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**PUBLIC SCHOOL CHOICE AND DESEGREGATION IN ARKANSAS**

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## Table of Contents

I.	Executive Summary .....	3
II.	Introduction.....	4
III.	Arkansas Public School Choice Act of 1989.....	6
IV.	Act 1227: Public School Choice Act of 2013.....	7
V.	Desegregation Exemptions .....	10
VI.	Characteristics of Act 1227-Exempt Districts .....	13
VII.	Challenges to Desegregation Exemptions.....	16
VIII.	Conclusions and Recommendations .....	17

## I. EXECUTIVE SUMMARY

In the 89<sup>th</sup> General Assembly, the Arkansas legislature passed The Public School Choice Act of 2013 (Act 1227 of 2013<sup>1</sup>). The law repealed the Public School Choice Act of 1989, which was declared unconstitutional in 2012 by a federal court in *Teague v. Arkansas Board of Education*. The 1989 law allowed students to transfer to a nonresident district based on race.<sup>2</sup> Following suit of similar cases in other states, the court struck down this law, stating that it violated the Equal Protection Clause of the Fourteenth Amendment.

Act 1227 allows students to switch districts regardless of race. However, the new law created certain restrictions on transfers. First, transfers cannot result in a net change in the district's average daily membership of more than 3%. Furthermore, districts can limit transfers in if they would require additional teachers, staff, or classrooms. The last restriction, and the main focus of this report, is that districts that are under desegregation orders can declare themselves exempt from allowing students to transfer into or out of the district.

In the 2013-14 school year, twenty-three districts have declared exemptions based on desegregation orders. The purpose of the desegregation exemptions is to prevent the resegregation of schools. However, in doing so, it seems that the Act, however well-intentioned, has had the practical effect of denying school choice to students in districts that are typically among the lowest-performing in the state. Districts that are exempt from Act 1227 had a higher proportion of ethnic and racial minorities and students eligible for Free or Reduced Lunch (FRL) than non-exempt districts. In addition, exempt districts have lower student achievement and graduation rates, on average, than non-exempt districts.

A number of families in exempted districts have challenged their rejected applications for transfer by bringing suits to court and filing appeals to the State Board of Education. To date, 24 appeals of denials of school choice applications have been filed to the State Board of Education. Also, a group of parents in Blytheville are challenging the Blytheville School District's desegregation exemption in a lawsuit. A decision in this case would likely have implications for the law as a whole.

Act 1227 expires July 1, 2015, so in two years, at a maximum, it will be up to the legislature to decide the future of school choice laws in Arkansas. In the meantime, we recommend that the Department of Education exercise meaningful oversight for which districts are granted exemptions based on desegregation exemptions, conduct a legal analysis of the cited desegregation exemptions, and provide study the impact of the law on different subgroups of students. In the future, we recommend that a law requires districts to admit students by lottery rather than on a "first-come, first serve" basis and consider the role of providing transportation to students in school choice.

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<sup>1</sup> Ark. Laws §§ 6-18-206 to -1909.

<sup>2</sup> A student could transfer to a nonresident district in which the percentage of enrollment for the student's race did not exceed the percentage in the student's resident district

## II. INTRODUCTION

Public school choice is an umbrella term for policies that allow students to enroll in a public school other than their residentially-assigned school. Public school choice, also called open-enrollment, is typically divided into two categories: intra-district choice, transfers to schools in the same district, and inter-district choice, transfers to schools in other districts.

Proponents of public school choice often claim that public school choice increases competition between schools, inciting schools or districts to improve in order to retain or attract students<sup>3</sup>. They also assert that open-enrollment policies result in more equitable outcomes, giving students from low socioeconomic backgrounds the same opportunity to obtain a high-quality education as students from higher socioeconomic backgrounds who can afford to live in higher-achieving districts. Finally, proponents argue that public school choice can allow schools and districts to find a particular niche, facilitating a better school fit and increasing parent and student satisfaction with the school.

On the other hand, critics believe that public school choice will disproportionately harm lower-income students because the more advantaged and ambitious students in districts will leave, leaving school districts more economically and racially segregated and with fewer motivated students and parents. Additionally, schools that lose large numbers of students will also lose the funding that follows those students, making it even more difficult for them to improve.

Twenty-one states have inter-district public school choice programs and 22 have intra-district open-enrollment public school choice programs. The policies and implementation of public school choice programs vary state by state, but most programs share the following common traits:

- State and local funding typically follows the student.
- Programs typically provide an opt-out provision for districts and schools based on capacity.
- Transfers cannot supersede a court-ordered desegregation plan.
- Districts are often given the power to create their own standards or hierarchy for accepting students but are generally prohibited from accepting or rejecting students based on achievement, extracurricular or athletic ability, disabilities, and/or proficiency in English.<sup>4</sup>

As was mentioned above, the impact of public school choice programs on desegregation efforts in districts is a common concern. Two examples, Minnesota's Statewide Open Enrollment program and Hartford, CT's Open Choice Program, may provide some justification for these concerns. The Twin Cities of Minnesota experienced increased segregation as a result of its open enrollment program, mostly due to white students transferring to already white districts. On the

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<sup>3</sup> Mikulecky, M. T. (2013, June). *Open Enrollment is on the Menu - But Can You Order It?* Retrieved from <http://www.ecs.org/clearinghouse/01/07/96/10796.pdf>

<sup>4</sup> Mikulecky, M. T. (2013, June). *Open Enrollment is on the Menu - But Can You Order It?* Retrieved from <http://www.ecs.org/clearinghouse/01/07/96/10796.pdf>

other hand, Hartford's Open Choice Program, which was set up specifically to create more racial balance, has decreased segregation but not to the extent desired. It is important to note that both of these cases are in urban areas located in the North and Midwest, which have not had the same history of legalized segregation as in many southern states like Arkansas.

Arkansas' new public school choice law, Act 1227 of 2013<sup>5</sup> or the "Public School Choice Act of 2013," was passed by both Houses, signed into law by Governor Beebe, and became effective April 16, 2013. This law repealed the School Choice Act of 1989, which had recently been declared unconstitutional due to its race-based provision, which, in effect, denied students the opportunity to transfer districts based solely on their race. The new law allows students to switch districts regardless of race and will remain in effect until July 1, 2015.

Despite the removal of the race-based provision, the Public School Choice Act of 2013 still places restrictions on inter-district transfers: transfers cannot result in a net change in the district's average daily membership of more than 3%; districts can limit transfers in if they would require additional teachers, staff, or classrooms; and districts that are under desegregation orders can declare themselves exempt from allowing students to transfer into or out of the district. For the 2013-14 school year, 23 districts have declared exemptions based on desegregation orders. Families in exempted districts have challenged their rejected applications for transfer, bringing suits to court and filing appeals to the State Board of Education.

In this report, we describe the 1989 and 2013 school choice laws, the legal basis for the desegregation exemptions, the demographic and academic characteristics of exempt districts, and the challenges that have been raised to the new school choice law. Finally, we make recommendations for changes to the law to be made during the 2015 legislative session.

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<sup>5</sup>Public School Choice Act of 2013, Ark. Laws §§ 6-18-206 to -1909 (2013). Retrieved from <http://www.arkleg.state.ar.us/assembly/2013/2013R/Acts/Act1227.pdf>.

### III. ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 1989

The Arkansas Public School Choice Act of 1989 enabled “any student to attend a school in a district in which the student does not reside,” subject to the following restriction: “no student may transfer to a nonresident district where the percentage of enrollment for the student’s race exceeds the percentage in the student’s resident district.”<sup>6</sup> For example, a white student could not transfer to a district with a higher percentage of white students than his previous district. The only exception to this restriction was that if the transfer is between two districts within the same county and the percentages of minority and majority races remain within an acceptable range, the transfer may be allowed. The General Assembly included the limitation based on race to fend off possibilities of student transfers leading to increased racial segregation in schools across the state. Ironically, however, this provision that was included to ward off racial segregation had the effect of denying transfers to some students solely because of their race. Not surprisingly, this led to a continued concern that the law might be overturned.

The fear of this 1989 law being ruled unconstitutional became more real in 2007 with the Supreme Court’s ruling in *Meredith v. Jefferson County Board of Education* and *Parents Involved in Community Schools v. Seattle School District No.1*. In these cases, the Supreme Court ruled that race cannot be the sole factor in determining whether students can transfer between school districts in Louisville and Seattle.<sup>7</sup> As expected, after the rulings in Louisville and Seattle, Arkansas’s School Choice Act of 1989 was challenged in *Teague v. Arkansas Board of Education* and was ruled unconstitutional by the US District Court in June 2012. The decision was appealed, and in January 2013, the 8th US Circuit Court of Appeals in St. Louis heard oral arguments of the case. At the same time, the Arkansas legislature was meeting and developing Senate Bill 65, which later became Act 1227. On July 25<sup>th</sup>, 2013, the 8th US Circuit Court of Appeals rendered the case moot due to the fact that the Public School Choice Act of 2013 repealed the Public School Choice Act of 1989 in its entirety.<sup>8</sup>

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<sup>6</sup> Arkansas Public School Choice Act of 1989, Ark. Laws §§ 6-18-206 (1989). Retrieved from <http://law.justia.com/codes/arkansas/2010/title-6/subtitle-2/chapter-18/subchapter-2/6-18-206>

<sup>7</sup> Office for Education Policy, University of Arkansas. (2008, December). How Does 2007 Seattle Decision affect Arkansas? *Policy Brief*, 5(7). Retrieved from [http://www.uark.edu/ua/oep/policy\\_briefs/2008/Seattle\\_Decision.pdf](http://www.uark.edu/ua/oep/policy_briefs/2008/Seattle_Decision.pdf)

<sup>8</sup> *Teague v. Arkansas Board of Education*, Nos. 12-2413, 12-2418 (D. Arkansas 2013). Retrieved from <http://media.ca8.uscourts.gov/opndir/13/07/122413P.pdf>

## IV. ACT 1227: PUBLIC SCHOOL CHOICE ACT OF 2013

During the recent legislative session, lawmakers grappled with strategies for modifying Arkansas' public school choice statutes in an attempt to meet three broad goals: (1) offer choice to parents to choose public schools within the state; (2) guard against regulations that would lead to greater levels of racial segregation between AR school districts, and (3) avoid unconstitutional requirements, such as those that limited the options of a student based on his or her own race.

Act 1227 of 2013,<sup>9</sup> or the "Public School Choice Act of 2013," repeals the School Choice Act of 1989 and puts into place a new school choice law that allows students to switch districts regardless of race.<sup>10</sup> The new law will remain in effect until July 1, 2015.

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### Evolution of Senate Bill 65 (SB65) into Act 1227

- Senator Johnny Key's (R-Mountain Home) first proposal of SB65 sought to allow an unlimited number of students to transfer to another school district, unless they reside in a district that has a pending desegregation court order.
  - Senator Joyce Elliot (D-Little Rock) filed SB114 which allowed districts under desegregation orders to claim exemptions from the school choice law, a stipulation that Senator Key later included in his amendments.
  - Senator Key included amendments to original bill to create 3% net cap.
  - Senator Elliot voiced her support for Senator Key's amended bill.
  - Act 1227 passed and was signed by Governor Mike Beebe.
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#### A. Operational Details

In order to transfer a student to a nonresident district for the 2013-2014 school year, families were required to submit their applications no later than June 1<sup>st</sup>. This deadline left families with about a month and a half to submit their applications, a two-page document asking for information about the student and the resident and nonresident districts.

#### Publicity

To build awareness of the program among parents, the law requires superintendents to make public announcements via broadcast media, print media or the Internet in adjoining districts about the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

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<sup>9</sup> Public School Choice Act of 2013, Ark. Laws §§ 6-18-206 to -1909 (2013). Retrieved from <http://www.arkleg.state.ar.us/assembly/2013/2013R/Acts/Act1227.pdf>.

<sup>10</sup> Act 1334, "Act to Preserve the Continuity of Education for Students who Attend Nonresident Schools Under the Arkansas Public School Choice Act of 1989," was passed to allow students who were previously "choiced" into nonresident districts under the Public School Choice Act of 1989 to remain in their current districts until they complete their secondary education. In addition, Act 1334 allows a present or future sibling of a student who attends school in a nonresident district to enroll or continue enrollment in the nonresident district until the sibling completes his or her secondary education, as long as the district has the capacity.

## **Admissions**

Act 1227 requires each school district to “adopt by resolution specific standards for acceptance and rejection of applications under this subchapter.” These standards may include capacity, class, grade level, or school building but shall not include academic achievement, athletic or other extracurricular ability, English proficiency, disciplinary proceedings other than expulsions from another district, gender, national origin, race, ethnicity, religion, or disability. Though the rules do not explicitly require that students be admitted on a first come-first serve basis, they do require that students whose applications were not accepted due to the 3% limit be given priority for a transfer in the following year “in the order that the resident district receives notices of applications.” Additionally, each district must give priority to an applicant who has a sibling or stepsibling who resides in the same household.

## **Transportation**

If a student’s transfer request is accepted, the student or student’s parents are responsible for transportation to school, unless they are able to get a written agreement from the nonresident district to provide transportation. It is also important to note that parents of students that are granted a district transfer do not necessarily get to choose the school within the district that their child will attend. This could potentially limit the desirability of seeking a school choice transfer since the quality of schools can vary considerably within a district, though it is irrelevant for many small rural districts that only have one school at each level.

If a family’s request is denied, they “may request a hearing before the State Board of Education to reconsider the transfer by filing such a request in writing with the Commissioner of Education no later than ten (10) days after the student or student’s parent receives a notice of rejection.” Such an appeal requires a hearing before the State Board of Education.

## **Data Collection**

Act 1227 requires the Department of Education to collect data from school districts on the number of applications for student transfers and study the effects of school choice transfers on the racial balance of the resident and nonresident districts. By October 1<sup>st</sup> of each year, the department is required to report its findings from the study of this data to the House and Senate Committees on Education.<sup>11</sup>

## **B. Restrictions**

The Public School Choice Act of 2013 still places restrictions on inter-district transfers. Transfers cannot result in a net change in the district’s average daily membership of more than 3%, districts can limit transfers in if they would require additional teachers, staff, or classrooms, and districts that are under desegregation orders can declare themselves exempt from allowing students to transfer into or out of the district.

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<sup>11</sup> Public School Choice Act of 2013, Ark. Laws §§ 6-18-206 to -1909 (2013). Retrieved from <http://www.arkleg.state.ar.us/assembly/2013/2013R/Acts/Act1227.pdf>.



### **3% Limit on Transfers**

Act 1227 sets a maximum limit on the number of school transfers each school year of a net 3% change in the district's average daily membership (ADM) from the prior year. The net change is calculated as the absolute value of the number of school choice transfers *from* a school district, less any school transfers *into* the school district.

Formula for 3% Net Change:

$$.03(\text{ADM}) = |\text{Transfers Out} - \text{Transfers In}|$$

If School District A has 1,000 students, the district can gain or lose 30 students. For instance, a maximum of 30 students can leave the district through school choice if no students transfer into School District A. If 7 students from School District B transfer into School District A, then a total of 37 students can leave School District A because the net change will still be 30 or 3%.

### **Additional Capacity**

Act 1227 also allows districts to limit transfers in if they would require additional teachers, staff, or classrooms.

### **Desegregation Exemptions**

Finally, districts that are subject to one or more desegregation cases are exempt from the law. Details of the desegregation exemptions will be discussed at length in Section V.

## V. DESEGREGATION EXEMPTIONS

A district can declare an exemption from participating as either a receiving or a sending district if it is “subject to the desegregation order or mandate of a federal court or agency remedying the effects of past racial segregation.”

Act 1227 requires districts that are claiming an exemption to notify the Arkansas Department of Education (ADE). There does not appear to be a process for the ADE to evaluate the validity of these exemptions, determining, for instance, whether the court order that the exemption is based on is still in effect. According to ADE attorney Jeremy Lasiter, the state does not yet have a comprehensive list of districts that are currently under federal desegregation orders.<sup>12</sup>

Act 1227 includes a deadline of April 1 to file an exemption, but it was not signed into law by Governor Beebe until April 16, leaving some uncertainty about interpretation of this law. In order to try to clear this up, the Department of Education asked in a Memorandum dated May 1 that the ADE be notified of any exemptions by May 17, 2013 so that they could administer all aspects of Act 1227 in an “orderly fashion.”<sup>13</sup>

### Legal Precedents

Twenty-three districts declared exemptions based on desegregation orders for the 2013-14 school year. The purpose of the desegregation exemptions is to prevent the resegregation of schools. In addition, legally, a state law cannot supersede a federal court order. As was discussed earlier, restrictions based on desegregation are a common characteristic of many open enrollment programs across the country.<sup>14</sup>

For the purposes of this report, a specific court case is one that applies to the district specifically, as opposed to a federal Supreme Court case like *Brown v. Board of Education*. As can be seen in Table 1, six of the 23 districts did not cite a specific court case in their notification of their desegregation exemption. At least two districts that we know are under federal court supervision for desegregation (Little Rock and Pulaski County Special) did not cite cases in their notification of their desegregation exemption. It is possible that other districts that did not cite a case actually have one but failed to report it in their notification of exemption.

Eleven of the 23 exemptions refer to the *Brown v. Board* decision of 1954 and the 1969 desegregation orders from the United States Department of Health, Education, and Welfare. These original mandates could technically be applied to any school district in the country and, therefore, do not seem legitimate for school choice exemptions.

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<sup>12</sup> Blad, E. (2013, August 13). State board urges redo of school choice act. *Arkansas Democrat-Gazette*. Retrieved from <http://www.arkansasonline.com/news/2013/aug/13/state-board-urges-redo-school-choice-act-20130813/>.

<sup>13</sup> Lasiter, J. (2013, May 1). The Public School Choice Act of 2013. Memorandum. Retrieved from <http://adesharepoint2.arkansas.gov/memos/Lists/Approved%20Memos/DispForm2.aspx?ID=908&Source=http%3A%2F%2Fadesharepoint2.arkansas.gov%2Fmemos%2Fdefault.aspx>

<sup>14</sup> Mikulecky, M. T. (2013, June). *Open Enrollment is on the Menu - But Can You Order It?* Retrieved from <http://www.ecs.org/clearinghouse/01/07/96/10796.pdf>

Table 1: Desegregation Court Cases Cited by District<sup>15</sup>

DISTRICT	SPECIFIC COURT CASE(S) CITED
<b>Arkadelphia</b>	No specific court case cited
<b>Blytheville*</b>	<i>Harvell, et al. v. Ladd, et al.</i> , United States District Court, Eastern District of Arkansas, Case No. J-C-89-225 <i>Franklin, et al. v. Board of Education of the Blytheville School District No. 5, et al.</i> , United States District Court, Eastern District of Arkansas, Case No. J-71-C-35
<b>Camden-Fairview*</b>	<i>Milton, et al. v. Huckabee, et al.</i> , United States District Court, Western District of Arkansas, El Dorado Division, Case No. 88-1142 <i>Lancaster, et al. v. Guess, et al.</i> , United States District Court, Western District of Arkansas, El Dorado Division, Case No. 09-CV-1056
<b>Cutter Morning Star**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Dollarway* ***</b>	No specific court case cited
<b>El Dorado*</b>	<i>Kemp, et al. v. Beasley, et al.</i> , United States District Court, Western District of Arkansas, El Dorado Division, Case No. ED-1048 <i>Townsend, et al. v. Watson, et al.</i> , United States District Court, Western District of Arkansas, El Dorado Division, Case No. 89-CV-1111
<b>Forrest City*</b>	<i>McKissik, et al. v. Forrest City School District, et al.</i> , US District Court of Eastern District of Arkansas, Eastern Division, Case Number Civil No. H-69-C-42
<b>Fountain Lake**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Helena-West Helena*</b>	<i>United States of America v. Helena West Helena School District, et al.</i> , US District Court of Eastern District of Arkansas, Eastern Division, Case Number Civil No. H-70C-10
<b>Hope*</b>	<i>Davis, et al. v. Franks, et al.</i> , United States District Court, Western District of Arkansas, Texarkana Division, Case No. 88-4082.
<b>Hot Springs**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Jessieville**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Junction City*</b>	Suit against Junction City School District No. 75 in the United States District Court for the Western District of Arkansas, El Dorado Division, Civil Action No 1095
<b>Lake Hamilton**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Lakeside (Chicot)</b>	No specific court case cited
<b>Lakeside (Garland)**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Little Rock</b>	No specific court case cited
<b>Marvell*</b>	<i>Jackson, et al. v. Marvell School District</i> , 425 F2d 211 (1970), U.S. Court of Appeals, Eight Circuit <i>Fields v. Marvell School District</i> , 102 SW 3 <sup>rd</sup> 502, 352 Ark. 483 (2003)
<b>Mountain Pine**</b>	<i>W.T. Davis, et al. v. Hot Springs School District, et al.</i> , Case No. 89-6088
<b>Pulaski County Special</b>	No specific court case cited
<b>South Conway County</b>	Case number LR-72-C-290; United States Court Eastern District of Arkansas; United States of America, Plaintiff v. Arch Ford, Director of State Department of Education and Members of Department of Education; Wonderview School District; Nemo Vista School District; Morrilton School District; East Side School District; Plummerville School District; Conway County School District No. 1, Defendants
<b>Stephens*</b>	<i>Milton, et al. v. Huckabee, et al.</i> , United States District Court, Western District of Arkansas, El Dorado Division, Case No. 69-C-42 <i>Ronald Runyan v McNeil School District</i> , United States District Court, Western District of Arkansas, El Dorado Division
<b>Texarkana*</b>	No specific court case cited

\*Cites *United States Supreme Court in Brown v. Board of Education of Topeka, Kansas* (1954) and 1969 mandate from the federal department of Health, Education, and Welfare

\*\* Operate under Act 609 of 1989 (all Garland County districts)

\*\*\* Dollarway's school district is state. Dr. Kimbrell allowed superintendent to make decision about whether would pursue exemption

<sup>15</sup> Retrieved from <http://www.arkansased.org/divisions/public-school-accountability/equity-assistance/school-choice>

All seven school districts in Garland County districts cited the same case, *W.T. Davis, et al. v. Hot Springs School District, et al.*, for their desegregation exemptions. Even though the 1989 school choice law was declared unconstitutional, a U.S. district judge ruled on June 10<sup>th</sup>, 2013 in *W.T. Davis, et al. v. Hot Springs School District, et al.* that Garland County school districts must continue to operate under the 1989 law and its race-based restriction.<sup>16</sup>

Many questions remain for the other ten districts that cited specific court cases and are not in Garland County. Many of the court orders cited were issued decades ago, and it is unclear whether obligations have been met or if they still apply to current transfers. For example, attorney Jess Askew, who is representing parents in the Blytheville School District, said that the *Franklin, et al. v. Board of Education of the Blytheville School District* desegregation case was filed in 1970 and dismissed in 1978.<sup>17</sup> The other case cited, *Harvell v. Ladd*, is a Voting Civil Rights Act case from 1996 and is unrelated to desegregation, according to Askew.

Even if districts are under a legitimate desegregation order, many school districts remain under desegregation orders for decades and not necessarily because they fail to desegregate. According to a Note in *The Yale Law Journal*, districts can remain under court supervision indefinitely when the court removes the case from its active docket if an outside party does not bring a problem to the court's attention.<sup>18</sup>

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<sup>16</sup> Blad, E. (2013, August 13). State board urges redo of school choice act. *Arkansas Democrat-Gazette*. Retrieved from <http://www.arkansasonline.com/news/2013/aug/13/state-board-urges-redo-school-choice-act-20130813/>.

<sup>17</sup> Moritz, R. (2013, May 21). Lawsuit filed against Blytheville School District over school choice. *Arkansas News*. Retrieved from <http://arkansasnews.com/sections/news/lawsuit-filed-against-blytheville-school-district-over-school-choice.html>

<sup>18</sup> Moore, M. L. (2002). Unclear Standards Create an Unclear Future: Developing a Better Definition of Unitary Status. *The Yale Law Journal*, 112 (311). Retrieved from <http://yalelawjournal.org/the-yale-law-journal/content-pages/unclear-standards-create-an-unclear-future:-developing-a-better-definition-of-unitary-status/>

## VI. CHARACTERISTICS OF ACT 1227-EXEMPT DISTRICTS

Twenty-three districts have claimed exemptions from Act 1227 for the 2013-2014 school year, citing desegregation orders.<sup>19</sup> So what are the characteristics of districts declaring desegregation exemptions? To analyze what types of districts filed for exemptions as compared to those that did not, we examined 2011-12 demographic data, change in enrollment from 2009-12, 2011-12 math and literacy Benchmark exam achievement, and 2011-12 graduation rates (see Table 2). Districts that are exempt from Act 1227 had a higher proportion of ethnic and racial minorities and students eligible for Free or Reduced Lunch (FRL) than non-exempt districts. In exempt districts, 61% of students are non-white, compared to 30% for districts that were not exempt. The percent of students eligible for FRL was 68% for exempt districts, compared to 59% for schools that were not exempt. Schools in exempt districts also have suffered from declining enrollment; exempt districts have lost about 4% of their enrollment as compared to non-exempt districts, which have seen a 2% increase in enrollment over the past three years. In addition, exempt districts have lower student achievement and graduation rates, on average, than non-exempt districts.

The fact that districts that declared exemptions have a higher proportion of minority students is consistent with the idea that districts are declaring exemptions for their stated purpose, to prevent the resegregation of schools. It is also possible, however, that districts may be declaring exemptions for other reasons. Districts with exemptions, which have lower student performance than non-exempt districts, may be claiming exemptions out of fear of losing students to districts with higher test scores or stronger academic programs. Districts may also be concerned about losing more advantaged students, students who are not eligible for free or reduced lunch, to districts with higher proportions of advantaged students. These scenarios are merely hypotheses, as it is impossible to discern districts' reasons for claiming exemptions. Also, minority status, poverty, and academic achievement are often very highly-correlated with one another, so it is possible that districts that pursued an exemption for desegregation reasons also happen to have an economically-disadvantaged student population and low academic performance.

Table 3 compares the academic performance of exempt districts to its contiguous districts. We define contiguous districts as those districts that share a border with another district. This table provides a finer comparison than Table 2 because it reflects the actual choice sets of families who may seek a school choice transfer. On average, Act 1227-exempt districts scored 3 percentage points lower in both math and literacy than their contiguous districts. Blytheville, for example, scores on average about 23 percentage points lower on the Benchmark in both math and literacy than its contiguous districts. Even in districts that do better on average than their neighboring districts, the districts usually have at least one nearby school district that performs significantly better. For example, the Lake Hamilton School District scores on average 8 percentage points higher than its contiguous districts in both math and literacy on the Benchmark but would still have to compete with nearby Lakeside (Garland), which scores about 5 percentage points higher on both of these tests. In fact, only one exempt district has higher

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<sup>19</sup> See <http://www.arkansased.org/divisions/public-school-accountability/equity-assistance/school-choice> for a list of exemptions.

scores than its contiguous districts. Lakeside (Garland) scores about 11% higher in both math and literacy than its contiguous districts, on average.

Table 2: Characteristics of Act 1227 Exempt Schools

Exempt District	# of Schools	2012 Enrollment	3-Yr Growth ('09-'12)	% White	% Non-White	% FRL	Combined % Proficient or Advanced*	Grad Rate**
Arkadelphia	5	1,974	-3%	57%	43%	55%	82%	80.3%
Blytheville	7	2,797	-10%	20%	80%	82%	57%	72.5%
Camden Fairview	5	2,425	-2%	33%	67%	75%	69%	82.2%
Cutter-Morning Star	2	596	-13%	83%	17%	66%	84%	87.8%
Dollarway	5	1,449	-17%	6%	94%	91%	62%	70.6%
El Dorado	8	4,581	-1%	42%	58%	62%	78%	81.8%
Forrest City	5	3,115	-9%	16%	84%	82%	55%	76.0%
Fountain Lake	3	1,229	2%	87%	13%	50%	85%	89.3%
Helena/ W. Helena	5	1,888	-27%	6%	94%	96%	59%	72.0%
Hope	5	2,460	-4%	25%	75%	85%	67%	80.8%
Hot Springs	8	3,709	1%	43%	57%	78%	72%	72.3%
Jessieville	3	873	-2%	92%	8%	70%	86%	84.0%
Junction City	2	518	-11%	66%	34%	68%	82%	86.7%
Lake Hamilton	6	4,311	9%	83%	17%	57%	87%	90.8%
Lakeside (Chicot)	5	1,144	-9%	13%	87%	83%	70%	80.8%
Lakeside (Garland)	4	3,088	5%	78%	22%	41%	92%	94.2%
Little Rock***	45	24,049	-2%	20%	80%	71%	66%	82.0%
Marvell	2	418	-34%	9%	91%	98%	65%	61.0%
Mountain Pine	2	561	-7%	84%	16%	74%	69%	75.7%
Pulaski Co. Special****	35	16,959	-3%	48%	52%	54%	75%	66.0%
So. Conway County	5	2,212	-4%	70%	30%	65%	85%	80.6%
Stephens	2	326	-12%	12%	88%	91%	61%	78.6%
Texarkana	8	4,307	-1%	44%	56%	69%	70%	81.1%
<b>Exempt Schools</b>	<b>177</b>	<b>84,989</b>	<b>-4%</b>	<b>39%</b>	<b>61%</b>	<b>68%</b>	<b>73%</b>	<b>78%</b>
<b>Other Schools</b>	<b>904</b>	<b>383,667</b>	<b>2%</b>	<b>70%</b>	<b>30%</b>	<b>59%</b>	<b>79%</b>	<b>87%</b>
<b>Arkansas</b>	<b>1,081</b>	<b>468,656</b>	<b>1%</b>	<b>65%</b>	<b>35%</b>	<b>61%</b>	<b>79%</b>	<b>85%</b>

All data are for the 2011-12 school year unless otherwise noted

\*Math and Literacy combined % Proficient or Advanced is based on the average of the percent of students in the district scoring proficient or advanced on their Math benchmark and the percent of students in the district scoring proficient or advanced on their Literacy benchmark. A perfect score of 100% on this measure would mean 100% of students scored proficient or advanced on both their Math and Literacy benchmarks. Benchmark tests are administered each spring to Arkansas students in grades 3-8.

\*\*Grad Rate weighted by high school enrollment. Only 4 districts had more than one high school: Blytheville (2), Hot Springs (2), Little Rock (5), and Pulaski County Special (6)

\*\*\*Excludes Fair Park Early Childhood Ctr, Woodruff Early Childhood Ctr and Alternative Agencies

\*\*\*\*Excludes Adkins Pre-K Center

Table 3: 2011-12 Student Achievement in Act 1227-Exempt Districts and Contiguous Districts

Exempt District	# of Adjacent Districts	Math and Literacy Combined % Proficient or Advanced				
		Exempt District Average	Adjacent District Average	Difference from Average	Highest Adjacent District	Difference from Highest
Arkadelphia	7		78%	4%	85%	-2%
Blytheville	3	57%	80%	-23%	86%	-30%
Camden Fairview	7	69%	73%	-4%	81%	-13%
Cutter-Morning Star	5	84%	83%	1%	92%	-8%
Dollarway	9	62%	74%	-13%	87%	-25%
El Dorado	6	78%	73%	5%	89%	-11%
Forrest City	7	55%	70%	-15%	84%	-29%
Fountain Lake	6	85%	83%	2%	89%	-5%
Helena/ W. Helena	3	59%	60%	-1%	75%	-16%
Hope	7	67%	72%	-6%	88%	-21%
Hot Springs	5	72%	85%	-13%	92%	-20%
Jessieville	6	86%	83%	3%	89%	-3%
Junction City	5	82%	78%	3%	89%	-8%
Lake Hamilton	6	87%	79%	8%	92%	-5%
Lakeside (Chicot)	2	70%	73%	-4%	80%	-10%
Lakeside (Garland)	6	92%	81%	11%	89%	3%
Little Rock	3	66%	76%	-10%	89%	-24%
Marvell	6	65%	64%	1%	78%	-13%
Mountain Pine	5	69%	80%	-11%	87%	-18%
Pulaski Co. Special	13	75%	75%	0%	89%	-14%
So. Conway County	9	85%	86%	-1%	90%	-5%
Stephens	4	61%	71%	-10%	81%	-21%
Texarkana	6	70%	76%	-6%	88%	-18%
<b>Average</b>	<b>5.91</b>	<b>73%</b>	<b>76%</b>	<b>-3%</b>	<b>86%</b>	<b>-13%</b>



## VII. CHALLENGES TO DESEGREGATION EXEMPTIONS

### State Board of Education

To date, 24 appeals of denials of school choice applications have been filed to the State Board of Education. The districts that families sought to transfer into include Palestine-Wheatley, Wynne, White Hall, Lonoke, Marion, Lakeside (Garland County), Gosnell, DeWitt, Mansfield and Alma. All of the appeals were rejected, and only 5 of the 24 were denied for reasons other than desegregation exemptions. During the July 8<sup>th</sup> State Board of Education meeting hearing, the Board reviewed six appeals of rejections that were made because the resident district has filed a desegregation exemption. Approving the appeals would require interpreting the desegregation clause of Act 1227, but in a May 1 Memorandum,<sup>20</sup> the Arkansas Department of Education wrote that the law “does not provide the [department] with the authority to rule a particular exemption valid or invalid, based on advice from Mike Beebe in 2003.” Therefore, the Board denied all of the appeals because they could not determine the validity of the exemptions. In doing so, the Board essentially removed appeals as a viable option for other similar families.<sup>21</sup>

### Courts

A group of parents in Blytheville are challenging the Blytheville School District’s desegregation exemption in a lawsuit. Attorney for the Blytheville parents Jess Askew III has argued that the two court cases cited that are specific to the Blytheville School District, *Harvell v. Ladd* and *Franklin, et al. v. Board of Education of the Blytheville School District*, are not valid, and the federal cases, *Brown v. Board* and the 1969 mandate from the federal department of Health, Education, and Welfare, are not grounds for an exemption.

Initially, parents requested a preliminary injunction that would allow their children to transfer into another school district for the 2013-14 school year while the case is being resolved. Federal Judge Kristine Baker denied the injunction request, claiming that the parents had not proved their children would suffer irreparable harm if they were denied transfers.<sup>22</sup>

On July 16, 2013, the Blytheville parents amended their claims and are now seeking “damages and injunctive and declaratory relief” from the district for “unlawful and unconstitutional refusal to permit inter-district school transfers in the coming school year.” If they win, the Blytheville School District may be required to rescind its exemption from Act 1227 and fully participate in the school choice program established through Act 1227.<sup>23</sup> In addition, a decision in this case would likely have implications for the law as a whole.

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<sup>20</sup>Lasiter, J. (2013, May 1). The Public School Choice Act of 2013.Memorandum. Retrieved from <http://adesharepoint2.arkansas.gov/memos/Lists/Approved%20Memos/DispForm2.aspx?ID=908&Source=http%3A%2F%2Fadesharepoint2.arkansas.gov%2Fmemos%2Fdefault.aspx>

<sup>21</sup> Brawner, Steve. (2013, July 8). State board denies school choice appeals. *Talk Business Arkansas*. Retrieved from <http://talkbusiness.net/2013/07/state-board-denies-school-choice-appeals/>

<sup>22</sup> San Francisco Gate. (2013, July 2). Judge denies injunction in Blytheville school case. *San Francisco Gate*. Retrieved from <http://www.sfgate.com/news/article/Judge-denies-injunction-in-Blytheville-school-case-4642181.php>

<sup>23</sup> Pinkard, Chris. (2013, July 16). Parents seeking damages in School Choice lawsuit. *Blytheville Courier News*. Retrieved from <http://www.couriernews.net/story/1986291.html>



## VIII. CONCLUSION AND RECOMMENDATIONS

After the 1989 law was declared unconstitutional, legislators were faced with the formidable challenge of creating a new law that would balance the admirable but sometimes conflicting objectives of empowering parents to choose their child's school and preventing the harmful resegregation of schools. The final product, the Public School Choice Act of 2013, was the result of compromise from both sides of the aisle. The Public School Choice Act of 2013, however well-intentioned, has had the practical effect of denying school choice to students in districts that are typically among the lowest-performing in the state.

Act 1227 expires July 1, 2015, so in two years, at a maximum, it will be up to the legislature to decide the future of school choice laws in Arkansas. By this time, the House and Senate Education Committees will have two years of reports from the Arkansas Department of Education on the impact of school choice transfers on districts' racial balance.

In the meantime, the lawsuit against the Blytheville School District is pending. It is possible that the courts could rule in the Blytheville case in such a way that has implications for the law as a whole before the 2015 legislative session.

Below are our final recommendations and insights about three key aspects of Act 1227: desegregation exemptions, equitable access to school choice, and evidence on school choice.

### **Desegregation Exemptions**

*The Arkansas Department of Education needs to exercise meaningful oversight for which districts are granted desegregation exemptions.*

Act 1227 only requires a district to notify the Arkansas Department of Education that it is claiming a desegregation exemption. There appears to be no process in place for validation of these exemptions, theoretically allowing any district, regardless of actual history of desegregation, to claim an exemption. Indeed, six of the 23 districts that declared exemptions failed to cite a court case in their exemption notification. Additionally, as has been suggested in the Blytheville lawsuit, some of the cases that were cited may not be valid for the purpose of seeking a desegregation exemption.

The ADE should be given the authority to grant exemptions, as opposed to simply being notified of them, and should set clear standards for doing so. Questions that need to be answered include:

- Does the district cite a "specific" court case, one that indicates that the district itself has had a history of segregation?
- Is the case that the district cites still open?
- Should districts that have been released from court supervision granted unitary status be eligible for an exemption?

### **Equitable Access to School Choice**

We hypothesize that both the first-come first-serve admissions process and the fact that district provision of transportation is voluntary are likely to privilege higher-income students and

students with more active, motivated families over lower-income students or those with less motivated parents. Since many of the concerns about school choice center around the how the composition of the student population is changed by transfers, it is important to ensure that all students have an equal chance of taking advantage of public school choice. Two ways to make access to public school choice more equitable is to require a lottery admissions system and that transportation be provided.

***Require districts to admit students by lottery rather than first-come, first-serve.***

For districts that have more students apply to transfer out than the 3% net maximum limit law allows, districts should be required to grant transfers through a lottery system. Additionally, receiving districts should admit students based on lottery as well. Theoretically, this could be conducted in several rounds: the first round would determine who is allowed to transfer out of districts, the second round would determine who can transfer into districts, and subsequent rounds would be held for remaining spots. Because the 3% net change provision means that the allowable numbers of transfers in and out of a district will change, a lottery for this program would be more time-consuming and logistically-difficult than the first-come first-serve provision currently in place. Still, despite the challenges associated with a lottery admissions system, it may be worth sacrificing simplicity for a more fair system.

***Require that transportation be provided for students attending nonresident districts through school choice.***

In addition to first-come first-serve policies, another significant barrier to school choice for less-advantaged students is the cost of transportation. Parents who cannot afford to live in a more expensive school district often cannot afford the time and monetary costs of providing transportation to a district that is further away. Under the current law, “the nonresident district may enter into a written agreement with the student, the student’s parent, or the resident district to provide the transportation.” However, neither the nonresident or resident district is required by law to provide transportation. Requiring the nonresident district to pay for transportation costs could provide a disincentive to accepting new students, causing nonresident districts to claim they do not have the capacity to accept new students. Requiring resident districts to pay the cost of transportation could cause an undue financial burden, in which the district would not only lose revenue from a student that transfers out but would also have to incur the additional cost of transportation. One potential solution that avoids either of these pitfalls is a special state fund for transportation. It is important to note that, currently, transportation is not required to be provided for students attending charter schools.

## **Evidence on School Choice**

***The Department of Education should also study the impact of the law on different subgroups of students.***<sup>24</sup>

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<sup>24</sup> The Department of Education shall collect data from school districts on the number of applications for student transfers under Section 8.00 of these rules and study the effects of school choice transfers under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules, including

As mentioned earlier, Act 1227 requires the Department of Education to study the overall impact of the new school choice law. It will be equally important for the Department of Education to determine the impact on racial and economic student subgroups. To ensure that school choice is creating opportunities for all students, all students need to be able to access school choice, but this is not always the case. Typically, more advantaged, wealthier, and whiter students are the ones who are best able to access these types of laws. Knowing which students are benefitting the most will have implications for how the law should be amended.

***Legal analysis of cases cited in desegregation exemptions needs to be conducted.***

The lawsuit against the Blytheville School District illustrated the possibility that the court cases being cited by districts are not valid for the purpose of declaring a desegregation exemption. We strongly recommend that legal experts review the cases cited by the other districts to determine their validity.

Any law that is constructed on a short timeline is likely to have room for improvement. In the case of the Public School Choice Act of 2013, we applaud our legislators for compromising to come up with a solution to a problem to which there are no easy answers and for having the foresight to authorize the law for only two years. Keeping in mind the considerations raised in this report and the forthcoming evidence on impact of the law on racial balance, we hope that legislators will make a reasoned assessment of the law's impact and will enact appropriate changes when they reauthorize the law during the 2015 legislative session.

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without limitation the net maximum number of transfers and exemptions, on both resident and nonresident districts for up to two (2) years to determine if a racially-segregative impact has occurred to any school district.

8.03 Annually by October 1, the Department of Education shall report its findings from the study of the data under Section 8.02 of these rules to the Senate Committee on Education and the House Committee on Education.