

MEMO



ARKANSAS
DEPARTMENT
OF EDUCATION

DATE: April 27, 2022
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Friendship Aspire Academy Pine Bluff's Amendment Request to Merge LEAs, Increase Enrollment Caps & Change Grade Levels Served

I. INTRODUCTION

Friendship Aspire Academy of Pine Bluff submitted an amendment request to merge LEA numbers, increase enrollment caps, and change grade levels served. The charter school is requesting to increase the enrollment cap at Friendship Aspire Academy - Southeast Pine Bluff from 25 to 75 students beginning with the 2022-2023 school year. The charter school is also requesting to change the grade levels served from 6-12 to 5-12 beginning with the 2022-2023 school year. The charter school currently draws students primarily from the Pine Bluff School District.

II. STATUTORY REQUIREMENTS

Ark. Code Ann. § 6-23-106(a) requires the applicants for a charter school, the board of directors of the school district in which a proposed charter school would be located, and the charter authorizer to "carefully review the potential impact of an application for a charter school on the efforts of a public school district or public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools." Ark. Code Ann. § 6-23-106(b) requires the charter authorizer to "attempt to measure the likely impact of a proposed public charter school on the efforts of public school districts to achieve and maintain a unitary system." Ark. Code Ann. § 6-23-106(c) states that the authorizer "shall not approve any public charter school under this chapter or any other act or any combination of acts that hampers, delays, or in any manner negatively affects the desegregation efforts of a public school district or public school districts in this state." This analysis is provided to inform the decision-making of the charter authorizer with regard to the effect, if any, of the proposed public charter school upon the desegregation efforts of a public school district.

III. INFORMATION SUBMITTED BY THE APPLICANT AND THE AFFECTED SCHOOL DISTRICTS

A desegregation analysis submitted by the charter school is attached as Exhibit A. To date, no desegregation-related opposition to the amendment request has been received.

IV. ANALYSIS FROM THE DEPARTMENT

Enrollment data, as accessed on April 27, 2022, for the traditional public school districts and the open-enrollment charter schools in Jefferson County, Arkansas is attached as Exhibit B.

“Desegregation” is the process by which a school district eliminates, to the extent practicable, the lingering negative effects or “vestiges” of prior *de jure* (caused by official action) racial discrimination. The ADE is aware of desegregation orders affecting LRSD, PCSSD, and the North Little Rock School District (NLRSD). *Little Rock School District, et al. v. Pulaski County Special School District, et al.*, Case No. 4:82-cv-00866-DPM (E.D. Ark.). The goal of a desegregation case with regard to assignment of students to schools is to “achieve a system of determining admission to the public schools on a non-racial basis.” *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 435 (1976) (quoting *Brown v. Board of Education*, 349 U.S. 294, 300-301 (1955)).

ADE is not aware of any active desegregation orders in the affected districts, and no desegregation-related opposition was received from any of the affected school districts.

V. CONCLUSION

As stated above, Arkansas law does not allow the authorizer to approve any public charter school that “hampers, delays, or in any manner negatively affects the desegregation efforts” of a public school district. Ark. Code Ann. § 6-23-106(c). 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*, 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).

It is difficult to conclude, from data currently available, that approval of the charter school is motivated by an impermissible intent to segregate schools, or that approval would hamper, delay or negatively affect the desegregation efforts of the affected school districts.

Desegregation Analysis

Friendship Aspire Academy Pine Bluff (Friendship Aspire) proposes to locate its open-enrollment public charter school within the boundaries of the Pine Bluff School District, and as an open-enrollment public charter school unconfined by district boundaries, expects to obtain its students from within the boundaries of the Pine Bluff and Dollarway School Districts. As we seek to operate an open-enrollment charter school in the PBSB, Friendship Aspire School's careful review of the court orders and statutory obligations indicate that our school should not create and maintain a unitary system of desegregated in the PBSB.

Friendship Aspire understands that we are required: 1) by Ark. Code Ann. § 6-23-105 to carefully review the potential impact its opening would have upon the efforts of the Pine Bluff School District to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools; 2) that the granting of an open-enrollment public school charter for Friendship Aspire cannot be said to have a negative impact on the Pine Bluff and Dollarway School District's ability to comply with court orders or statutory obligations to create and maintain a unitary system of desegregated public schools; 3) Pursuant to Ark. Code Ann. § 6-23-306, that Friendship Aspire must be race-neutral and non-discriminatory in its student selection and admission processes; and 4) Ark. Code Ann. § 6-23-105 requires that Friendship Aspire's operation will not serve to hamper, delay, or in any manner negatively affect the desegregation efforts of a public school district or districts within the state.

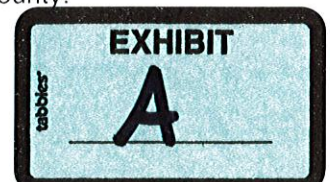
On February 4, 2016, ADE Legal Services Staff did a desegregation analysis of Amendment request for Quest Middle School of Pine Bluff. In their memorandum to the Charter Authorizer, they cited that, "Although Ark. Code Ann. § 6-23-106 requires the authorizer to carefully analyze the impact of any new proposed charter school on the efforts of public school districts to achieve and maintain unitary systems, it does not require the authorizer to conduct an analysis of proposed amendments to an existing charter. However, Ark. Code Ann. § 6-23-106(c) states that the State Board "shall not approve any ... act or any combination of acts that hampers, delays, or in any manner negatively affects the desegregation efforts of a public school district or public school districts in this state."

Furthermore, they outlined the enrollment in the Pine Bluff and surrounding Districts of Dollarway, Watson Chapel and White Hall as follows:

Based on their analysis, ADE determined that they are "not aware of any active desegregation orders in the affected districts, and no desegregation-related opposition was received from any of the affected school districts." The board of Friendship Aspire understands that Arkansas law does not allow the authorizer to approve any public charter school that "hampers, delays, or in any manner negatively affects the desegregation efforts" of a public school district. Ark. Code Ann. § 6-23-106(c). 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*, 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).

In conclusion, Friendship Aspire submits that, upon the basis of its review, neither any existing federal District Court desegregation order affecting the PBSB and the PBSSD, nor the 1989 Settlement Agreement, prohibit the State's charter school authorizer from granting a new charter for an open-enrollment public charter school in Pine Bluff or Dollarway County.



	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
School Districts in Jefferson County							
White Hall School District	95 3.14%	102 3.38%	771 25.52%	96 3.18%	9 0.30%	1,948 64.48%	3,021 --
Watson Chapel School District	27 1.39%	20 1.03%	1,664 85.68%	32 1.65%	2 0.10%	197 10.14%	1,942 --
Pine Bluff School District	43 1.27%	14 0.41%	3,152 93.28%	55 1.63%	24 0.71%	91 2.69%	3,379 --
DISTRICT TOTAL	165 1.98%	136 1.63%	5,587 66.97%	183 2.19%	35 0.42%	2,236 26.80%	8,342 --
Open-Enrollment Public Charter Schools in Jefferson County							
Pine Bluff Lighthouse	0 0.0%	0 0.0%	206 97.2%	2 0.9%	1 0.5%	3 1.4%	212 --
Friendship Aspire	2 0.5%	2 0.5%	418 95.2%	4 0.9%	2 0.5%	11 2.5%	439 --
CHARTER TOTAL	2 0.3%	2 0.3%	624 95.9%	6 0.9%	3 0.5%	14 2.2%	651 --
COUNTYWIDE TOTAL	167 1.9%	138 1.5%	6,211 69.1%	189 2.1%	38 0.4%	2,250 25.0%	8,993

Source: ADE Data Center, accessed April 27, 2022

Prepared by:
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