



MEMO

DATE: July 13, 2020

TO: Charter Authorizer

FROM: ADE Legal Services Staff

SUBJECT: Desegregation Analysis of Open Enrollment Charter Amendment Request for Northwest Arkansas Classical Academy

I. INTRODUCTION

Northwest Arkansas Classical Academy submitted an amendment request to add an additional K-12 campus in Rogers, AR, opening in the fall of 2020. The proposed charter school would be located within the boundaries of the Rogers School District. The proposed charter school would provide instruction to students in grades kindergarten through twelve (K-12). The proposed school would be a license within Northwest Arkansas Classical Academy's current charter. The school is asking for an increase in its enrollment cap from 1,500 to 2,500 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 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

NONE

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 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.