

Federal Court Dismisses Arizona School District's Appeal to End Desegregation Order

Proskauer For Good on August 8, 2019

Last week, the Court of Appeals for the Ninth Circuit [granted](#) a request by Proskauer and our co-counsel, the [Mexican American Legal Defense and Educational Fund \(MALDEF\)](#) to block efforts by the Tucson Unified School District (TUSD) to be released from a court-supervised desegregation plan first imposed on the district in the 1970s.

MALDEF has represented Latino plaintiffs in the desegregation case since it was first filed in 1974. Thereafter, MALDEF's case was combined with a lawsuit filed on behalf of African American students who similarly claimed that there was a longstanding pattern of racial segregation in TUSD's school operations and curriculum. In 1978, a court agreed that there was intentional discrimination against Latino and African American students, and ordered the schools to be desegregated under court supervision.

Proskauer's pro bono team joined MALDEF in these racial justice efforts in 2007, when the District Court was considering whether the school district's school assignment policies had any discriminatory impact and whether it should be released from further court supervision. After the Court ruled in favor of the school district, Proskauer and MALDEF, on behalf of some of the original plaintiffs, appealed, arguing that the Court's findings, which called into question the school district's good faith compliance with the desegregation plan, precluded entry of an order ending court oversight. In 2011, the Ninth Circuit Court of Appeals reversed the District Court and remanded the case for continued court supervision until the school district met its burden to remove all vestiges of past discrimination to the extent feasible and to demonstrate a good faith commitment to a nondiscriminatory school system. In 2012, the District Court appointed a Special Master to craft a plan, known as the Unitary Status Plan (USP), to be implemented by TUSD to achieve these ends.

In September 2018, U.S. District Court Judge David Bury ruled that the district had partially complied with the USP but maintained judicial oversight over much of the school district's activities. TUSD appealed, arguing that the Court "refused" to declare that the district had met all of the mandates of the USP and that it should be released from court oversight. Proskauer and MALDEF cross-appealed because TUSD had not demonstrated adequate commitment to a nondiscriminatory school system.

In January 2019, Proskauer and MALDEF asked the Ninth Circuit to dismiss TUSD's appeal arguing that the District Court could not have "refused" to declare TUSD in full compliance with the USP because the school district never made such a request. Therefore, attorneys argued, the Ninth Circuit lacked jurisdiction to rule on the TUSD appeal.

On July 29, 2019, a three-judge panel agreed that the Ninth Circuit lacked jurisdiction and granted Proskauer and MALDEF's request to dismiss TUSD's appeal. TUSD must now return to the District Court and prove that it is in full compliance with the 2013 desegregation plan. Meanwhile, the Ninth Circuit has permitted the cross appeal filed by Proskauer and MALDEF to proceed.

Senior Counsel [Jennifer Roche](#) and I have led numerous Proskauer attorneys and staff over the past decade who have dedicated their time and talent to this meaningful and high-impact case.

Sylvia Campoy, the representative of the Plaintiffs, said, "The recent dismissal is one of many examples of the victories achieved by the Mendoza Plaintiffs' legal team for those who would otherwise have no voice in these matters."

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- **Lois D. Thompson**