

Ronald DAVIS v. HELENA-WEST HELENA SCHOOL
DISTRICT

93-31

853 S.W.2d 864

Supreme Court of Arkansas
Opinion delivered May 3, 1993

Appeal from Phillips Circuit Court; *Henry Wilkinson*,
Judge; Petition for Review denied.

David Solomon, for appellant.

R. S. McCullough, for appellee.

PER CURIAM. Petition for Review is denied.

TOM GLAZE, Justice, dissenting. This case should have initially come to the Arkansas Supreme Court since it involves the interpretation of "The Teacher Fair Dismissal Act" (Ark. Code Ann. §§ 6-17-1501-1510 (1987) and the Arkansas Administration Procedures Act (APA) (Ark. Code Ann. §§ 25-15-201-214 (1987)). See Rule 29, 6(a) of the Arkansas Rules of Supreme Court. *Neither* party cited the APA in their briefs before the court of appeals, but that court in reaching its decision relied on cases construing the APA — an Act which this court has held applies only to state agencies and does not include school districts. *Corbin v. Spec. School Dist. of Fort Smith*, 250 Ark. 357, 465 S.W.2d 342 (1971). In doing so, the court of appeals held petitioner Ronald Davis never objected to having no opportunity to cross-examine certain students or their parents before the respondent's school board proceeding and therefore Davis effectively waived his rights to cross-examine those witnesses. Davis argues § 6-17-1510(d) of The Teacher Fair Dismissal Act allows additional testimony and evidence in an appeal to show facts that his or her termination or renewal was lawful or unlawful.

Obviously the construction of the foregoing Acts comes into play in reaching the parties' issue on appeal. This court should particularly grant certiorari since the court of appeals decided this appeal based in part by construction of the APA when that Act was never previously mentioned by the respective parties.

BROWN, J., joins this dissent.