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

MARY TURNER, *et al.* PLAINTIFFS

V. CASE NO. 4:92-CV-4040

LAFAYETTE COUNTY SCHOOL DISTRICT, *et al.* DEFENDANTS

ARKANSAS DEPARTMENT OF EDUCATION and
ARKANSAS STATE BOARD OF EDUCATION INTERVENORS

ORDER

Before the Court is Lafayette County School District's ("LCSD") Motion for Temporary Restraining Order and Preliminary Injunction. (ECF No. 47). Plaintiffs have filed a response in support of the requested relief.[1] (ECF No. 51). The Arkansas Department of Education and the Arkansas State Board of Education (the "ADE and SBE") have filed a response in opposition. (ECF No. 57). LCSD has filed a reply. (ECF No. 60). On August 1, 2018, the Court held a hearing on the matter. The Court finds this matter ripe for consideration.

I. BACKGROUND

This lawsuit was filed in April 1992 by African American individuals who were employed by or were parents of students who attended the Lewisville School District No. 1. In March 1993, the Court dismissed the case with prejudice subject to the terms of a consent decree entered into by the parties (hereinafter the "*Turner* Decree"). (ECF Nos. 9 & 10). The *Turner* Decree provided that "[t]he district shall hereafter maintain a unitary, racially non-discriminatory school system

[1] In their response, Plaintiffs state that they join LCSD in the instant motion, and also independently move for a temporary restraining order or preliminary injunction enjoining LCSD from participating in school choice. However, Plaintiffs have not briefed the issue and, therefore, the Court cannot consider Plaintiffs' independent request for preliminary 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.

wherein all schools are effectively and equitably desegregated and integrated." (ECF No. 9, ¶ 13; ECF No. 27-1, ¶ 13). The *Turner* Decree further stated that "[t]he Court shall have continuing jurisdiction of [the decree] in order to insure compliance with the spirit and terms of [the decree]. (ECF No. 9, ¶ 13; ECF No. 27-1, ¶ 13).

On November 23, 2015, the Court ordered the substitution of LCSD for Lewisville School District No. 1 as a party to this matter because Lewisville School District No. 1 had been consolidated with the Stamps School District to form the Lafayette County School District. (ECF No. 26). The Court found that because Lewisville School District No. 1 had ceased to exist and had been succeeded by LCSD, the substitution of LCSD as a party to this matter was proper to facilitate the continuation of the case.

On May 28, 2018, LCSD 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. 27). In that motion, LCSD informed the Court that although it believes it is still subject to the *Turner* Decree—and therefore has a conflict with taking part in school choice—the ADE and SBE have ordered LCSD to participate in school choice for the 2018-19 school year 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] Accordingly, LCSD's Motion for Declaratory Judgment seeks, by various alternative means, a finding that LCSD is prohibited from taking part in school choice and/or a declaration that portions of the 2017 Act are unconstitutional. (ECF No. 28).

[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.*

On May 23, 2018, the Court issued an order certifying LCSD's constitutional challenge and sending notice to the Arkansas Attorney General of the same, pursuant to Federal Rule of Civil Procedure 5.1(b). (ECF No. 29). On June 21, 2018, the ADE and SBE filed a motion to intervene in this case for the limited purpose of opposing LCSD's Motion for Declaratory Judgment. (ECF No. 37). On June 22, 2018, the Court held a status conference in which LCSD, Plaintiffs, and counsel from the Arkansas Attorney General's Office participated. On July 2, 2018, the Court granted the Motion for Limited Intervention filed by the ADE and SBE, thereby allowing those parties to intervene for the limited purpose of opposing LCSD's Motion for Declaratory Judgment. (ECF No. 44). On July 16, 2018, the ADE and SBE filed their response in opposition to LCSD's Motion for Declaratory Judgment. (ECF No. 45).

On July 19, 2018, LCSD filed the instant motion. LCSD seeks preliminary injunctive relief "restraining the [ADE] and the [SBE] from enforcing the [SBE's] March 26, 2018 order requiring LCSD to participate in the Arkansas Public School Choice Act of 2015, as amended by Act 1066 of 2017" or, alternatively, "that the Court enjoin LCSD from participating in school choice pursuant to the [SBE's] Order." (ECF No. 47, ¶ 1). LCSD requests that injunctive relief remain in effect until an evidentiary hearing may be held on the issue of whether LCSD's desegregation obligations conflict with participation in school choice. LCSD also requests that if injunctive relief is granted, that the bond requirement be waived. On July 20, 2018, Plaintiffs filed a response in support of the motion. (ECF No. 51). On July 28, 2018, the ADE and SBE filed a response in opposition. (ECF No. 57).

II. LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure 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 LCSD 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).

LCSD argues that it will suffer irreparable harm if injunctive relief is denied. Specifically, LCSD argues that if students are allowed to transfer, it is unlikely those students will ever return to LCSD. LCSD 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 42 students." (ECF No. 48, p. 7). At the preliminary injunction hearing, LCSD also argued that it could suffer irreparable harm by being required to participate in school choice until the Court rules on LCSD's underlying Motion for Declaratory Judgment, thereby violating the *Turner* Decree during that period.

In response, the ADE and SBE argue that the harm LCSD cites is "certainly not irreparable." (ECF No. 57, p. 22). The ADE and SBE assert that if LCSD were to ultimately prevail it is "entirely possible" that the Court would order that students that had transferred must return to LCSD and "order the restitution of the per-student funding that LCSD lost by virtue of the unconstitutional application of the school-choice law." (ECF No. 57, p. 22). 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 forty-two students and that—if LCSD ultimately prevailed—future losses would be prevented through permanent injunctive relief. Finally, the ADE and SBE argue that the "difference a denial of injunctive relief [and, accordingly, the loss of forty-two students] would make is a less than 5% increase in the black percentage of its student body." (ECF No. 57, p. 22). According to the ADE and SBE, his change would be *de minimis* and no student would notice such a change and no parent's "perception of LCSD's racial identity would be affected[.]" (ECF No. 57, p. 22).

Upon consideration, the Court finds that LCSD has failed to carry its burden of establishing that, absent preliminary injunctive relief, it will suffer irreparable harm. The Court is not

persuaded that LCSD will suffer imminent financial harm if the approved student transfers leave LCSD. Robert Edwards, superintendent of LCSD, testified at the August 1, 2018 hearing that LCSD's funding for the 2018-19 school year is already in place and based on LCSD's average daily membership three quarters ago. Likewise, Mr. Edwards testified that LCSD will receive those funds regardless of the loss of the transferring students. Taken together with the testimony offered by other superintendents in the other school desegregation cases before the Court, it becomes clear that the loss of students will not cause an imminent financial harm to the student's former district so as to require preliminary injunctive relief. Although Mr. Edwards' testimony suggests that LCSD 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 LCSD. LCSD cites no authority supporting this proposition, and the Court is unaware of any. Absent any such authority, the Court cannot find that LCSD will suffer irreparable harm solely from the loss of certain students.

The Court is also unpersuaded by LCSD's argument that it will suffer irreparable harm by being required to participate in school choice until the Court rules on LCSD's underlying Motion for Declaratory Judgment. At the preliminary injunction hearing, LCSD argued that if the Court were to eventually rule in LCSD's favor on the Motion for Declaratory Judgment, LCSD will have violated the terms of the *Turner* Decree 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 LCSD's Motion for Declaratory Judgment. If, on the other hand, the Court denies the instant motion and eventually denies LCSD's Motion for

Declaratory Judgment, LCSD will not have suffered any harm from participating in school choice, as the Court will have determined that LCSD may do so without violating the *Turner* Decree. 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 LCSD 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 Lafayette County School District's Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 47) 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 LCSD 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.