

**GOVERNING BOARD AGENDA ITEM
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

DATE OF MEETING: July 1, 2010

TITLE: Verification of Desegregation Funding Matters and Submission of Desegregation Funding Report, Pursuant to A.R.S. §15-910(J)(3).

BACKGROUND: As the Board is aware, A.R.S. § 15-910 permits Arizona school districts to :

“... budget for expenses of complying with or continuing to implement activities which were required or permitted by a court order of desegregation or administrative agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination which are specifically exempt in whole or in part from the revenue control limit and the capital outlay revenue limit....”

During the 2004-2005 legislative session, the above-quoted statute was amended to mandate annual school district reporting and verification of data and other information concerning desegregation expenditures made by any school district pursuant to § 15-910. This requirement of verification has continued since and, each year, the Governing Board submits such verification.

This agenda item will provide some history of the bases for the District's desegregation funding and also describe the verifications now required under the desegregation statute quoted above. The Board's approval of the verifications to be submitted under the Board President's signature is also required. Accordingly, reporting form (to be signed by President Grant) and the specific verifications to be submitted with the form are attached as exhibits to this item.

Desegregation Funding, Generally. The purpose of the desegregation funding mechanism is to enable school districts which are subject to court orders and U.S. Department of Education Office for Civil Rights (OCR) agreements to comply with those orders and agreements. Desegregation activities present new expenses for school districts, because, by their very nature, they mandate doing things differently from, and in addition to, that already being done and funded under previous district budgets.

Without the funding made possible by A.R.S. §15-910(G), districts would have to fund the supplemental programs and activities required by the applicable court orders and OCR agreements, by diverting funds from the regular capital and maintenance and operations budgets. With other programs services already dependent upon the regular maintenance and operations budget, funding of desegregation activities through

diversion of funds would jeopardize the ability of districts to just maintain the *status quo* in terms of educating students. The resulting “borrowing from Peter to pay Paul” would result in a dilution of existing services or the quality thereof, perhaps even exposing districts to further claims of inadequate service like the ones that led to the desegregation complaints in the first place.

While there have been a number of legislative attacks against the desegregation funding mechanism as extraneous or unnecessary, the fact is that the legislature has taken a different posture with regard to state programs. For example, during the 2002-2003 legislative year, the legislature passed HCR 2022. HCR 2022 was intended to eliminate the impact of new funding requirements on the State’s general fund. HCR 2022 placed a referendum on the 2004 General Election Ballot which required that where any new initiative or referendum proposing a mandatory expenditure of state revenues or allocating state funding for any specific purpose, that new measure would also have to provide for the increased revenues necessary to cover the new costs.

In the case of HCR 2022, the legislature determined that new programs which go beyond the level, type and form of existing state programs should have their own funding source, so as not to burden the state and its current and continuing programs. In the exact same way, the cost of new programs or services mandated or permitted by OCR agreements or court orders should have their own source of revenue, rather than burdening the existing and continuing programs and services of a school district. Presumably, the legislature agreed when it originally placed A.R.S. § 15-910 into law.

The Bases for Amphi’s Desegregation Funding.

Amphi’s desegregation activities, and consequently its expenses under the statute, arise from two administrative agreements between Amphi and OCR. These agreements are known as “corrective action agreements”.

Amphi’s Lau Corrective Action Agreement.

The first of the OCR agreements requiring or permitting desegregation activities as contemplated by §15-910 followed an extensive OCR investigation of Amphi educational programs and services in Compliance Review No. 08925002 (“the Lau Review”). This review initiated in November 1991 and concerned issues not too dissimilar from the allegations raised by the plaintiffs in the pending Flores litigation against the State of Arizona. In short, the inquiry of this OCR review was whether Amphi provided national origin/minority students who are Limited English Proficient (“LEP”) with educational services which allow them equal educational opportunities.

The Lau Review lasted for more than two years and resulted in findings in January 1994. OCR determined that Amphi denied LEP students an equal opportunity to meaningfully participate in its educational programs, in violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. OCR therefore required corrective action by Amphi. Failure of Amphi to take corrective action would have potentially subjected Amphi to loss

of federal funds and civil penalties for civil rights violations. Consequently, the District entered into a Corrective Action Agreement in January 1994 ("the Lau Agreement").

In summary, the Lau agreement required the District to ensure that LEP students and students whose primary home language was other than English ("PHLOTE" students) have equal access to educational programs and services. There were three main components in the Lau Agreement. The first component was the development of a comprehensive plan for providing specific programs and services to all LEP students. The agreement required that the comprehensive plan include specific procedures for consistent, reliable and timely identification and assessment of students whose language is other than English. The plan was also required to include:

- Timely provision of ESL services for Limited English Proficient students as the appropriate level, i.e., beginner, intermediate or advanced
- A method for collecting and recording follow-up data on students who have left the ESL program
- A provision for students who re-enter the program, if necessary
- Program evaluation to determine its effectiveness
- Elimination of barriers which might exclude LEP students from receiving gifted education services
- Expansion of gifted education identification and assessment process to ensure access of LEP students

The second component of the Lau Agreement was a requirement that Amphi develop a plan to ensure appropriate placement of special-needs LEP students, whether enrolled at the time of the Lau Agreement or thereafter. The third component was mandated development of plans to improve services to LEP students. Also required by the Lau Agreement was translation of parental notices into home languages.

As required by the Lau Agreement, the comprehensive plan described above was developed and implemented in the years that followed. Implementation continues today and takes many forms required or permitted by the Lau Agreement, the majority of which consist of:

- Sufficient levels of specially trained teachers provide specialized instruction to LEP students, in Sheltered English Immersion classrooms in accordance with Proposition 203, to ensure timely provision of services to LEP students.
- Bilingual instructional assistants assist teachers in Sheltered English Immersion/ESL classrooms.
- Additional special education teachers have been placed at schools with high numbers of ESL students to ensure prompt access to special education services by ESL students and families.

- At schools with significant LEP populations, regular classroom teachers and administrators also play key roles in the provision of educational services, monitoring of student success, and assurance of LEP student access to other District services including special and gifted education.
- An ESL department, staffed by a director and support staff, operates to coordinate ESL programs and services, collect and record data regarding student participants and their families, monitor student success, and improve program performance.
- Bilingual clerks are hired to assist in data collection necessary to evaluate program effectiveness and student success. Bilingual clerks also enable the District to comply with the requirement to translate parental notices and other important district materials.
- Some district central office administrators monitor continuing compliance with the Lau Agreement and remain responsible for supervision of those efforts.
- An Equal Opportunity Office has been established to ensure that parents and other members of the public can raise complaints and concerns about educational opportunities for LEP students within Amphi, including gifted and special education.
- Recurring staff development, through both “in-house” and external means takes place to maintain and improve program effectiveness.
- Provision of necessary supplies and other support materials for the mandated or permitted services.

Amphi's Student Discipline Corrective Action Agreement.

The second of the two OCR agreements requiring or permitting Amphi's desegregation activities as funded by §15-910 followed an OCR investigation of OCR Complaint No. 08925002 which concerned, among other things not relevant here, a parent's complaint that the District engaged in disparate treatment of minority students in terms of discipline (“the Discipline Investigation”). The investigation began in September 1992. After several months of investigation, OCR concluded that it was unable to make any substantive determination on the merits of the parent complaint because Amphi's student record keeping at the time was so substandard that OCR was simply *unable* to investigate.

OCR required corrective action in Amphi record keeping practices that would enable OCR to investigate and determine district compliance with pertinent civil rights laws in the future. Failure of the District to take corrective action might have subjected Amphi to loss of federal funds and/or civil penalties for civil rights violations. Consequently, the District entered into a Corrective Action Agreement on or about April 5, 1993 (“the Discipline Agreement”). The Discipline Agreement required Amphi to

substantially improve its student record keeping practices with the obvious goal of documenting and ensuring equity in student discipline matters.

Desegregation activities required or permitted by the Discipline Agreement consist of the following:

- Maintenance of a computerized student information system that provides timely, complete and accurate disciplinary records for students, particularly with regard to disabled or minority students.
- Retention of personnel and service providers responsible for ensuring accurate, timely student data which can be examined and evaluated on race, national origin and disability status.
- Placement of behavioral intervention monitors and in-school suspension personnel at schools to implement disciplinary programs and services to ensure equitable and lawful treatment of minority, national origin and disabled students.
- Maintenance of internal student discipline record audit staff to monitor Amphi student disciplinary practices, confirm timely and accurate record keeping,
- Monitoring, by certain district central office administrators, of continuing compliance with the Discipline Agreement.
- Operation of an Equal Opportunity Office to enable parents and other members of the public to file complaints or report concerns about District disciplinary practices.
- Recurring staff development, through both "in-house" and external means to maintain compliance.
- Provision of necessary supplies and other support materials for the mandated or permitted activities.

Both aspects of Amphi's desegregation activities described above have been highly effective at resolving the issues that gave rise to them. One very clear indication of their success is the fact that OCR has ceased monitoring Amphi compliance under both corrective action agreements. This reflects OCR's determination that the Amphi is compliant, i.e., that Amphi provides the requisite programs and services for LEP student and that Amphi evidences demonstrable proof of equitable disciplinary practices. Naturally, however, the District cannot simply terminate the programs that enabled compliance or non-compliance could certainly again develop. Thus, the District's continuing desegregation expenditures are necessary to ensure continuing compliance with federal mandates.

The Required Verifications.

Pursuant to A.R.S. §15-910(J)(3), the Governing Board must now provide the following data and verifications concerning the above described desegregation program on or before July 1, 2010:

(a) A district-wide budget summary and a budget summary on a school by school basis for each school in the school district that lists the sources and uses of monies that are designated for desegregation purposes.

(b) A detailed list of desegregation activities on a district-wide basis and on a school by school basis for each school in the school district.

(c) The date that the school district was determined to be out of compliance with Title VI of the Civil Rights Act of 1964 (42 USC §2000d) and the basis for that determination.

(d) The initial date that the school district began to levy property taxes to provide funding for desegregation expenses and any dates that these property tax levies were increased.

(e) If applicable, a current and accurate description of all magnet type programs that are in operation pursuant to the court order during the current school year on a district-wide basis and on a school by school basis. This information shall contain the eligibility and attendance criteria of each magnet type program, the capacity of each magnet type program, the ethnic composition goals of each magnet type program, the actual attending ethnic composition of each magnet type program and the specific activities offered in each magnet type program.

(f) The number of pupils who participate in desegregation activities on a district-wide basis and on a school by school basis for each school in the school district.

(g) A detailed summary of the academic achievement of pupils on a district-wide basis and on a school by school basis for each school in the school district.

(h) The number of employees, including teachers and administrative personnel, on a district-wide basis and on a school by school basis for each school in the school district that are necessary to conduct desegregation activities.

(i) The number of employees, including teachers and administrative personnel, on a district-wide basis and on a school by school basis for each school in the school district and the number of employees at school district administrative offices that are funded in whole or in part with desegregation monies received pursuant to this section.

(j) The amount of monies that are not derived through a primary or secondary property tax levy and that are budgeted and spent on desegregation activities on a district-wide basis and on a school by school basis for each school in the school district.

(k) Verification that the desegregation funding will supplement and not supplant funding for other academic and extracurricular activities.

(l) Verification that the desegregation funding is educationally justifiable.

(m) Any documentation that supports the proposition that the requested desegregation funding is intended to result in equal education opportunities for all pupils in the school district.

(n) Verification that the desegregation funding will be used to promote systemic and organizational changes within the school district.

(o) Verification that the desegregation funding will be used in accordance with the academic standards adopted by the state board of education pursuant to sections 15-701 and 15-701.01.

(p) Verification that the desegregation funding will be used to accomplish specific actions to remediate proven discrimination pursuant to title VI of the civil rights act of 1964 (42 USC §2000d) as specified in the court order or administrative agreement.


(q) An evaluation by the school district of the effectiveness of the school district's desegregation measures.

(r) An estimate of when the school district will be in compliance with the court order or administrative agreement and a detailed account of the steps that the school district will take to achieve compliance.

(s) Any other information that the department of education deems necessary to carry out the purposes of this paragraph.

A substantial portion of the required information listed above is provided to the state through the budget forms for the District. Items (d) and (k) through (s), however, must be submitted as individual documents, together with a verification form to be executed by the Governing Board president. These requisite submissions, including the verification form to be executed by President Grant, are included as attachments to this item.

RECOMMENDATION: This item is presented for the Board's action. The Administration recommends approval of the attached verifications and authorization of the Board President to execute the verification form on behalf of the Board.

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|------------|-----------------------------------------------------------------------------------|------------------------|-------------|
| INITIATOR: |  | Todd A. Jaeger | 6/23/2010 |
| | Signature | Associate to the Supt. | |
| | | Name/Title | Date |

**ASSOCIATE SUPERINTENDENT
SIGNATURE:**

SUPERINTENDENT SIGNATURE:



15-910(J)(3)(d) The initial date that the school district began to levy property taxes to provide funding for desegregation expenses and any dates that these property tax levies were increased:

Initial Levy: 1992-1993 fiscal year

Levy Increases: The Records Retention and Disposition Schedule for Arizona School Districts, promulgated by the Arizona State Library, Archives and Public Records Agency, mandates the destruction of school district budgets three years after their adoption. The District therefore lacks records necessary to fully answer this inquiry.

It is known, however, that the District has not increased its desegregation levy in any fiscal year from 1999-2000 to the present.

15-910(J)(3)(k)

Verification that the desegregation funding will supplement and not supplant funding for other academic and extracurricular activities

The Amphitheater Unified School District desegregation programs did not exist in their current form at the time the federal Office of Civil Rights required the District, by administrative agreement, to develop those programs and services. Those programs and services have changed over time, but do and will supplement and do not and will not supplant the programs and services which existed prior to the Administrative Agreements.

15-910(J)(3)(I)

Verification that the desegregation funding is educationally justifiable.

The Amphitheater District's April 1993 Administrative Agreement with the U.S. Office for Civil Rights mandated the implementation of a new system of imposing, documenting and auditing student discipline, for the purpose of ensuring equity and the absence of discriminatory impact in student discipline-related functions. The District's January, 1994 administrative agreement with the U.S. Office for Civil Rights required programs and activities which would assure access to and equity in programs in District programs and services for minority students. Desegregation funding received by the Amphitheater District is used to implement these agreements.

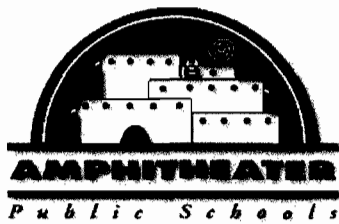
Certainly, without question, the purpose, intent and requirements of the administrative agreements are educationally justified as is the funding of the same.

15-910(J)(3)(m)

Any documentation that supports the proposition that the requested desegregation funding is intended to result in equal education opportunities for all pupils in the school district.

Substantial documentation of the basis, purpose and intent of the Amphitheater District's desegregation funding was included in the District's September 19, 2003 Sunset Review submission concerning the desegregation funding statute, which was submitted to Ms. Kimberly Yee at the Arizona State Senate.

A copy of this submission, in its entirety, was also attached to the Amphitheater Unified School District A.R.S. § 15-910(J)(3) Report as 93 Sunset Review.pdf.



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SUPERINTENDENT
Vicki Balentine, Ph.D.

September 19, 2003

Ms. Kimberly Yee
Arizona State Senate
1700 W Washington Street
Phoenix AZ 85007

RE: Sunset Review of Funding Mechanisms for Desegregation Activities in Public Schools;

Senator Slade Mead's Correspondence of August 14, 2003;

Response of Amphitheater Unified School District No. 10 of Pima County, Arizona ("Amphi")

Dear Ms. Yee:

I am responding to Senator Mead's above-referenced correspondence to Dr. Vicki Balentine, Superintendent of Amphi. Senator Mead previously spoke with Dr. Balentine, and granted Amphi an extension for its reply until today, rather than the original deadline of September 1. With all the demands of beginning a school year, we certainly appreciated his kindness in that regard.

I anticipate that your task of assimilating the responses from the school districts will be a substantial one, and I hope that our following reply will be of assistance to you. I wish to invite you, however, to contact me should you find any aspect of our response lacking. I would also like to share with you the fact that the events leading to Amphitheater's desegregation expenditures occurred several years before any of the current Amphi Governing Board members or administrators had joined Amphi. Thus, much of the detail I have provided is drawn from historical records or our understanding of those proceedings. We have our best possible response given the "institutional" memory and knowledge that we possess. Again, should you need any additional information, we will do everything possible to respond.

Senator's Mead's correspondence set forth a series of questions. I intend to reply to each of his inquiries below, after restating his specific questions in bold typeface for your convenience.

1. The objective and purpose of establishing the funding mechanisms of the desegregation activities.

Amphi receives funding of its “desegregation” activities through the provisions of A.R.S. §15-910 which, as you know, establishes the funding mechanism for such activities. The statute authorizes school district governing boards to:

...budget for expenses of complying with or continuing to implement activities which were required or permitted by a court order of desegregation or administrative agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination....

A.R.S. § 15-910(G). The law also exempts desegregation activity expenses from a school district’s revenue control limit.

The purpose of the desegregation funding mechanism is to enable school districts which are subject to court orders and OCR agreements to comply with those orders and agreements. Desegregation activities present new expenses for school districts, because by their very nature they mandate doing things differently from, and in addition to, that done and funded under previous district budgets. Without the funding made possible by A.R.S. §15-910(G), districts would have to fund the supplemental programs and activities required by the applicable court orders and OCR agreements, by diverting funds from the regular capital and maintenance and operations budget. With other programs services already dependent upon the regular maintenance and operations budget, funding of desegregation activities through diversion of funds would jeopardize the ability of districts to just maintain the *status quo* in terms of educating students. The resulting “borrowing from Peter to pay Paul” would likely result in a dilution of service or quality thereof, perhaps even exposing districts to further claims of inadequate service like the ones that led to the desegregation complaints in the first place.

Just last year, the Arizona Legislature addressed a funding dilemma of a similar sort when it passed HCR 2022. I will remind you that HCR 2022 places on the 2004 General Election Ballot a provision that would require that any initiative or referendum which proposes a mandatory expenditure of state revenues, establishes a fund for any specific purpose, or allocates state funding for any specific purpose must also somehow provide for the increased revenues necessary to cover the requisite funds. This would eliminate the impact of new funding requirements on the State’s general fund or diversion of general fund revenues. If new funds fall short, the HCR 2022 provision, would allow the legislature to reduce costs to the level of actual revenues.

We believe that the legislature correctly determined that new programs that go above and beyond the level, type and form of existing state programs should have their own funding source, so as not to burden the state and its current and continuing programs. In the exact same way, the cost of new programs or services mandated or permitted by OCR agreements or court orders should have their own source of revenue, rather than burdening the existing and continuing programs and services of a school district. We believe the legislature agreed when it originally placed A.R.S. § 15-910 into law.

Having expressed the purpose of the underlying statute, I would now like to turn to the specifics of Amphi's desegregation efforts.

Amphi's desegregation activities, and consequently its expenses under the statute, arise from two administrative agreements between Amphi and the Office for Rights Office of the U.S. Department of Education ("OCR"). These agreements are known as "corrective action agreements".

Amphi's Lau Corrective Action Agreement.

The first of the OCR agreements requiring or permitting desegregation activities as contemplated by §15-910 followed an extensive OCR investigation of Amphi educational programs and services in Compliance Review No. 08925002 ("the Lau Review"). This review initiated in November 1991 and concerned issues not too dissimilar from the allegations raised by the plaintiffs in the pending Flores litigation against the State of Arizona. In short, the inquiry of this OCR review was whether Amphi provided national origin/minority students who are Limited English Proficient ("LEP") with educational services which allow them equal educational opportunities.

The Lau Review lasted for more than two years and resulted in findings in January 1994. OCR determined that Amphi denied LEP students an equal opportunity to meaningfully participate in its educational programs, in violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. OCR therefore required corrective action by Amphi. Failure of Amphi to take corrective action would have potentially subjected Amphi to loss of federal funds and civil penalties for civil rights violations. Consequently, the District entered into a Corrective Action Agreement in January 1994 ("the Lau Agreement").

In summary, the Lau agreement required the District to ensure that LEP students and students whose primary home language was other than English ("PHLOTE" students) have equal access to educational programs and services. There were three main components in the Lau Agreement. The first component was the development of a comprehensive plan for providing specific programs and services to all LEP students. The agreement required that the

comprehensive plan include specific procedures for consistent, reliable and timely identification and assessment of students whose language is other than English. The plan was also required to include:

- Timely provision of ESL services for Limited English Proficient students as the appropriate level, i.e., beginner, intermediate or advanced
- A method for collecting and recording follow-up data on students who have left the ESL program
- A provision for students who re-enter the program, if necessary
- Program evaluation to determine its effectiveness
- Elimination of barriers which might exclude LEP students from receiving gifted education services
- Expansion of gifted education identification and assessment process to ensure access of LEP students

The second component of the Lau Agreement was a requirement that Amphi develop a plan to ensure appropriate placement of special-needs LEP students, whether enrolled at the time of the Lau Agreement or thereafter. The third component was mandated development of plans to improve services to LEP students. Also required by the Lau Agreement was translation of parental notices into home languages.

As required by the Lau Agreement, the comprehensive plan described above was developed and implemented in the years that followed. Implementation continues today and takes many forms required or permitted by the Lau Agreement, the majority of which consist of:

- Sufficient levels of specially trained teachers provide specialized instruction to LEP students, in Sheltered English Immersion classrooms in accordance with Proposition 203, to ensure timely provision of services to LEP students.
- Bilingual instructional assistants assist teachers in Sheltered English Immersion/ESL classrooms.
- Additional special education teachers have been placed at schools with high numbers of ESL students to ensure prompt access to special education services by ESL students and families.
- At schools with significant LEP populations, regular classroom teachers and administrators also play key roles in the provision of educational services, monitoring of student success, and assurance of LEP student access to other District services including special and gifted education.
- An ESL department, staffed by a director and support staff, operates to coordinate ESL programs and services, collect and record data regarding student participants and their families, monitor student success, and improve program performance.

- Bilingual clerks are hired to assist in data collection necessary to evaluate program effectiveness and student success. Bilingual clerks also enable the District to comply with the requirement to translate parental notices and other important district materials.
- Some district central office administrators monitor continuing compliance with the Lau Agreement and remain responsible for supervision of those efforts.
- An Equal Opportunity Office has been established to ensure that parents and other members of the public can raise complaints and concerns about educational opportunities for LEP students within Amphi, including gifted and special education.
- Recurring staff development, through both “in-house” and external means takes place to maintain and improve program effectiveness.
- Provision of necessary supplies and other support materials for the mandated or permitted services.

Having described the objectives and purpose of Amphi’s desegregation activities related to the Lau Agreement at and in -- what I hope -- is sufficient length and detail, I would now like to turn to the District’s second basis for desegregation activities and funding.

Amphi’s Student Discipline Corrective Action Agreement.

The second of the two OCR agreements requiring or permitting Amphi’s desegregation activities as contemplated by §15-910 followed an OCR investigation of OCR Complaint No. 08925002 which concerned, among other things not relevant here, a parent’s complaint that the District engaged in disparate treatment of minority students in terms of discipline (“the Discipline Investigation”). The investigation began in September 1992. After several months of investigation, OCR concluded that it was unable to make any substantive determination on the merits of the parent complaint because Amphi’s student record keeping at the time was so substandard that OCR was simply *unable* to investigate.

OCR required corrective action in Amphi record keeping practices that would enable OCR to investigate and determine district compliance with pertinent civil rights laws in the future. Failure of the District to take corrective action might have subjected Amphi to loss of federal funds and/or civil penalties for civil rights violations. Consequently, the District entered into a Corrective Action Agreement on or about April 5, 1993 (“the Discipline Agreement”). The Discipline Agreement required Amphi to substantially improve its student record keeping practices with the obvious goal of documenting and ensuring equity in student discipline matters.

Desegregation activities required or permitted by the Discipline Agreement consist of the following:

- Maintenance of a computerized student information system that provides timely, complete and accurate disciplinary records for students, particularly with regard to disabled or minority students.
- Retention of personnel and service providers responsible for ensuring accurate, timely student data which can be examined and evaluated on race, national origin and disability status.
- Placement of behavioral intervention monitors and in-school suspension personnel at schools to implement disciplinary programs and services to ensure equitable and lawful treatment of minority, national origin and disabled students.
- Maintenance of internal student discipline record audit staff to monitor Amphi student disciplinary practices, confirm timely and accurate record keeping,
- Monitoring, by certain district central office administrators, of continuing compliance with the Discipline Agreement.
- Operation of an Equal Opportunity Office to enable parents and other members of the public to file complaints or report concerns about District disciplinary practices.
- Recurring staff development, through both “in-house” and external means to maintain compliance.
- Provision of necessary supplies and other support materials for the mandated or permitted activities.

2. The effectiveness with which the funding mechanisms of the desegregation activities have met its objectives and purpose and the efficiency with which it has operated.

Both aspects of Amphi’s desegregation activities, described above, have been highly effective at resolving the issues that gave rise to them. One very clear indication of their success is the fact that OCR has ceased monitoring Amphi compliance under both corrective action agreements. This reflects OCR’s determination that the Amphi is compliant, i.e., that Amphi provides the requisite programs and services for LEP student and that Amphi evidences demonstrable proof of equitable disciplinary practices. Other measures of success and effectiveness of A.R.S. §15-910, as it has been implemented in Amphi, include the following:

- In 1996-1997, as the Lau Agreement was nearing just its third year of implementation, Amphi’s rate of ESL students being reclassified as English Proficient was higher (9.3%) than the statewide rates reported by the Arizona Department of Education (2.7%). In November 1998, as OCR concluded monitoring under the Lau Agreement, it found that for the entire five years of monitoring, Amphi’s reclassification rates remained consistently high, at approximately the 9% mark or higher.

- Last year (2002-2003), Amphi's Lau Agreement activities resulted in the reclassification of 336 students from LEP status to English Proficient status, a rate of 23.3 according to the Arizona Department of Education's Programs for English Language Learners Year End Report.
- Amphi's student achievement is among the highest in the State.
- Amphi implemented in-school suspension and behavioral intervention alternatives years before the legislature required the same by virtue of A.R.S. § 15-841(I), recognizing the effectiveness of such programs.
- Amphi maintains consistently high correlation in the data found in school based student disciplinary records and those maintained centrally.
- OCR determined that Amphi made significant gains in accuracy of student disciplinary records while at the same time decreasing student disciplinary incidents.

3. The extent to which the funding mechanisms of the desegregation activities have operated in the public interest.

Public schools are required to comply with federal civil rights laws. Where an agency of the federal government (OCR) or a court of competent jurisdiction has determined that a school district has failed to do so, we cannot imagine a greater public interest than seeing that failure corrected. As discussed in response to question no. 1 above, the funding mechanism of A.R.S. § 15-910 makes the correction of that failure -- the redress of important and potentially damaging wrongs to students and their families -- possible. It does so while avoiding an inappropriate and counterproductive impact to the other continuing programs of a district. In its current form in Amphi's situation through assessment of local taxes, making the district not only accountable to the taxpayers for the resulting tax but also for the underlying failure.

4. The extent to which the rules adopted by the funding mechanisms of the desegregation activities are consistent with the legislative mandate.

There are no administrative rules mandated by A.R.S. § 15-910, nor has the Arizona Department of Education adopted any relevant rules. Consequently, we are unable to respond to this question, as it appears to be inapplicable.

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- 5. The extent to which the funding mechanisms of the desegregation activities have encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

Like question no. 4 above, this question appears to contemplate administrative rules that do not exist and would therefore seem inapplicable. Notwithstanding this, I will note parenthetically that Arizona school districts must, of course, hold their governing board meetings in public, after first providing notice to the public of their intended business and action, pursuant to the Arizona Open Meeting Law. Before adopting their budgets, of course, school district governing boards are also required to hold public hearings regarding those budgets. Districts must also report to the Arizona Department of Education regarding their budget activities, including desegregation revenues and expenditures and must also submit to audits, the results of which are open to the public.

- 6. The extent to which the funding mechanisms of the desegregation activities have been able to investigate and resolve complaints that are within its jurisdiction.**

Again, this sunset review question does not appear to apply to the funding statute, but rather appears to be directed more toward the activities of agencies that have jurisdiction over matters that require investigation and resolution of complaints.

- 7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

This question is also inapplicable to the present issue. A.R.S. § 15-910 simply enables school districts to fund activities required or permitted by court orders or OCR administrative agreements. It does not provide prosecutorial or other enforcement authority of the nature that appears to be contemplated by this question.

- 8. The extent to which the funding mechanism of the desegregation activities have addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

This question again contemplates “enabling statutes” which do not exist here. Certainly, however, A.R.S. §15-910 does allow school districts to comply with constitutional or statutory mandates in so far as the court orders or administrative agreements contemplated by § 15-910 require or permit.

9. The extent to which changes are necessary in the laws of the funding mechanisms of the desegregation activities to adequately comply with these factors.

A.R.S. § 15-910 provides an effective and logical means for funding federally mandated or permitted activities. As it presently stands, however, funding is restricted to 2001-2002 levels. This jeopardizes the ability of school districts with current desegregation activities to meet increasing demands for services due to increasing enrollment, court order, OCR requirements, or the like. For Districts that become subject to desegregation orders for the first time, they are essentially powerless to comply – unless they divert funds from their existing educational programming.

10. The extent to which the termination of the funding mechanisms of the desegregation activities would significantly harm the public health, safety or welfare.

Public schools cannot simply ignore or refuse to comply with federal court orders or the demands of OCR administrative agreements. Like any political subdivision of the state, they must respond to the expressions of public policy and law represented by the orders and findings of courts of law and federal regulators. To terminate the existing funding mechanism that enables compliance would be a folly that would risk the future of countless Arizona children. Without the funding source of § 15-910, districts would be compelled to find the required funding elsewhere: from within their regular maintenance and operations budget. That could mean reductions in services and programs so basic and integral to school operations that the resulting damage would disenfranchise the public and disadvantage students for years to come. It would be inappropriate to suggest specific potential cuts here, but suffice it to say that so much of what schools do affects the welfare and safety of its students. Cuts to the same could not do anything *but* harm.

11. The extent to which the level of regulation exercised by the funding mechanisms of the desegregation activities are appropriate and whether less or more stringent levels of regulation would be appropriate.

A.R.S. §15-910, in subsection J, now requires that school districts obtaining funding under the statute provide reports to the Department of Education and the State legislature detailing the program funded by desegregation monies. Annual financial reports are also required detailing the expenditures for compliance. And, on or before September 30, 2003, and at least every two years thereafter, districts will submit reports on forms prescribed by the Department of Education that will include extensive data on the funded activities required or permitted by court order or OCR agreement. The latter report is received by the Department of Education, the Governor, the President of the Senate, the Speaker of the House, and the

chairpersons of the Senate and House education committees, and must include financial information and data on the results of desegregation activities, including demographic and academic achievement trends.

This new level of oversight created by A.R.S. §15-910(J) appears substantial and substantive. Significantly, they include measures of the penultimate issue: whether desegregation activities are producing greater student achievement. We do not recommend further regulation.

12. The extent to which the funding mechanisms of the desegregation activities have used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Again, this inquiry appears to be a sunset review consideration applicable to state agencies or programs and does not seem applicable to a funding statute.

Additional responses requested:

1. An identification of the problem or the needs that the funding mechanisms of the desegregation activities are intended to address.

When school districts are compelled or permitted by court order or OCR agreement to undertake certain new activities, the districts must have the financial ability to do so. Failure of a society to ensure that its schools can comply with the requirements of civil rights laws will weaken those schools, in turn weakening that society.

Compliance with civil rights laws must be a priority for all forms of government. Enabling that compliance without demanding destruction or reduction of existing services through this funding mechanism appropriately evidences that civil rights compliance, and compliance with lawful orders, is a priority.

Please also see our reply to the first set of 12 questions above, particularly our answer to question no. 3.

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2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives for the funding mechanisms of the desegregation activities and their anticipated accomplishments.

Our objectives include the following:

- Continuing compliance with the OCR agreements, despite the fact that compliance is no longer monitored.
- Timely provision of ESL services for Limited English Proficient students as the appropriate level, i.e., beginner, intermediate or advanced
- Accurate collection and recording of follow-up data on students who have left the ESL program.
- Timely identification of ESL students requiring ESL services or special or gifted education services
- Expansion of gifted education identification and assessment process
- Increase the rate of students reclassified from LEP status to English Proficient status, improving upon the current rate of 23.3%.
- Increase student achievement for ESL students, as measured by yearly progress.
- Decrease the occurrence of disciplinary incidents.
- Increase the graduation and college enrollment rates of ESL students.
- Ensure better grade level transitions for ESL students with reduced regression.
- Ensure equality in disciplinary consequences for students without regard to national origin or home language.

3. An identification of any other programs having similar, conflicting or duplicate objectives, and an explanation of the manner in which the funding mechanisms of the desegregation activities avoid duplication or conflicts with other such programs or activities.

As we mentioned briefly in our response to question no. 1 in the first set of questions above, we do see great similarity between our desegregation efforts and the activities ordered by the court in *Flores v. State of Arizona*, specifically the requirement of the State to provide additional funding for the education of English Language Learners. As I have explained, Amphi is subject to two OCR agreements, but certainly the Lau Agreement presents some duplication as to the State allocation of funds made in response to *Flores*.

4. An assessment of the consequences of eliminating the funding mechanisms of the desegregation activities or consolidating it with another agency or program.

Please see our responses to questions 3, 9 and 10 from the first set of questions above.

In final response, please find attached the minutes of the Amphi Governing Board's meeting of July 8, 2003 regarding adoption of the budget for the 2002-2003 desegregation expenditures. Also attached are minutes and agenda items relating to 2002-2003 monthly district budget reviews in which the desegregation expenditures were reviewed publicly.

In closing, I invite you again to contact me or Dr. Balentine should you need any additional information or find this response lacking in anyway.

Sincerely,

Todd A. Jaeger, J.D.
Associate to the Superintendent
General Counsel

TAJ/crm

Enc.

Cc: Vicki Balentine, Ph.D., Superintendent
Patrick Nelson, Associate Superintendent

15-910(J)(3)(n)

Verification that the desegregation funding will be used to promote systemic and organizational changes within the school district.

The 1993 and 1994 Office for Civil Rights Administrative Agreements mandated substantial systemic and organizational changes within the Amphitheater District. New programs and services were required. For example, prior to the 1993 Agreement, student discipline records were maintained on a localized, school-site basis. The Administrative Agreements required, among other things, the District implement a centralized, district-wide recordkeeping system. That centralized system was, and continues to be, made possible by the District's desegregation funding. Desegregation funding also supports other programs such as auditing of disciplinary records and expanded, comprehensive ELL services, both of which were also changes in District organization in place at the time of the respective Office of Civil Rights Agreement.

15-910(J)(3)(o)

Verification that the desegregation funding will be used in accordance with the academic standards adopted by the state board of education pursuant to sections 15-701 and 15-701.01.

Programs and services made possible by the District's desegregation funding are in accordance with Arizona State Board of Education academic standards, as these standards are applicable. For example, the District's ELL Sheltered English Immersion program provides instruction to students which is in accordance with state standards.

15-910(J)(3)(p)

Verification that the desegregation funding will be used to accomplish specific actions to remediate proven discrimination pursuant to title VI of the civil rights act of 1964 (42 United States Code §2000d) as specified in the court order or administrative agreement.

The desegregation funding received by the District has been and will continue to be used to accomplish specific actions which will ensure equity in the provision of programs and services for LEP and minority students, and remediate alleged or proven discrimination, as required by the Office of Civil Rights administrative agreements and as permitted by A.R.S. § 15-910.

15-910(J)(3)(q)**An evaluation by the school district of the effectiveness of the school district's desegregation measures.**

All of Amphi's desegregation activities have been highly effective at resolving the issues that gave rise to them. One very clear indication of their success is the fact that OCR has ceased monitoring Amphi compliance under both corrective action agreements. This reflects OCR's determination that the Amphi is compliant, i.e., that Amphi provides the requisite programs and services for LEP student and that Amphi evidences demonstrable proof of equitable disciplinary practices. Other measures of success and effectiveness include the following:

- In 1996-1997, as the Lau Agreement was nearing just its third year of implementation, Amphi's rate of ESL students being reclassified as English Proficient was higher (9.3%) than the statewide rates reported by the Arizona Department of Education (2.7%). In November 1998, as OCR concluded monitoring under the Lau Agreement, it found that for the entire five years of monitoring, Amphi's reclassification rates remained consistently high, at approximately the 9% mark or higher.
- Amphi's Lau Agreement activities continue to result in high numbers of students being reclassified from LEP status to English Proficient status, and specific reclassification rates verifying this are already annually reported to the Arizona Department of Education.
- The Arizona Department of Education has specifically recognized the quality and effectiveness of Amphitheater Sheltered English Immersion programs and staff.
- Amphi student achievement continues to increase and, at several district schools, is among the highest in the State; 10 of the District's 19 schools are had "excelling" labels during the 2009-2010 fiscal year.
- Amphi implemented in-school suspension and behavioral intervention alternatives years before the legislature required the same by virtue of A.R.S. § 15-841(I), recognizing the effectiveness of such programs.
- Amphi maintains consistently high correlation in the data found in school based student disciplinary records and those maintained centrally.
- OCR determined that Amphi made significant gains in accuracy of student disciplinary records while at the same time decreasing student disciplinary incidents.

15-910(J)(3)(r)

An estimate of when the school district will be in compliance with the court order or administrative agreement and a detailed account of the steps that the school district will take to achieve compliance.

The Office of Civil Rights has determined that the Amphitheater District is in compliance with the 1993 and 1994 Administrative Agreements. District desegregation efforts and funding continue to maintain compliance.

15-910(J)(3)(s)

Any other information that the department of education deems necessary to carry out the purposes of this paragraph.

The Department has not indicated that any additional information is required.