



MEMO

DATE: November 9, 2022
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application for eStem Public Charter School

I. INTRODUCTION

eStem Public Charter School submitted a renewal application for its charter. The charter has five schools: eStem Elementary School (grades K-6); eStem Junior High School (grades 7-9); eStem East Village Elementary School (grades K-6); eStem East Village Junior High School (grades 7-9); and eStem High School (grades 10-12). According to its application, the proposed charter school expects to continue to draw students from within the boundaries of the Little Rock School District, North Little Rock School District, Pulaski County Special School District, and Jacksonville-North Pulaski 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 November 9, 2022, for the traditional public school districts and the open-enrollment charter schools in Pulaski 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 eStem 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.

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.

Section 8: Desegregation Analysis

Describe the impact, both current and potential, of the public charter school on the efforts of affected public school district(s) to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools.

eStem Public Charter Schools Desegregation Analysis

eStem Public Charter Schools (eStem) is seeking the renewal of its open-enrollment charter from the State's charter authorizer. eStem is located within the boundaries of the Little Rock School District and, as an open-enrollment public charter school unconfined by district boundaries, expects to continue to obtain most of its students from within the boundaries of the Little Rock (LRSD), North Little Rock (NLRSD), Pulaski County (PCSSD) and Jacksonville-North Pulaski (JNPSD) School Districts.

I. The Status of Pulaski County Desegregation Litigation

eStem is providing this desegregation analysis in accordance with Ark. Code Ann. §6-23-106 to review the potential impact that its charter renewal application would have upon the efforts of all four (4) of the Pulaski County 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, eStem has substantiated that the LRSD and the NLRSD have been declared unitary in all respects of their 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

EXHIBIT

A

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, eStem’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 eStem’s requested charter renewal could impact LRSD’s unitary status. To be clear, eStem’s charter renewal application 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. Pursuant to Judge Marshall’s order on May 6, 2021, both PCSSD and JNPSD are unitary in all areas except School Facilities.

Upon review, eStem believes that its request to obtain the renewal of its open-enrollment public charter shall have no negative effects on the efforts of the PCSSD and JNPSD to attain unitary status.

II. Data

According to last year's third-quarter Average Daily Membership enrollment figures as maintained by the DESE Data Center, LRSD had a student population of 20,518 students, of which 59.94% were Black/African-American; 19.57% were White, and 16.02% were Hispanic. NLRSD's student population was 7,640 students, of which 57.19% were Black/African-American; 25.75% were White, and 11.45% were Hispanic. PCSSD's student population was 11,227 students, of which 44.37% were Black/African-American; 38.61% were White, and 10.17% were Hispanic. JNPSD's student population was 3,841 students, of which 54.81% were Black/African-American; 33.85% were White, and 7.54% were Hispanic. eStem's student population was 3,055 students, of which 63.79% were Black/African-American; 19.56% were White, and 9.34% were Hispanic.

Ark. Code Ann. §6-23-106 requires that eStem's continued 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, eStem's careful review of the relevant statutes and court orders affecting the LRSD, NLRSD, PCSSD, and JNPSD and their student populations, and its own student population, shows that such negative impact is not present here.

III. Conclusion

eStem submits that upon the basis of its review, neither any existing federal desegregation order affecting the PCSSD, LRSD, NLRSD, and JNPSD, nor the 1989 Settlement Agreement prohibit the State's charter school authorizer from granting its renewal application to continue operating an open-enrollment public charter school within the geographic boundaries of the LRSD.

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
School Districts in Pulaski County							
Jacksonville North Pulaski School District	202 4.76%	36 0.85%	2,238 52.68%	370 8.71%	22 0.52%	1,380 32.49%	4,248 --
Little Rock School District	136 0.68%	691 3.43%	11,925 59.23%	3,348 16.63%	129 0.64%	3,906 19.40%	20,135 --
N. Little Rock School District	355 4.65%	66 0.86%	4,402 57.62%	938 12.28%	40 0.52%	1,839 24.07%	7,640 --
Little Rock School District	136 0.68%	691 3.43%	11,925 59.23%	3,348 16.63%	129 0.64%	3,906 19.40%	20,135 --
DISTRICT TOTAL	829 1.59%	1,484 2.85%	30,490 58.46%	8,004 15.35%	320 0.61%	11,031 21.15%	52,158 --
Open-Enrollment Public Charter Schools in Pulaski County							
Academics Plus -	57 3.4%	79 4.7%	312 18.5%	74 4.4%	8 0.5%	1,155 68.5%	1,685 --
Capitol City Lighthouse	0 0.0%	0 0.0%	112 89.6%	7 5.6%	0 0.0%	6 4.8%	125 --
E-Stem	184 6.0%	28 0.9%	1,947 63.8%	291 9.5%	5 0.2%	597 19.6%	3,052 --
Exalt Academy	11 2.0%	0 0.0%	118 21.9%	409 75.9%	0 0.0%	1 0.2%	539 --
Jacksonville Lighthouse (Elem.,)	9 1.2%	10 1.4%	496 68.2%	62 8.5%	7 1.0%	143 19.7%	727 --
Lisa Academy	106 3.4%	218 7.0%	1,428 45.7%	773 24.8%	24 0.8%	573 18.4%	3,122 --
Premier High School (NLR)	3 2.1%	1 0.7%	102 71.3%	5 3.5%	1 0.7%	31 21.7%	143 --
Premier High School (LR)	4 3.2%	0 0.0%	101 80.8%	0 0.0%	2 1.6%	18 14.4%	125 --
Founders Classical Academy WLR	8 6.5%	3 2.4%	47 38.2%	5 4.1%	1 0.8%	59 48.0%	123 --
Friendship LR	0 0.0%	0 0.0%	226 84.6%	38 14.2%	1 0.4%	2 0.7%	267 --
Scholarmade	2 0.5%	1 0.3%	375 96.2%	10 2.6%	0 0.0%	2 0.5%	390 --
Westwind School for Performing Arts	2 15.4%	0 0.0%	46 353.8%	2 15.4%	0 0.0%	0 0.0%	13 --
Graduate Arkansas	0 0.0%	0 0.0%	82 58.2%	19 13.5%	5 3.5%	35 24.8%	141 --
CHARTER TOTAL	384 3.7%	340 3.3%	5,346 51.2%	1,693 16.2%	54 0.5%	2,622 25.1%	10,439 --
COUNTYWIDE TOTAL	1,213 1.9%	1,824 2.9%	35,836 57.2%	9,697 15.5%	374 0.6%	13,653 21.8%	62,597

Source: ADE Data Center, accessed November 2022

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