



NEWS RELEASE

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ARKANSAS DEPARTMENT OF EDUCATION FILES PETITION WITH SUPREME COURT

On July 19, the Arkansas Department of Education (ADE) filed a petition for writs of certiorari and prohibition, or in the alternative, for an expedited appeal concerning the Pulaski County Circuit Court ruling in the matter of Ron Crawford et al. against the Arkansas State Board of Education and ADE. In the Circuit Court ruling, Judge Jay Moody issued a temporary restraining order preventing the closure of Paron High School by the Bryant School District and ordered that the Bryant School District become a co-defendant in the case.

"We are hoping that the Supreme Court sees fit to act on these petitions quickly," said Dr. Ken James, Arkansas Commissioner of Education. "The first day of school is just a month away, and for the good of the students, the parents, the teachers and the administrators in the Bryant School District, the sooner we have resolution, the sooner the focus can return to teaching and learning."

The ADE petition requests the Supreme Court to review and dismiss the action without a formal appeal on the following grounds:

- The Bryant School District was plainly a necessary party to this case from its inception. "The Circuit Court's recognition that Bryant was a necessary party to the litigation under rule 19(a) was correct, but the

Circuit Court fatally erred in entering a substantive ruling and order that directly impacts the Bryant School District before the Bryant District was made a party and was given an opportunity to contest the entry of any such order. By the time plaintiffs amended the complaint and served Bryant, the TRO was already in effect, an Order entered without giving Bryant the opportunity to, among other things, appear through counsel, present its own witnesses and evidence, and cross-examine the witnesses called by the plaintiffs. The practical effect was the entry of an order that directly and substantially impacted the Bryant School District without affording the district any 'process' at all, much less 'due' process."

- Also, the Court plainly erred in holding that the Administrative Procedures Act (APA) applied to the State Board's action because the "APA does not confer Circuit Court jurisdiction for the review of any and all agency action." While the APA confers limited subject matter jurisdiction for judicial review of agency "rulemaking" or "adjudications," the State Board's actions were neither. The petition contends that it is clear that State Board approval of local school closure decisions is not subject to judicial review under the APA. In reviewing similar statutes, "it is plain that when the General Assembly intends the decisions of the State Board in such matters to be subject to review under the APA, the General Assembly knows how to expressly so provide."
- There is no other arguable legal basis to uphold the temporary restraining order. While the Supreme Court found in its 2002 Lake View decision that the State has an " 'absolute duty' to see to it that all school children in Arkansas receive an 'adequate' education, nothing in Lake View suggests that the State's duty requires the State to assure that the 'adequate' education is provided at a site designated or preferred by individual students or parents." The Supreme Court also has long held that the General Assembly may control the arrangement and management of school districts at will. In addition, the Supreme

Court determined in *Evans v. McKinney* (1962) that two-hour bus rides necessary for some students due to the closing of a school campus did not invalidate a school district's authority to close that campus.

In the petition, ADE request that the Court issue the writs immediately or, if it does not decide to do so, that the Court expedite ADE's petition for an appeal of the order.

—ADE—

The Arkansas Department of Education strives to ensure that all children in the state have access to a quality education by providing educators, administrators and staff with leadership, resources and training.