

**UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

LAWRENCE HALL, ET AL.
Plaintiffs

CIVIL ACTION NO. 52-1068-D

and

UNITED STATES OF AMERICA
Plaintiff-Intervenor

JUDGE JAMES J. BRADY

VERSUS

MAG. JUDGE DOCIA L. DALBY

ST. HELENA PARISH SCHOOL BOARD, ET AL.
Defendants

***DEFENDANT’S POST HEARING MEMORANDUM IN OPPOSITION TO
THE SCHOOL BOARD’S MOTION FOR FURTHER RELIEF***

The defendants, the Louisiana Board of Elementary and Secondary Education and the Louisiana Department of Education, hereby file this supplemental Memorandum in Opposition to the St. Helena Parish School Board’s Motion for Further Relief.

The School Board’s motion mainly seeks authority from this Court to reconfigure its grade structure and to add middle school grades to its existing elementary and high school programs. The middle school grades that are sought to be added by the St. Helena Parish School Board are currently offered to students in St. Helena Parish through the Louisiana Recovery School District, a division of the Louisiana Department of Education. The control and management of the St. Helena Middle School was transferred to the jurisdiction of the Louisiana Department of Education by this Court on May 19, 2010 (Doc. 437). The transfer was initiated by the motion of the Louisiana Department of Education (Doc. 426) and shows that the St. Helena Parish middle school had been determined to be Academically Unacceptable for four consecutive years. Under the State’s plan for school improvement pursuant to the No Child Left

Behind Act of 2001, Pub. L. No. 107-110, 20 USC 6301, *et seq.* and Louisiana Revised Statute 17:10.5, jurisdiction of the school and grades were to be administered by the Louisiana Department of Education.

RECONFIGURATION OF GRADES

The St. Helena School board argues that it should be able to reconfigure the grades at its existing elementary school (grades K-4) and its existing high school (grades 9-12) to offer middle school grades at the two facilities currently under its jurisdiction. The board's two main arguments for reconfiguration may be paraphrased and summarized as follows:

1. The school board is now fiscally stable, is improving its facilities, and is currently able to provide adequate education resources for the inclusion of these grades; and
2. Current State law does not prohibit the school board from offering middle school grades at its existing facilities and also provides that the local school board make available a non-RSD enrollment option for the students assigned to attend the middle school.

DESEGREGATIVE EFFECT

To allow St. Helena to expand their elementary and high schools to serve grades 5-8 would likely result in a further segregative effect. Having two middle school populations will lead to further dilution or even total elimination of the minimal white student population at one or both of the middle schools.

Allowing two middle schools will promote segregation because now there will be two schools with children of the same age and will further dilute the already small white student population in the middle grades. This could result c in one school having very few or no white students. The projected enrollment of St. Helena Middle School for the 2013-14 school year is

312 students. The chart below shows the enrollment breakdown by grade and race at St. Helena Middle School as of January 15, 2013.

Grade	White	Black	Hispanic	Native American	Hawaiian	Total
5th	3	59	-	-	-	62
6th	4	64	2	-	-	70
7th	8	72	-	-	-	80
8th	4	97	-	-	-	101
Total	19	292	2	-	-	313

MIDDLE SCHOOL POULATION INADEQUATE TO SUPPORT TWO SCHOOLS

A. ECONOMIES OF SCALE

Allowing St. Helena to expand their elementary and high schools to serve 5th through 8th grade students would likely result in doing harm to the education of the students at both middle schools. Having two middle school populations for such a small number of students will result in a lack of economy of scale and wasted resources. Further, making this change so close to the beginning of the school year provides inadequate time to make all of the major, necessary changes to readjust the programs for both systems in time for the beginning of the school year. This will negatively affect the education of these middle school students.

St. Helena has enough students in the elementary and high schools to somewhat achieve a level of economy of scale to make smaller middle school grades work. However, the RSD does not have that advantage. Reducing the student population at the RSD middle school would put the RSD middle school at a severe financial disadvantage, which would hinder the RSD from providing the best education possible for the middle school students.

For 2013-2014, there are a number of fixed costs that will remain at St. Helena Middle School, regardless of the size of the student population. These include costs such as maintenance and custodial (\$105,154) utilities (\$51,459), and supplies that have already been ordered (\$31,200). If the student population decreases, there will be less MFP funds available to cover these fixed costs, which will result in a disproportionate amount of funds to cover instructional costs at the school.

B. CHANGES IN GOVERNANCE

Making a change in governance at this point in the school year negatively affects parents and students. St. Helena Middle School begins on August 6th, which is 14 school days away (as of July 17th).

If a change in governance or grade reconfiguration change occurs, both schools will have to implement new, last-minute enrollment procedures. RSD 6th, 7th, and 8th graders have already enrolled at St. Helena Middle School by submitting their “intent to return forms.”

- i. The RSD still has not officially enrolled the 5th grade students at St. Helena Middle School, because Superintendent Joseph has refused to turn over the 4th grade roster information to the RSD. However, it is worth noting that the RSD gave St. Helena 8th grade roster information in early May so that St. Helena could have the necessary information to enroll these students in 9th grade at St. Helena High School.

A change in governance or grade reconfiguration change would also necessitate last minute personnel changes. St. Helena Middle School currently has a staff of twenty-five people. If the middle school is returned to St. Helena or St. Helena is allowed to serve middle school students, the RSD will need to terminate teachers. Teachers are scheduled to start work on August 1, 2013. Given the timeline, the RSD will likely have to pay the staff at least one paycheck before termination, which will result in the RSD losing a substantial amount of money.

A change in governance or grade reconfiguration change would also require the RSD to amend or cancel a number of contracts with vendors and service providers. The RSD has entered into several service contracts for the upcoming school year including a maintenance and custodial contract, a food service contract, and pest and waste disposal service agreements. We are also in an agreement with Southeast Community Health Center to provide physical and mental health services for the students at St. Helena Middle School.

Sports, clubs, and extracurricular activities have already been established for the school year, and students are looking forward to participating in these teams and clubs. If St. Helena began serving middle school grades, these teams and clubs would lose members and the school might not have enough enrollment or resources to maintain these programs.

A grade reconfiguration change would also require the RSD to substantially revise its budget based on decreased enrollment.

Also, in order to formalize and fully implement a change in governance or grade reconfiguration change, St. Helena and the RSD would have to complete a

number of procedures required by the Louisiana Department of Education's finance and accountability offices that have already been completed for all other school systems in the state.

C. PAST PERFORMANCE

St. Helena School System has argued that its past performance has earned it the opportunity to add middle school grades to its existing schools. However, an examination of the past performance of the St. Helena School System shows that each of its schools, for the 2010-11 and the 2011-12 school years, have performed in the Academically Unacceptable category. The chart below shows the school performance scores for the elementary and high schools in St. Helena. Although some of its scores show significant gains in 2012, the 2013 iLeap testing showed a significant decline (Exhibit RSD-3 at June 13, 2013 hearing). The entire St. Helena System has historically been a very low performing system over the past 8 years. The facts presented at the hearing simply do not provide evidence or record of consistent improvement in school performance by the St. Helena Parish School System.

School	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	MOU began in Jan 2009	2008-2009	2009-2010	Transferred to RSD at beginning of 2010-11 school year	2010-2011	2011-2012
St. Helena Central High School	60.1	64.8	51.8 AUS	44.7 AUS	56.8 AUS	63		64.6	63.7		51.4 AUS	64.8 AUS
St. Helena Central Elem School	53.9	64.1	63.7	57.6 AUS	61.5	63.1		68.2	64.3		57.3 AUS	69.7 AUS

St. Helena further argues that it is now in a position to better fiscally handle or manage the School System's finances. However, the School System's own budget projections indicate that it is in a fiscal deficit and project that its expenses will exceed its revenues through the year 2016. It projects that during that time it will use funds from its reserves to cover this deficit. Although its projections show that its fiscal deficit should decline over the next three years, the System is, nevertheless, in a deficit situation and over the past several years has existed in a deplorable fiscal and an even more deplorable facilities condition. The System has not yet been able to show that it can achieve and maintain substantial improvements in its physical or fiscal condition.

D. STATE AND FEDERAL LAW

Both the Federal (No Child Left Behind Act) and State law La. R.S. 17:10.5 require the State to take action with regard to a school that is judged Academically Unacceptable for four (4) consecutive years. The State has chosen to establish the RSD and to place those schools deemed Academically Unacceptable under the jurisdiction of the RSD for a minimum term of five (5) years [La. R.S. 17:10.5 C]. This attempt to improve unacceptable public schools is a racially neutral remedy chosen by the State to repair failing schools. It should be allowed to function unless this Court finds that it interferes with its desegregation Order. There has been no finding or evidence placed before the Court that would indicate that it is interfering or has interfered in the past with any of the Court's desegregation Orders.

St. Helena points to La. R.S. 17:10.5 D to say that the parish is required to operate a school in which parents may exercise their option to enroll their students rather than at an RSD school. This provision must be read to mean the option is available if there is another parish school available. Otherwise, in a district with only one school, transfer to the RSD would be useless or meaningless if the local district can simply reopen the same grades at another site.¹

¹ This requirement should be viewed in context of the related federal laws and BESE policies to determine its true meaning.

- I. Pursuant to the federal Elementary and Secondary Education Act (ESEA), school systems must offer “school choice” to students who are assigned to attend failing schools. Students must be provided with an option to attend another, *non-failing* school in the district.
 - a. The relevant provision of the ESEA requires local educational agencies (LEAs) to provide the opportunity to transfer to another public school in the LEA to students enrolled in Title I schools that have been identified for school improvement, corrective action, or restructuring. The provisions of the ESEA that set forth these requirements include provisions in Sections 1116(b)(1)(E), 1116(b)(1)(F), 1116(b)(5)(A), 1116(b)(6)(F), 1116(b)(7)(C)(i), 1116(b)(8)(A)(i), and 1116(b)(9) through 1116(b)(13). <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf>
 - b. The school choice provision of NCLB addresses what occurs when a school is located in a remote area or there are no non-failing school alternatives.
 - i. When there are no non-failing school alternatives the school must, to the extent practicable, enter into cooperative agreements with other LEAs in the area (or with charter and virtual schools in the State) that can accept its students as transfers. <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf>
 - ii. When a school is located in a remote area, the school is still put on notice that it is a failing school and required to notify the parents of the students that the school is failing. However, because there are no non-failing school alternatives available the school choice provision of NCLB is not enforced. <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf>
 - iii. These are the only exceptions to the school choice provision of NCLB.
- II. BESE policy - Bulletin 111 – The Louisiana School, District, and State Accountability System
 - a. Sections 1603 and 2501 of Bulletin 111 requires that beginning with a school’s first year of failing, the school system must provide students assigned to the failing school the option to transfer to a *non-failing* school.
 - b. Subsection C of §2505 in Bulletin 111 states that students may not transfer to any school that is academically unacceptable.

CONCLUSION

The St. Helena Middle School and its grades were placed under the jurisdiction of the Recovery School District because they were Academically Unacceptable. This transfer was made pursuant to the State and Federal law and after a hearing before this honorable court. To allow the St. Helena School District to reconfigure its existing schools to add the middle school grades would be to frustrate and circumvent Louisiana's current effort to improve Academically Unacceptable schools. There is no basis in fact or in law for this court to grant St. Helena's motion. For the reasons articulated above, the motion should be denied.

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- c. Subsection D of §2505 states that if there are no schools to which students can transfer, parents must be notified that the child is eligible for school choice. The notification will further indicate that no choice options are currently available. www.doa.louisiana.gov/osr/lac/28v83/28v83.doc
 - III. Prior to transfer to the RSD, St. Helena Middle School was labeled Academically Unacceptable and determined to be a failing school for four consecutive years. During these four years, because St. Helena did not have a non-failing option for the students, St. Helena was not able to provide school choice, and was not required to do so by the Louisiana Department of Education.
 - a. Similarly, St. Helena was not required last year to provide school choice for its elementary and high schools, which are also both failing/Academically Unacceptable.
 - IV. After four consecutive years of failing, the RSD law (R.S. 17:10.5) comes into play, and the RSD takes jurisdiction of the school for a minimum five year period to turn around the school.
 - a. The part of the RSD law, La. R.S. 17:10.5, that requires the school board provide an option for attendance other than the RSD school was meant to function as a legal mechanism to continue the School Choice provision for failing schools required by the federal ESEA and BESE policy in Bulletin 111, wherein the previous year, prior to RSD intervention,, students zoned to the failing school were given the option to attend a non-failing school in the district. This portion of the RSD law ensures that those students would continue to have the option to attend a non-failing school in the district, even if they are zoned to the failing (now RSD-run) school.

Because St. Helena was never subject to the School Choice requirement for St. Helena Middle School to begin with, the School Choice provision included in the RSD law (R.S. 17:10.5) is inapplicable. There is still no other non-failing option for middle school students in St. Helena school system. Providing a choice to attend St. Helena Elementary or High School merely provides an additional *failing* option for those students.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing has been filed in the CM/ECF system this 17th day of July, 2013 and counsel for all parties are receiving notice of this electronically.

s/Winston G. DeCuir, Sr.
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