

## **ORDER**

IT IS HEREBY ORDERED pursuant to Arkansas Code Annotated §§ 6-13-1401 et seq. and the May 8, 2014 vote of the Arkansas State Board of Education (State Board) that:

1. The voluntary annexation petition submitted by the Norphlet School District and the Smackover School District for the annexation of the Norphlet School District into the Smackover School District is hereby granted for the reasons set forth therein. A copy of the voluntary annexation petition is attached to this order. (Exhibit A).

2. Effective July 1, 2014, the Norphlet School District is hereby abolished and shall be annexed into the receiving Smackover School District. The new school district shall be named the Smackover-Norphlet School District. The boundary lines of the Smackover-Norphlet School District shall encompass the existing boundaries of the Norphlet School District and the Smackover School District.

3. The State Board finds that the voluntary annexation of the Norphlet School District into the Smackover School District will not hamper, delay, or in any manner negatively affect the desegregation efforts of a school district or districts in this state. A copy of an advisory opinion from the Attorney General is attached to this order. (Exhibit B).

4. The Arkansas Department of Education is hereby directed, on behalf of the State Board, to:

a. Revise the maps of the school districts to properly show the boundary lines of the receiving district;

b. File a copy of this order and a map of the boundary lines of the receiving district with:

(1) The county clerk of each county where the district will be located;

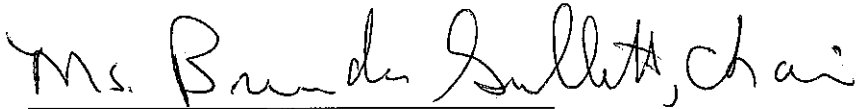
(2) The Secretary of State; and

(3) The Arkansas Geographic Information Office.

5. For the reasons set forth above, the voluntary annexation petition submitted by the Norphlet School District and the Smackover School District is hereby granted.

IT IS SO ORDERED.

ORDER SIGNED AND EXECUTED ON THIS 8<sup>th</sup> OF MAY 2014.

Handwritten signature of Ms. Brenda Gullett, Chair.

Arkansas State Board of Education  
Ms. Brenda Gullett, Chair

**BEFORE THE ARKANSAS STATE BOARD OF EDUCATION**

**IN THE MATTER OF THE ANNEXATION OF THE NORPHLET SCHOOL DISTRICT OF UNION COUNTY INTO  
THE SMACKOVER SCHOOL DISTRICT OF UNION COUNTY**

**PETITION FOR ANNEXATION**

**COMES NOW the Smackover School District (SSD) of Union County and the Norphlet School District (NSD) of Union County (Petitioners) acting by and through their respective Superintendents duly authorized, pursuant to Ark. Code Ann. § 6-13-1401 et seq., and petition the Arkansas State Board of Education (Board) to approve the annexation of the petitioning affected Norphlet School District into the petitioning receiving Smackover School District, and hereby would submit to the Board as follows:**

- 1. Pursuant to Ark. Code Ann. § 6-13-1401 et seq., the Petitioners hereby submit and incorporate in this petition as Exhibit A attached hereto, proof of legally binding local board resolutions approving this petition for annexation of the Norphlet School District into the receiving Smackover School District as approved by a majority of the members of the local boards of education of the respective Petitioners.**
- 2. The Petitioners hereby submit and incorporate in this petition as Exhibit B attached hereto, proof of public notice of intent to petition this Board to annex the Norphlet School District into the receiving Smackover School District. Said public notice of intent to annex was published in the local newspaper of general circulation of the affected and receiving districts for a time period of no less than once a week for two (2) consecutive weeks immediately prior to the filing of this of this petition with this Board.**

3. The Petitioners submit that at the proper school election following the petitioned annexation, the receiving Smackover School District shall elect 7 local board members in compliance with Ark. Code Ann. § 6-13-1416 and 6-13-1417.

4. The Petitioners submit that their respective school districts are geographically contiguous.

5. The Petitioners submit that they hereby request through the State Board, an Attorney General Opinion declaring whether the petitioned annexation will or will not hamper, delay or in any manner negatively affect the desegregation of another school district or districts in this state. Upon receipt, the resulting opinion shall be incorporated herein and attached hereto as Exhibit C.

6. Pursuant to Ark. Code Ann. § 6-13-1401 et seq., the Petitioners hereby submit and declare that the effective date of this petitioned annexation shall be July 1, 2014, and that there shall be only one local school board and the current one local superintendent of the receiving Smackover School District.

7. The Petitioners hereby submit an affidavit of facts by the superintendent of the affected school district(s), which is incorporated as Exhibit D, concerning the relevant status of any federal court-ordered supervision or jurisdiction of desegregation cases involving the affected districts.

8. The Petitioners hereby submit and incorporate in this petition as Exhibit E attached hereto, the written agreement required by Ark. Code Ann. § 6-13-1416.

WHEREFORE, Petitioners request that the Board approve the annexation of the Norphlet School District of Union County, into the receiving Smackover School District of Union County, to create the

**new Smackover-Norphlet School District of Union County; that it issue an Order dissolving the affected school districts and establishing the new Smackover-Norphlet School District; that it issue an Order establishing the boundary lines of the receiving school district and prepare a map of the resulting SNSD; and that it file its Order and map with the County Clerks of Union County and the Arkansas Geographic Information Office.**

Respectfully submitted,

Norphlet School District

By: [Signature] 3/11/14  
Superintendent Date

[Signature] 3/11/14  
President, School Board Date

Smackover School District

By: [Signature] 3/19/14  
Superintendent Date

[Signature] 3/19/14  
President, School Board Date

Exhibit A

**SCHOOL BOARD RESOLUTION**

**COMES NOW** the Smackover School District Board acting by and through its  
Superintendent duly authorized and do herein declare:

A special or regular school board meeting was held on March 19, 2014, wherein a  
quorum was present and a majority of the board membership voted to approve the annexation  
of the Norphlet School District into the Smackover School District, and the minutes of said  
meeting reflect such. Therefore, this document is to serve as the formal resolution of the  
Smackover School District Board of Directors, pursuant to Arkansas law, that said annexation is  
hereby approved.

Smackover School District

of Union County

By:

 3/19/14  
Superintendent Date

By:

 3/19/14  
President, School Board Date

Exhibit A

**SCHOOL BOARD RESOLUTION**

COMES NOW the Norphlet School District Board acting by and through its  
Superintendent duly authorized and do herein declare:

A special or regular school board meeting was held on Monday 11, 2014, wherein a  
quorum was present and a majority of the board membership voted to approve the annexation  
of the Norphlet School District into the Smackover School District, and the minutes of said  
meeting reflect such. Therefore, this document is to serve as the formal resolution of the  
Norphlet School District Board of Directors, pursuant to Arkansas law, that said annexation is  
hereby approved.

Norphlet School District

of Union County

By:

[Signature]  
Superintendent

3/11/14  
Date

By:

[Signature]  
President, School Board

3-11-14  
Date



## Certificate of Publications

State of Arkansas

SS

**INTENT TO ANNEX**

County of Union

I, Nicole Patterson, upon oath state that I am  
Advertising Manager (job title) of the El Dorado News-Times, a daily newspaper published at El  
 Dorado Arkansas, and that said newspaper has a bona fide circulation in said county, that the annexed  
 advertisement was inserted, and published, in said newspaper for two consecutive weeks, as follows:

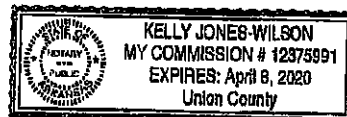
1<sup>st</sup> insertion on the 22<sup>nd</sup> day of March, 2014

And the 2<sup>nd</sup> on the 29<sup>th</sup> day of March, 2014.

Nicole Patterson  
 Signature

Subscribed and sworn before me this the 31<sup>st</sup> day of March, 2014

Kelly Jones-Wilson  
 Signature of Notary Public



NOTICE OF  
 INTENT TO ANNEX

The Smackover School District of Union County hereby provides lawful notice of the intent to file a petition with the Arkansas State Board of Education requesting approval to annex the Norphlet School District into the receiving Smackover School District. On March 11, 2014, the Norphlet School Board met and approved the petition and on March 19, 2014, the Smackover School Board met and approved the petition. Both districts are hereby giving notice to the public of the districts' intent to annex into one school district. The superintendent of each school district has been granted the authority to petition the State Board of Education for annexation. Said petition shall be filed with the State Board of Education at least 30 days prior to the meeting when the petition will be presented for the consideration of the State Board of Education.

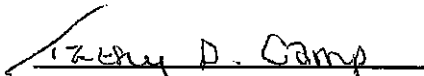
## PROOF OF PUBLICATION

STATE OF ARKANSAS  
COUNTY OF COLUMBIA

I, Susan Gill, do hereby state upon oath that I am in charge of legal publications of THE BANNER-NEWS, a newspaper of general circulation in Columbia County, Arkansas, and having a bona fide circulation therein; that said newspaper is authorized by law to publish legal advertisements; and that the advertisement annexed hereto was published in said newspaper 2 times, the first of which appeared March 21, 2014 and the last on March 28, 2014.

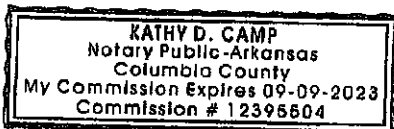
  
Susan Gill

Subscribed and sworn before me, this the  
28<sup>th</sup> day of March, 2014



Kathy D. Camp, Notary Public

Lines: 34 Times: 2 Cost: \$ 129.20  
Attorney/Business: Smackover Schools



### NOTICE OF INTENT TO ANNEX

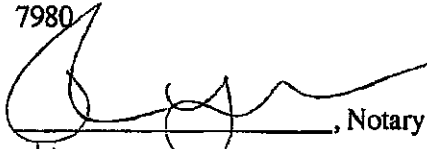
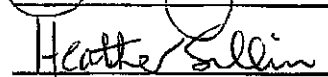
The Smackover School District of Union County hereby provides-lawful notice of the intent to file a petition with the Arkansas State Board of Education requesting approval to annex the Norphlet School District into the receiving Smackover School District. On March 11, 2014, the Norphlet School Board met and approved the petition and on March 19, 2014, the Smackover School Board met and approved the petition. Both districts are hereby giving notice to the public of the district's intent to annex into one school district. The superintendent of each school district has been granted the authority to petition the State Board of Education for annexation. Said petition shall be filed with the State Board of Education at least 30 days prior to the meeting when the petition will be presented for the consideration of the State Board of Education.

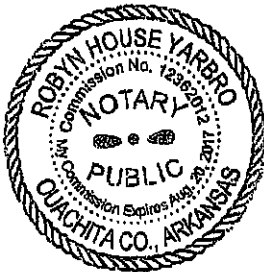
State of Arkansas  
County of Ouachita

I, Heather Sullivan, do solemnly swear that I am Legal Clerk of the Camden News, a daily newspaper published in the said county, and that I was Legal Clerk at the date hereinafter states, and that said paper had a bona fide circulation in said county at said dates, had been regularly published in said county for a period of one month next before the date of the first publication of advertisement hereto annexed, and that said advertisement was published ONE time (s) for TWO week (s) consecutively, the first insertion having been made on the 21st day of March, 2014, and the last on the 28th day of March, 2014. Sworn and subscribed to me this 28th day of March, 2014  
My Commission expires 8/20/2017

Total \$107.26

7980

  
\_\_\_\_\_, Notary Public  
  
\_\_\_\_\_, Legal Clerk



7980

**NOTICE OF  
INTENT TO ANNEX**

The Smackover School District of Union County hereby provides lawful notice of the intent to file a petition with the Arkansas State Board of Education requesting approval to annex the Norphlet School District into the receiving Smackover School District. On March 11, 2014, the Norphlet School Board met and approved the petition. Both districts are hereby giving notice to the public of the districts' intent to annex into one school district. The superintendent of each school district has been granted the authority to petition the State Board of Education for annexation. Said petition shall be filed with the State Board of Education at least 30 days prior to the meeting when the petition will be presented for the consideration of the State Board of Education.

Exhibit D

Affidavit Concerning Desegregation Orders

COMES NOW the Norphlet School District, acting by and through its Superintendent, and hereby states and represents to the State Board of Education that, to the best of my knowledge, the Norphlet School District is (is not) (circle one) involved in desegregation litigation in a United States Federal Court or is (is not) (circle one) under the continuing jurisdiction of a United States Federal Court Order regarding desegregation of a public school or schools (see "\*" at bottom of affidavit).

FURTHER the affiant sayeth not.

IN WITNESS WHEREOF, I hereunto set my hand this 17<sup>th</sup> day of March, 2014

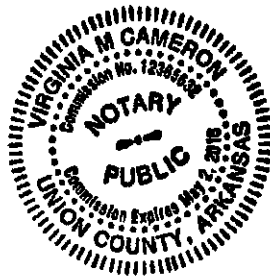
[Signature]  
Superintendent

County of Union  
State of Arkansas

Sworn and subscribed before me, Notary Public, this 17<sup>th</sup> day of March, 2014.

My Commission expires

05-02-2018



Virginia M. Cameron  
Notary Public

\* = If you answered, "Is involved in desegregation litigation, etc." above, please attach a copy of any applicable Court orders or other relevant documentation.

Exhibit D

Affidavit Concerning Desegregation Orders

COMES NOW the Smackover School District, acting by and through its Superintendent, and hereby states and represents to the State Board of Education that, to the best of my knowledge, the Smackover School District is ~~is not~~ (circle one) involved in desegregation litigation in a United States Federal Court or is ~~is not~~ (circle one) under the continuing jurisdiction of a United States Federal Court Order regarding desegregation of a public school or schools (see "\*" at bottom of affidavit).

FURTHER the affiant sayeth not.

IN WITNESS WHEREOF, I hereunto set my hand this 19<sup>th</sup> day of March, 2013. 2014

  
Superintendent

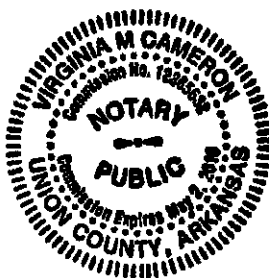
County of Union  
State of Arkansas

Sworn and subscribed before me, Notary Public, this 19<sup>th</sup> day of March, 2014.

Virginia M. Cameron  
Notary Public

My Commission expires

05-02-2018



\* = If you answered, "is Involved in desegregation litigation, etc." above, please attach a copy of any applicable Court orders or other relevant documentation.

**AGREEMENT FOR A VOLUNTARY ANNEXATION OF THE NORPHLET SCHOOL DISTRICT INTO THE  
SMACKOVER SCHOOL DISTRICT**

**WHEREAS, the Norphlet School District (NSD) of Union County, and the Smackover School District (SSD), of Union County, (NSD and SSD are the "schools"), and both NSD and SSD are desirous of petitioning the Arkansas State Board of Education to cause the NSD to be annexed into the SSD, to create the new Smackover-Norphlet School District (SNSD), pursuant to Ark. Code Ann 6-13-1401 et.seq., and**

**WHEREAS, both NSD and SSD agree that it would be in the Schools' mutual best interest and the mutual best interest of the Schools' patrons for the Schools' to enter into this Voluntary Annexation Agreement (Agreement), and**

**WHEREAS, the purpose of this Agreement is to set forth the terms and conditions of the proposed voluntary annexation so that the annexation may be accomplished in the best interest of the Schools;**

**NOW THEREFORE, in consideration of their mutual promises and agreements, NSD and SSD agree as follows:**

- 1. Effective date. If approved by the Arkansas State Board of Education (SBE), the effective date of voluntary annexation shall be July 1, 2014.**
- 2. Names. The SSD is willing to approve an annexation of the NSD under the following terms of agreement. The resulting school district shall be known as the Smackover-Norphlet School District (SNSD).**
- 3. Board of Directors. Following approval of the proposed annexation by the SBE, the SNSD will establish a seven (7) member school board establishing two (2) single member zones in the area of the current NSD and five (5) single member zones in the SSD. There would be an interim school board created effective July 1, 2014, made up of two (2) members from the Norphlet School Board and five (5) members from the Smackover School Board. The interim board of directors will serve until the regular school election of September 2015 pursuant to Ark. Code Ann. 6-13-1416(d). As to the seven (7) member board elected in the regular school election of September, 2015 and thereafter, all board positions shall serve five (5) year terms, subject to the staggered terms provision contained in Section 4 of the Petition for Annexation.**
- 4. Superintendent. Mr. Dave Wilcox of the Smackover School District shall remain under contract as superintendent of the Smackover-Norphlet School District, under the terms and conditions of his current contract.**
- 5. School Employees Employment. All employees of NSD employed as of July 2014, shall become employees of the SNSD for the 2014-2015 school year only and shall be subject to all terms, conditions of contract, personnel and other policies of the**

**SNSD. After evaluating the needs of the district during the 2014-2015 school year, all staff shall be reviewed for continued employment needs and shall remain subject to reassignment of duties, non-renewal or termination of contract provisions as allowed by law and policies of the SNSD.**

- 6. School Facilities. Both SSD and NSD agree that SNSD will continue to allow the Norphlet campus to operate both an elementary school and a high school in the SNSD for the 2014-2015 school year. There will be plans made to reorganize the SNSD campuses during the 2014-2015 school year effective for the 2015-2016 school year. The SNSD intends to operate at both campuses as long as it is deemed economically and educationally feasible and beneficial to the SNSD. There shall be no specific test or determination or binding obligation on any future school board concerning the decision to open or close any of the schools in the district, including a school at the current Norphlet campus.**
- 7. Millage Rates. The issue of unification of the millage rates in the current SSD and the current NSD for the SNSD shall be placed on the ballot for the annual school election in 2014.**
- 8. Board Elections. As stated in Section 3, a seven (7) member interim board, comprised of two (2) members from the current NSD School Board and five (5) members from the current SSD School Board, shall serve until the board members elected in the 2015 annual school elections are duly sworn and authorized to assume their duties. There shall be no elections for school board members at the 2014 annual school election.**
- 9. Petition. If the proposed merger of annexation is approved, the attached petition of annexation shall be approved by both the Norphlet School Board and the Smackover School Board and submitted to the State Board of Education no later than April 7, 2014.**
- 10. School Choice/Student Transfer. It is the Intent of this agreement that all students eligible for school choice under applicable law may exercise school choice option.**
- 11. Entire Agreement. This Agreement along with Attachment A represents the entire proposal of annexation and no other terms or conditions or a proposed merger are contemplated or approved by the SSD at this time. This action is necessary to protect the integrity of the new SNSD and thus seek to avoid, as much as possible, fiscal distress, academic distress, facilities distress and violations of Arkansas**

Standards for Accreditation or other state or federal accountability laws, and maintain a standard of education and accountability desired by the new SNSD.

12. Counterparts. This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Applicable Law. The annexation shall be effective in accordance with the laws of the State of Arkansas and the rules of the Arkansas State Board of Education.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement on the 11 day of March, 2014.

Norphlet School District of Union County, Arkansas

By: [Signature]  
President, Board of Directors

By: [Signature]  
Secretary, Board of Directors

Smackover School District of Union County, Arkansas

By: [Signature]  
President, Board of Directors

By: [Signature]  
Secretary, Board of Directors





THE ATTORNEY GENERAL  
STATE OF ARKANSAS  
DUSTIN MCDANIEL

Scott P. Richardson  
Senior Assistant Attorney General

Direct dial: (501) 682-1019  
E-mail: [scott.richardson@arkansasag.gov](mailto:scott.richardson@arkansasag.gov)

May 7, 2014

Dr. Tom Kimbrell  
Commissioner of Education  
Arkansas Department of Education  
# 4 State Capitol Mall  
Little Rock, Arkansas 72201-1019

Re: Proposed Voluntary Annexation of the Norphlet School District and Smackover School District

Dear Dr. Kimbrell:

This is in response to your letter to Attorney General McDaniel dated March 27, 2014, in which you ask for our advice, pursuant to Ark. Code Ann. §§ 6-13-1408(b) and 6-13-1603, concerning the potential desegregation effects of a proposed voluntary annexation of the Norphlet School District into the Smackover School District.

Section 6-13-1408(b) provides that, prior to the entry of any order annexing or consolidating school districts, "the state board shall seek an advisory opinion from the Attorney General concerning the impact of the proposed annexation or consolidation on the effort of the state to assist a school district or districts in desegregation of the public schools of this state." Section 6-13-1603(c) provides that "[a]ll administrative consolidations or annexations under this section shall be accomplished so as not to create a school district that hampers, delays, or in any manner negatively affects the desegregation of another school district in this state."

Under United States Supreme Court precedent, the term "desegregation" is a legal term of art that describes the process by which a school district eliminates, to the extent practicable, the lingering effects or "vestiges" of prior *de jure* racial discrimination. Thus, in the absence of a finding that a school district has engaged in the past in activities prohibited by the Fourteenth Amendment to the United States Constitution, and that there are presently lingering effects or vestiges of that discrimination that remain unaddressed, a school district is not "desegregating" as that term is used in case law.

In this case, the State Board is considering the possible voluntary annexation of the Norphlet School District into the Smackover School District. If approved, the annexation would result in the creation of a new larger school district. In addition to the two schools being

323 Center Street • Suite 200 • Little Rock, Arkansas 72201  
(501) 682-2007 • FAX (501) 682-2591

**EXHIBIT B**

considered as consolidation partners, the following districts could potentially share a border with the newly formed district(s): Junction City School District, Magnolia School District, Stephens School District, Camden-Fairview School District, Hampton School District, and El Dorado School District.

The Department of Education has not indicated whether Norphlet or Smackover are subject to desegregation orders. A search of our records does not reveal any desegregation cases involving either Norphlet or Smackover School Districts. We also note that neither Norphlet nor

Smackover School Districts have declared an exemption from the Public School Choice Act of 2013.

Of the surrounding school districts noted above, four appear to have been subject to desegregation litigation: Stephens School District, Junction City School District, Camden-Fairview School District, and El Dorado School District. The Stephens School District is subject to a desegregation order in the case of *Runyan v. McNeil School District, et al.*, Case No. 1:69-cv-00042, U.S. District Court, Western District of Arkansas (El Dorado). The Junction City School District has been subject to desegregation litigation in *United States v. Junction City School Dist. No. 75*, Case No. 1095, U.S. District Court, Western District of Arkansas. The Camden-Fairview School District has been subject to desegregation litigation in the cases of *Milton v. Huckabee*, Case No. 88-1142, U.S. District Court, Western District of Arkansas (El Dorado) and *Lancaster v. Guess*, Case No. 09-CV-1056, U.S. District Court, Western District of Arkansas (El Dorado). The El Dorado School District has been subject to desegregation litigation in *Kemp, et al. v. Beasley, et al.*, Case No. 1048, U.S. District Court, Western District of Arkansas, and *Townsend et al. v. Watson, et al.*, Case No. 1:89-cv-01111, U.S. District Court, Western District of Arkansas. I will address each case in turn.

1) *Runyan v. McNeil School District*: The Runyan case was originally filed on November 5, 1969, forty-four years ago. The former McNeil School District submitted a desegregation plan to the federal court on January 5, 1970, and the same day the Court approved the district's plan. The case lay dormant until 2004 when the McNeil School District was required to consolidate with a neighboring school district because it fell below the minimum school district size set out in Act 60 of 2003 (Second Extra. Sess.). At that time, McNeil sought an order dismissing the case and (by separate motion) sought an order approving McNeil's voluntary annexation with the Stephens School District. The Motion to Dismiss was opposed by written response of the Plaintiffs on May 6, 2004, but the motion asking for approval of the voluntary annexation was not opposed. On June 23, 2004, the District Court, Hon. Harry F. Barnes presiding, approved the consolidation of the two school districts and denied the motion to dismiss. On July 14, 2004, the Stephens School District was added to the case as a party defendant.

The "Unification Plan" that the McNeil School District adopted in 1970 addressed only the areas of student assignments, student transportation, and staff assignments. In the district's motion to dismiss and motion for approval of the annexation, McNeil represented to the Court that it had been in full and complete compliance with its unification plan since January 5, 1970; thirty-four years. We note that in their Response to the Motion to Dismiss, the Plaintiffs in the case failed to articulate any actions of the district that failed to comply with the unification plan.

None of the orders in the *Runyon* case appear to affect either the Norphlet or the Smackover School Districts.

2) *United States v. Junction City School Dist. No. 75*, Case No. 1095, U.S. District Court, Western District of Arkansas. We have been able to confirm the existence of this case. There is one reported decision from the case: *U.S. v. Junction City School Dist. No. 75*, 253 F.Supp. 766 (1966). We are unable to locate any information about this case in the on-line docketing system of the U.S. District Court, Western District. The School District has provided information to the ADE, however, indicating that the U.S. Department of Justice considers the District unitary in all aspects of operation other than staffing. We are not aware of any obligations that were imposed on the State in this case.

3) *Milton v. Huckabee*: This case was filed December 16, 1988. The case resulted in the consolidation of the Camden and Fairview school districts. By Consent Judgment entered February 1, 2002, the State's obligations in the *Milton* case ended except for a limited number of payments to be made. Those payments ended on or about July 1, 2008. The final, February 1, 2002, Consent Order entered in *Milton* concluded with this paragraph:

The defendants, State defendants, City of Camden, Housing Authority of Camden, Harmony Grove School District, and Camden Fairview School District have complied with all obligations imposed pursuant to the 1991 settlement agreement and all court orders entered in this case and are DISMISSED WITH PREJUDICE from this suit.

There are no current obligations of the State in the *Milton* case. None of the orders in the *Milton* case appear to affect either the Norphlet or the Smackover School Districts.

4) *Lancaster v. Guess*: This case was originally filed in state court on December 1, 2009, but was removed to federal court on December 14, 2009. It was a challenge to Camden-Fairview's denial of a school choice transfer to a student under Ark. Code Ann. 6-18-206. The requested transfer was to Harmony Grove School District from Camden-Fairview School District. Camden-Fairview denied the transfer, apparently, on the basis of orders entered years before in the *Milton v. Huckabee* case discussed above. The Court dismissed the case on joint motion of the parties. In its order the Court held that certain orders from the *Milton* case controlling the transfer of students between Camden-Fairview and Harmony Grove School Districts remained in effect and subject to the jurisdiction of the District Court. The Court also modified paragraph ten of a February 1, 2002, order in the *Milton* case to require Camden-Fairview to obtain Court approval before "granting its written consent to the attendance at [Harmony Grove] of the child of a [Camden-Fairview] resident who is an employee of [Harmony Grove]." None of the orders in the *Lancaster* case appear to affect either the Norphlet or the Smackover School Districts. None of the orders in the *Lancaster* case imposed any obligations on the State.

5) *Kemp, et al. v. Beasley, et al.*, Case No. 1048, U.S. District Court, Western District of Arkansas: The last order that we are aware of in this case is a 1970 opinion from the Eighth Circuit Court of Appeals. The case does not appear in the online docket management system for

the Western District of Arkansas Courts. The State was not a party to this case, and there appear to be no ongoing obligations of the State in this case. Also, this case appears to only have involved the El Dorado School District and not the Norphlet or Smackover School Districts.

6) *Townsend, et al. v. Watson, et al.*, Case No. 1:89-cv-01111-SOH, U.S. District Court, Western District of Arkansas: This case does appear in the online docket management system for the Western District of Arkansas Courts, but only a few documents are available online. It was filed September 29, 1989. The docket reflects an order entered July 28, 1992 with the following text: "ORDER by Honorable Jimm L. Hendren approving amended & substituted stipulation for resolution of voting rights issues dismissing case; parties settled." In July of 2004, the school district filed a motion asking to change the composition of the school board. In April of 2013, the school district filed a motion asking for approval of a school board re-zoning. The State was not a party to this case, and there appear to be no ongoing obligations of the State in this case. Also, this case appears to only have involved the El Dorado School District and not the Norphlet or Smackover School Districts.

As will be the case in any proposed annexation or consolidation, the Board must be cognizant that it may not order or approve any proposed annexation or consolidation with the purpose or intent to create racially segregated schools. As the Supreme Court noted in *Missouri v. Jenkins*, 515 U.S. 70, 115 (1995):

[I]n order to find unconstitutional segregation, we require that plaintiffs "prove all of the essential elements of *de jure* segregation — that is, stated simply, a current condition of segregation resulting from *intentional state action directed specifically* to the [allegedly segregated] schools." *Keyes v. School Dist. No. 1, Denver*, 413 U.S. 189, 205-206 (1973) (emphasis added). "[T]he differentiating factor between *de jure* segregation and so-called *de facto* segregation . . . is purpose or *intent* to segregate." *Id.*, at 208 (emphasis in original).

There are numerous cases that discuss legal challenges to school district annexations and consolidations in the context of desegregation litigation, but in each case the question of whether a particular annexation or consolidation (or series of annexations or consolidations) were done with the requisite unconstitutional intent is a highly fact-specific inquiry.

To assist the State Board, Department of Education staff has provided the Board with enrollment figures showing the racial composition of the school district to be annexed or consolidated and the surrounding school districts. We suggest that this practice continue and that the State Board consider the relative racial balance of the affected school districts in making its decision.

Neither state nor federal law requires the Board to create school districts in a manner that would achieve any particular "racial balance" in the student population of a school district.<sup>1</sup> We

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<sup>1</sup> It should be noted that a decision made solely on a racial basis, even for laudable purposes such as diversity in education or the prevention of (re)segregation, would be subject to

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have, however, previously noted that neither the Norphlet nor the Smackover School Districts appear to be subject to any ongoing desegregation order. Some surrounding school districts may contend they have current desegregation obligations including the Camden-Fairview School District, the El Dorado School District, the Stephens School District, and the Junction City School District. For this reason, we strongly advise the Board to scrutinize this proposed consolidation with great care and to satisfy itself that there are legitimate, non-racially-motivated reasons for the annexation of Norphlet School District to the Smackover School District.

Best Regards,

A handwritten signature in blue ink, appearing to read "Scott P. Richardson", with a long horizontal flourish extending to the right.

Scott P. Richardson  
Senior Assistant Attorney General

SPR/jd

cc: Mr. Allen Roberts (*via electronic mail*)  
Mr. Jeremy Lasiter (*via electronic mail*)

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“strict scrutiny” analysis. *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738 (2007).