



MEMO

DATE: March 25, 2022
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application for Founders Online

I. INTRODUCTION

Founders Classical Academy submitted an application for an open-enrollment public charter school, Founders Online. The proposed charter school would be a virtual school that offers onsite instruction at Founders Classical Academy's existing brick-and-mortar campuses. The proposed charter school would provide instruction to students in grades kindergarten through twelve (K-12). The proposed charter school estimates enrollment of 250 students statewide in its initial year, with an enrollment of 500 by 2024-2025. According to its application, the proposed charter school expects to draw students statewide and from the Little Rock School District, Bentonville School District, and Rogers 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, as accessed on March 24, 2022, for the traditional public school districts and the open-enrollment charter schools in Pulaski County and Benton County 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)).

The Little Rock School District and the North Little Rock School District have both been declared unitary. The PCSSD has been declared unitary save for facilities. The JNPSD has also been declared unitary, but has ongoing facilities responsibilities.

Because Founders Online 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 facilities. Therefore, the authorizer should consider whether granting the application will negatively affect PCSSD or JNPSD’s efforts to achieve full unitary status.

ADE is not aware of any active desegregation orders in Benton County, 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):

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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.

Responsive Education Solutions Amendment Request
Desegregation Analysis-Hybrid/Virtual Campus

This desegregation analysis is in support of Responsive Education Solutions' (RES) amendment request to open a hybrid/virtual campus (and add an additional building to house the students) to its Founders Classical Academies of Arkansas (Founders) charter, and to increase its enrollment cap by 500 students from 2500 students to 3000 students. The entire 500 student enrollment cap increase will be allocated to the new hybrid/virtual campus. RES is required to carefully review the potential impact its operations would have upon the efforts of the Bentonville School District (BSD), Little Rock School District (LRSD), and the Rogers School District (RSD), the three (3) school districts in which Founders campuses are currently located, to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. Founders' hybrid/virtual campus will serve students in grade levels K-12. While the hybrid/virtual school could draw students statewide (just as Founders can now), this analysis is focused on the school districts in which the current Founders campuses are located. The hybrid/virtual school's administrative offices are scheduled to be housed in Founders Classical Academy Rogers school building (located within the boundaries of the Rogers SD).

I. The Status of Pulaski County Desegregation Litigation, and Bentonville and Rogers School Districts

RES is providing this desegregation analysis in accordance with Ark. Code Ann. §6-23-106 to review the potential impact that its charter amendment would have upon the efforts of the LRSD to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. In conducting its review, RES has substantiated that the LRSD has been declared unitary in all respects of its school operations. The Pulaski County desegregation litigation was first filed in 1982. *Little Rock School District, et al v. Pulaski County Special School District, et al.*, Case No. 4:82:cv-00866-DPM. In 1989, the parties entered into a settlement agreement (the "1989 Settlement Agreement") under which the Arkansas Department of Education, the then-three (3) Pulaski County school districts, and the intervenors agreed to the terms of state funding for desegregation obligations.

LRSD successfully completed its desegregation efforts in 2007 and was declared fully unitary by the federal court in 2007. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed February 23, 2007. In 2010, LRSD filed a motion to enforce the 1989 Settlement Agreement. The motion contended that operation of open-enrollment public charter schools within Pulaski County interfered with the "M-M Stipulation" and the "Magnet Stipulation." On January 17, 2013, Judge D.P. Marshall Jr. denied LRSD's motion, stating:



“The cumulative effect of open enrollment charter schools in Pulaski County on the stipulation magnet schools and M-to-M transfers has not, as a matter of law, substantially defeated the relevant purposes of the 1989 Settlement Agreement, the magnet stipulation, or the M-to-M stipulation.”

Little Rock School District v. Pulaski County Special School District, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed January 17, 2013. LRSD appealed to the Eighth Circuit Court of Appeals.

One (1) year later, on January 13, 2014, Judge Marshall approved a Settlement Agreement that included a provision stipulating to the voluntary dismissal with prejudice of LRSD’s pending appeal concerning the charter school issues. In light of LRSD’s unitary status and the parties’ 2014 Settlement Agreement, Premier’s requested charter renewal cannot interfere with the purposes of the Pulaski County desegregation litigation, which has been fully concluded as to LRSD. After the dismissal and the settlement agreement, the case was completely concluded for all purposes as to LRSD, and the federal court terminated all jurisdiction in the matter. Because of that, there is no possibility that Premier’s proposed amendment could impact LRSD’s unitary status. To be clear, LISA North’s proposed amendment cannot impact LRSD’s unitary status because 1) there is no case in which LRSD’s unitary status could be an issue; 2) LRSD made a claim regarding operation of open-enrollment charter schools in federal court in 2010 and lost it; and 3) As a consequence of the 2014 Settlement Agreement, the LRSD released any claims it had concerning the charter school issues. 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, LRSD, NLRSD and PCSSD 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. Subsequently, PCSSD was also found to be unitary in the areas of Staff and Monitoring. PCSSD thus remains non-unitary in the following three (3) areas of its desegregation plan: 1) Discipline; 2) School Facilities; 3) Student Achievement, and 4) Monitoring. JNPSD is non-unitary in the areas of: 1) Discipline; 2) School Facilities; 3) Staff; 4) Student Achievement, and 5) Monitoring.

RES is unaware of any federal court orders or consent decrees concerning desegregation affecting the Bentonville and Rogers School Districts. Upon review, RES believes that its request to amend its Premier charter shall have no negative, segregative effects on the LRSD, BSD and RSD.

II. Premier Data

According to the latest enrollment figures as maintained by the ADE Data Center, LRSD’s student population of 20,786 students, of which approximately 60% are Black; 19.6% are White, and 16% are Hispanic. BSD’s student population is 18,536 students, of which approximately 70.6% are Black; 11.8% are Hispanic, and 7.7% are Asian. RSD’s student population is 15,603 students, of which approximately 47.8% are Hispanic and 42.8% are White. The Founders Bentonville campus’ student population is 781 students, of which approximately 44.4 % are Asian; 44.4% are White, and 6% are Hispanic. The Founders West Little Rock Middle/High School campus’ (Grade Levels 6-12) student population is 107 students, of which approximately 49.5% are White; 36.4% are Black, and 6.5% are Two or More Races. The Founders West Little Rock Elementary campus’ (Grade Levels K-2) student population is 15 students, of whom 53.3% are Black; 33.3% are White, and 6.7% are Two or More Races. Under Ark. Code Ann.

§6-23-306(6)(A), RES must be race-neutral and non-discriminatory in its student selection and admission process. While it is impossible to project its future racial composition accurately, RES will continue to implement admissions policies that are consistent with state and federal laws, regulations, and/or guidelines applicable to charter schools.

In addition, Ark. Code Ann. §6-23-106 requires that RES' 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. As explained in more detail above, RES' careful review of the relevant statutes and court orders affecting the LRSD and its student populations shows that such negative impact is not present here.

III. Conclusion

RES submits that upon the basis of its review, neither any existing federal desegregation order affecting the LRSD, nor the 1989 Settlement Agreement, prohibit the State's charter school authorizer from granting its amendment request to add a hybrid/virtual school to the Founders charter. RES also submits that it found no evidence of any federal desegregation court order or consent decree affecting the BSD and the RSD.

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
School Districts in Pulaski County							
Jacksonville	75	40	2,108	290	31	1,302	3,846
North Pulaski	1.95%	1.04%	54.81%	7.54%	0.81%	33.85%	--
Little Rock	152	665	12,459	3,329	114	4,067	20,786
School District	0.73%	3.20%	59.94%	16.02%	0.55%	19.57%	--
N. Little Rock	312	72	4,395	880	47	1,979	7,685
School District	4.06%	0.94%	57.19%	11.45%	0.61%	25.75%	--
Pulaski Co. Spec. School District	451	266	4,998	1,146	55	4,349	11,265
	4.00%	2.36%	44.37%	10.17%	0.49%	38.61%	--
DISTRICT TOTAL	990	1,043	23,960	5,645	247	11,697	43,582
	2.27%	2.39%	54.98%	12.95%	0.57%	26.84%	--
Open-Enrollment Public Charter Schools in Pulaski County							
Academics Plus	57	79	312	74	8	1,155	1,685
	3.4%	4.7%	18.5%	4.4%	0.5%	68.5%	--
Capitol City Lighthouse	0	0	112	7	0	6	125
	0.0%	0.0%	89.6%	5.6%	0.0%	4.8%	--
E-STEM	184	28	1,947	285	11	597	3,052
	6.0%	0.9%	63.8%	9.3%	0.4%	19.6%	--
Exalt Academy	11	0	118	409	0	1	539
	2.0%	0.0%	21.9%	75.9%	0.0%	0.2%	--
Jacksonville Lighthouse	9	10	496	62	7	143	727
	1.2%	1.4%	68.2%	8.5%	1.0%	19.7%	--
Lisa Academy	106	218	1,428	773	24	573	3,122
	3.4%	7.0%	45.7%	24.8%	0.8%	18.4%	--
Premier High School (NLR)	3	1	102	5	1	31	143
	2.1%	0.7%	71.3%	3.5%	0.7%	21.7%	--
Premier High School (LR)	4	0	101	0	2	18	125
	3.2%	0.0%	80.8%	0.0%	1.6%	14.4%	--
Founders Classical Academy WLR	8	3	47	5	1	58	122
	6.6%	2.5%	38.5%	4.1%	0.8%	47.5%	--
Friendship LR	0	0	226	38	1	2	267
	0.0%	0.0%	84.6%	14.2%	0.4%	0.7%	--
Scholarmade	2	1	375	10	0	2	390
	0.5%	0.3%	96.2%	2.6%	0.0%	0.5%	--
Graduate Arkansas	0	0	82	19	5	35	141
	0.0%	0.0%	58.2%	13.5%	3.5%	24.8%	--
CHARTER TOTAL	384	340	5,346	1,687	60	2,621	10,438
	3.7%	3.3%	51.2%	16.2%	0.6%	25.1%	--
COUNTYWIDE TOTAL	1,374	1,383	29,306	7,332	307	14,318	54,020
	2.5%	2.6%	54.3%	13.6%	0.6%	26.5%	--

Source: ADE Data Center, accessed March 2022

Prepared by:
Whitney James,
Staff Attorney



	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
School Districts in Benton County							
Gravette School District	89 4.64%	29 1.51%	9 0.47%	146 7.60%	43 2.24%	1,604 83.54%	1,920 --
Decatur School District	9 1.58%	34 5.96%	8 1.40%	229 40.18%	39 6.84%	251 44.04%	570 --
Gentry School District	158 10.35%	122 7.99%	5 0.33%	253 16.57%	59 3.86%	930 60.90%	1,527 --
Pea Ridge School District	27 1.16%	21 0.90%	36 1.55%	195 8.40%	43 1.85%	1,999 86.13%	2,321 --
Siloam Springs School District	289 6.74%	135 3.15%	46 1.07%	1,431 33.36%	227 5.29%	2,162 50.40%	4,290 --
Bentonville School District	891 4.81%	1,436 7.75%	599 3.23%	2,179 11.76%	354 1.91%	13,077 70.55%	18,536 --
Springdale School District	504 2.31%	312 1.43%	487 2.23%	10,436 47.88%	3,094 14.20%	6,963 31.95%	21,796 --
Rogers School District	532 3.41%	254 1.63%	209 1.34%	7,465 47.84%	472 3.03%	6,671 42.75%	15,603 --
DISTRICT TOTAL	2,499 3.75%	2,343 3.52%	1,399 2.10%	22,334 33.55%	4,331 6.51%	33,657 50.56%	66,563 --
Open-Enrollment Public Charter Schools in Benton County							
Arkansas Arts Academy	83 7.0%	14 1.2%	24 2.0%	229 19.2%	8 0.7%	833 69.9%	1,191 --
Arkansas Connections Academy	250 7.4%	34 1.0%	491 14.5%	227 6.7%	39 1.2%	2,349 69.3%	3,390 --
Founders Classical Academy	27 2.8%	365 37.9%	18 1.9%	71 7.4%	7 0.7%	476 49.4%	964 --
Hass Hall	49 7.1%	129 18.6%	16 2.3%	91 13.1%	5 0.7%	404 58.2%	694 --
CHARTER TOTAL	409 6.6%	542 8.7%	549 8.8%	618 9.9%	59 0.9%	4,062 65.1%	6,239 --
COUNTYWIDE TOTAL	2,908 4.0%	2,885 4.0%	1,948 2.7%	22,952 31.5%	4,390 6.0%	37,719 51.8%	72,802

Source: ADE Data Center, accessed March 2022

Whitney James,