

**Arkansas – *Lake View v. Huckabee* (2002)**

In 2002, the Arkansas Supreme Court decided *Lake View v. Huckabee* (*Lake View III*),<sup>48</sup> which addressed the constitutionality of the state’s system of funding public education. In that decision, the Court rejected a claim for state-funded preschool, overturning a lower court decision finding such a program was required by the state constitution. However, the Court did find the state’s system for financing public education violated the state constitution’s guarantee of an adequate and substantially equal education for every child. In a subsequent proceeding in 2004 in which the Supreme Court reviewed the legislature’s compliance with *Lake View III*, the Court reiterated its earlier holding that the constitution did not require state funding for preschool education.<sup>49</sup> In June 2005, the Supreme Court reopened jurisdiction over the *Lake View* case<sup>50</sup> in response to plaintiffs’ allegation that the legislature had failed to comply with the mandates of the *Lake View III* ruling.

Although the Arkansas Supreme Court declined to direct the legislature to fund preschool as part of a school finance remedy, the Court’s *Lake View III* decision influenced the implementation and funding of a significant preschool program. First, as part of its effort to revamp the school funding system to comply with the *Lake View* decision, the Arkansas legislature commissioned a study on the cost of an adequate education, and this study, prepared by a panel of experts, recommended that the state allocate \$100 million to implement a preschool program for all children at risk for school failure. Second, a well-organized, long-standing coalition of preschool advocates took advantage of the state’s efforts to revamp the school finance system to press for state funding for a high quality preschool program. In 2003, in response to this campaign and to the recommendation in the cost study, the legislature enacted the Arkansas Better Chance for School Success Program (“ABC for School Success Program”), an early care and education program for three- and four-year-olds in school districts where at least seventy-five percent of students have scored below proficient on the state assessment exams, or in districts identified as being in academic distress. The ABC for School Success Program is designed to serve children living at or below 200 percent of the poverty level. The General Assembly allocated \$40 million in new funding for the program in FY 2005, and increased funding by an additional \$20 million for FY 2006. When combined with funds previously designated for preschool, the FY 2006 state budget for the ABC for School Success Program totals \$71 million.

**Background to *Lake View III* Decision**

The education clause in the Arkansas Constitution provides that “the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all

suitable means to secure to the people the advantages and opportunities of education.”<sup>51</sup> Significantly, the clause specifically allows for the possibility of public funding of preschool education stating that “... the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age as may be provided by law, and no other interpretation shall be given to it.”

In 1983, the first landmark case challenging the state’s financing of public education was decided. In *Dupree v. Alma Sch. Dist. No. 30*,<sup>52</sup> the Arkansas Supreme Court held that the state’s system of allocating funds among school districts violated the state constitution’s guarantee of equal protection as well as its promise of a “general, suitable, efficient system” of education. In that ruling, the justices concluded the state’s school finance system, which was based on local property taxes, had no “rational relationship to the educational needs of the individual districts...”<sup>53</sup>

In 1992, following the Arkansas legislature’s failure to remedy the constitutional violations found in *Dupree*, the Lake View School District launched a new legal challenge to the constitutionality of the state’s school finance system. Several other low-income school districts joined this new case as third-party intervenors. In 1994, the trial court found the state’s school funding system was still inequitable and inadequate under the education clause in the state Constitution.<sup>54</sup> The *Lake View* trial court ordered the state to “enact and implement appropriate legislation” to remedy the constitutional violations. After six amended complaints and a failed Agreed Order, the plaintiffs appealed to the Arkansas Supreme Court to enforce the trial court order.

In response, the Supreme Court remanded the case back to the trial court, directing the lower court to hold a factual hearing to determine whether the state had yet complied with the initial order to eliminate constitutional violations.<sup>55</sup> One month later, in May 2001, the trial court found the Arkansas school funding system was still inequitable and inadequate,<sup>56</sup> this time, insisting that the state “must provide substantially equal educational opportunities.” Further, the trial court ruled, such opportunities could not be denied to children simply because they happened to attend a school located “in a poorer part of the state.”

### ***Lake View* Trial Court Ruling on Preschool**

The trial court made three specific findings relating to preschool education, facts that “were uncontroverted at trial:”

- 1) A substantial number of children are entering kindergarten and first grade significantly behind their peers;
- 2) Those children that enter the first grades needing remediation will have a difficult time performing at grade level by the third grade; and
- 3) If a student cannot perform at grade level, especially in reading, by the third grade, then he/she is unlikely ever to do so.<sup>57</sup>

As a result, the trial judge concluded that “the state must forthwith provide programs for those children of pre-school age that will allow them to compete academically with their peers” in order to “provide our children with an adequate education as required by the Constitution.”<sup>58</sup>

Despite these findings, it appears from the trial court decision that preschool education was not a central part of the plaintiff’s case at trial. The court reached its preschool ruling based on the general facts set forth above, apparently without any expert testimony on the scientific studies demonstrating the benefits of preschool education for at-risk students, in particular evidence that high quality preschool can help prepare these students to learn and succeed in elementary school and beyond. Nor does it appear the parties introduced specific empirical evidence showing the gap between disadvantaged students and their more advantaged peers coming into kindergarten as a result of the lack of high quality preschool programs for these students. It is also unclear whether the low-income districts placed preschool within the framework of the state’s curriculum and learning standards and argued that without the foundation that preschool education provides, disadvantaged students would not have the opportunity to meet the state standards and obtain a constitutionally adequate education.

### **Arkansas Supreme Court Decision in *Lake View III***

In the *Lake View III* decision, the Arkansas Supreme Court invalidated the state’s method of funding public education, finding that reliance on property taxes did not allow the state to fulfill “its constitutional duty to provide the children of [the] state with a general, suitable, and efficient school funding system.”<sup>59</sup>

The Court also upheld the plaintiff’s claim based on equal protection. Specifically, the Court held that “equal educational opportunity is not being afforded to the school children of this state.”<sup>60</sup> The disparities in funding among districts led to a shortage of resources in the low-income districts, the justices found, and “there is no legitimate government purpose warranting the discrepancies in curriculum, facilities, equipment, and teacher pay among the school districts.”<sup>61</sup> The Supreme Court gave the Arkansas legislature until January 1, 2004, to remedy the constitutional violations.

On the preschool claim, the plaintiffs argued that since the state already provided some public preschool programs to at-risk children, it was required under the equal protection clause to create equal access to preschool education for all children at risk for school failure. The third-party intervenors from other low-income school districts contended that the state must provide full funding for preschool for all at-risk students as an essential component of its constitutional obligation to provide an adequate education.

Despite its strong ruling requiring the state to provide equal educational opportunity and an adequate education, the Supreme Court rejected the claims for state-funded preschool. The justices determined that the judicial branch in Arkansas cannot “mandate pre-school education as an essential component of an adequate education.”<sup>62</sup> In so ruling, the Court noted that it was unclear whether the trial court was ordering the state to provide

preschool, or merely underscoring the importance of the value and need for such a program. Ultimately, the Court saw the issue of judicial authority as primary, and adopted a strict interpretation of the state Constitution's education clause.<sup>63</sup> This clause authorizes, but does not require, the legislature to fund programs for children under six: "...the General Assembly and/or public school districts may spend public funds for the education of persons ...under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it." In ruling that the legislature has exclusive authority to decide to fund a state preschool program, the Court implicitly rejected the intervenors' underlying argument that disadvantaged children could not achieve an adequate education without receiving the foundation of quality state-funded preschool.

The Court also rejected the attempt to link preschool to the constitutional right to equal protection, ruling that the implementation of preschool programs "is a public-policy issue for the General Assembly to explore and resolve."<sup>64</sup>

### **Appointment of Special Masters to Review Compliance with *Lake View III***

In its ruling in *Lake View III*, the Supreme Court gave the legislature until January 1, 2004 to correct the inadequacies of the state's education system. When the lawmakers failed to act by that deadline, the Supreme Court reopened and reestablished jurisdiction over the *Lake View* case. In February 2004, the Court appointed two special masters to "examine and evaluate legislative and executive action taken since November 12, 2002," to "comply with this court's order and the constitutional mandate that the state 'maintain a general, suitable and efficient system of free public schools.'"<sup>65</sup> The justices also insisted the state must "adopt all suitable means to secure to the people the advantages and opportunities of education."<sup>66</sup>

Two months later, on April 2, 2004, the special masters submitted their report to the Supreme Court.<sup>67</sup> On the issue of state-funded preschool, the special masters questioned whether the state could meet the goal of *Lake View III* and offer "a substantially equal educational opportunity" to all its citizens without providing preschool for disadvantaged children. The special masters found that the Arkansas legislature, in responding to the Court's directive to define an adequate education, had established as a matter of public policy that preschool education plays an "integral part in providing students an adequate education."

The special masters also referred to a study commissioned by the Arkansas Legislature following the *Lake View III* decision to help the state determine the cost of an adequate education. This study recommended the state spend \$100 million on a preschool program for all low-income three- and four-year-old children, in order to enable these children to achieve a constitutionally adequate education. "Low-income" was defined in the study as families with an income at or below 200 percent of the state poverty level. The Arkansas Legislature responded to this recommendation by allocating \$40 million for the ABC preschool program.

## Arkansas Supreme Court Decision in *Lake View IV*

In June 2004, the Supreme Court issued a decision in *Lake View Sch. Dist. No. 25 v. Huckabee*, (*Lake View IV*),<sup>68</sup> releasing jurisdiction of the *Lake View* case. The Court reviewed the special masters' report, noted the Legislature's "laudable" progress in reforming the school finance system and, without specifically addressing whether the state had achieved a constitutionally adequate system for funding education, released its mandate in the case. Citing the separation of powers doctrine, the Court rejected plaintiff's request that it retain jurisdiction until the system meets the standard established in *Lake View III*. In strong language, however, the Court expressed a "commitment to the goal of an adequate and substantially equal education for all Arkansas students"

On the issue of the state's constitutional obligation to fund preschool education, the Court in *Lakeview IV* specifically rejected the special masters' suggestion that the state must provide preschool for disadvantaged students. The Court reiterated its ruling in *Lakeview III* that the Arkansas legislature has sole authority to determine whether to authorize and fund an early childhood education program, thereby effectively closing the door on a court mandate for state-funded preschool education. Fortunately, the litigation already resulted in the implementation of the ABC for School Success Program, which serves a significant number of disadvantaged preschoolers.

In a brief opinion issued in June 2005,<sup>69</sup> the Supreme Court reopened jurisdiction and recalled its mandate in *Lake View III*. The Court reappointed the two special masters who had previously reviewed the legislature's 2003 and 2004 enactments to make findings of fact on plaintiffs' allegation that the state's 2005 enactments failed to satisfy the *Lake View III* ruling. The Court gave the special masters until September 1, 2005 to issue a report, unless they need additional time. Acting on the motion of plaintiffs and third party intervenors, the Court rejected the state's argument that plaintiffs must file a new lawsuit. The Court pointed to the need for a speedy resolution of plaintiffs' claims and cited its constitutional duty to ensure that the state meets its "goal of an adequate and substantially equal education for all Arkansas students."

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<sup>48</sup> *Lake View III*, 91 S.W.3d 472 (2002).

<sup>49</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, \_\_ S.W.3d \_\_, (2004); 2004 WL 1406270 (Ark. June 18, 2004).

<sup>50</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, \_\_ S.W.3d \_\_ (2005), 2005 WL 1358308 (Ark. June 9, 2005).

<sup>51</sup> Ark. Const. art. 14, § 1.

<sup>52</sup> *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90 (1983).

<sup>53</sup> *Id.* at 93.

<sup>54</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 1992-5318, 1 (Ch. Ct. Pulasky County, Ark. 2d Div., May 25, 2001).

<sup>55</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, 10 S.W. 3d 892 (Ark. 2000).

<sup>56</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, 1992-5318 (Ch. Ct. Pulasky County, Ark. 2d Div., May 25, 2001).

<sup>57</sup> *Lake View III*, 91 S.W.3d at 501 (quoting trial court order).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 495.

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<sup>60</sup> *Id.* at 500.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 502.

<sup>63</sup> *Id.* at 501-502.

<sup>64</sup> *Id.* at 501.

<sup>65</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 01-836, 2004 WL 213203 (Ark. Feb. 3, 2004).\*

<sup>66</sup> *Id.*

<sup>67</sup> The special masters' report is available on the website for the Arkansas courts:

<http://courts.state.ar.us/lake%20view/report.pdf>.

<sup>68</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 01-836, \_\_ S.W.3d \_\_, 2004 WL 1406270 (Ark. June 18, 2004) (*Lake View IV*).

<sup>69</sup> *Lake View Sch. Dist. No. 25 v. Huckabee*, \_\_ S.W.3d \_\_ (2005), 2005 WL 1358308 (Ark. June 9, 2005).