



MEMO

DATE: July 24, 2019
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application Winslow
Community School

I. INTRODUCTION

Winslow Community Center Association submitted an application for an open-enrollment public charter school, Winslow Community School. The proposed charter school would be located within the boundaries of the Greenland School District. The proposed charter school would provide instruction to students in grades kindergarten through six grade (K-6) in its initial year and by 2024-2025 would serve students in grades kindergarten through twelve (K-12). The proposed charter school would possess a student enrollment cap of 260 in its initial year, and by 2024-2025 the charter would have a student enrollment cap of 260 students. According to its application, the proposed charter school expects to draw students from only the West Fork School District and Mountainburg 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 below:

Greenland School District. The school will not be located in an area in which there are any court orders or judicial decrees concerning the desegregation of schools. No student in or applicant to WCS shall be, on the grounds of race, religion, color, national origin, gender, sex or disability be excluded from participation in or denied the benefits of, or be subjected to discrimination under any lottery requirements, educational programs or activities sponsored by the school.

IV. ANALYSIS FROM THE DEPARTMENT

Enrollment, as of the 2018-2019 school year, for the traditional public school districts and the open-enrollment charter schools in Washington and Crawford Counties are attached as Exhibit A.

“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)).

ADE is not aware of any active desegregation orders in the affected districts, 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):

[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.