



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

DATE OF MEETING: **July 11, 2017**

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

BACKGROUND:

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 the law. This requirement of verification has continued since and, each year, the District submits the requisite verification to the Department of Education.

This agenda item will provide some history of the bases for the District’s desegregation funding and also detail the verifications now required under the desegregation statute quoted above. The Board’s approval of the attached verifications and reporting, to be submitted under the Board President’s signature, is also required.

Desegregation Funding, Generally.

The purpose of the desegregation funding mechanism is to enable school districts to comply with court orders and U.S. Department of Education Office for Civil Rights (OCR) administrative agreements. Compliance with court orders and compliance agreements typically represent new and sometimes substantial expenses for school districts, because by their very nature, they mandate doing things differently from, and in addition to, those things already being done and funded under existing district budgets.

Without the funding made possible by A.R.S. §15-910, districts would have to fund the supplemental programs and activities required by applicable court orders and OCR agreements, by diverting funds from their maintenance and operations budgets and “capital” funding sources. With other programs services already dependent upon already limited (and in recent years, reduced education budget funds), funding of desegregation activities through the diversion of other funds would jeopardize the ability of districts to just maintain the *status quo* in terms of educating students. The resulting and proverbial “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 those that led to desegregation complaints in the first place.

While there has historically been some degree of legislative criticism of the desegregation funding mechanism as extraneous or unnecessary, the legislature has notably taken a different posture with regard to state programs which are subject to new mandates. For example, during the 2002-2003 legislative year, the legislature passed HCR 2022.

HCR 2022 placed a referendum on the 2004 General Election Ballot which would have required any new initiative or referendum proposing a mandatory expenditure of state revenues or allocating state funding for any specific purpose also 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 very same way, the cost of new programs or services mandated or permitted by OCR agreements or desegregation court orders should have their own source of additional 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 Basis 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 Flores litigation against the State of Arizona. In short, the inquiry of this OCR review was whether Amphi provided students who are Limited English Proficient ("LEP") with sufficient educational services to allow them educational opportunities which were equal to non-minority students.

The Lau Review lasted for more than two years and resulted in findings in January 1994 from OCR that Amphi had denied LEP students an equal opportunity to meaningfully participate in District 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 at 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; and
- 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. Implementation strategies include:

- Sufficient levels of specially trained teachers to 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 to assist teachers in Sheltered English Immersion/ESL classrooms.
- Additional special education teachers, 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 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 through its disciplinary policies and actions (“the Discipline Investigation”). The Discipline 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 discipline 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 ensure OCR’s ability 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.

Progress Since OCR Agreements.

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 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. Despite having attained compliance status, however, the District cannot simply terminate the programs that enabled compliance. 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 15, 2017:

- (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 United States Code section 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 is 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 is not derived through a primary or secondary property tax levy and that is 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 United States Code section 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 Day, are included as attachments to this item.

RECOMMENDATION:

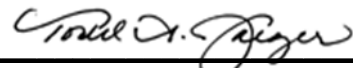
The Administration recommends approval of the attached verifications and authorization of the Board President to execute the verification form on behalf of the Board.

INITIATED BY:



Michelle H. Tong, J.D., Associate to the Superintendent

Date: July 6, 2017



Todd A. Jaeger, J.D., Superintendent