



# MEMO

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DATE: October 3, 2016

TO: Charter Authorizing Panel

FROM: ADE Legal Staff

SUBJECT: Desegregation Analysis, District Conversion Public Charter School Applications

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## I. Introduction

Six public school districts submitted applications for district conversion charter schools:

- Harrisburg School District, proposing a charter school to provide instruction in grades nine (9) through twelve (12) with an enrollment cap of 600 students;
- Harrison School District, proposing a charter school to provide instruction in grades nine (9) through twelve (12) for all high school students in the district;
- Hot Springs School District, proposing a charter school to provide instruction in grades seven (7) through eight (8) with an enrollment cap of 600 students;
- North Little Rock School District, proposing a charter school to provide instruction in grades nine (9) through twelve (12) with an enrollment cap of 3,000 students;
- Prairie Grove School District, proposing a charter school to provide instruction in grades nine (9) through twelve (12) for all high school students in the district; and
- Van Buren School District, proposing a charter school to provide instruction in grades kindergarten (K) through twelve (12) with an enrollment cap of 325 students;

## 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 DISTRICTS**

Each applicant addressed Desegregation Assurances in its application. The Department is unaware of any desegregation-related opposition to these applications from any other school district. The applicants' responses are as follows:

**Harrisburg School District, Harrisburg College and Career Preparatory School:** "Pursuant to Ark. Code Ann. §6-23-106, the Harrisburg School District has carefully reviewed the impact that the granting of a conversion charter to Harrisburg High School would have upon the efforts of the Harrisburg School District and any other school district to create and maintain a unitary system of desegregated public schools. The granting of a conversion charter to Harrisburg High School will have no effect on any Arkansas public school district's efforts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. The Harrisburg School District is not under any federal desegregation order or court-ordered desegregation plan, and neither are any of our surrounding districts. Nothing in the operation of the Harrisburg High School as a conversion charter school will hamper, delay, or in any manner negatively affect the desegregation efforts of any public school district or public school districts in this state."

**Harrison School District, Harrison High School:** "Pursuant to Ark. Code Ann. §6-23-106, the Harrison School District has carefully reviewed the impact that the granting of a conversion charter to Harrison High School would have upon the efforts of the Harrison School District and any other school district to create and maintain a unitary system of desegregated public schools. The granting of a conversion charter to Harrison" High School will have no effect on any Arkansas public school districts' efforts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. The Harrison School District is not under any federal desegregation order or court-ordered desegregation plan, and neither are any of our surrounding districts. Nothing in the operation of the Harrison High School as a conversion charter school will hamper, delay, or in any manner negatively affect the desegregation efforts of any public school district or public school districts in this state."

**Hot Springs School District, Hot Springs Junior Academy:** "The Garland County School Desegregation Case Comprehensive Settlement Agreement requires that the applicant district, as well as the other school districts in Garland County, is required to participate in inter-district school choice within the parameters of Act 609 of 1989. The applicant confirms that the conversion of Hot Springs Middle School to a charter middle school will not inhibit its compliance with the Agreement, nor would it negatively affect the efforts of any Arkansas public school district to create and maintain a unitary system of desegregated public schools. The District is currently involved in litigation which seeks to terminate the requirements of the Agreement. The applicant will keep the Arkansas Department of Education and the charter authorizing panel apprised of the status of the litigation as the application process progresses."

**North Little Rock School District, North Little Rock Center of Excellence:** "The North Little Rock School District will continue to operate in compliance with all applicable Arkansas law. The 2013 Desegregation Settlement Agreement requires that the applicant

district, as well as the other school districts in Pulaski County, participate in legal transfer, within the parameters of the 2013 settlement agreement. There will be no restrictions for transfers out of Pulaski County Special School District. The applicant confirms that the conversion of North Little Rock High School to a charter school will not inhibit its compliance with the Agreement, nor would it negatively affect the efforts of any Arkansas public school district to create and maintain a unitary system of desegregated public schools. The District is no longer under a Desegregation plan.”

**Prairie Grove School District, Prairie Grove High School:** “PGHS will continue to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. Prairie Grove School District is not under any federal desegregation or court ordered desegregation plan, nor will accepting a conversion charter school process in any way negatively impact our school or any area schools.”

**Van Buren School District, Arkansas River Valley Virtual Academy:** “Pursuant to Ark. Code Ann. § 6-23-106, the Van Buren School District has carefully reviewed the impact that the granting of a conversion charter to Arkansas River Valley Virtual Academy would have upon the efforts of the Van Buren School District and any other school district to create and maintain a unitary system of desegregated public schools. The granting of a conversion charter to Arkansas River Valley Virtual Academy will have no effect on any Arkansas public school district's efforts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. The Van Buren School District is not under any federal desegregation order or court-ordered desegregation plan, and neither are any of our surrounding districts. Nothing in the operation of the Arkansas River Valley Virtual Academy as a conversion charter school will hamper, delay, or in any manner negatively effect the desegregation effort of any public school district or public school districts in the state.”

#### **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 any of the proposed charter schools are 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, only one conversion charter school applicant, the Hot Springs Junior Academy, would operate in a school district that is subject to a desegregation order. As noted by the applicant, the conversion charter school will not impede the Hot Springs School District's obligations to participate in inter-district school choice as provided in the controlling desegregation order.