



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

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**DATE OF MEETING:** July 14, 2019

**TITLE:** Approval of Verification of Desegregation Funding Matters and Submission of Desegregation Funding Report for Compliance with A.R.S. § 15-910

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**BACKGROUND:** A.R.S. § 15-910 requires Arizona school districts who qualify to receive state desegregation funding to verify annually how they use their desegregation funds. Amphitheater qualifies to receive state desegregation funds through two separate agreements with the United States Department of Education, Office of Civil Rights (“OCR”). This Board item permits the Governing Board to review Amphitheater’s use of desegregation funding and to authorize the Administration to provide the District’s annual A.R.S. § 15-910 verification.

Because this item is presented annually, the Board will be familiar with the below discussions of the reasons for Amphitheater’s desegregation funding. Nevertheless, a general explanation is included to enable the Board to authorize the requisite verification.

### **State Authority for Desegregation Funding**

A.R.S. § 15-910 authorizes the issuance of desegregation funding to school districts who are required to budget for specific expenses to comply with a court order of desegregation or an administrative agreement with the United States Department of Education, Office of Civil Rights, to remediate concerns for racial disparity. A.R.S. § 15-910(G) states, in pertinent part, as follows:

“... 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....”

This desegregation funding mechanism enables school districts to comply with court orders and OCR administrative agreements. Compliance with judicial or administrative requirements like these generally represent new, and sometimes substantial, expenses for school districts because 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 through A.R.S. §15-910, school districts would have to fund the supplemental programs and activities required by OCR using funds diverted from their maintenance and operations budgets and “capital” funding sources. 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 the District to further claims of inadequate service like those that led to desegregation complaints in the first place.

### **Reasons for Amphitheater’s Desegregation Funding.**

Amphitheater’s desegregation activities, and consequently its expenses under the statute, arise from two administrative agreements between Amphitheater and OCR. These agreements are known as “Corrective Action Agreements”. The details of each Corrective Action Agreement are identified more fully below.

### **1. Lau Corrective Action Agreement.**

The first Corrective Action Agreement followed an extensive OCR investigation of Amphitheater's educational programs and services in Compliance Review No. 08925002 ("the Lau Review"). Initiated in November 1991, this OCR review stemmed from a complaint that Amphitheater did not provide sufficient educational services to students who are Limited English Proficient ("LEP") to allow them educational opportunities equal to non-minority students.

The Lau Review lasted for more than two years and resulted in OCR findings in January 1994 that Amphitheater violated 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 determined that Amphitheater denied LEP students an equal opportunity for meaningful participation in District programs. It required immediate corrective action by Amphitheater. Because Amphitheater risked potential loss of federal funds and civil penalties if it did not take the corrective action, it entered into a Corrective Action Agreement with OCR in January 1994 ("the Lau Agreement").

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. First, the District had to develop a comprehensive plan for providing specific programs and services to all LEP students, which includes 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.

Second, the Lau Agreement required Amphitheater to develop a plan to ensure appropriate placement of special-needs LEP students, whether enrolled at the time of the Lau Agreement or thereafter. Third, it mandated development of plans to improve services to LEP students with translation of parental notices into home languages.

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.
- Administrative monitoring of 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 Amphitheater, 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.

## **2. Student Discipline Corrective Action Agreement.**

The second OCR agreement 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 Amphitheater’s student discipline record keeping at the time was so substandard that OCR was simply *unable* to investigate.

OCR required corrective action in Amphitheater 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 Amphitheater 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 Amphitheater 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 Amphitheater 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 Amphitheater’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 Amphitheater’s compliance under both corrective action agreements. This reflects OCR’s

determination that Amphitheater is compliant, i.e., that Amphitheater provides the requisite programs and services for LEP student and that Amphitheater 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.

#### **Annual Verifications**

A.R.S. § 15-910(J)(3) requires that a school district who receives desegregation funding provide the following verifications:

- (a) A District-wide budget summary and a budget summary on a school-by-school basis for each school in the 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 District.
- (c) The date that the District was determined to be out of compliance with Title VI of the Civil Rights Act of 1964 (42 United States Code § 2000d) and the basis for that determination.
- (d) The initial date that the 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 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 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 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 District and the number of employees at 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 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 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 District of the effectiveness of the District's desegregation measures.
- (r) An estimate of when the District will be in compliance with the court order or administrative agreement and a detailed account of the steps that the 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 of Arizona 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 submissions, including the verification form to be executed by the Board President, are included as attachments to this item.

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

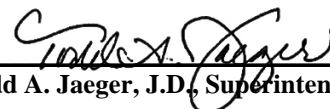
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**INITIATED BY:**



Michelle H. Tong, J.D.,  
Associate to the Superintendent and General Counsel

Date: July 6, 2020



Todd A. Jaeger, J.D., Superintendent