



# MEMO

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DATE: August 6, 2023  
TO: Charter Authorizer  
FROM: ADE Legal Services Staff  
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application for Bentonville School for Advanced Studies

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## I. INTRODUCTION

Bentonville School for Advanced Studies submitted an application to open a new open enrollment public charter school. The charter school plans to service grades five (5) through (9) in its first year and progressively add a grade until it reaches grades five (5) through twelve (12). The charter will have a progressive cap beginning with 500 in its first year, before arriving at 750 by the 2027-2028 school year.

## 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 charter renewal has been received.

## IV. ANALYSIS FROM THE DEPARTMENT

Enrollment, as of August 1, 2023, for the traditional public school districts and the open-enrollment charter school in Benton 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)).

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).

The Division has no reason to conclude, from data currently available, that approval of this application 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 district.

independent audit. Schools managed by the CMO and operated by the ASASI Board of Directors' sole member contract with independent auditors to conduct the full financial and programmatic operations audits in each of the other states where schools operate. The independent auditor would be responsible for all aspects of the audit, including fiscal audit, operations, legal and compliance questionnaire, etc. No disallowed services outside the agreed upon procedures for conducting the independent audit would be used.

The School will investigate appropriately experienced licensed certified public accounting firms that operate in Arkansas to complete this work, including, to the extent it is appropriate, creating an RFP solicitation to obtain services from a properly qualified firm in a fiscally responsible manner.

**36. If the facility to be used by the school has been identified, list the owner(s) of the facility, and describe their relationship with employees or directors of the sponsoring entity or charter management organization.**

The BSAS facility has not been identified yet. However, no employee or Directors of the sponsoring entity, ASASI, or the CMO will have an ownership stake in the facility. BSAS will either own the facility or lease from an owner that has no relationship to BSAS, other than landlord.

**37. If the facility to be used by the school is not currently in compliance with the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA), provide a list of items that will need to be addressed to bring the facility into compliance.**

BSAS is committed to delivering a facility that provides all students access to the world class education it will offer including, but not limited to, meeting all ADA, IDEA and E Occupancy (or local municipal equivalent) requirements. All schools currently operated by the CMO do so in facilities that meet these requirements.

**38. Are there any alcohol sales within 1,000 feet of the facility?**

The BSAS facility has not been identified yet. However, it will meet all E Occupancy (or local municipal equivalent), regulatory requirements and ordinances required for public school facilities and to educate students safely including, but not limited, appropriate and/or required distances from the sale of alcohol.

**39. Describe the potential impact of the proposed public charter school on the efforts of affected public school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools.**

This desegregation analysis is being provided in support of Bentonville School for Advanced Studies' (BSAS) request to be granted a charter for an open-enrollment public charter school to be located within the boundaries of the Bentonville School District. BSAS anticipates that it will receive most of its students from the Bentonville (BSD), Decatur (DSD), Eureka Springs (ESSD), Gentry (GSD), Gravette (GRSD), Pea Ridge (PRSD), Rogers (RSD), Siloam Springs (SSSD), and Springdale (SSD) School Districts. As an open-enrollment public charter school, however, BSAS may enroll students from anywhere within the State of Arkansas. Pursuant to Ark. Code Ann. §6-23-106, BSAS is required to carefully review the potential impact that its

operation would have upon the efforts of the BSD, DSD, ESSD, GSD, GRSD, PRSD, RSD, SSSD, and SSD to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. At full enrollment, BSAS will have a student population of 650 students in Grades 5-12.

BSAS, in its review, has carefully reviewed the potential impact that the operation of an open-enrollment public charter school within the boundaries of the BSD would have upon the efforts of affected 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, BSAS has found that none of the school districts listed above are under any court orders concerning their desegregation obligations and are, therefore, unitary in all aspects of school operations. Therefore, the granting of an open-enrollment charter to BSAS to operate its school within the boundaries of the BSD cannot be said to have a negative impact on the BSD, DSD, ESSD, GSD, GRSD, PRSD, RSD, SSSD, and the SSD's ability to comply with the districts' statutory obligations to create and maintain a unitary system of desegregated public schools.

According to the latest third-quarter Average Daily Membership enrollment figures as maintained by the DESE Data Center, the BSD had a student population of 18,336 students; the DSD had a student population of 563 students; the ESSD had a student population of 574 students; the GSD had a student population of 1,525 students; the GRSD had a student population of 1,892 students; the PRSD had a student population of 2,333 students; the RSD had a student population of 15,604 students; the SSSD had a student population of 4,277 students, and the SSD had a student population of 21,756 students. BSD's student population was comprised of 70.55% White students; 11.76% Hispanic students, and 7.75% Asian students. DSD's student population was comprised of 44.04% White students; 40.18% Hispanic students, and 5.96% Asian students. ESSD's student population was comprised of 86.71% White students and 8.22% Hispanic students. GSD's student population was comprised of 60.9% White students; 16.57% Hispanic students, and 7.99% Asian students. GRSD's student population was comprised of 83.54% White students and 7.6% Hispanic students. PRSD's student population was comprised of 86.13% White students and 8.4% Hispanic students. RSD's student population was comprised of 47.84% Hispanic students and 42.75% White students. SSSD's student population was comprised of 50.4% White students; 33.36% Hispanic students, and 6.74% of students who were Two or More Races. SSD's student population was comprised of 47.88% Hispanic students; 31.95% White students, and 13.7% Hawaiian/Pacific Islander students.

In conclusion, BSAS submits that upon the basis of its review, no statutory or other impediments concerning the creation and operation of desegregated public schools prohibit the State's charter school authorizer from granting its request to operate an open-enrollment public charter school within the boundaries of the BSD.

**40. List the services that the CMO will provide to the charter and the annual cost of the services.**

BASIS Ed will be engaged to perform comprehensive school management services for BSAS pursuant to a management services agreement that will be negotiated by the parties through

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
<b>School Districts in Benton County</b>							
Bentonville School District	887 4.75%	1,379 7.38%	603 3.23%	2,248 12.04%	398 2.13%	13,159 70.47%	18,674 --
Springdale School District	590 2.71%	326 1.50%	505 2.32%	10,462 47.99%	3,067 14.07%	6,851 31.43%	21,801 --
Gravette School District	99 4.95%	41 2.05%	8 0.40%	145 7.26%	48 2.40%	1,657 82.93%	1,998 --
Gentry School District	175 10.82%	131 8.10%	10 0.62%	289 17.87%	63 3.90%	949 58.69%	1,617 --
Siloam Springs School District	382 8.56%	149 3.34%	40 0.90%	1,534 34.37%	216 4.84%	2,142 47.99%	4,463 --
Pea Ridge School District	36 1.47%	20 0.81%	45 1.83%	199 8.11%	48 1.96%	2,106 85.82%	2,454 --
Decatur School District	17 2.94%	33 5.70%	9 1.55%	224 38.69%	40 6.91%	256 44.21%	579 --
Rogers School District	580 3.70%	215 1.37%	221 1.41%	7,535 48.10%	466 2.97%	6,648 42.44%	15,665 --
<b>DISTRICT TOTAL</b>	<b>2,173 3.74%</b>	<b>1,961 3.37%</b>	<b>1,337 2.30%</b>	<b>20,390 35.06%</b>	<b>3,979 6.84%</b>	<b>28,315 48.69%</b>	<b>58,155 --</b>
<b>Open-Enrollment Public Charter Schools in Benton County</b>							
Haas Hall Academy	97 7.8%	196 15.7%	42 3.4%	173 13.9%	8 0.6%	732 58.7%	1,248 --
Arkansas Arts Academy	85 7.8%	12 1.1%	9 0.8%	221 20.3%	5 0.5%	758 69.5%	1,090 --
Premier High School of Springdale	0 0.0%	1 1.1%	2 2.1%	55 58.5%	2 2.1%	34 36.2%	94 --
LISA Academy Springdale	16 4.4%	5 1.4%	20 5.5%	164 45.3%	22 6.1%	135 37.3%	362 --
<b>CHARTER TOTAL</b>	<b>182 7.8%</b>	<b>208 8.9%</b>	<b>51 2.2%</b>	<b>394 16.9%</b>	<b>13 0.6%</b>	<b>1,490 63.7%</b>	<b>2,338 --</b>
<b>COUNTYWIDE TOTAL</b>	<b>2,355 3.9%</b>	<b>2,169 3.6%</b>	<b>1,388 2.3%</b>	<b>20,784 34.4%</b>	<b>3,992 6.6%</b>	<b>29,805 49.3%</b>	<b>60,493 --</b>

Source: ADE Data Center, accessed August 2023

Shasta Wagner,