



Arizona State Senate Issue Brief

August 3, 2018

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

SCHOOL DESEGREGATION IN ARIZONA

OFFICE OF CIVIL RIGHTS

Under the provisions of Title VI of the Civil Rights Act of 1964, “no person in the U.S. may be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity receiving federal funding from the U.S. Department of Education on the grounds of race, color or national origin.” The agency responsible for monitoring and resolving discrimination complaints is the U.S. Department of Education’s Office of Civil Rights (OCR). The OCR ensures compliance through two methods: 1) OCR-initiated cases, often called compliance reviews, which can include random site visits that permit the OCR to target resources on acute compliance problems; and 2) reviews of complaints made by any party who feels discrimination is occurring at an educational institution that receives federal funding. The OCR also provides technical assistance to help institutions achieve voluntary compliance with civil rights laws.

The OCR enforces several federal civil rights laws prohibiting discrimination in programs or activities of institutions receiving federal funding from the U.S. Department of Education, including all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries and museums. Areas covered include admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment.

Following an investigation of alleged federal civil rights violations, if the OCR determines that evidence supports a conclusion that a school district has failed to comply with applicable laws or regulations, the OCR will negotiate with the district to reach a voluntary administrative compliance agreement. The provisions of the administrative agreement are aligned with the findings of the

investigation and the complaint is considered resolved if the agreement is fully performed. Noncompliance with the administrative agreement can lead to a letter of finding, which outlines the consequences for failure to comply, or the matter may be referred to the Department of Justice.

Generally, school districts budget for costs associated with the requirements of a consent decree resulting from a lawsuit filed against the district for civil rights violations. It is left up to each state to determine how, if at all, to financially support school districts that are in noncompliance with an OCR administrative agreement. The OCR does not take a position on funding.

ARIZONA DESEGREGATION FUNDING

In 1983, session law was enacted that allowed school districts under court order to raise local funds for a limited amount of time in order to meet desegregation costs outside the revenue control limit. At the time, only Tucson Unified School District (TUSD) met this criterion (Laws 1983, Chapter 267). Laws 1985, Chapter 166, permanently established this exemption in statute and expanded it to include school districts under consent agreements with OCR. A school district may budget and levy an additional property tax, without voter approval, above and beyond the tax used for regular maintenance and operations for expenses incurred for any measures or activities designed to remediate alleged or proven racial discrimination. Beginning in FY 2019, retroactive to July 1, 2018, desegregation programs must be funded with secondary rather than primary property taxes. This budget authority is typically referred to as “desegregation funding,” although monies may be used to remediate any civil rights category violation. Districts may continue to budget and levy for desegregation funding after a court order is lifted or the OCR agreement expires.

Arizona school districts may budget for desegregation activities due to an OCR administrative agreement or court order of desegregation if the expenses incurred for these activities were initiated before the termination of the court order or an OCR administrative agreement. School districts budgeting for an OCR administrative agreement or consent decree costs must: 1) prepare and employ a separate maintenance and operation and capital outlay desegregation budget; 2) utilize a budget format that allows the school district to detail all of the expenditures resulting from any program implementation required by a consent decree or an OCR administrative agreement in their annual financial report; and 3) annually collect and report program activity data related to the court order of desegregation or an OCR administrative agreement to the Arizona Department of Education (ADE). ADE must compile and submit a report to the Governor and the Legislature that includes an annual financial report regarding desegregation activities, the programmatic and per pupil costs for desegregation activities, a summary of the results of desegregation activities, a summary of all relevant court filings, pleadings and correspondence and the actions taken to achieve equitable status.

Finally, school districts must also ensure that desegregation expenses are educationally justifiable, result in equal educational opportunities, promote systemic and organizational changes within the district, align with the Arizona Academic Standards, accomplish specific actions to remediate the violation and be used in accordance with the plan the school district submits to ADE.

In 2002, the Legislature limited the ability of school districts to increase desegregation budgets by capping desegregation funding for FY 2003 and FY 2004 at the FY 2002 level. In 2004, the Legislature adopted a “soft cap” allowing desegregation expenditures to increase for

enrollment growth and inflation in FY 2005, which was extended in FYs 2006, 2007, 2008 and again in 2009. In FY 2010, the Legislature established a “hard cap” that limited the amount of desegregation expenditures to FY 2009 levels.

The Phoenix Union High School District and TUSD governing boards each initiated a process to discontinue their respective court orders in 2004; a process referred to as achieving unitary status. In 2005, a judge lifted the court order against the Phoenix Union High School District after the district improved dropout rates, increased attendance and developed magnet programs.¹

In 2009, U.S. District Judge David C. Bury lifted TUSD's court order. Two years later, the 9th Circuit Court of Appeals reversed the decision citing a lack of evidence that the district acted in good-faith, and ordered the lower court to renew oversight of TUSD.² TUSD submitted a new Unitary Status Plan in 2014 and may petition for unitary status beginning in 2017. Both school districts continue to budget for desegregation expenses in an effort to maintain the desegregation programs.

Eighteen school districts in Arizona currently budget for costs resulting from an ongoing or resolved OCR administrative agreement or a court order of desegregation. *Chart 1* illustrates those school districts in Arizona currently budgeting for desegregation for FY 2016.

PARENTS INVOLVED IN COMMUNITY SCHOOLS V. SEATTLE DISTRICT NO. 1/ MEREDITH V. JEFFERSON COUNTY BOARD OF EDUCATION

In June 2007, the United States Supreme Court issued an opinion related to the integration of public schools for two merged cases: *Parents*

School District	Type	Budget
Agua Fria Union	OCR	999,000
Amphitheater Unified	OCR	4,025,000
Buckeye Elementary	OCR	1,608,921
Cartwright Elementary	OCR	4,628,061
Flagstaff Unified	OCR	2,241,322
Glendale Union	OCR	6,131,959
Holbrook Unified	OCR	2,493,307
Isaac Elementary	OCR	4,951,155
Maricopa Unified	OCR	1,291,000
Mesa Unified	OCR	8,774,057
Phoenix Elementary	OCR	11,151,530
Phoenix Union	Order	55,800,892
Roosevelt Elementary	OCR	13,570,494
Scottsdale Unified	OCR	7,382,169
Tempe Elementary	OCR	14,178,248
Tucson Unified	Order	63,711,047
Washington Elementary	OCR	6,350,000
Wilson Elementary	OCR	1,946,054
FY 2016 Total:		\$211,258,390

¹ *Castro, et al v. Phoenix Union High School District, et al* (2005)

² *Fisher v TUSD* (2011)

<i>Chart 1</i>

Involved in Community Schools v. Seattle District No. 1 and *Meredith v. Jefferson County Board of Education*. In a 5-4 vote, the Supreme Court ruled unconstitutional the school assignment programs in Seattle and Jefferson County, Kentucky.

In the *Parents* case, the Seattle school district's open enrollment policy employed race as a "tie-breaker" when too many students chose a particular school. In the *Meredith* case, the Kentucky school district, which had previously been under a desegregation order, continued to assign students to schools based on race, even after the order was lifted. The plaintiffs in both cases argued that the school districts' policies were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

The Supreme Court had previously issued an opinion in *Grutter v. Bollinger* that racial

classifications in a public higher education setting were permitted only if the classifications were “narrowly tailored” to realize a “compelling state interest.” In the *Grutter* case, racial diversity was held as a compelling state interest. Additionally, in prior cases, compelling state interest also included a remedy for past intentional discrimination.

The majority opinion, written by Chief Justice Roberts with Justices Thomas, Kennedy, Scalia and Alito concurring, stated that since: 1) neither the Seattle nor the Kentucky school district operated under a court-ordered desegregation decree or operated illegally segregated schools; and 2) both districts reported “minimal effects” in attaining racial diversity due to their policies; and 3) no other nonracial based alternatives were utilized, neither school districts’ policies met the standards of compelling state interest. The plurality opinion, which did not include Justice Kennedy, further contends use of racial diversity or “balancing” in schools can never meet the compelling state interest standard, citing that the use of race to assign children to schools as the basis in which the segregation of black children was found unconstitutional in *Brown v. Board of Education* in 1954. In their dissent, Justices Stevens, Breyer, Souter and Ginsburg argued that racial balancing has a compelling state interest as the act of using race-conscious criteria in the specific context of the public school setting furthers the goal of ensuring racial integration.

ADDITIONAL RESOURCES

- *Castro, et al v. Herrera, et al*, 427 F.3d 1164 (D. Ariz 2005)
- Desegregation Statutes: A.R.S. §§ 15-816.02 and 15-910
- *Fisher v. TUSD*, 652, F.3d 1131 (9th Cir. 2011) 1530
- *Grutter v. Bollinger*, 539 U.S. 306 (2003)
- Office for Civil Rights
<http://www.ed.gov/about/offices/list/ocr/index.html>
- *Parents Involved in Community Schools v. Seattle School District No.1 and Meredith v. Jefferson County Board of Education*, 551 U.S. 701 (2007)
- “School Finance Primer” Hunter, Michael and Gifford, Mary. February 2000
www.arizonatax.org/research_&_publications1.htm
- "Timeline of Desegregation in Tucson Unified School District"
http://tusd1.org/contents/distinfo/deseg/Documents/Deseg_TIMELINE.pdf
- "ATRA Special Report: Desegregation/OCR Funding Overview." Arizona Tax Research Association. January 2016.
- *Brown v. Board of Education*, 347 U.S. 348 (1954)