



MEMO

DATE: October 3, 2016
TO: Charter Authorizing Panel
FROM: ADE Legal Staff
SUBJECT: Desegregation Analysis, The Excel Center Adult Education Charter School Application

I. Introduction

Goodwill Arkansas Education Initiatives, Inc. (GAEI) submitted an application for an open-enrollment adult education public charter school, The Excel Center. The proposed adult education charter school would be located within the boundaries of the Little Rock School District. The proposed charter school would provide instruction to students in grades nine through twelve (9-12) and is only for students ages nineteen (19) and older. The proposed adult education charter school would possess a student enrollment cap of 125. According to its application, the proposed charter school expects to draw students from the Little Rock, North Little Rock, and Pulaski County Special school districts.

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 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 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 authorizer with regard to the effect, if any, of the proposed charter schools upon the desegregation efforts of a public school district.

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

The applicant addressed Desegregation Assurances in its application. The Department is unaware of any desegregation-related opposition to these applications from any school district. The applicant’s response is as follows:

“The Excel Center is located within the boundaries of the Little Rock School District (PCSSD), and will be an open-enrollment public charter school which is not restricted in its student enrollment by district boundaries, expects to continue to obtain most of its students from within the Central Arkansas area.

The Excel Center offers this desegregation analysis in accordance with the requirements of Ark. Code Ann. § 6-23-106 to carefully review the potential impact its operation would have upon the efforts of the PCSSD, LRSD, and NLRSD to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools.

The granting of The Excel School open-enrollment public school charter cannot be said to have a negative impact on the PCSSD, LRSD, and NLRSD's ability to comply with any District Court orders or statutory obligations to create and maintain a unitary system of desegregated public schools for two primary reasons.

First, the LRSD and the NLRSD have been found by the federal District Court to be unitary in all respects of their school operations. PCSSD has been determined by the federal District Court to be unitary in all respects concerning inter-district student assignment. The importance of the attainment of unitary status of the LRSD and the NLRSD, and the status of PCSSD as unitary in the area of inter-district student assignment, is that those school districts have no further obligations to comply with court orders in these areas.

Pursuant to Ark. Code Ann. § 6-23-306, The Excel Center must be race-neutral and nondiscriminatory in its student selection and admission processes. Based solely on current dropout rates for the community in which The Excel School sits, the initial student enrollment is expected to have significant representation of students from communities of color. The Excel Center students are not part of the traditional population of students, ages 5-18, considered a concern in affecting the statutory and court ordered obligations for each district to meet desegregation requirements.

Second, the mission of The Excel Center is to provide adults the opportunity and support to earn a high school diploma and post-secondary education while developing career paths that offer greater employment and career growth opportunities. These individuals are not included in the traditional K-12 student population and cannot be considered to negatively impact or to have any effect at all on the school year enrollment figures for 2017-2018.

Even if there were concern regarding inclusion of these students in the state's overall student enrollment population, The Excel Center's enrollment would have little to no significant impact on the student populations for each district. According to the 2015-2016 school year enrollment figures as maintained by the ADE Data Center, the PCSSD had a student population of 16,562 students; the LRSD had a student population of 23, 164 students, and the NLRSD had a student population of 8,413 students. At its proposed initial enrollment of 125 students, the student population of The Excel Center would equal less than one percent of the PCSSD and LRSD student populations and just 1.49% of the NLRSD student population.

The Excel Center at Goodwill has carefully completed its review of the relevant statutes and

court orders affecting the three (3) Pulaski County school districts and the student populations of such districts and has determined that no negative effect is present here.”

IV. ANALYSIS FROM THE DEPARTMENT

“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.

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).

V. CONCLUSION

The Department is unaware of any data demonstrating that the proposed adult education charter school is motivated by an impermissible intent to segregate schools. However, the authorizer should carefully examine the proposed charter school applications in an attempt to determine whether there are legitimate, non-racially motivated reasons for the charter schools’ existence.

Additionally, while the applicant expects to draw students from the Pulaski County Special School District (PCSSD), who is still subject to a desegregation order, as noted by the applicant, the adult education charter school will not impede or hinder the PCSSD in meeting it’s obligations under the controlling desegregation order.