

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

**FILED**  
SEP 12 2005  
ARLEN B. COYLE, CLERK  
*[Signature]*  
Deputy

HENRY B. AYERS, et al.

Plaintiffs,

vs.

WESTERN LINE CONSOLIDATED SCHOOL  
DISTRICT, *et al.*,

Defendants.

CIVIL ACTION NO. 66-1-LS

**PLAINTIFFS' AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER**  
**HEARING REQUESTED**

Through a technical over-site, Counsel for Plaintiffs inadvertently attached to the Plaintiffs' Motion for Temporary Restraining Order, filed on September 9, 2005, affidavits identified as Exhibits A-K, which were not notarized. That error has been cured and by this amended Motion, attached are properly notarized affidavits, identified as Exhibits A-K. Further, Plaintiffs adopt all other allegations and supporting documents, set forth in their original Motion for Temporary Restraining Order filed on September 9, 2005.

**RELIEF SOUGHT**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs in this long-standing school desegregation case move this Court to immediately issue an ex parte **Temporary Restraining Order** ("TRO") against the Defendant Western Line Consolidated School District ("Western Line" or "Defendant") to the following ends:

- (a) requiring Western Line to immediately cease implementation and execution of an unauthorized student assignment plan that requires

- kindergarten students from the Glen Allan Elementary School and the Riverside Elementary School to attend classes at the former C.L. Morris school facility, which Plaintiffs submit is unsafe;
- (b) requiring Western Line to develop and submit to the Plaintiffs and the Court, prior to the expiration of the TRO, both short-term and long-term plans for using alternative sites (other than the C.L. Morris facility) for educating kindergarten students previously scheduled to attend classes at Glen Allan Elementary and Riverside Elementary School, as well as short-term and long-term plans for former Glen Allan Elementary students in grades one (1) through six (6), now housed at Riverside Elementary School;
  - © requiring Western Line to respond in full to Plaintiffs informal discovery request (dated March 10, 2005) prior to the expiration of the TRO;
  - (d) enjoining Western Line from engaging in any type of retaliatory action against kindergarten students or the parents who withhold their children from school due to unsafe conditions at the C.L. Morris facility. Such retaliatory acts may include, but are not limited to, negative grading of missed assignments, removal of privileges, truancy enforcement during pendency of this litigation, and negative employment action for parents or other relatives of affected students who may be employed by Western Line;
  - (e) compelling Western Line to commission independent inspections of the C.L. Morris facility by all relevant state and local agencies (including, but not limited to the Mississippi Department of Education, the Mississippi Commission on Environmental Quality and the Mississippi Department of Health) for various health hazards (including, but not limited to the following: asbestos abatement; lead abatement; mold and mildew removal; drinking water quality; pest and rodent infestation; structural soundness of facility) and to provide the results and documentation of such inspections to the Plaintiffs; and
  - (f) compelling Western Line to provide compensatory educational services and ample opportunity to make up missed school work for those students who were unable to attend classes due to unsafe conditions at the C.L. Morris facility.

### **GROUND FOR MOTION**

The grounds for this motion, as set forth more fully in the affidavits of Marlene Davis, Shatawna Riley, Dessoree Smith, Quenshoda Henry, LaShay Ball, Ivory Brady and Veronica Walker (herein identified as Exhibits A-G) contain several points of information, including much of the following, which Plaintiffs allege on information and belief. Also attached, herein identified as Exhibits H-K, are affidavits of the following individuals: Lillie B. Ayers, Andrew B. Gatson, Janice Young and Sheila Brady, who are local community residents and family members of the Plaintiffs in support of the relief requested by this Motion.

1. Western Line has implemented a new student assignment plan without consulting opposing counsel or the Court. This assignment plan requires kindergarten students from both the Glen Allan and Riverside Schools to attend classes at the former C.L. Morris facility, and requires students in grades one (1) through six (6) at Glen Allan to attend classes at the Riverside Elementary School. This reassignment plan was apparently devised in response to a fire that damaged a part of the Glen Allan Elementary School building on the morning of August 30, 2005. The fire and resulting damage are still under investigation by the Washington County Sheriff's Department, which is treating Glen Allan Elementary School as a crime scene.

2. Prior to the fire, Western Line had sought to close the predominately African-American Glen Allan Elementary School altogether and the matter was the subject of potential litigation. However, Western Line has failed to respond, even in part, to an informal discovery request submitted by Plaintiffs regarding this matter nearly six (6) months ago.

3. Western Line did not provide formal notice of the student reassignment plan or its details to parents of affected students in the Glen Allan community. The only notice came from a

Western Line school board meeting, held on Thursday, September 1, 2005, during which the school board went into executive session and summarily announced its plan to the audience upon reconvening in public session, eliminating any opportunity for meaningful input and comment from the public. However, Western Line did provide notice via letter to parents of kindergartners schedule to attend the predominately white Riverside Elementary School.

4. Western Line did not endeavor to provide any form of notice to Plaintiffs' counsel about either the fire or the reassignment plan until nearly two weeks later – conveniently, after the reassignment plan had already been implemented and classes begun – and even then, only after Plaintiffs' counsel contacted Western Line's counsel to protest the lack of notice request detailed information. As of this writing, Western Line has not provided information regarding the logistics of classroom instruction at either the Riverside Elementary School or the C.L. Morris facility. Some parents have reported that Glen Allan students may be segregated from the population of Riverside students.

5. Western Line did not seek court approval for its reassignment plan, thereby deviating from the spirit, if not the letter, of this Court's previous school desegregation orders, particularly with respect to student assignment and attendance zone boundaries.

6. The C.L. Morris facility is located on Highway 1 in Avon, MS. It consists of two main buildings, neither of which have been used as instructional space in several years. The last time the facility housed students was in 1999 when junior high school students were temporarily housed there. Even then, plaintiff class members report, the building was in such disrepair that rain water poured in through the ceiling. Currently, least part of the C.L. Morris facility appears to have been abandoned, posing a variety of health and safety hazards. See item 9, *infra*.

7. Parents of affected students from Glen Allan (members of the Plaintiff class) initiated peaceful and professional contact with Western Line Superintendent Larry Green in an attempt to obtain verification and documentation regarding the safety of the C.L. Morris facility. Among other things, they inquired about the following: asbestos abatement status, lead contamination status, mold and mildew removal, drinking water quality tests, pest and rodent infestation and control status, structural soundness of facility. These concerns are shared by many in the community, as evidence by petitions annexed to this pleading. See Exhibit L, which is a composite Exhibit of copies of petitions containing signatures of Glen Allan and Riverside parents and other concerned citizens. Superintendent Green did not provide such documentation and admitted that the C.L. Morris facility had, in fact, **not been inspected** by any agency prior to the start of classes. To the Plaintiffs' knowledge it still has not been inspected as of this writing.

8. Despite the lack of prior health and safety inspection, Western Line officials initially refused to allow parents of African-American Glen Allan kindergartners to visually inspect the C.L. Morris facility prior to dropping their children off for classes. However, white parents were permitted open access to the facility.

9. After negotiation between parents and Superintendent Larry Green, the parents were permitted to inspect the facility, but only in small groups and even then under **armed police escort**.

10. Upon their visual inspection of the C.L. Morris facility, parents observed deplorable conditions that make the facility wholly unsafe and inappropriate for any students, let alone those of tender years. These observations included the following:

- large rodent droppings
- numerous dark stains on many ceiling tiles, with possible mold/mildew spores

- large amounts of dust and dirt in common areas
- inappropriate delivery of meals imported from another site
- the strong aroma of paint fumes
- a general stale aroma throughout the facility
- numerous workers engaging in construction work on premises during classes
- lack of fire extinguishers in designated locations
- lack of hot water in restrooms
- general unsanitary conditions in restrooms
- lack of doors for restroom stalls
- lack of soap and hand-drying materials in restrooms
- toilets of an inappropriately large size for young kindergartners, such that they could fall into commodes
- spraying of pesticides on the premises while students were in classrooms and while meals were being delivered

See Exhibit M-T (Photographs of C.L. Morris facility) and Exhibit U (news article from the Delta Democrat)<sup>1</sup>. One building on the premises has received a cosmetic paint job and new carpeting over dirty floors. The other building located less than twenty (20) feet away, serves as an abandoned warehouse, still containing large amounts of old, broken, dusty and mildewed books and desks; broken light bulbs, school supplies, crumbling construction materials, and maintenance equipment on the floor; and an inoperable commode sitting in the middle of one room – all of which are strewn about the premises as if a tornado had touched down. According to one construction worker on the site, this building is also inhabited by numerous snakes.

11. Western Line does not appear to have seriously considered alternative sites or arrangements for educating the affected students.

12. Several parents of kindergarten students, including students with health conditions that include asthma, have opted to withhold their children from classes at the C.L. Morris facility due to safety concerns. Thus, their ability to obtain an education, and their fundamental right to a

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<sup>1</sup>Recent video footage of these conditions is also available should the Court desire to view it.

minimally adequate education under Mississippi law, have been directly compromised due to Western Line's failure to provide a verifiably safe learning environment. These parents are fearful of retaliation by Western Line against themselves and their minor children for their decision to vindicate their rights.

13. Unless enjoined, Western Line will continue to implement its student reassignment plan, deprive the Plaintiff class of vital safety information, and place very young children at grave risk of serious injury and deleterious health consequences. There is a substantial likelihood that these health hazards will cause immediate and irreparable harm to the students and their parents, members of the Plaintiff class in the instant case. The conditions at the C.L. Morris facility are at best unverifiable. Thus, Western Line cannot argue that the facility is safe with any degree of certainty. Considering the substances and conditions that currently exist at the facility, it should be presumed unsafe for habitation by anyone, let alone the youngest children in the school district. Indeed, Plaintiffs submit that if this facility were an apartment building, it would surely violate the warranty of habitability, leading to a constructive eviction.

14. Plaintiffs' counsel attempted to contact David S. Rounsavall, counsel for Defendant Western Line, on the first day of classes on which the affected students were instructed to report to the C.L. Morris facility – Wednesday, September 7, 2005. An assistant reported that Mr. Rounsavall was in the office, but on another telephone line, so Plaintiffs' counsel left a message with the assistant, providing a mobile telephone number for easy contact. On the afternoon of Thursday, September 8, 2005, Mr. Rounsavall left a voicemail message and an E-mail message for Plaintiffs' counsel indicating that he would be out of town for the remainder of that afternoon and for the balance of the business week ending September 9, 2005.

It was also in that E-mail message that Western Line provided its first tardy notice of even the fire that damaged the Glen Allan School.

15. The irreparable harm will occur prior to the time opposing counsel may be prepared to be heard in this matter. Counsel for Defendant has indicated via E-mail message that he will be out of town for the balance of the business week ending September 9, 2005. Thus, waiting for counsel places the students at risk of either exposure to health hazards or exposure to claims of truancy or failure to comply with the state's compulsory school attendance law. Thus, immediate action by the Court is necessary to protect both the students' health and other interests.

16. No significant injury will be sustained by Western Line or the public through issuance of the requested TRO. It appears that Western Line has not meaningfully explored other alternatives, some of which may even be more cost-effective and efficient, as well as more beneficial to students overall.<sup>2</sup> Even if injury could be claimed from issuance of the TRO, it would be significantly outweighed by the threat of harm to befall the young children in Western Line's care. See Cherokee Pump & Equipment, Inc. v. Aurora Pump, 38 F.3d 246, 249 (5th Cir.1994).

### SUMMARY

The children of the Western Line School District deserve to have a safe learning environment. It was unconscionable for the Defendant to assign students to attend classes at an old, abandoned facility without first inspecting it for health and safety hazards. It is even worse to

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<sup>2</sup>These options include temporarily educating students at a more suitable facility, such as privately-owned buildings or other school facilities that are currently in use.



permit students to inhabit the facility with clear and grave dangers all around the campus. Safety should be of paramount concern. Courts have recognized that “an injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981). It should go without saying that no amount of money can compensate for a severe injury or health threat to a child. Cf. Steven L. LaFrance Pharmacy, Inc. v. Tallant, 1997 WL 392736 (N.D. Miss. June 25, 1997), at \*6.

Thus, the facility must be thoroughly inspected by the appropriate agencies and the Plaintiff class should be furnished with verification and documentation of the aforementioned safety inspections. In the meanwhile, all students must be removed from the facility in order to preserve their good health. In addition, steps must be taken to protect these students and their families from retaliation, as well as to provide compensatory education services where necessary.

Safety cannot wait upon the schedules of the Defendant parties. And the school district’s leadership has already demonstrated that its discretion cannot be trusted when it concerns the health and safety of students. If left to their own devices, Western Line may never provide the necessary inspections and documentation. For these reasons, Court action is both necessary and particularly appropriate.

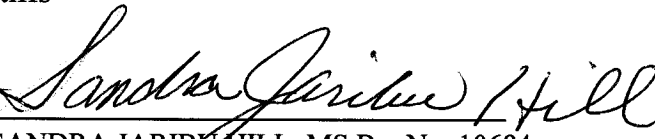
### CONCLUSION

This motion is based upon the aforementioned allegations made on information and belief, the Points and Authorities<sup>3</sup> specified herein, the annexed and supporting Affidavits, as well as the other Exhibits to this pleading and other evidence that may be presented at a hearing.

WHEREFORE, Upon consideration of this evidence, Plaintiffs respectfully request that this Court issue a TRO to the ends specified in this Motion, to remain in effect for the maximum time period permissible under Rule 65, or until the Court may schedule and hold a hearing on this matter.

Respectfully Submitted this 12<sup>th</sup> day of September, 2005.

Henry B. Ayers, et al.  
Plaintiffs

BY:   
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<sup>3</sup>Pursuant to Rules 7.2(D) and (H) of the Local Rules of the Northern District of Mississippi, Plaintiffs note that the instant motion for a TRO is an urgent, ex parte instrument, and therefore request that the Court dispense with the typical requirement of a memorandum of authorities.

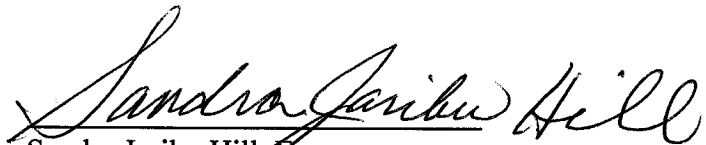
**CERTIFICATE OF SERVICE**

I, Sandra Jaribu Hill, hereby certify that a copy of the foregoing **PLAINTIFFS'**  
**MOTION FOR TEMPORARY RESTRAINING ORDER** has been served via hand delivery  
and depositing same in the United States mail, first class postage prepaid to the following at his  
usual address:

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*Attorney for Defendant Western Line Consolidated School District*

This, the 12<sup>th</sup> day of September 2005.

  
Sandra Jaribu Hill, Esq.  
Certifying Attorney