



MEMO

DATE: July 24, 2019
TO: Charter Authorizer
FROM: ADE Legal Services Staff
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application Dr. Lloyd Elam Academy of Excellence and Innovation

I. INTRODUCTION

Transforming Life Ministries Care Center submitted an application for an open-enrollment public charter school, Dr. Lloyd Elam Academy of Excellence and Innovation. The proposed charter school would be located within the boundaries of the North Little Rock School District. The proposed charter school would provide instruction to students in grades six through eight grade (6-8) in its initial year and by 2024-2025 would serve students in grades six through twelve (6-12). The proposed charter school would possess a student enrollment cap of 200 in its initial year, and by 2024-2035 the charter would have a student enrollment cap of 400 students. According to its application, the proposed charter school expects to draw students from only the North Little Rock 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:

A.C.A. 6-23-106 requires each open-enrollment charter school applicant to review the potential impact of the proposed charter school on the efforts of affected public school districts to comply with court order or statutory obligations to create and maintain a unitary system of desegregated public schools. The following desegregation analysis explains that LEA charter approval will not negatively impact the desegregation effort of any public school district in the state. LEA will operate as a public school; may attract and enroll student in the City of North Little Rock. LEA cannot fully foresee the demographics of its student body, but it will not discriminate in its admissions on the basis of gender, national origin, race, ethnicity, religion, disability, or academic or athletic eligibility. If application for enrollment exceed the set enrollment cap, LEA will use a random, anonymous lottery for admissions.

LEA could potentially draw students from the North Little Rock School District, given its size, enrollment is not expected to severely or adversely affect the district. It is reasonable to expect that some of the students that choose to enroll in LEA may previously have been enrolled in private, parochial, or home schools. These students would have no impact on North Little Rock School District. The enrollment capacity at LEA will only represent a small fraction of the Arkansas public school students.

All school districts are bound by the U. S. Supreme Court's decision in *Brown v. Board of Education* which requires the operation of a unitary and desegregated system of public schools. Given the demographics of the community and North Little Rock School District, it is unlikely that active efforts to maintain a unitary school system will be negatively impacted.

IV. ANALYSIS FROM THE DEPARTMENT

Enrollment, as of the 2018-19 school year, for the traditional public school districts and the open-enrollment charter schools in Pulaski County 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)).

In 2002, the Little Rock School District was declared unitary with respect to the majority of its desegregation plan obligations and released from court supervision in those areas. *Little Rock School District v. Pulaski County Special School District*, 237 F. Supp. 2d 988, 999 (E.D. Ark. 2002). In 2007, LRSD successfully completed its desegregation efforts and was declared fully unitary by the federal court. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed February 23, 2007. This order was affirmed by the Eighth Circuit Court of Appeals on April 2, 2009. *Little Rock School District v. Pulaski County Special School District*, 561 F.3d 746 (8th Cir. 2009). In February and March 2010, the federal court held hearings on the motions of NLRSD and PCSSD to be declared unitary. On May 19, 2011, the federal court held that neither district was fully unitary. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), Order filed May 19, 2011. However, on December 28, 2011, the Eighth Circuit Court of Appeals ruled that NLRSD is fully unitary but that PCSSD is not. *Little Rock School District v. State of Arkansas*, 664 F.3d 738 (8th Cir. 2011).

On January 13, 2014, the presiding federal judge in the Pulaski County Desegregation Case gave final approval to a settlement agreement between the Joshua Intervenors, Knight Intervenors, Little Rock School District, North Little Rock School District, PCSSD and the State of Arkansas. Pursuant to the settlement agreement, the only remaining obligation of the State of Arkansas is to continue the distribution of desegregation payments to the three Pulaski County school districts through the 2017-2018 school year. 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, all three school districts in Pulaski County 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. The court has recently declared PCSSD unitary in the area of staffing, but they remain non-unitary in the following four areas of its desegregation plan: (1) Discipline; (2) School Facilities; (3) Student Achievement; and (4) Monitoring.

However, with the creation of the Jacksonville North Pulaski School District (JNPSD) detaching from PCSSD, the JNPSD assumed the desegregation obligations of the PCSSD at the time of detachment. JNPSD remains non-unitary in the following five areas of its desegregation plan: (1) Discipline; (2) School Facilities; (3) Staff; (4) Student Achievement; and (5) Monitoring.

Because Premier High School of North Little Rock 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 five areas of the district's desegregation plan. Therefore, the authorizer should consider whether granting the application will negatively affect PCSSD or JNPSD's efforts to achieve full unitary status.

ADE 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.