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DATE: July 27, 2022  
TO: Charter Authorizer  
FROM: ADE Legal Services Staff  
SUBJECT: Desegregation Analysis of Open Enrollment Charter Application for Omni Classical Prep. of Cabot

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## I. INTRODUCTION

Omni Classical Prep. of Cabot submitted an application for an open-enrollment public charter school. The proposed charter school would be located within the boundaries of the Cabot School District. The proposed charter school would provide instruction to students in grades kindergarten through eight (K-8) in its initial year, and by the 2027-2028 school year, it would provide instruction to students in grades kindergarten through twelve (K-12). The proposed charter school would possess a student enrollment cap of 200 students in its initial year, with an enrollment cap of 300 by 2027-2028. According to its application, the proposed charter school expects to draw students from Cabot School District, Beebe School District, Pulaski County Special School District, Lonoke School District, Jacksonville Special School District, Des Arc School District, and Carlisle 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 attached as Exhibit A. To date, no desegregation-related opposition to the charter application has been received.

### **IV. ANALYSIS FROM THE DEPARTMENT**

Enrollment, as of the 2021-2022 school year, for the traditional public school districts and the open-enrollment charter schools in Lonoke 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)).

The Little Rock School District and the North Little Rock School District have both been declared unitary. The PCSSD has been declared unitary save for facilities. The JNPSD has also been declared unitary, but has ongoing facilities responsibilities.

Because Omni Classical Prep. will draw 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 facilities. Therefore, the authorizer should consider whether granting the application will negatively affect PCSSD or JNPSD’s efforts to achieve full unitary status.

ADE is aware of an active desegregation order in England School District. The district has filed a motion to be declared unitary. ADE is not aware of any other active desegregation

orders in any of the other affected school districts. 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.



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 orders or statutory obligations to create and maintain a unitary system of desegregated public schools. Omni Classical completed the desegregation analysis and shows that it will not negatively impact the desegregation efforts of the neighboring districts.

### **REVIEW**

Code Ann. §6-23-106 states a review of the potential impact that a charter application would have upon the efforts of the Pulaski County school districts to comply with court orders and statutory obligations to create and maintain a unitary system of desegregated public schools. The Pulaski County desegregation litigation was first filed in 1982. *Little Rock School District, et al v. Pulaski County Special School District, et al.*, Case No. 4:82:cv-00866-DPM. In 1989, the parties entered the “1989 Settlement Agreement”, which the Arkansas Department of Education, the Pulaski County school districts, and the intervenors agreed to the terms of state funding for desegregation obligations.

In 2007, the Little Rock School District completed its desegregation efforts and was declared fully unitary by the federal court in 2007. *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.). In 2010, LRSD filed a motion to enforce the “1989 Settlement Agreement”. On January 17, 2013, Judge D.P. Marshall Jr. denied LRSD’s motion, stating: “The cumulative effect of open enrollment charter schools in Pulaski County on the stipulation magnet schools and M-to-M transfers has not, as a matter of law, substantially defeated the relevant purposes of the “1989 Settlement Agreement”, the magnet stipulation, or the M-to-M stipulation.” *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-cv-0866 (E.D. Ark.), LRSD appealed to the Eighth Circuit Court of Appeals.

One (1) year later, on January 13, 2014, Judge Marshall approved a Settlement Agreement that included a provision stipulating to the voluntary dismissal with prejudice of LRSD’s pending appeal concerning the charter school issues. All schools were deemed unitary, at this point, except PCSSD and JNPSD.

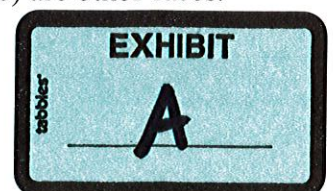
During a 2021 court hearing, Judge Marshall ruled that PCSSD and JNSD were now unitary but must continue to finish the master facilities plans to ensure all building are equal. They both are no longer under Court’s jurisdiction but must file annually to update them on the facilities issues.

### **DATA**

According to the 2021-2022 ADE Data Center, 43, 582 kids are enrolled in Pulaski County, within the four (4) public school districts.

JNPSD has a student population of 3,846 enrolled, of which approximately 53% (2,038) are African American; 33.8% (1,300) are white; 7.6% (292) are Hispanic/Latino, and 5.4% (208) are Other.

LRSD has 20,786 students enrolled, of which approximately 60.5% (12,576) are African American; 19.2% (3,991) are White; 15.7% (3,263) are Hispanic, and 4.5% (956) are other races.



NLRSD has 7,685 students enrolled, of which approximately 59.4% (4,565) are African American; 26.4% (2,029) are White; 10.1% (776) are Hispanic, and 4.2% (315) are other races.

PCSSD has 11,265 students enrolled, of which approximately 44.4% (5,002) are African American; 39.2% (4,416) are White; 9.6% (1,081) are Hispanic, and 6.7% (766) are other races.

Cabot Public School District had 10,171 students enrolled in 2021-2022, of which approximately 82.8% were white; 6.6% Hispanic; 6% two or more races; 2.6% African American, and 2% other races. The students enrolled represent a good sampling of the Lonoke County population which is roughly 85.5% white, 5.5% African American, and 4.6% Hispanic.

### **CONCLUSION**

Ark. Code Ann. §6-23-106 requires that Omni Classical's operation will not serve to hamper, delay, or in any manner negatively affect the desegregation efforts of a public school district or districts within the state. Now that all districts are unitary, Omni Classical sees no way it can negatively impact the two districts which still need to continue their facility upgrades or hinder any of the districts that were under desegregation orders. Omni Classical will be reaching out to students currently in PCSSD and JNSD, which will ensure all students, no matter the race, have equal access to Omni Classical.

	2 or More Races	Asian	Black/ African American	Hispanic	Native Am. Hawaiian/ Pacific Islander	White	Totals
<b>School Districts in Lonoke County, Arkansas</b>							
Cabot School District	668 6.50%	129 1.26%	272 2.65%	718 6.99%	44 0.43%	8,441 82.17%	10,272 --
Jacksonville - North Pulaski School District	75 1.95%	40 1.04%	2,108 54.81%	290 7.54%	31 0.81%	1,302 33.85%	3,846 --
Lonoke School District	61 3.94%	5 0.32%	352 22.71%	137 8.84%	8 0.52%	987 63.68%	1,550 --
PCSSD	451 4.00%	266 2.36%	4,998 44.37%	1,146 10.17%	55 0.49%	4,349 38.61%	11,265 --
England School District	25 3.91%	1 0.16%	205 32.08%	55 8.61%	5 0.78%	348 54.46%	639 --
Carlisle School District	22 3.59%	1 0.16%	64 10.44%	38 6.20%	0 0.00%	488 79.61%	613 --
<b>DISTRICT TOTAL</b>	<b>1,324</b> <b>7.89%</b>	<b>175</b> <b>1.04%</b>	<b>2,796</b> <b>16.66%</b>	<b>1,183</b> <b>7.05%</b>	<b>83</b> <b>0.49%</b>	<b>11,218</b> <b>66.86%</b>	<b>16,779</b> <b>--</b>

Source: ADE Data Center, accessed July 2022

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