



MEMO

DATE: April 5, 2023
TO: Charter Authorizer
FROM: ADE Staff Attorney
SUBJECT: Desegregation Analysis of District Conversion Charter Amendment Request for Fort Smith Virtual Academy

I. INTRODUCTION

Fort Smith School District submitted an amendment for their current district-conversion public charter school, Fort Smith Virtual Academy. The district conversion charter school currently provides instruction to students in grades kindergarten through eight (K-8). The amendment request is to add grades nine through twelve (9-12) to the district conversion charter.

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 charter amendment has been received.

IV. ANALYSIS FROM THE DEPARTMENT

Enrollment, as of the 2022-2023 school year, for the traditional public school districts and open-enrollment charter schools contiguous to the Fort Smith School District are 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).

There is nothing, from data currently available, that suggests the amendment request 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.

FSVA Desegregation Analysis

The Fort Smith School District (FSSD) is submitting an amendment application for its conversion charter school, Fort Smith Virtual Academy (FSVA). As a district conversion charter school, the school may only enroll students who live within Fort Smith’s boundaries, or lawfully transfer into the district. Fort Smith is contiguous to the following school districts: Alma, Greenwood; Lavaca; and Van Buren. This analysis is provided to inform the decision-making of the charter authorizer regarding the effect, if any, that the grade reconfiguration of FSSD’s district conversion charter would have on the efforts of FSSD and the above-listed contiguous school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. FSSD, in this analysis, has carefully reviewed the potential impact that the grade reconfiguration of its district conversion charter school would have upon its efforts and the efforts of the contiguous school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. In conducting its review, FSSD has found that none of the contiguous school districts listed above are under any court orders concerning their desegregation obligations, and are therefore unitary in all respects of their school operations. FSSD itself is not under any court order concerning its desegregation obligations. According to last school year’s third-quarter average daily membership enrollment figures as maintained by the DESE Data Center.

School	Student Population	Ethnicity % Caucasian	Ethnicity % Hispanic	Ethnicity % African-American
Alma	3,210	84	4	2
Greenwood	3,848	83	6	1
Lavaca	794	82	7	1
Van Buren	5,600	66	19	3
Fort Smith	13,846	39	35	11

Ark. Code Ann. §6-23-106 also requires that FSSD’s continued operation of the charter school 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. FSSD’s careful review of the relevant statutes affecting the contiguous school districts, and the student populations of such districts, shows that such negative effect is not present here.

In conclusion, FSSD submits that upon the basis of its review, no statutory or other impediments concerning the creation and operation of desegregated public schools prohibit the State’s charter school authorizer from granting its application to amend the grade configuration of its district conversion charter for Fort Smith Virtual Academy

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
Affected School Districts							
Fort Smith School District	1,462 10.57%	703 5.08%	1,411 10.20%	4,896 35.40%	142 1.03%	5,215 37.71%	13,829 --
Greenwood School District	290 7.47%	72 1.85%	26 0.67%	235 6.05%	66 1.70%	3,193 82.25%	3,882 --
Lavaca School District	60 7.71%	7 0.90%	4 0.51%	53 6.81%	15 1.93%	639 82.13%	778 --
Van Buren School District	515 8.86%	121 2.08%	127 2.19%	1,159 19.94%	85 1.46%	3,804 65.46%	5,811 --
DISTRICT TOTAL	2,327 9.58%	903 3.72%	1,568 6.45%	6,343 26.10%	308 1.27%	12,851 52.88%	24,300 --
Open-Enrollment Public Charter Schools in Affected Area							
Future School of Fort Smith	23 9.5%	2 0.8%	44 18.3%	52 21.6%	4 1.7%	116 48.1%	241 --
CHARTER TOTAL	23 2300.0%	2 0.8%	44 18.3%	52 21.6%	4 1.7%	116 48.1%	241 --
AFFECTED AREA TOTAL	2,350 9.6%	905 3.7%	1,612 6.6%	6,395 26.1%	312 1.3%	12,967 52.8%	24,541 --

Source: ADE Data Center, accessed April, 2023

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