

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

AMBER BOOTH McCOY; DON BOOTH;
KATHERINE LU; EUGENE LU; and
SKYE ADAMS

PLAINTIFFS

v.

Case No. _____

ARKANSAS DEPARTMENT OF EDUCATION;
JOHNNY KEY, in his official capacity as
Arkansas Commissioner of Education;
DIANE ZOOK, in her official capacity as a
member of the Arkansas State Board of Education;
SUSAN CHAMBERS, in her official capacity as a
member of the Arkansas State Board of Education;
CHARISSE DEAN, in her official capacity as a
member of the Arkansas State Board of Education;
R. BRETT WILLIAMSON, in his official capacity as a
member of the Arkansas State Board of Education;
O. FITZGERALD HILL, in his official capacity as a
member of the Arkansas State Board of Education;
OUIDA NEWTON, in her official capacity as a
member of the Arkansas State Board of Education;
SARAH MOORE, in her official capacity as a
member of the Arkansas State Board of Education; and
KATHY McFETRIDGE, in her official capacity as a
member of the Arkansas State Board of Education;

DEFENDANTS

COMPLAINT

Plaintiffs state the following for their Complaint:

1. This Complaint seeks judicial relief pertaining to the Arkansas Department of Education's ("the Department") control of the Little Rock School District ("the District") beyond the now-expired five-year deadline to end state control of the District by January 28, 2020.
2. Defendants fail to properly establish criteria for the District to exit state control despite the plain language of Ark. Code Ann. § 6-15-2917(c)(2) requiring them to promulgate such criteria as rules pursuant to the Arkansas Administrative Procedures Act (the "APA"), instead relying on the unlawful unilateral creation of criteria by Defendant Key.

3. The Arkansas State Board of Education (the “State Board”) also seeks to indefinitely constrain a future elected LRSD School Board (“District School Board”) with “guardrails” not contemplated by law.

4. Plaintiffs seek all available relief to stop Defendants’ unlawful acts and return the District as soon as practicable to a democratically elected District School Board unconstrained by the illegal and unlawful exit criteria and “guardrails.”

PARTIES

5. Plaintiff Amber Booth McCoy is an Arkansas citizen residing in Pulaski County.

6. Plaintiff Don Booth is an Arkansas citizen residing in Pulaski County.

7. Plaintiff Katherine Lu is an Arkansas citizen residing in Pulaski County.

8. Plaintiff Eugene Lu is an Arkansas citizen residing in Pulaski County.

9. Plaintiff Skye Adams is an Arkansas citizen residing in Pulaski County.

10. Each Plaintiff resides within the area designated to vote in District elections.

11. Each Plaintiff pays state and local taxes that support and fund the District.

12. The Arkansas Department of Education is an administrative agency of the State of Arkansas charged with the statutory responsibility of providing support to the District.

13. Defendant Johnny Key is the Commissioner of the Arkansas Department of Education. He currently administers the District as its de facto school board.

14. Defendant Diane Zook is the Chair of the State Board.

15. Defendant Susan Chambers is a State Board member.

16. Defendant Charisse Dean is a State Board member.

17. Defendant Brett Williamson is a State Board member.

18. Defendant O. Fitzgerald Hill is a State Board member.

19. Defendant Ouida Newton is a State Board member.
20. Defendant Sarah Moore is a State Board member.
21. Defendant Kathy McFetridge is a State Board member.
22. Each of the named Defendants engaged in the acts and votes complained of herein in an effort to extend state control of the District beyond five years in contravention of Arkansas state law. Each continues to fail to act to remedy those illegal and unlawful acts and failures.

JURISDICTION AND VENUE

23. The acts, failures, and decisions complained of herein occurred in Pulaski County, Arkansas.
24. Jurisdiction and venue are proper pursuant to Ark. Code Ann. § 25-19-107(a).
25. Judicial review of state agency action, or inaction, is proper in Pulaski County under the APA, pursuant to Ark. Code Ann. § 25-15-212(b)(1)(B).

FACTS

26. Plaintiff Amber Booth McCoy is a District parent. She volunteers regularly in her children's District schools, including working with 8th grade Forest Heights Stem Academy teachers to create a co-curricula component designed to teach students about implicit bias, diversity, and inclusion. She also has a child enrolled at Parkview Arts Science Magnet School.
27. Plaintiff Don Booth is a career educator and public education advocate. He is a District grandparent.
28. Plaintiffs Katherine and Gene Lu are District parents to three children, with two enrolled at Little Rock Central, and one at Pulaski Heights Elementary. Both attended Henderson Junior High, graduating from Little Rock Central.

29. Plaintiff Skye Adams is a District parent, including a special needs child who attends Pinnacle View Middle School. Her second child is a kindergartener at Fulbright Elementary School.

30. The District is formed pursuant to the laws of the State of Arkansas.

31. On July 10, 2014, the State Board classified six District schools as academically distressed: Baseline Elementary School, Cloverdale Aerospace Technology Center, Henderson Middle School, Hall High School, J.A. Fair High School, and McClellan High School.

32. The District held a School Board election on September 16, 2014.

33. On January 8, 2015, the same day the newly elected School Board met to address the academically stressed schools, the State Board called a special meeting for January 28, 2015.

34. On January 28, 2015, the State Board met, entertaining competing motions either to develop a cooperative memorandum of understanding between the Department and the District to improve the academically distressed schools, or to remove all of the current District School Board members immediately, create a Community Advisory Board (“CAB”), and place the authority of the School Board with the Commissioner of Education.

35. The State Board voted 5-4 to dissolve the District School Board, thus placing control of the District with the State Board, pursuant to the now replaced Ark. Code Ann. § 6-15-430.

36. On April 21, 2015, District Superintendent Dexter Suggs resigned.

37. Defendant Key appointed Baker Kurrus District Superintendent in May of 2015.

38. At a March 31, 2016, State Board meeting, then Superintendent Kurrus advocated against the State Board’s approval of additional charter school seats within the District’s geographic footprint.

39. On or about April 13, 2016, Defendant Key informed Kurrus Key would not extend Kurrus's contract as District Superintendent beyond its June 30, 2016, expiration.

40. Defendant Key replaced Kurrus with Michael Poore as District Superintendent.

41. During the 2017 Regular Session, the Arkansas General Assembly, in 2017 Ark. Acts 930, amended the statutory provisions pursuant to which Defendants control the District, including replacing Ark. Code Ann. § 6-15-430 and creating Ark. Code Ann. § 6-15-2917.

42. Ark. Code Ann. § 6-15-2917(c)(1) carries forward a definitive five-year deadline to end state control in local school districts, stating:

If the public school district has not demonstrated to the state board and the Division of Elementary and Secondary Education [of the Department] that the public school district meet the criteria to exit Level 5—Intensive support ***within (5) years of the assumption of authority***, the state board shall annex, consolidate, or reconstitute the public school district under § 6-13-1401 et seq. and this subchapter.

(Emphasis added).

43. Ark. Code Ann. § 6-15-2917(c)(2) then states:

The state board shall promulgate rules to establish the criteria by which a public school district may exit Level 5--intensive support.

44. During 2015, 2016, 2017, 2018, and 2019, the State Board failed to take the actions necessary to fulfill its statutory obligation and promulgate exit criteria within its statutorily mandated five-year period of control.

45. On September 13, 2018, at a State Board meeting, attorney for the Defendant Department, Courtney Salas-Ford, stated:

The takeover of Little School District did happen...in January of 2015...and so under 6-15-2917 action would need to occur no later than January of 2020, and of course the state board has numerous options to do by that date. One is returning the district to local control through either the appointment or election of a newly elected board upon recommendation of the Commissioner. Other actions include or would be required if the board did not return local control, annexation,

consolidation, or reconstitution of the school district. In terms of electing a new school board, as you know under the new law, the school district can elect either for a May or November election, that does have to be decided no later than February of the year preceding the election and so *in terms of Little Rock we could be looking at either a November 2019 election or a May 2020 election...some sort of decision would need to be made around or before June of 2019.*

(Emphasis added).

46. Despite the very advice of its own counsel, the State Board failed to take any action by June of 2019, to assure compliance with Ark. Code Ann. § 6-15-2917(c)(1) on or before January 28, 2020, and a necessary and required District School Board election.

47. On Friday, February 15, 2019, Commissioner Key unilaterally adopted “exit criteria” for the then eight academically distressed schools in the District, including the following:

- a. Collaborative teams regularly interact to address common issues regarding curriculum, assessment, instruction, and the achievement of all students;
- b. The school is aware of and monitors predominant instructional practices;
- c. The school provides teachers with clear, ongoing evaluations of their pedagogical strengths and weaknesses that are based on multiple sources of data and are consistent with student achievement data;
- d. The school curriculum and accompanying assessments adhere to state and district standards;
- e. The school manages its fiscal, operational, and technological resources in a way that directly supports teachers to provide a safe, supportive and collaborative culture and increase student achievement;

- f. All F schools meet or exceed 80.0 Content with ELP Growth as identified in ESSA School Index;
- g. The number of students in Close, Ready, Exceeds for both Math and ELA will exceed the number of students In Need of Support categories according to the ESSA School Index. This is for all F schools identified based on the 2017-2018 School Year; and
- h. Fiscal, operational, and human capital to support teaching and learning in an efficient and effective manner.

48. The “LRSD Exit Criteria as of 2/15/19” document is attached to this Complaint as Exhibit A.

49. Regarding the promulgation of rules to establish exit criteria as required by Ark. Code Ann. § 6-15-2917(c)(2), Ark. Code Ann. § 25-15-204 of the APA establishes the procedure for the promulgation and adoption of rules by agencies of the State of Arkansas, including publishing notice and information of the rulemaking in the paper and online, fully considering all written and oral comments, considering statutorily defined factors, exploring alternatives to the rule, and finally undergoing legislative review and adoption.

50. The February 2019, exit criteria are not the product of a rule promulgation procedure, despite the unambiguous language of Ark. Code Ann. § 6-15-2917(c)(2) stating the “state board shall promulgate rules to establish the criteria.”

51. There is no evidence available to Plaintiffs or the public that Defendants followed Ark. Code Ann. § 25-15-204 when creating the February 15, 2019, exit criteria.

52. Plaintiffs are denied their ability to participate in the promulgation of exit criteria by Defendants.

53. On September 20, 2019, the State Board voted to adopt a “proposed framework” to “order the election of a 9-member local Board of Directors to take place in November of 2020,” with powers defined or limited by the State Board. The proposed framework would have established three categories of schools as follows:

- a. Category 1 would be schools with a 2019 letter grade of “D” or higher, and would operate under the elected 9-member Board of Directors;
- b. Category 2 would be schools undergoing reconfigurations, which may operate under the elected 9-member Board of Directors; with the State Board determining which schools would be included in Category 2; and
- c. Category 3 would be schools with a 2019 letter grade of “F.” These schools would operate under different leadership than the remaining schools in the District, but in partnership with the District.

54. Massive public resistance to the “proposed framework” ensued, culminating in thousands of District students, parents, and supporters holding a vigil on the steps of Little Rock Central High School on October 9, 2019, to express their opposition to the proposed resegregation of the District.

55. On October 10, 2019, the State Board voted to:

- a. abandon its September 20, 2019, “proposed framework;” and
- b. direct Mr. Key to end the District’s Collective Bargaining Agreement with the Little Rock Education Association, effective October 31, 2019.

56. The State Board’s votes again caused turmoil, resulting in an estimated 1800 Little Rock Education Association members holding a one-day strike on November 14, 2019.

57. On December 12, 2019, the State Board voted in favor of a reconstitution framework which calls for a November 2020, election of a District School Board, but prohibits the District, through the District School Board or otherwise, from taking the following actions, referred to as “guardrails,” without specific prior approval by the State Board of Education:

- a. The Local Board shall not make any change in the superintendent of the Little Rock School District without the approval of the State Board;
- b. The Local Board shall not make any manner of selection of the Personnel Policy Committee or its status with respect to the Little Rock School District, nor recognize any employee bargaining agent, without the approval of the State Board; and
- c. The Local Board shall not institute any litigation (other than routine contract litigation against vendors or contractors of the Little Rock School District) without the approval of the State Board.

58. The Minutes of the State Board for December 12, 2019, contain the “guardrails” on page 12, and are attached to this Complaint as Exhibit B.

59. No statutory authority exists permitting the State Board to place “guardrails” on a future elected District School Board.

60. Furthermore, Defendants continue to ignore their statutory mandate to relinquish control of the District by January 28, 2020.

61. Defendants’ management of the District results in a 4,000-student enrollment reduction in the District, among other impacts.

62. During Defendants’ management of the District, additional schools fell to academically distressed status.

63. Defendants play a direct role in eroding the funding base due to their failure to properly manage the District, continued approval of charter school seats within the District footprint, and a decision-making process not recognized or authorized by the APA, other statutory law, or the Arkansas Constitution.

64. This continued mismanagement is decreasing the District budget by tens of millions of dollars in lost funding, impacting its ability to provide the services required of it.

65. The State Board's actions must be constrained by this Court to ensure that Defendant's official actions fully comply with the law.

CAUSES OF ACTION

66. Plaintiffs incorporate each of the previous paragraphs by reference as part of the allegations supporting each of Plaintiffs' causes of action against Defendants.

ARKANSAS ADMINISTRATIVE PROCEDURE ACT

67. The State Board is a state agency. Its decisions are subject to the APA.

68. Plaintiffs each have a vested interest in the District, its management, and their right to elect a School Board for the District.

69. Defendants violate the APA by failing to take action necessary to end State Board control of the District by January 28, 2020, and thus return it to a locally elected District School Board.

70. This failure violates Ark. Code Ann. § 6-15-2917(c)(1).

71. Ark. Code Ann. § 25-15-214 permits citizens of the State of Arkansas to initiate an action against a state agency when it fails to act in a lawful and reasonable manner, resulting in a capricious failure, refusal, and delay in complying with the law.

72. Defendant’s failure to act, as stated in this Complaint, causes harm to Plaintiffs’ legal rights, as well as constituting a failure to comply with the five-year deadline found at Ark. Code Ann. § 6-15-2917(c)(1), and the obligation to promulgate rules for exit criteria pursuant to Ark. Code Ann. § 6-15-2917(c)(2).

73. Plaintiffs request the Court issue an Order requiring Defendants to immediately comply with the APA and Ark. Code Ann. § 6-15-2917(c)(1).

DECLARATORY JUDGMENT

74. Ark. R. Civ. P. 57 permits declaratory judgments.

75. Ark. Code Ann. §§ 16-111-101 *et seq.* permits this Court to declare legal rights.

76. Plaintiffs are persons “whose rights, status or other legal relations are affected by a statute,” and thus may obtain a “declaration of rights, status or other legal relations thereunder” pursuant to Ark. Code Ann. § 16-111-102.

77. Plaintiffs seek a declaration regarding the following:

- a. Right to elect a District School Board as soon as practicable because of the expiration of the five-year state-control limitation provided by Ark. Code Ann. § 6-15-2917(c)(1);
- b. Right to a district free of State Board control, including the “guardrails,” because of the expiration of the five-year state control limitation provided by Ark. Code Ann. § 6-15-2917(c)(1) and because of the lack of any statutory authority for the “guardrails;” and
- c. Denial of their right to participate, under the APA, in the promulgation of the February 2019 “exit criteria,” as required by Ark. Code Ann. § 6-15-2917(c)(2).

78. Thus, this Court should declare Plaintiffs' right to an elected District School Board free of "guardrails" and a District not subject to improperly promulgated "exit criteria."

WRIT OF MANDAMUS

79. A writ of mandamus is appropriate when public officials fail to perform a nondiscretionary ministerial duty.

80. Here, Defendants fail to perform their nondiscretionary ministerial duty to take actions necessary to comply with the Ark. Code Ann. § 6-15-2917(c)(1) deadline to relinquish control of the District by January 28, 2020.

81. Defendants' further failure to perform its nondiscretionary ministerial duty will deny Plaintiffs their right to elect a District School Board free of illegal and unlawful exit criteria and "guardrails."

82. A writ must issue requiring Defendants to comply with the five-year deadline of Ark. Code Ann. § 6-15-2917(c)(1), thus releasing the district from state control, the "guardrails," and illegal exit criteria.

ULTRA VIRES

83. An *ultra vires* action is one taken by a state actor in the absence of statutory or other legal power.

84. Defendants act here in relation to the District pursuant to specific powers defined by Ark. Code Ann. § 6-15-2916 and the process found in Ark. Code Ann. § 6-15-2917.

85. Imposing "guardrails" on the District after January 28, 2020, is not amongst those enumerated powers, as Ark. Code Ann. § 6-15-2916 does authorize Defendants to place the following restrictions on the District, especially after the expiration of the five-year time period provided by Ark. Code Ann. § 6-15-2917(c)(1) time period:

- a. prohibit the District from engaging in litigation;
- b. determine the District’ superintendent; or
- c. prohibit recognition of the Little Rock Education Association or altering the personnel policy committee.

86. Defendants’ act to adopt the February 2019, “exit criteria” in the absence of an APA rulemaking proceeding is a failure to comply with the Ark. Code Ann. § 6-15-2917(c)(2) requirement that the State Board “shall promulgate rules to establish the criteria by which” the District may exit support.

87. There is no justification under the law for the “guardrails,” or for adopting “exit criteria” in the absence of an APA rulemaking procedure. This Court must therefore enjoin or otherwise vacate actions taken by Defendants in the absence of legal authority.

ARBITRARY, CAPRICIOUS, BAD FAITH, AND WANTONLY INJURIOUS ACTIONS

88. This Court may enjoin agency conduct that is arbitrary, capricious, in bad faith, or wantonly injurious.

89. Here, Defendants take multiple actions which are in direct contravention to both the law and the facts before them, including:

- a. failing to act in a manner that results in the return of the District to local control within five years, on or before January 28, 2020, resulting in harm and injury to voters within the District who seek democratic representation;
- b. imposing “guardrails” that harm the District and are not based in an effort to improve the academically distressed schools within the District; and
- c. setting forth exit criteria in the absence of proper procedure and public input.

90. Defendants take each of these actions without substantial evidence or a supporting record, thus invalidating each as arbitrary, capricious, in bad faith, and wantonly injurious.

UNCONSTITUTIONAL DELEGATION OF POWER

91. The legislature may only delegate discretionary power to a state agency so long as reasonable guidelines are provided.

92. Such guidelines must include appropriate standards by the administrative agency is to exercise this power.

93. A statute that in effect reposes an absolute, unregulated, and undefined discretion in an administrative agency bestows arbitrary powers and is an unlawful delegation of legislative powers.

94. Ark. Code Ann. §§ 6-15-2916 and 2917 fail to provide the necessary guidelines and elements for Defendants to create exit criteria for the District.

95. To the extent Ark. Code Ann. §§ 6-15-2916 and 2917 would, as written, give Defendants the power to impose the “guardrails” on the District, those provisions are written in such a broad and vague manner, without constraints or necessary guiding language, that any actions taken beyond specifically enumerated powers are the exercise of unlawfully delegated power.

RELIEF REQUESTED

96. Plaintiffs request an order commanding Defendants to comply with the APA.

97. Plaintiffs request a declaratory judgment pursuant to Ark. Code Ann. §§ 16-111-101 *et seq.*:

- a. establishing their rights to a locally elected District School Board free of the “guardrails;” and

- b. declaring the February 2019, “exit criteria” as a denial of rights for failure to conform with the public participation elements of the APA rule promulgation requirements.

98. Plaintiffs request a writ requiring Defendants to perform their nondiscretionary ministerial duty to return the District to full local control through an elected District School Board, without guardrails, as soon as practicable.

99. Plaintiffs request prohibitory injunctive relief against the “guardrails” and the “exit criteria” any further ultra vires, arbitrary, capricious, bad faith, or wantonly injurious acts by Defendants, and mandatory injunctive relief requiring the return of the District to a locally elected District School Board as soon as possible practicable.

100. Plaintiffs request an Order barring Defendants from exercising unlawfully delegated legislative power, and declaring such laws unconstitutional.

WHEREFORE, Plaintiffs request that the Court grant them all proper relief to which they are entitled.

Respectfully submitted,

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