

MEMO

DATE: December 9, 2019
TO: Charter Authorizing Panel
FROM: ADE Staff
SUBJECT: Desegregation Analysis of Southside Charter High School

I. INTRODUCTION

On December 11, 2014 the State Board of Education (State Board) approved the application of Southside School District to operate the Southside Charter High School district conversion charter. The district conversion school is currently approved to serve 1,200 students in grades 9-12.

II. STATUTORY REQUIREMENTS

Although Ark. Code Ann. § 6-23-106 requires the Authorizer to carefully analyze the impact of any charter school on the efforts of public school districts to achieve and maintain unitary systems, it does not require the Authorizer to conduct an analysis of charter renewal or proposed amendments to an existing charter. However, Ark. Code Ann. § 6-23-106(c) states that the Authorizer “shall not approve any ... 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.”

III. INFORMATION SUBMITTED BY THE APPLICANT

A desegregation analysis submitted by the charter school is attached in the Applicant's application.

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. 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 unaware of any active desegregation orders affecting the Southside School District.

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 renewal of the district conversion charter school is motivated by an impermissible intent to segregate schools. The ADE is unaware of any active desegregation orders which could be impacted by the proposed charter school. However, the authorizer should carefully examine the district conversion charter school renewal in an attempt to determine whether there are legitimate, non-rationally motivated reasons for the school's existence.