

1
2
3
4
5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**
7

8 Roy and Josie Fisher, et al.,

9 Plaintiffs

10 and

11 United States of America,

12 Plaintiff-Intervenor,

13 v.

14 Tucson Unified School District, et al.,

15 Defendants,

16 and

17 Sidney L. Sutton, et al.,

18 Defendants-Intervenors,

No. CV-74-00090-TUC-DCB

19 Maria Mendoza, et al.,

20 Plaintiffs,

21 and

22 United States of America,

23 Plaintiff-Intervenor,

24 v.

25 Tucson Unified School District, et al.

26 Defendants.
27
28

No. CV-74-0204-TUC-DCB

AMENDED
ORDER

Report and Recommendation Re: Withdrawal of Magnet Status- Approved

1 TUSD adopted the CMP, pursuant to the Unitary Status Plan (USP), on July 15,
2 2014, it filed its final Revised CMP on January 28, 2016. (Doc. 1898).

3 The Court adopts the recommendation of the Special Master and orders
4 withdrawal of magnet status from the following elementary and middle¹ schools, Ochoa,
5 Robison, Safford, and Utterback, and from the following high schools, Cholla and
6 Pueblo. These schools are racially concentrated, having more than 70 percent Latino
7 students in the entering classes of Kindergarten, Sixth or Ninth grades, respectively.

8 These withdrawals are pursuant to directives made by this Court on January 16,
9 2015, which provided for the development of Improvement Plans for these schools and
10 an opportunity for them to attain magnet status, pursuant to criteria measuring the ability
11 of the school to attract students from across the racial divides existing in the school
12 district and to additionally provide enriched programs for neighborhood students. (Order
13 (Doc. 1753) at 3.) The Court does not repeat here the relevant and important case
14 history, which requires a Comprehensive Magnet Plan (CMP) be the cornerstone of
15 Tucson Unified School District's (TUSD) integration efforts required by the Unitary
16 Status Plan (USP). *Id.* at 2-5. For purposes of this Order, it suffices to say that it has
17 long been recognized, including the 2011 Magnet Study and the 2014 CMP, that existing
18 magnet programs and schools in TUSD need improvement or to be changed or
19 eliminated. *Id.* at 5.

20 The Court's January 16, 2015, Order set a one year progress benchmark
21 assessment regarding two measures of success: integration with no more than 70 percent
22 of students being of a single race/ethnicity at the entry grade for the school and student
23 achievement measured reflected by either an A or B school rating. Thereafter, the
24 Special Master was charged with recommending the withdrawal of magnet status for
25 these schools by the fall semester SY 2015-2016. However, on November 19, 2015, the
26 Court agreed to allow the parties, pursuant to a stipulation, to extend their improvement
27 schedules for another year to SY 2016-2017 before the Special Master recommended

28

¹ Amended to clarify that Safford is K-8 and Utterback is a middle school.

1 withdrawing magnet status. (Order (Doc. 1870)). The Special Master has now filed his
2 R&R regarding these recommendations. (R&R (Doc. 1974) (revised) (Doc. 1971)).

3 The schools the Special Master recommends be removed from the CMP failed to
4 meet the definition for a magnet school in January 2015 and November 2015. It is
5 undisputed that these six schools continue to NOT meet the integration goal for being a
6 magnet school. (TUSD Response (Doc. 1979)). There is no assertion that the academic
7 measures for these schools have improved.² Both TUSD and the Mendoza Plaintiffs ask
8 for more time. The Court asks: if not now when?

9 The Court finds that the decreases in racial concentration noted by TUSD is slight,
10 and adopts the finding of the Special Master that "[t]here is no reasonable way to argue
11 that these six schools met the integration criteria set by the Court." (R&R (Doc. 1974) at
12 3.) There is absolutely no evidence put before the Court to suggest that more time will
13 improve the ability of these six schools to operate like magnet schools to warrant
14 inclusion in the CMP. This is especially true given the Court's prior directives in both
15 the January and November Orders issued in 2015 that TUSD must have an operational
16 CMP in place by SY 2016-2017.

17 The withdrawal of magnet status from these six schools cannot surprise any party
18 or the community. The tentativeness of their inclusion in the CMP has been evident in
19 the Court's Orders addressing the CMP. In an abundance of caution when this Court
20 required Improvement Plans be developed for these schools, it also required TUSD to
21 develop Transition Plans for schools which did not then meet the integration
22 benchmarks.³ TUSD should immediately file the Transition Plans with the Court so that
23 the parties and the community are informed regarding the future planned at these schools,
24 and so that they may be fully funded in the SY 2017-2018 USP budget. The Special
25 Master may file an R&R, which the Court will address on an expedited basis. The parties

26
27 ² There is no discussion whatsoever of the academic achievements of any of these
schools.

28 ³ The deadline for developing the Transition Plans was 6 months from the Court's
November 19, 1995, ruling.

1 may weigh in regarding the sufficiency of the Transition Plans to meet the needs of the
2 students attending these schools, with the Special Master recommending an expedited
3 briefing schedule, if possible to resolve any disagreements over the Transition Plans so as
4 to not impede the SY 2017-2018 budget process. Alternatively, the Special Master may
5 propose a bifurcated schedule to identify the Transition Plans in part to the extent there
6 can be full funding under the SY 2017-2018 USP budget, with full briefing of objections
7 to follow.

8 The Court turns to the Mendoza Plaintiffs' remaining areas of concern. The
9 Mendoza Plaintiffs accuse TUSD of undermining any potential for integration at these
10 schools by failing to hire enough permanent and experienced teachers there, failing to
11 address discipline problems at Safford and Utterback, and failing to reach out and engage
12 families. Additionally, the Mendoza Plaintiffs point out the success of the International
13 Baccalaureate (IB) Programme at Cholla High School and ask this Court to Order TUSD
14 to continue it and other effective programs after magnet status is withdrawn. The Court
15 shares the Mendoza Plaintiffs' concerns and advises that the Transition Plans should
16 address them, with the exception of discipline problems at Safford and Utterback which
17 shall be expressly addressed by the Special Master in his 2015-2016 annual report or
18 separately by R&R. See Court's Order approving 2016-2017 USP Budget.

19 Finally, to be clear, the Court reiterates that the withdrawal of magnet status from
20 these schools shall not have a negative impact on their students. The Mendoza Plaintiffs
21 are 100 percent correct: "[T]he failure of the subject schools to achieve the integration
22 criteria set forth in the USP should not relieve them (or the District) of on-going efforts to
23 increase integration at those schools particularly given that every one of them is reported
24 to be racially concentrated in the District's most recent Annual Report. (2015-2016
25 Annual Report, Appendix II-4.) The District should take steps to encourage open
26 enrollment at these schools by students whose presence would reduce the racial
27 concentration at these schools and should continue to advertise the possibility of
28

1 qualifying for free incentive transportation under the USP." (Mendoza Plaintiffs'
2 Response (Doc. 1978) at 11.)

3 Accordingly,

4 IT IS ORDERED that the Reports and Recommendations addressing withdrawal
5 of magnet status, (Docs. 1956, 1971, and 1974) are adopted by the Court.

6 IT IS FURTHER ORDERED that magnet status is withdrawn for Ochoa
7 Elementary School, Robison Elementary School, Safford K-6 School, Utterback 6-7
8 School, Cholla High School, and Pueblo High School.

9 IT IS FURTHER ORDERED that within 21 days of the filing date of this Order,
10 TUSD shall file the Transition Plans for these schools with the Court, and all parties shall
11 move forward in a good faith effort to fully fund the Transition Plans in SY 2017-2018.
12 If necessary, the Special Master may file an R&R, which the Court will address on an
13 expedited basis, pursuant to a recommendation from the Special Master for briefing any
14 objections to the Transition Plans.

15
16 Dated this 23rd day of December, 2016.

17
18
19 

20 Honorable David C. Bury
21 United States District Judge
22
23
24
25
26
27
28

FAX JOURNAL REPORT

TIME : 01/04/2017 16:38
 NAME :
 FAX :
 TEL :
 SER.# : 000B0N326577

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
#100	06/04	06:15	5207512881	43	01	OK	RX
#101	06/09	06:48	18552045020	53	02	OK	TX ECM
	06/13	18:07	16473493009	02:18	07	OK	TX ECM
	06/14	08:53	5203252745	24	01	OK	RX
#102	06/20	14:35	18552045020	58	02	OK	TX ECM
#103	06/20	14:36	18552045020	53	02	OK	TX ECM
#104	06/21	19:12	14436814602	34	02	OK	TX ECM
#105	06/23	07:05	*672902392	33	01	OK	TX ECM
#107	06/30	15:31	15207907777	00	00	BUSY	TX
#109	06/30	22:47	7907790	42	03	OK	TX ECM
#110	07/13	15:19	5479718	20	01	OK	TX ECM
#111	07/22	18:28	14436814602	01:05	03	OK	TX ECM
	07/31	22:45	818 752 1400	48	01	OK	RX ECM
	08/01	14:30		01:39	04	OK	RX ECM
#112	08/04	17:37	14436814602	37	02	OK	TX ECM
	08/05	12:06	8556483534	30	02	OK	RX ECM
	08/15	12:23		27	01	OK	RX ECM
#113	08/18	14:37	18002309531	39	01	OK	TX ECM
#114	08/19	09:13	*678834308	18	01	OK	TX ECM
#115	08/24	17:22	14436814602	48	03	OK	TX ECM
	09/02	05:20		28	01	OK	RX ECM
	09/06	09:35		38	01	OK	RX ECM
	09/07	19:44	818 752 1400	01:14	01	OK	RX ECM
#116	09/08	07:58	5206268326	55	02	OK	TX ECM
	09/12	08:46		33	01	OK	RX ECM
	09/13	10:19		34	01	OK	RX ECM
#117	09/13	10:57	*6718666432219	23	01	OK	TX ECM
	09/14	23:43		33	01	OK	RX ECM
	09/28	15:22		01:32	02	OK	RX
#118	10/12	19:21	18014684033	01:24	04	OK	TX
	10/17	08:27		27	01	OK	RX ECM
	10/26	13:05		01:11	02	OK	RX
	10/26	13:15	5203210240	01:00	01	OK	RX ECM
	10/27	11:02	5203210240	30	01	OK	RX ECM
#119	11/16	09:50	*677338611	55	02	OK	TX ECM
	11/19	14:09	5207222614	40	01	OK	RX ECM
	11/19	19:06	5208885299	37	01	OK	RX ECM
#120	11/22	09:08	7464511	51	01	OK	TX
#121	11/22	12:53	7464511	53	01	OK	TX
#122	11/23	15:19	18667455766	02:17	05	OK	TX ECM
#123	11/23	15:22	18667455766	02:41	06	OK	TX ECM
	12/05	11:27		01:03	02	OK	RX ECM
#124	12/26	11:04	*676242309	23	01	OK	TX ECM
	12/29	10:53		06:36	19	OK	RX ECM
	12/29	11:08		07:24	29	OK	RX ECM
	12/29	11:56		08:38	31	OK	RX ECM
	12/29	12:36		24	01	OK	RX ECM
	12/30	20:37		03:29	11	OK	RX ECM
	01/04	08:49	888 388 3044	31	01	NG	RX ECM
	01/04	16:36		01:35	05	OK	RX ECM

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION / OUT OF MEMORY
 CV : COVERPAGE
 POL : POLLING
 RET : RETRIEVAL
 PC : PC-FAX