who transferred must return to Junction City and "order the restitution of the per-student funding that [Junction City] lost by virtue of the unconstitutional application of the school-choice law." (ECF No. 32, p. 19). Furthermore, the ADE and SBE assert that the only harm that would result from a denial of preliminary injunctive relief would be the loss of five students and that—if Junction City ultimately prevailed—future losses would be prevented

through permanent injunctive relief. Finally, the ADE and SBE argue that "the five transfers at issue would change the ratio of black students by 0.4%." (ECF No. 32, p. 19). According to the ADE and SBE, this change would be *de minimis*, no student would notice such a change, and no parent's "perception of [Junction City's] racial identity would be affected." (ECF No. 32, p. 19).

Upon consideration, the Court finds that Junction City has failed to carry its burden of establishing that it will suffer irreparable harm absent preliminary injunctive relief. The Court is not persuaded that Junction City will suffer imminent financial harm if the approved student transfers leave the district. Robby Lowe, superintendent at Junction City, testified at the August 1, 2018, hearing that Junction City's funding for the 2018-2019 school year is already in place. Likewise, Mr. Lowe testified that Junction City will not suffer any immediate financial harm as a result of the transfers. Taken together with the testimony offered by other superintendents in the other school desegregation cases before the Court, it becomes clear that Junction City will not suffer imminent financial harm from the loss of certain transferring students. In fact, Mr. Lowe testified that all of the students seeking transfers have not yet enrolled in Junction City. Although Mr. Lowe's testimony suggests that Junction City might suffer financial harm in several years 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 Junction City. As previously mentioned, none of the students seeking transfer have enrolled in Junction City. Moreover, Junction City cites no authority supporting this proposition, and the Court is unaware of any. Absent any such authority, the Court cannot find that Junction City will suffer irreparable harm solely from the loss of certain students.

The Court is also unpersuaded by Junction City's argument that it will suffer irreparable harm by being required to participate in school choice until the Court rules on the district's underlying Motion for Declaratory Judgment. At the preliminary injunction hearing, Junction City argued that if the Court were to eventually rule in Junction City's favor on the underlying Motion for Declaratory Judgment, the district will have violated the terms of the Court's 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 Junction City's Motion for Declaratory Judgment. If, on the other hand, the Court denies the instant motion and eventually denies Junction City's Motion for Declaratory Judgment, Junction City 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 Court's 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 too speculative, as the mere possibility of harm is inadequate to support a finding of irreparable harm.

In sum, the Court finds that Junction City has not satisfied its burden of making a clear showing that it would suffer irreparable harm absent preliminary 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.[2] *Watkins*, 346 F.3d at 844.

[2] The Court also finds that Junction City 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.

IV. CONCLUSION

For the foregoing reasons, the Court finds that Junction City's Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 22) 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