

**TUSD's August 6, 2014 Response to the Fisher Plaintiffs' July 25, 2014 Request for Report and Recommendation (R&R) and July 9, 2014 Objections Regarding the Comprehensive Magnet Plan**

Below are TUSD's responses to the Fisher Request for an R&R related to the Comprehensive Magnet Plan, submitted on July 25, 2014:

*Fisher Plaintiffs' hereby request a Report and Recommendation concerning the TUSD Comprehensive Magnet Plan for the following reasons:*

- (1) Fisher Plaintiffs' maintain their comments, observations, and objections to the TUSD June 27, 2014 Revised Draft Comprehensive Magnet Plan as presented to Fisher Plaintiffs, Mendoza Plaintiffs, and the Special Master. The Fisher Plaintiffs made their comments, observations, and objections to this Revised Document known to the District, the Mendoza Plaintiffs, and the Special Master on July 9, 2014, and the Fisher Plaintiffs request a R&R for all comments, observations, and objections made in the July 9, 2014 document.*

**TUSD Response:** This objection does not express any specific issues to which TUSD can respond. This is a violation of the Court's December 2, 2013 order requiring that "[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)". ECF 1510. *See* TUSD responses to the Fisher Plaintiffs' specific objections below.

- (2) The Fisher Plaintiffs concur with the Mendoza Plaintiffs' Request for a Report and Recommendation Concerning the Comprehensive Magnet Plan sent to the Plaintiffs and the District on July 25, 2014.*

**TUSD Response:** This objection does not express any specific issues to which TUSD can respond. This is a violation of the Court's December 2, 2013 order requiring that "[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)". ECF 1510. *See* TUSD responses to the Mendoza Plaintiffs' R&R Request provided concurrently herewith.

**Fisher Comments, Observations, and Objections Made in the July 9, 2014 Document**

These comments, observations, and objections were provided to the Governing Board prior to the July 15, 2014 vote to approve the CMP. The District's responses herein are responses to the Fisher Plaintiffs request for a report and recommendation which referred to their prior comments, observation, and objections.

**Fisher #1: Concerns and objections**

*Fisher Plaintiffs believe their original concerns raised in the May 20, 2014 comments to the District have not been ameliorated. Rather, it appears the District is merely paying “lip service” to the Fisher Plaintiffs. The Fisher Plaintiffs wish to reiterate they are serious about their specific concerns and objections to the CMP and wish to have these issues sincerely addressed and considered.*

**TUSD Response to 1:** TUSD has sincerely addressed the Fisher Plaintiffs’ concerns. This objection does not express any specific issues to which TUSD can respond – nor any specific Fisher Plaintiffs’ Objections that the Fisher Plaintiffs believe were not “sincerely addressed” by TUSD. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. We would ask the Fisher Plaintiffs to provide these specifics, so that they can be specifically addressed by TUSD.

**Fisher #2: African American students**

*Fisher Plaintiffs concur with the responses from Mendoza Plaintiffs as they pertain to the achievement and integration of African American students*

**TUSD Response to 2:** This objection does not express any specific issues to which TUSD can respond. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. *See* TUSD responses to the Mendoza Plaintiffs’ R&R Request provided concurrently herewith.

**Fisher #3: Excessive number of magnet schools**

*Fisher Plaintiffs join Special Master Hawley in expressing concern with the excessive number of magnet schools. Fisher Plaintiffs have previously expressed this concern to the District with the process for demagnetizing schools.*

**TUSD Response to 3:** The District set forth a process and procedure to create new, revise, relocate, and eliminate magnets as expressly required by the USP. The specific objection, or the recommendation that would flow from the objection, is not clear. The USP specifically requires the District to create a process for creating and maintaining quality magnet schools, the USP does not require the District to eliminate magnet schools. However, per the USP, the current plan includes a process whereby schools that do not meet the stated requirements will be demagnetized.

**Fisher #4: Cragin Elementary School**

*Fisher Plaintiffs renew their objection to the District’s making Cragin Elementary School a Magnet School*

**TUSD Response to 4:**

There are several reasons supporting the new magnet at Cragin. First, the two magnets have two different themes (Cragin is performing arts; Holladay is fine and performing arts)<sup>1</sup>. This supports the USP language that requires the District to “*consider how, whether, and where to add new sites to replicate successful programs.*” Second, Cragin needs to attract Hispanic students (and is surrounded by racially concentrated Hispanic schools); Holladay needs to attract non-Hispanic students. Third, Cragin meets the location criteria, specifically: it is centrally located and has favorable transportation times (and, does not cause an undue travel burden on one particular group over another). Fourth, Cragin has an African American student population that is significantly higher than the District average, thereby improving access to a magnet program for African American students.

In the Fisher Plaintiffs’ May 20, 2014 comments, they stated their concern “that the CMP does not include the establishment of any new magnet programs.” Here, the District has identified a centrally-located elementary school, with capacity, with staff and administration that is behind a new magnet, and with demographic and travel-time data that supports that a magnet at that location promises to be successful.

The District requests that the Fisher Plaintiffs provide their specific objections for opposing Cragin as a new magnet in light of their concern that the CMP does not establish new magnets.

**Fisher #5: Utterback Middle School**

*Fisher Plaintiffs question the District’s fallacious belief that Utterback Middle School can become an integrated school. The Fisher Plaintiffs suggest the District examine the history of Utterback Middle School and its attempt to become an integrated school.*

**TUSD Response to 5:** Through the process outlined in the CMP, Utterback is currently in “elimination warning.” If progress is not made towards integration it may be demagnetized. The District should not be required to simply eliminate a magnet without having given a good faith effort to improve it – as required by the USP.

**Fisher #6: Unitary status by 2017**

*Fisher Plaintiffs repeat they have repeatedly objected from day one that the Unitary Status Plan was signed that TUSD cannot obtain unitary status by 2017 due to the late implementation of the magnet plan and other USP mandated requirements.*

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<sup>1</sup> Performing Arts includes dance and specific instruments; Fine and Performing Arts includes drama, theatre, and art.

**TUSD Response to 6:** The USP required TUSD to provide a proposed magnet plan to the Plaintiffs and Special Master on April 1, 2013. The draft Magnet Plan was submitted to the Plaintiffs and Special Master on April 22, 2013. ECF 1627 at 8. Plaintiffs and the Special Master put their objections on hold pending development of the Comprehensive Magnet Plan. The Comprehensive Magnet Plan was approved on July 15, 2014 accordance with the deadline in the IA order (ECF 1627) and the detailed timeline negotiated between TUSD, the Special Master and the Plaintiffs. *See* attached Timeline. The USP requires the CMP to be fully implemented in the 2014-15 school year, which will be done.

**Fisher #7: Evaluating magnet schools status**

*Fisher Plaintiffs object to the ambiguous criteria contained within the June 2014 CMP as applied to evaluating magnet schools and withdrawing magnet status from those current schools.*

**TUSD Response to 7:** Without knowing the specific objection to the criteria, the District cannot respond to this objection. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. The District believes that the criteria are not ambiguous and that the process is clearly defined. The Plaintiff-identified expert, Dr. Siegel-Hawley, has commented on the CMP and has not found the criteria to be ambiguous.

**Fisher #8: Districts’ responses**

*Fisher Plaintiffs reiterate their feelings that many of the Districts’ responses to the previous questions, issued May 20, 2014, are insufficient, vague, off-point, and non-responsive.*

**TUSD Response to 8:** TUSD has sincerely addressed the Fisher Plaintiffs’ concerns. This objection does not express any specific issues to which TUSD can respond – nor any specific Fisher Plaintiffs’ Objections that the Fisher Plaintiffs believe were not “sincerely addressed” by TUSD. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. We would ask the Fisher Plaintiffs to provide these specifics, so that they can be specifically addressed by TUSD.

**Fisher #9: CMP / demagnetize of schools**

*Fisher Plaintiffs noted the CMP stops short of making necessary decisions required to demagnetize those schools showing little integrative effect – whether as consequence of geographic or programmatic factors, or travel times or perceptions of school safety or academic performance. The District responded that there are no obvious decisions and they will use “a process” as required by the USP. What are the details of this process, and has the District developed any less-opaque decisions than at the time of this earlier response.*

**TUSD Response to 9:** Please see pages 47-48 of the CMP for the details of the process for 2014-15.

**Fisher #10: CMP**

*The Fisher Plaintiffs noted the CMP should be modeled on already successful programs, including those which effect integration by being exceptionally attractive, academically successful, and well funded. The District replied that it is “mindful of creating a magnet system that does not dilute to the point where schools are competing ... without having an integrative impact.” Has the District’s mindfulness developed to the point of creating solutions rather than merely philosophizing?*

**TUSD Response to 10:** TUSD has developed a Comprehensive Magnet Plan in compliance with the USP. It would not have developed a plan that it does not believe will be productive towards the educational and USP goals of TUSD. This objection appears to be merely argumentative and an attack on TUSD that does not express any specific issues to which TUSD can respond – nor any specific Fisher Plaintiffs’ Objections that the Fisher Plaintiffs believe were not “sincerely addressed” by TUSD. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. We would ask the Fisher Plaintiffs to provide these specifics, so that they can be specifically addressed by TUSD.

**Fisher #11: Boundary changes**

*The Fisher Plaintiffs, through a previous request, received information that the District will consider recommendations from the Boundary Review Committee with regard to pros and cons of boundary changes and magnet scenarios with regard to disused school sites. Has the District taken further action as promised on this request? What, if any, recommendation(s) were made by the Boundary Review Committee and what actions were/will be taken on said recommendation(s)?*

**TUSD Response to 11:** Yes, the District – through the Boundary Review Committee – put forward an option to open an unused site (Townsend) for the new site of Dodge Magnet so more students could attend an integrated school, a goal specifically named in the USP. That option is included in the Comprehensive Boundary Plan, has been discussed at length with the Parties and Special Master and, if approved by the Governing Board, would be incorporated into the District’s magnet planning.

**Fisher #12: Optimal number of magnets**

*The Fisher Plaintiffs requested the CMP address the optimal number of magnets, wherein the Fisher Plaintiffs noted that significantly more magnets will need to be established for the CMP to have any hope for having an integrative effect on a significant percentage of District enrollment. The District indicated it would take this recommendation into consideration. To what*

*extent was this recommendation included in any changes in the June 2014 CMP?*

**TUSD Response to 12:** The District has taken this into consideration in its planning and CMP development. The process was not designed to result in an “optimal” number of magnets, the process was designed, per the USP, to create strong, quality schools and programs that will attract students and promote integration.

**Fisher #13: Integrative effects**

*The plan is lacking in what Fisher Plaintiffs perceive to be validation that there will be integrative effects. Fisher Plaintiffs would like to have seen a disparate impact study as to each scenario and proposal that was adopted and rejected. Absence of that type of thorough analysis, it is unclear how the District can be assured the magnet plan, as proposed, will have a positive effect on the integration of its students.*

**TUSD Response to 13:** Arizona is an open enrollment state, and TUSD has a 30-40 percent student mobility rate. Parents and students in Arizona have choices of where to send their children and, particularly in TUSD, parents often exercise that choice. The District is not assured that any proposal or strategy will work, but will make a good faith effort to ensure that the strategies proposed have an integrative impact.

**Fisher #14: Closing Comments**

*The Fisher Plaintiffs believe the goals of a magnet plan are threefold: (1) Improve student diversity and integration; (2) Eliminate past vestiges of discrimination; and (3) Aid in improving the educational achievement of African-American and other minority students. As any Comprehensive Magnet Plan must adequately address these goals, Fisher Plaintiffs believe, upon reviewing the June 2014 CMP as submitted, they cannot be achieved by the District. In fact, Fisher Plaintiffs predict the June 2014 CMP will only maintain the status quo, at best, or even worse, increase the degree of segregation.*

*For these reasons, Fisher Plaintiffs continue to insist upon the District do more than give lip service to their concerns and instead, invest the necessary and required effort to correct past wrongs to provide an environment of student diversity and integration, and a positive educational atmosphere for all African-American and minority students.*

**TUSD Response to 14:** The Fisher Plaintiffs argue in this objection that the CMP will increase segregation, however, it does not explain what portion of the CMP the Fisher Plaintiffs contend will “increase” segregation. This is a violation of the Court’s December 2, 2013 order requiring that “[a] request [for R&R] must explain the objection(s) and identify the record relevant to support the objection(s)”. ECF 1510. The District is investing the necessary and required effort to the CMP. We would ask the Fisher Plaintiffs to provide these specifics, so that they can be specifically addressed by TUSD.