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Attorneys for Tucson Unified School District No. One, et al.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,

Plaintiffs

CV 74-90 TUC DCB
(Lead Case)

v.

United States of America,

Plaintiff-Intervenor,

**DECLARATION OF J. WILLIAM
BRAMMER, JR. RE:
OBJECTION TO REPORT AND
RECOMMENDATION ON
BOUNDARY REVIEW PROCESS
(ECF 1601)**

v.

Anita Lohr, et al.,

Defendants,

CV 74-204 TUC DCB
(Consolidated Case)

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

Maria Mendoza, et al.

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.

Defendants.

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Tucson, Arizona 85718
Telephone: (520) 792-4800

1 I, J. William Brammer, Jr., declare under penalty of perjury that the following
2 statements are true:

3 1. I am above the age of 18 and am competent to make this Declaration. I am an
4 attorney of record for Defendant Tucson Unified School District No. One (“TUSD”) in this
5 action and have personal knowledge regarding the facts stated herein. This declaration is
6 based upon my personal knowledge, information and belief.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of an Email I sent to
8 Special Master Hawley and counsel for Plaintiffs on April 15, 2014 at 1:27 p.m. (time
9 stamp is E.S.T.; 10:27 local time) transmitting a list of the Boundary Committee members.

10 3. Attached hereto as **Exhibit 2** is a true and correct copy of an Email that I
11 received from Special Master Willis Hawley on April 15, 2014 at 2:10 p.m. (time stamp is
12 E.S.T.; 11:10 local time)

13 4. Attached hereto as **Exhibit 3** is a true and correct copy of an Email that I
14 received from Anurima Bhargava, counsel for Plaintiff-Intervenor United States
15 Department of Justice, on April 15, 2014 at 11:17 a.m. (time stamp is P.S.T.)

16 5. Attached hereto as **Exhibit 4** is a true and correct copy of an Email that I
17 received from Special Master Hawley on April 15, 2014 at 1:38 p.m. (time stamp is P.S.T.)

18 6. Attached hereto as **Exhibit 5** is a true and correct copy of an Email I sent to
19 the Special Master and counsel for Plaintiffs on April 23, 2014 at 3:36 p.m.

20
21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct.

23 DATED this 6th day of June, 2014.

24
25
26 /s/ J. William Brammer, Jr.
27 J. William Brammer, Jr.
28

EXHIBIT 1

From: William Brammer
Sent: Tuesday, April 15, 2014 10:27 AM
To: lthompson@proskauer.com; 'nramirez@MALDEF.org' (nramirez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com); Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Willis D. Hawley (wdh@umd.edu)
Cc: Julie Tolleson (Julie.Tolleson@tusd1.org); Desegregation (deseg@tusd1.org); TUSD
Subject: Boundary Committee composition
Attachments: 2328360-Boundary Committee membership list 4 15 14.XLS
Categories: TUSD

Dr. Hawley and counsel:

Attached is the roster of the Boundary Committee. I apologize for the time it has taken to put this together. Several items important to the committee's mission, including this one, have been in process simultaneously. In any event, here it is.

I have been told the reason the numbers don't total precisely, and as seems to be apparent from the document, is because some of these members occupy more than one category – parent/district employee for example. Please let me know if you have any questions.

Thanks,
Bill

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2014 BOUNDARY REVIEW PLAN COMMITTEE

Name	Region	Parent	Employee	Hispanic	Race
Members					
Cesar Aguirre	C	Yes		Yes	American Indian/Alaskan Native
Agnes Attakai	W	Yes		No	American Indian/Alaskan Native
Rodney Bell	E			No	Black
Liz Benites	E	Yes	Yes	No	White
Georgia Brousseau	E	Yes		No	White
Caroline Carlson	C		Yes	No	White
Vivian Chilton	W	Yes	Yes	No	Black
Juan De La Torre	C		Yes	Yes	
Gerlie Fout	C	Yes	Yes	No	Asian
Kathryn Jensen	E	Yes	Yes	No	White
Jorge Leyva	E	Yes		Yes	
Dale Lopez	C		Yes	Yes	White
Lilian Martinez	W	Yes	Yes	Yes	
Angie Mendoza	W		Yes	Yes	White
Susan Neal	W	Yes	Yes	No	White
Lorinda Pierce Sena	O		Yes	Yes	
Betts Putnam-Hidalgo	C	Yes	Yes	No	White
Cinthia Quijada	W	Yes	Yes	Yes	
Celina Ramirez	E			Yes	White
Lorraine Ramirez	W	Yes		Yes	
Rachel Starks	W	Yes		No	American Indian/Alaskan Native
Anna Timney	E	Yes	Yes	No	White
Diana Tolton	C		Yes	No	White
Marietta Wasson	O		Yes	No	American Indian/Alaskan Native
Plaintiffs Reps					
Sylvia Campoy	C			Yes	
Gloria Copeland	E			No	Black
Taren Ellis Langford	E	Yes		No	Black
Rosalva Meza	C			Yes	Hispanic
Lorraine Richardson	O		Yes	No	Black
James Schelble	C			No	White
Alternates					
Vicki Borders	O		Yes	No	White
Arthur Buckley	O		Yes	No	White
Megan Chavez	O		Yes	No	White
Amy Cislak	E		Yes	No	White
Amy Emmendorfer	O	Yes	Yes	No	Asian
Vicki Harvey	E		Yes	No	White
William Jones	E			No	White
Jill Leon	E	Yes	Yes	No	White
Cheryl Norwood	E		Yes	No	White
Marguerite Samples	E		Yes	No	White
Cheryl Schrader-Gerken	C	Yes	Yes	No	White
Marsha Willey	E		Yes	No	White

Legend

A = Alternative
Y = Committee Member
E = East
C = Central
W = West
O = Out of District

EXHIBIT 2

From: Willis D. Hawley [<mailto:wdh@umd.edu>]

Sent: Tuesday, April 15, 2014 02:10 PM

To: William Brammer <WBrammer@rlaz.com>; lthompson@proskauer.com <lthompson@proskauer.com>; 'nramirez@MALDEF.org' (nramirez@MALDEF.org) <nramirez@MALDEF.org>; Rubin Salter Jr. (Rsjr3@aol.com) <Rsjr3@aol.com>; Bhargava, Anurima (CRT); Savitsky, Zoe (CRT)

Cc: Julie Tolleson (Julie.Tolleson@tusd1.org) <Julie.Tolleson@tusd1.org>; Desegregation (deseg@tusd1.org) <deseg@tusd1.org>; TUSD <TUSD@rlaz.com>

Subject: RE: Boundary Committee composition

While I don't believe that there should be racial spots on the committee, the relationship between student race and committee race is dramatic. Latino students outnumber Whites 3-1 but Whites on the committee outnumber Hispanics. Even more problematic, there are 15 parents but only 5 are Hispanic. And there are no Hispanic alternates.

Bill Hawley

EXHIBIT 3

From: Bhargava, Anurima (CRT) [<mailto:Anurima.Bhargava@usdoj.gov>]

Sent: Tuesday, April 15, 2014 11:17 AM

To: 'wdh@umd.edu'; William Brammer; 'lthompson@proskauer.com'; 'nramirez@MALDEF.org'; 'Rsjr3@aol.com'; Savitsky, Zoe (CRT)

Cc: 'Julie.Tolleson@tusd1.org'; 'deseg@tusd1.org'; TUSD

Subject: Re: Boundary Committee composition

Thank you for providing this information. The United States has no express concerns here because the Committee is racially diverse and the precise racial composition of this Committee has not been prescribed nor is governed by the USP.

EXHIBIT 4

From: Willis D. Hawley [<mailto:wdh@umd.edu>]

Sent: Tuesday, April 15, 2014 1:38 PM

To: Bhargava, Anurima (CRT); William Brammer; 'lthompson@proskauer.com'; 'nramirez@MALDEF.org'; 'Rsjr3@aol.com'; Savitsky, Zoe (CRT)

Cc: 'Julie.Tolleson@tusd1.org'; 'deseg@tusd1.org'; TUSD

Subject: RE: Boundary Committee composition

By my read, counting the Plaintiffs reps on the Committee there are 12 and 12 (I had counted 11 Hispanics first time). Maybe I am reading this wrong and if so, mea culpa. Perhaps we are looking at different documents. Mine is dated 4/15. Anurima is quite right about the requirements of the USP. And, it is too late to remedy the situation anyway. But, after 40 years, you would—frankly—expect concern about the racial makeup of advisory groups, focus groups and others to learn from and to serve. There will be many opportunities in the future to select member of groups whose views will shape District policies. I would oppose specific formulas or guidelines but race matters.

Bill H.

EXHIBIT 5

From: William Brammer
Sent: Wednesday, April 23, 2014 3:36 PM
To: Rubin Salter Jr. (Rsjr3@aol.com); lthompson@proskauer.com; 'nramirez@MALDEF.org' (nramirez@MALDEF.org); Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Willis D. Hawley (wdh@umd.edu)
Cc: Julie Tolleson (Julie.Tolleson@tusd1.org); Desegregation (deseg@tusd1.org); TUSD
Subject: Responses to Fisher plaintiffs' 3/6/14 comments and questions re: Boundary Review Process
Attachments: 233492202-BRP RFI Responses FINAL.DOCX
Categories: TUSD

Rubin, counsel and Dr. Hawley:

Please find enclosed the district's responses to your questions and comments about the Boundary Review Process. As I said before, I apologize for providing them so tardily. I trust you will find they are responsive to your inquiries. And, I hope having received them will permit you to withdraw your renewed request made yesterday for a Report and Recommendation regarding the process. Thank you,

Bill

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**TUSD Responses to the Fisher Plaintiffs' Comments and Questions Dated March 6, 2014
Regarding the Boundary Review Process (BRP)**

Fisher Plaintiffs' Comment #1:

A review of the proposed revised deadlines for the USP shows that the District has set two boundary-review deadlines: one for schools located East of Country Club Road and one for schools located West of Country Club Road. This is extremely concerning. The establishment of the two separate deadlines suggests that the District intends to review boundaries for the two halves of the District in isolation from one another. This division of labor will place a massive impediment to integration by precluding the possibility of drawing attendance boundaries and establishing feeder patterns that bridge, rather than divide, the two halves of the District. The division would raise a virtual wall at Country Club Road and segregate the District's identifiably White Eastside from its identifiably minority Westside. The Fisher Plaintiffs objected to this exact policy in their 2007 opposition to the PUSP. At that time, the District was in the process of forming a boundary review task force similarly divided into East- and Westside groups. The Fisher Plaintiffs objected to that policy then, as now, as exacerbating residential segregation and thwarting the possibility of District-wide integration.

The Fisher Plaintiffs consider the division to be constitutionally suspect and in blatant violation of the language of and the rationale behind the USP.

Without reassurance that the boundary review will proceed as contemplated under the USP, the Fisher Plaintiffs will petition the Court for an order restraining the District from dividing the boundary review process into East- and Westside components (see Salter 04/04/13 email to Gaines and Brown emphasis added).

TUSD Response to Comment #1:

This approach is not part of the recently submitted BRP. The boundary review will proceed as contemplated under the USP.

Fisher Plaintiffs' Comment #2:

In reference to the BRP's compliance with the requirements of the USP, the Fisher Plaintiffs join the Mendoza Plaintiffs in their observation that the requirements of the magnet plan set forth in Section II (E) (3) of the Unitary Status Plan (USP) are intimately linked to the outcome of the boundary review process and should, therefore, be memorialized in the language of the boundary review plan.

TUSD Response to Comment #2:

The District has incorporated all four provisions into the revised Boundary Review Process.

Fisher Plaintiffs' Comment #3:

The coordination of the timing of the boundary review process with the magnet plan is not evident in the current draft of the boundary review plan where it contemplates the January 2014 completion of the comprehensive magnet plan informed by boundary decisions that will not be completed until late May 2014 (see TUSD School Master Plan (SMP) 2013-14 circulated as an attachment to Sam Brown's 09/16/13 email to counsel).

TUSD Response to Comment #3:

The revised Boundary Review Process shows the Magnet Plan and the BRP on parallel, coordinated paths. This process is the same process; there are not two separate processes for reviewing and revising magnet and non-magnet boundaries. The Boundary Review Process, as submitted, inherently includes a "process and schedule" for making changes to the magnet school boundaries. The revised plan refers to the USP requirements related to magnets, and all advisory groups and committees will be provided with this information (USP language re magnets) throughout the Boundary Review Process.

Fisher Plaintiffs' Comment #4:

In reference to provisions for plaintiff input in the BRP, the Fisher Plaintiffs join the Mendoza Plaintiffs in their concern that the current draft of the boundary review process does not provide a time frame for reporting the data necessary for informed plaintiff and SM analysis and commentary.

TUSD Response to Comment #4:

This is included in the BRP submitted on February 14, 2014. The District has revised the language in section IV to clearly set forth the role of the Plaintiffs at each stage of the boundary review process and the corresponding time frames for their participation.

Fisher Plaintiffs' Comment #5:

As noted by the Mendoza Plaintiffs, the SMP contemplates a demographic study. The scope and intended purpose of that study would be usefully informed by early plaintiff and SM review and input.

TUSD Response to Comment #5:

The demographic study was provided to the parties and the Special Master on March 13, 2014; it is also available at <http://tusd1.org/contents/distinfo/boundaryreview/demographic.asp>.

Fisher Plaintiffs' Comment #6:

In reference to plaintiff participation in focus groups, the Fisher Plaintiffs likewise join the Mendoza Plaintiffs and the Special Master (SM) where they appreciate the additional opportunity for plaintiff input contemplated in the District's willingness to "invite the Parties/Special Master (or their representatives) to [participate in] Focus Groups in November and February" (see Boundary Review Process circulated as an attachment to Sam Brown's 09/16/13 email to counsel). However, like the Mendoza Plaintiffs, the Fisher Plaintiffs believe participation in focus groups "may not be the most effective method for the Special Master and the Plaintiffs to provide feedback and comment to the District" (see Mendoza marginal comments to Boundary Review Process circulated as an attachment to Lois Thompson's 09/19/13 email to counsel).

TUSD Response to Comment #6:

The District is proposing focus groups that only include the parties, relevant staff, and the Special Master to encourage direct conversation among the parties and the Special Master. In addition, there are multiple opportunities for conference calls, as needed, for clarification and/or direct conversation. In other words, the focus groups are not the exclusive means for feedback. Additionally, the plaintiffs asked to have representation on the greater Boundary Committee. The District has fulfilled this request and both the Fisher and Mendoza counsel have sent representatives to participate as members of the greater Boundary Committee – in addition to counsel's participation in the smaller focus groups.

Fisher Plaintiffs' Comment #7:

In reference to the "general timeline" for the BRP, the Fisher Plaintiffs join the Mendoza Plaintiffs in all of the comments they make on this section of the process, especially the identification of the composition of an advisory team, the need for expert input, the appropriate sequencing of the establishment of a boundary committee, the need to ensure a representative membership of the boundary committee, the justification for treating UHS separately from the rest of the District's schools and finally the above-noted need to coordinate the boundary review process with the development of the comprehensive magnet plan (see Salter 09/27/13 email and attached Fisher 09/27/13 comments on TUSD 09/16/13 BRP).

TUSD Response to Comment #7:

The composition of the Advisory Team and the Boundary Committee has been provided to the Parties, and is provided below. UHS is not now being addressed in the BRP or separately from the BRP. See Response #3 above regarding the Magnet Plan.

Brammer, Rick – Applied Economics Demographer
Brown, Samuel - Desegregation Director

Brown, Shaun - Planning Technician
Butler Jr., Eugene - Exceptional Education Exec Director
Callison, Victoria - Magnet School Programs Director
Cisneros, Patricia - Project Manager
Egbert, Candy - Chief Operations Officer
Gray, Sue - DLR Group Program Director
French, Jim - DLR Group Community Facilitator
Graves, Don - Applied Economics Demographer
Holmes, Steve - Asst. Superintendent of Curriculum
Jones, Marcus - Arch. & Eng. Program Manager
Kiehl, Brad - DLR Group Master Plan Expert
Leach, Katrina - DLR Group Architect
Lough, Garret – Applied Economics Associate
Melendez, Teri - Asst. Superintendent Elementary
Morado, Abel – Asst. Superintendent of Secondary Leadership
Nodine, Bryant - Planning and Student Assignment Director
O’Neil, Tom – DLR Group Program Director
Sanchez, Anna - Tucson Office of Integrated Planning
Scott, David - Accountability & Research Director
Stratton, Lori - Director of Development, UofA Steele Children’s Research Center
Wiedenfeld, Noreen - School Community Services Director

See also: TUSD Response to Mendoza RFI #7 submitted March 25, 2014:

Applications for the Boundary Committee were accepted beginning on March 12, 2014; the Committee was formed, from these applications, on March 28, 2014. And, as stated above, representatives sent by each plaintiff group have been participating with the committee as members.

See also: TUSD Response #7 to Mendoza R&R submitted March 25, 2014:

The District is proposing focus groups that include only the parties, relevant staff, and the Special Master to encourage direct conversation among the parties and the Special Master. In addition, there are multiple opportunities for conference calls, as needed, for clarification and/or direct conversation. In other words, the focus groups are not the exclusive means for feedback.

See also: TUSD Response #9 to Mendoza R&R submitted March 25, 2014:

This process is the same process; there are not two separate processes for reviewing and revising magnet and non-magnet boundaries. The Boundary Review Process, as submitted, inherently includes a "process and schedule" for making changes to the magnet school boundaries. The revised plan refers to the USP requirements related to magnets, and all advisory groups and committees will be provided with this information (USP language re magnets) throughout the Boundary Review Process.

See also: TUSD Response #13 to Mendoza R&R submitted March 25, 2014:

Appendix A shows the sequence of events in detail. The formation of the Boundary Committee must take place at least two weeks before the initial meeting, and the initial meeting is, as stated, informational. Please note that the bulk of the Boundary Committee meetings are in late March and April; the actual work of the boundary committee comes after the development and review of scenarios.

In addition, the process is being revised to provide additional time for the committee to review the data as it considers various boundary options, including the product of the magnet development process.

Fisher Plaintiffs' Comment #8:

Additionally, the Fisher Plaintiffs note, and object to, the deletion from the “general outline” appearing in the 02/14/14 BRP of the language explicitly stating the District’s intention to “[c]onsult the Special Master and Parties in the development and refinement of objectives and criteria; refine objectives and criteria” (compare the general outlines included in the 09/16/13 and 02/14/14 versions of BRP). The contemplated consultation should have, but never actually occurred. This failure should be rectified by reintroducing the language deleted from the BRP in a timeframe that will allow the contemplated consultation to occur well prior to the District’s prematurely scheduled, community-wide “boundary discussion” (see Brammer 02/04/14 email announcing, with less than two weeks’ notice, the District’s unilateral decision to schedule a “boundary discussion” meeting for 03/17/14 to be held with “other participants” at an undisclosed location).

TUSD Response to Comment #8:

Objectives and criteria from the USP have been included in the BRP and provided to BRP participants – including the plaintiffs’ representatives. The District has met, and will continue to meet, with counsel for the Plaintiffs and with the Special Master in the development and refinement of objectives and criteria.

Fisher Plaintiffs' Comment #9:

The Fisher Plaintiffs join the Mendoza Plaintiffs’ objection to the District’s failure to disclose the demographic study conducted in conjunction with the school master plan: [And] object to the Boundary Review Process’ omission of a schedule and commitment for getting the Plaintiffs the information that we will need to make informed comments, such as enrollment projections. As Mendoza Plaintiffs stated in their September 2013 comments: “We note that the SMP includes a demographic study. We urge the District to provide the Plaintiffs and the Special Master information on the scope of that study now so that they can make suggestions about it before it is concluded rather than having us find ourselves having to ask for essential information late in the

process.” According to the schedule, the enrollment projections are completed. Presumably, they are part of the demographic study we have requested.

TUSD Response to Comment #9:

See Response #5 above. The demographic study was provided to the parties and the Special Master on March 13, 2014.

Fisher Plaintiffs’ Comment #10:

This sort of information should be routinely delivered to the Plaintiffs without us having to ask so that we can indeed be responsive in this process (at page 2 of Mendoza 02/25/14 request regarding TUSD BRP emphasis added).

TUSD Response to Comment #10:

A public website (www.tusd1.org/boundaryreview) has been established for public information and an FTP site has been provided specifically for the Plaintiffs—details to access the FTP site were provided prior to the March 28, 2014 focus group meeting. In section IV of the process, the District included language reaffirming its commitment to providing background information at key consultation points.

The first meeting with the Plaintiffs and Special Master occurred at the end of March 2014; a follow-up meeting occurred on April 16, 2014. An additional meeting is scheduled for May 15, 2014 and, depending on the revised schedule, others likely will be scheduled as the process continues. The demographic study has been provided to the Plaintiffs and Special Master. The Boundary Review Process, as presented and revised, addresses what information will be provided (potential options, draft options, draft plan) and when the information will be provided. Background information (like the demographic study) will be provided routinely as part of the process. Additional options will be solicited from the committee, as well as the Plaintiffs and Special Master, as the committee continues its work.

Fisher Plaintiffs’ Comment #11:

The Fisher Plaintiffs also join the Mendoza Plaintiffs in their objection to the District’s claims regarding “perceived ambiguities” in the USP. Specifically, the Fisher Plaintiffs join the Mendoza Plaintiffs where they: object to the “Project Team’s” role in “defining any perceived ambiguities in the USP.” (Page 3.) No such ambiguities can be “defined” without the participation and agreement of the Plaintiffs (at page 3 of Mendoza 02/25/14 request regarding TUSD BRP).

TUSD Response to Comment #11:

The District added "and Plaintiffs" to section V of the BRP to address this concern and involve the Plaintiffs in defining perceived ambiguities in the USP.

Fisher Plaintiffs' Comment #12:

The Fisher Plaintiffs object to the 02/14/14 BRP where it inappropriately seeks to limit the SM's access to, and communication with, District employees, representatives and staff. The BRP states in relevant part that: At key points the Project Team will update District leadership, the Governing Board and the Plaintiffs and Special Master. All submittals to the Plaintiffs and Special Master will be submitted through the Director of Desegregation and legal counsel; they will provide the Project Team with any responses on same, from same (at page 2 of TUSD 02/14/14 BRP).

The inclusion of this provision in the BRP both impedes the collaborative process envisioned by the Court and directly contradicts the language of Section VIII of the Court's 01/06/12 order appointing the SM, which section explicitly delineates the SM's access to and communications with District representatives, employees and staff and provides in relevant part that: The Special Master [...] may have ex parte communications with Party representatives or employees outside the presence of counsel [;] shall have unfettered access to District staff [; and] may communicate directly with District personnel (i.e. without counsel present). (at pages 15-16 of 01/06/12 order appointing SM). The Fisher Plaintiffs seek not only the deletion of the objectionable language, but seek also the addition of language positively and explicitly affirming the District's commitment to honoring the spirit and letter of the above-cited provisions of 01/06/12 order appointing the SM.

TUSD Response to Comment #12:

This provision of the Boundary Review Process is meant to ensure that submittals (not all conversations and communications) go through the proper channels. The District is not in any way attempting to dictate with whom the Special Master interacts.

Fisher Plaintiffs' Comment #13:

The Fisher Plaintiffs reiterate their objection to the District's stated intention to limit or in any way minimize the scope of the boundary review process where it will impact students affected by the round of school closures in occurring in 2013. [In a 03/14/13 email to plaintiff counsel and the Special Master, former TUSD counsel Heather K. Gaines stated that "[w]hen [the District] undertake[s] the comprehensive review of boundaries, [it] will be considering the impact of the above changes as a factor. It takes a few years for the pattern of the change to be established, thus a recent change is one criterion that is used (as a negative) in the evaluation of boundary options" (see attached 03/14/13 Gaines email).]

In its 03/21/13 notice and request for approval (NaRA) regarding boundaries for closing and receiving schools, the District argued that: As the District moves forward under the USP with a comprehensive review of boundaries throughout the District, including the possibility of magnet schools without attendance boundaries, clustering or pairing schools and otherwise examining

boundaries, the District is committed to minimizing the impact of such changes on students whose schools have been closed. Under applicable District policies, students are permitted to continue attending any school in which they are enrolled through the highest grade offered at that school, so no student would be forced to move in the future as a result of a change in boundaries, except in the event of a school closure (at page 7 of 03/21/13 NaRA regarding boundaries). [An attachment to the District's 01/02/13 request states that "approximately 14,768 students will be directly affected by [the 2013 round of] school closures" (at pages 3-4 of document number 1419-9 filed 01/02/13).]

In their 04/06/13 response to the District's 03/21/13 NaRA, the Fisher Plaintiffs objected to the District's plans, explaining that: [T]he District has prematurely and unilaterally concluded that none of the estimated 14,768 students impacted by the school closures will be subject to reassignment as a result of the upcoming, District-wide review of school boundaries required under Section II (D) (3) of the USP [...]. In support of its conclusion, the District cites "applicable District policies" permitting students "to continue attending any school in which they are enrolled through the highest grade offered at that school" (idem). This, the District asserts, means that "no student would be forced to move in the future as a result of a change in boundaries, except in the event of a school closure" (idem). The District's apparent readiness to disregard the requirements of the USP illustrates its continued failure to acknowledge its obligations under the USP. Whatever student assignment policies a school district may have in effect must yield where, as is the case here, they stand to impede or otherwise limit the implementation of a federally mandated remedial desegregation plan (at pages 8-9 of Fisher 04/06/13 response to TUSD 03/21/13 NaRA). In its 04/12/13 reply in support of its 03/21/13 NaRA, the District reiterated its "commitment to minimize future impacts to students impacted by these school closures," (at pages 6-7 of TUSD 04/12/13 reply) explaining that its "commitment in this regard has been made as a result of the Special Master's specific recommendations and instructions to the District, and the District concurs that this should be a primary concern as the District moves forward with other USP student assignment strategies" (idem). The Court addressed the District's argument in its 04/26/13 order and concluded that "[t]he District is wrong" (at page 5 of 04/26/13 order) explaining that it was the District's failure: to apply the entirety of the boundary change criteria [which was] a dis-service to the students, who now may be subject to further movement to accomplish the goal of integration to the extent practicable in the TUSD. Just to be clear, the Plaintiffs are correct. School policies must yield to the Constitution where they stand to impede or otherwise limit the implementation of the USP. See North Carolina State Bd. of Ed. v. Swann, 402 U.S. 43, 46 (1971) (where policy limits a school from operating a unitary school system or impedes disestablishing a dual school system, it must fall) (idem at 5 emphasis added). On the basis of the foregoing, the Fisher Plaintiffs strongly object to the omission from the boundary review process of an explicit commitment by the District to adhere to the requirements of the Court's 04/26/13 order).

TUSD Response to Comment #13:

The TUSD commitments and statements quoted above are in response to USP II.A.2, which states, “Subject to possible school consolidations or closures or to any other changes contemplated herein, students may continue at the school in which they are currently enrolled from the effective date of this Order through the completion of the highest grade offered at that school.” Quite the opposite of the Fisher Plaintiffs’ assertion, the District is committed to adhere to the Court’s requirements, including the requirement that students who recently were moved as part of last year’s “consolidations or closures” will not be forced to move yet again as a result of this boundary process –although students new to a school affected by the current changes would be subject to the change. This may mean that the integrative results of boundary changes proposed and implemented through this process are unknown. Indeed, some impacts may take some years to bear fruit.

Fisher Plaintiffs’ Comment #14:

On 02/14/14, the District provided the plaintiffs and the Special Master with its boundary review process (BRP). Attached to the BRP was a copy of Governing Board (GB) Policy Regulation (PR) JC-R, which policy sets forth guidelines for the review of attendance boundaries and provides in relevant part that: [t]he Superintendent shall direct a review of attendance boundaries [...] where a boundary change is indicated to [...] desegregate schools (at page 9 of TUSD 02/14/14 BRP). PR JC-R then identifies ten criteria to be considered “[w]hen the District creates and evaluates attendance boundaries” (idem). Those criteria are ordered and described as shown below:

- a. demographics (i.e., race, ethnicity, current and projected enrollment, current and project development patterns, socioeconomic status)*
- b. targeted operating capacities*
- c. current and planned instructional programs*
- d. compactness of the attendance area and distance to schools*
- e. physical barriers and subdivision/neighborhood boundaries*
- f. effects on school desegregation*
- g. student transportation*
- h. feeder patterns*
- i. previous, recent boundary changes affecting the area*
- j. fiscal impacts.*

PR JC-R then states that, “[i]n applying these criteria, the District shall propose and evaluate various options in an effort to desegregate schools” (idem). The final page of the District’s 02/14/14 BRP provides a summary of the District’s rationale for its recent revision of GB PR JC-R and claims that: Policy Regulation JC-R implements the [...] USP requirements in Policy JC. It incorporates these requirements with existing procedures in the current Policy JCR [...]. Key changes are [i]ncorporation of USP stipulations in the following sections [:] Review of Attendance Boundaries[:] Criteria for Drawing Attendance Boundaries [; and] Unitary Status

Plan Requirements (idem at 13). The Fisher Plaintiffs strongly dispute the District's claim that its 02/05/14 revision of GB PR JC-R "implements" and "incorporates" the District's boundary review requirements of the USP.

TUSD Response to Comment #14:

Noted. Without a specific understanding of why the Fisher Plaintiffs dispute that the District's 02/05/14 revision of GB PR JC-R "implements" and "incorporates" the District's USP boundary review requirements, the District cannot respond further.

Fisher Plaintiffs' Comment #15:

This is an issue that came before the district court in the conjunction with the District's 03/21/13 NaRA regarding boundaries for closing and receiving schools. At that time, the Fisher Plaintiffs objected to the District's inappropriate conflation of the boundary review requirements of GB PR JC-R with the boundary review requirements of the USP. The District argued that its adherence to the boundary review requirements of its policy also satisfied the requirements of the USP, because "Policy JC-R, while it should be revised in compliance with the USP, includes the same criteria as set forth in the USP" (at page 5 of TUSD 04/12/13 reply emphasis added). The Court disagreed, explaining that: The Fisher Plaintiffs point out that the District guideline JC-R for making boundary decisions, which was the guideline applied to the boundaries proposed here, is not the same as the guideline under the USP, which includes two of five criteria aimed at assessing integration: demographics (i.e., race, ethnicity, growth projections, socioeconomic status) and effects on school integration, and requires that in applying the five criteria, the District shall propose and evaluate various scenarios in an effort to increase the integration of its schools [...]. The problem is apparent in the District's Reply. It continues to maintain that it has satisfied the conditions of the USP by "factoring the goal of integration into the decisions." The JC-R guideline provides six factors, one of which is natural and legal parameters including neighborhood boundaries, natural boundaries, current and future subdivision growth, and ethnic mix. The District is wrong. This guideline is not the same as what is required under the USP. Even if looking at "ethnic mix" when considering the criteria "natural and legal parameters" is construed the same as considering "demographics (i.e., race, ethnicity, growth projections, socioeconomic status) and effects on school integration," the District has admittedly failed to apply the entirety of the boundary-change criteria by considering various scenarios in an effort to increase the integration of its schools. This is a disservice to the students, who now may be subject to further movement to accomplish the goal of integration to the extent practicable in the TUSD. Just to be clear, the Plaintiffs are correct. School policies must yield to the Constitution where they stand to impede or otherwise limit the implementation of the USP. See North Carolina State Bd. of Ed. v. Swann, 402 U.S. 43, 46 (1971) (where policy limits a school from operating a unitary school system or impedes disestablishing a dual school system, it must fall) (at pages 4-5 of 04/26/13 order emphases added).

TUSD Response to Comment #15:

The District is mindful that although it is following Governing Board policies and regulations as a guideline in conducting the Boundary Review, nothing in these policies or regulations mitigates the USP's requirement for the District to "review its current attendance boundaries and feeder patterns and, as appropriate, amend such boundaries and patterns and/or provide for the pairing and/or clustering of schools to promote integration of the affected schools."

Fisher Plaintiffs' Comment #16:

Although the District did subsequently revise GB PR JC-R, its revision, while improved, nevertheless fails to conform with the plain requirements of Section II (D) (2) of the USP, which section provides that: The District shall review and/or redraw its attendance boundaries when it opens a new school; closes, repurposes or consolidates a school; alters the capacity of a school; or designates a school without an attendance boundary. The Parties anticipate that such changes may result in the redrawing of some attendance boundaries.

TUSD Response to Comment #16:

The language of USP II.D.2 is included in Policy Regulation JC-R. TUSD also anticipates that such review may result in a redrawing of boundaries.

Fisher Plaintiffs' Comment #17:

When the District draws attendance boundaries, it shall consider the following criteria: (i) current and projected enrollment; (ii) capacity; (iii) compactness of the attendance area; (iv) physical barriers; (v) demographics (i.e., race, ethnicity, growth projections, socioeconomic status); and (vi) effects on school integration. In applying these criteria, the District shall propose and evaluate various scenarios with, at minimum, the Plaintiffs and the Special Master in an effort to increase the integration of its schools (at page 9 of 02/20/13 order entering the USP into record). Instead of simply incorporating the USP's express requirement to consider "physical barriers," (idem) as would seem logical, the District has revised GB PR JC-R to require consideration of "physical barriers and subdivision/neighborhood boundaries" (at page 9 of TUSD 02/14/14 BRP emphasis added). In so doing, the District has revised GB PR JC-R to misrepresent, rather than accurately implement or incorporate, the requirements of Section II (D) (2) of the USP.

TUSD Response to Comment #17:

This consideration respects residential patterns (street alignments, access, social interaction, etc.) at a small enough scale that it should not impede or otherwise limit the implementation of the USP.

Fisher Plaintiffs’ Comment #18:

Given the District’s stated intention to limit the scope of the boundary review process (see above), the Fisher Plaintiffs have good reason to fear that the District’s inclusion of GB PR JC-R as an attachment to its BRP and its explicit claim at the final page of its BRP that that policy “implements” and “incorporates” the boundary review requirements of the USP, is indication of the District’s continued intent to limit the scope of the boundary review process by applying the requirements of PR JCR rather than the plain requirements of Section II (D) (2) of the USP, which section requires consideration of six, equally-weighted criteria:

a.

Section II (D) (2) of the USP “current and projected enrollment”	.. is subordinated to and conflated with ...	TUSD GB PR JC-R “demographics”
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TUSD Response to Comment #18a:

Current and projected enrollment are part of demographics. Including them within that category, explicitly stated, does not reduce the need to consider them.

b.

Section II (D) (2) of the USP “capacity”	... is limited to ...	TUSD GB PR JC-R “targeted operating capacities”
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TUSD Response to Comment #18b:

Including the term “targeted operating capacities” still requires TUSD to look at school capacities, with the additional consideration of optimal school sizes. Right-sizing schools helps to ensure that students have sufficient and equitable resources. For instance, a 400-student middle school is hard-pressed to provide the same resources (electives, qualified staff, etc.) as a 700-student middle school.

c.

Section II (D) (2) of the USP “compactness of the attendance area”	... is expanded to ...	TUSD GB PR JC-R “compactness of the attendance area <u>and distance to schools</u> ” (emphasis added)
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TUSD Response to Comment #18c:

Compactness of the attendance area does not specifically address parent and student access to the school. The additional language does not conflict with the original language.

d.

<p>Section II (D) (2) of the USP “physical barriers”</p>	<p>... is expanded to ...</p>	<p>TUSD GB PR JC-R “physical barriers and subdivision/neighborhood boundaries”</p>
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TUSD Response to Comment #18d:

See Response #17 above.

e.

<p>Section II (D) (2) of the USP “demographics (i.e., race, ethnicity, growth projections, socioeconomic status)”</p>	<p>... is expanded to subordinate ...</p>	<p>TUSD GB PR JC-R “demographics (i.e., race, ethnicity, <u>current and projected enrollment</u>, current and project[ed] development patterns, socioeconomic status)” (emphasis added)</p>
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TUSD Response to Comment #18e:

See Response #18(a) above.

f.

<p>Section II (D) (2) of the USP “effects on school integration”</p>	<p>... is reworded as ...</p>	<p>TUSD GB PR JC-R “effects on school <u>desegregation</u>” (emphasis added)</p>
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TUSD Response to Comment #18f:

The legal objective of this case was school desegregation. That the USP utilizes “school integration” as a substitute term for that legal mandate does not change its meaning.

g.

<p>Section II (D) (2) of the USP N/A</p>	<p>(new)</p>	<p>TUSD GB PR JC-R “current and planned instructional programs”</p>
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TUSD Response to Comment #18g:

Moving students from one method of instruction to another or from one set of programs to another can have a negative impact on the academic success of some students. TUSD is committed to considering these impacts when reviewing boundary changes.

h.

<p>Section II (D) (2) of the USP N/A</p>	<p>(new)</p>	<p>TUSD GB PR JC-R “student transportation”</p>
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TUSD Response to Comment #18h:

How students will be transported to and from a school for academics as well as extra-curricular activities needs to be a consideration. Transportation times, routes, transfer points and costs are factors that need to be considered when determining the potential viability of a boundary change.

i.

<p>Section II (D) (2) of the USP N/A</p>	<p>(new)</p>	<p>TUSD GB PR JC-R “feeder patterns”</p>
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TUSD Response to Comment #18i:

TUSD includes feeder patterns in order to allow groups of students to transition from one school level to the next together. This helps students make those transitions with less anxiety.

j.

<p>Section II (D) (2) of the USP N/A</p>	<p>(new)</p>	<p>TUSD GB PR JC-R “previous, recent boundary changes affecting the area”</p>
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TUSD Response to Comment #18j:

See Response #13 above.

k.

<p>Section II (D) (2) of the USP N/A</p>	<p>(new)</p>	<p>TUSD GB PR JC-R “fiscal impacts”</p>
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TUSD Response to Comment #18k:

Any changes that increase operational costs reduce resources available for academics and other student services.