



MEMO

DATE: August 14, 2020
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application-- Westwind School of Performing Arts

I. INTRODUCTION

Timmons Art Foundation submitted an application for an open-enrollment public charter school, Westwind School of Performing Arts. The proposed charter school would be located within the boundaries of the Pulaski County Special School District. The proposed charter school would provide instruction to students in grades six through eight (6-8). The proposed charter school would possess a student enrollment cap of 150 in its initial year, and by 2025-2026 it would have an enrollment cap of 225.

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 located in Question 20 in the Applicant's charter application.

IV. ANALYSIS FROM THE DEPARTMENT

Enrollment data for the 2019-20 school year for the traditional public school districts and the open-enrollment charter schools in the impacted areas are attached.

“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)).

In 2002, the Little Rock School District was declared unitary with respect to the majority of its desegregation plan obligations and released from court supervision in those areas. *Little Rock School District v. Pulaski County Special School District*, 237 F. Supp. 2d 988, 999 (E.D. Ark. 2002). In 2007, LRSD successfully completed its desegregation efforts and was declared fully unitary by the federal court. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed February 23, 2007. This order was affirmed by the Eighth Circuit Court of Appeals on April 2, 2009. *Little Rock School District v. Pulaski County Special School District*, 561 F.3d 746 (8th Cir. 2009). In February and March 2010, the federal court held hearings on the motions of NLRSD and PCSSD to be declared unitary. On May 19, 2011, the federal court held that neither district was fully unitary. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed May 19, 2011. However, on December 28, 2011, the Eighth Circuit Court of Appeals ruled that NLRSD is fully unitary but that PCSSD is not. *Little Rock School District v. State of Arkansas*, 664 F.3d 738 (8th Cir. 2011).

On January 13, 2014, the presiding federal judge in the Pulaski County Desegregation Case gave final approval to a settlement agreement between the Joshua Intervenors, Knight Intervenors, Little Rock School District, North Little Rock School District, PCSSD and the State of Arkansas. Pursuant to the settlement agreement, the only remaining obligation of the State of Arkansas is to continue the distribution of desegregation payments to the three Pulaski County school districts through the 2017-2018 school year. On January 30, 2014, the Court also approved a stipulation among the parties that PCSSD is unitary in the areas of Assignment of Students and Advanced Placement, Gifted and Talented and Honors Programs. Based on the stipulation, the Court released PCSSD from supervision and monitoring in these areas. Thus, as of January 30, 2014, all three school districts in Pulaski County are unitary in the area of student assignments. On April 4, 2014, the court found that PCSSD is unitary in the areas of special education and scholarships. The court has recently declared PCSSD unitary in the area of staffing, but they remain non-unitary in the following four areas of its desegregation plan: (1) Discipline; (2) School Facilities; (3) Student Achievement; and (4) Monitoring.

However, with the creation of the Jacksonville North Pulaski School District (JNPSD) detaching from PCSSD, the JNPSD assumed the desegregation obligations of the PCSSD at the time of detachment. JNPSD remains non-unitary in the following five areas of its desegregation plan: (1) Discipline; (2) School Facilities; (3) Staff; (4) Student Achievement; and (5) Monitoring.

Because Pioneer Schools draws students from Pulaski County, Arkansas, the authorizer must ensure that any act it approves does not hamper, delay, or in any manner negatively affect the desegregation efforts of PCSSD or JNPSD. As 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).

As noted above, PCSSD and JNPSD remain under federal court supervision with regard to five areas of the district's desegregation plan. Therefore, the authorizer should consider whether granting the application will negatively affect PCSSD or JNPSD's efforts to achieve full unitary status.

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). It is difficult to conclude, from data currently available, that the proposed charter school is motivated by an impermissible intent to segregate schools, or that approval would hamper, delay or negatively affect any applicable desegregation efforts of any affected school district. However, the authorizer should carefully examine the proposed charter school application in an attempt to determine whether there are legitimate, non-rationally motivated reasons for the charter school's existence.

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
School Districts in Pulaski County							
Jacksonville North Pulaski	138 3.44%	32 0.80%	2,108 52.52%	312 7.77%	29 0.72%	1,395 34.75%	4,014 --
Little Rock School District	210 0.98%	666 3.10%	12,966 60.39%	3,417 15.91%	85 0.40%	4,128 19.23%	21,472 --
N. Little Rock School District	92 1.14%	91 1.13%	4,789 59.30%	771 9.55%	63 0.78%	2,270 28.11%	8,076 --
Pulaski Co. Spec. School District	388 3.29%	261 2.21%	5,059 42.87%	1,142 9.68%	48 0.41%	4,903 41.55%	11,801 --
DISTRICT TOTAL	828 1.83%	1,050 2.31%	24,922 54.94%	5,642 12.44%	225 0.50%	12,696 27.99%	45,363 --
Open-Enrollment Public Charter Schools in Pulaski County							
Academics Plus	49 3.2%	58 3.7%	283 18.2%	97 6.3%	11 0.7%	1,054 67.9%	1,552 --
Capitol City Lighthouse	7 4.3%	0 0.0%	142 86.6%	12 7.3%	0 0.0%	3 1.8%	164 --
E-Stem	189 5.9%	40 1.2%	1,887 58.9%	305 9.5%	12 0.4%	769 24.0%	3,202 --
Exalt Academy	10 2.1%	0 0.0%	145 29.8%	325 66.9%	0 0.0%	6 1.2%	486 --
Jacksonville Lighthouse	4 0.5%	16 1.9%	586 68.4%	57 6.7%	7 0.8%	187 21.8%	857 --
Lisa Academy	99 3.5%	200 7.1%	1,108 39.2%	748 26.5%	31 1.1%	639 22.6%	2,825 --
LR Prep Academy (Now LISA)	3 1.2%	0 0.0%	224 92.6%	13 5.4%	0 0.0%	2 0.8%	242 --
Premier High School (NLR)	1 1.4%	0 0.0%	56 80.0%	3 4.3%	0 0.0%	10 14.3%	70 =
Premier High School (LRSD)	1 1.1%	0 0.0%	87 91.6%	2 2.1%	0 0.0%	5 5.3%	95 --
REsed Classical Academy WLR	26 2.4%	286 26.9%	64 6.0%	97 9.1%	4 0.4%	587 55.2%	1,064 =
Friendship LR	1 0.4%	0 0.0%	173 74.9%	49 21.2%	0 0.0%	8 3.5%	231 =
Scholarmade	7 2.1%	0 0.0%	317 95.2%	4 1.2%	1 0.3%	4 1.2%	333 --
Graduate Arkansas	1 0.8%	0 0.0%	107 89.9%	7 5.9%	0 0.0%	4 3.4%	119 --
CHARTER TOTAL	398 3.5%	600 5.3%	5,179 46.1%	1,719 15.3%	66 0.6%	3,278 29.2%	11,240 --
COUNTYWIDE TOTAL	1,226 2.2%	1,650 2.9%	30,101 53.2%	7,361 13.0%	291 0.5%	15,974 28.2%	56,603

Source: ADE Data Center, 2019-20 Enrollment