

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

JUN - 1 2004

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_ DEPT. CLERK

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**VS.**

**Case No. 2:70CV00010**

**COTTON PLANT SCHOOL  
DISTRICT #1, ET AL.  
(WATSON CHAPEL SCHOOL  
DISTRICT #24)**

**DEFENDANT**

**PINE BLUFF SCHOOL DISTRICT #3**

**INTERVENOR**

**REPLY BRIEF TO THE BRIEF IN SUPPORT OF REPLY TO MOTION  
TO ALTER OR AMEND JUDGMENT**

Comes **Pine Bluff School District #3**, Intervenor herein, by and through its attorneys, **Ramsay, Bridgforth, Harrelson and Starling LLP**, and submits the following Reply to the Brief filed in Support of the Watson Chapel School District's Reply to the Motion to Alter or Amend Judgment.

Although the Watson Chapel School District attempts to distinguish the plain language of the Department of Education's Regulation 801, its argument is without merit. The Arkansas Legislature when it adopted the School Choice Act specifically provided that the Department of Education should adopt appropriate rules and regulations to implement the provisions of the transfer section contained in Ark. Code Ann. § 6-18-206(f). *See* Ark. Code Ann. § 6-18-206(f)(6) which states:

The Department shall adopt appropriate rules and regulations to implement the provisions of this section.

Pine Bluff School District would also like to correct a statement made by the Watson Chapel School District in its Reply. At page 3 in the last paragraph, the Watson Chapel School District

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states: "Pine Bluff School District has stated in pleadings and in arguments before the Court that it does not challenge the transfers of African American students and that those students are allowed under all provisions of the School Choice Act. Pine Bluff School District does not explain how this position has changed since the entry of this Court's Order."

This is a statement that is unsupported either by fact or pleadings. The Pine Bluff School District's position consistently has been both before the Board of Education and before this court that should the court's Order entered in the desegregation case only allow transfers of both black and white students, then no student should be allowed to transfer from Pine Bluff to Watson Chapel. It is in the pleadings filed with this court, it was addressed to this court in Pine Bluff's argument at the hearing, and it was also an argument that was made before the State Board of Education.

Rather than trying to ignore Ark. Code Ann. § 6-18-206(f)(5) and contrary to Watson Chapel's assertion, the Pine Bluff School District is reading that section consistently with its interpretation by the State Board of Education and consistently with the court's desegregation Order. Since the court has found that to allow the transfers as restricted by the Arkansas Act would violate Watson Chapel's desegregation Order, then the Order takes precedence over the rights of transfer for any students under the Act. This is the plain meaning of the statute as interpreted by the regulations and Watson Chapel's arguments to the contrary are misplaced.

The reason the State Board of Education chose to defer deciding the matter until it had been referred to the court that issued the desegregation Order is set forth in the stipulated facts. Stipulation 11 provides that the general counsel for the State Department of Education told the State Board that "Both the Watson Chapel School District and the Pine Bluff School District have argued an interpretation of the 1970 desegregation Order and have asked the State Board for clarification

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with regard to the implications of that Order to the Act. It is the Department's recommendation to the Board that the Board not rule with regard to a resolution of this conflict. Instead we recommend that the Board recommend that the parties go seek a judicial interpretation of the application of that Order to this Act at this time."

Attorney General Opinion 2003-269, far from supporting the Watson Chapel School District's position, simply provides that interpretations of federal court orders are to be left to the issuing court. The Attorney General's Opinion does not address the issue now before the court, which is whether the Arkansas School Choice Act prohibits all transfers due to this court's conclusion of law that restricted transfers under the Act would violate its order.

Finally, on page 4 of Watson Chapel's Brief, it states as follows: "Watson Chapel School District agrees with Pine Bluff School District that the Court did not address whether or not transfers to Watson Chapel School District violate state law. However, the parties stipulated that Pine Bluff School District did not challenge African American transfers."

Nowhere is there any such stipulation. Although the Brief makes that flat statement, no stipulation is cited. Stipulation 9 provided the Pine Bluff School District's Petition that it filed with the Arkansas Department of Education challenged Watson Chapel's acceptance of 33 white students who reside within the Pine Bluff School District.

However, that is not a stipulation, nor do the pleadings that have been filed in this matter support a stipulation, that the Pine Bluff School District doesn't challenge African American transfers under any circumstances. There is no such stipulation. The Pine Bluff School District does challenge all transfers under the Arkansas School Choice Act in light of the court's specific

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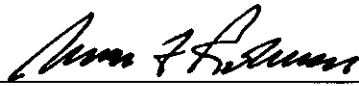
conclusion of law that the racial restrictions in the Act would violate the court's Order and has consistently done so.

Pine Bluff School District respectfully submits that its Motion should be granted.

Respectfully submitted,

**RAMSAY, BRIDGFORTH, HARRELSON  
AND STARLING LLP**

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**CERTIFICATE OF SERVICE**

I, Spencer F. Robinson, one of the attorneys for the Intervenor herein, do hereby certify that I have served a true and correct copy of the foregoing on the following counsel of record:

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by ordinary mail, postage prepaid, this 28 day of May, 2004.

  
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