

**To: The Hon. David C. Bury**  
**From: Willis Hawley, Special Master**  
**Date: December 8, 2014**  
**Re: Report and Recommendation Relating to TUSD's  
Comprehensive Magnet Plan Revising the Chronology  
and Adding Exhibits with No Substantive Changes in  
the Most Recent Submission of this R&R**

### **Reason for the R&R**

The Comprehensive Magnet Plan is essential to the implementation Section II.E of the USP. On July 25, 2014, the Mendoza plaintiffs requested an R&R on the Comprehensive Magnet Plan adopted by the TUSD Governing Board on July 15, 2014 (*see* Exhibit A). The Fisher plaintiffs also expressed objections and asked for an R&R on July 25, 2014 (*see* Exhibit B). The Department of Justice submitted its comments and concerns relating to the Comprehensive Magnet Plan on June 11, 2014 (*see* Exhibit C).

On September 12, 2014, a draft of this R&R was submitted to the District for consideration of possible alignment of the CMP with this R&R (*see* Exhibit M). I revised this draft on September 29, 2014 (*see* Exhibit N).

The District invited me to submit my proposals to the Governing Board. I declined saying that the process established by the Court and the parties should be followed. I added that I submitted a summary of my proposals to the Board on July 13, 2015 at which time the Board unanimously rejected these proposals and, instead, adopted the CMP proposed by the Superintendent.

On September 26, just prior to the time I was to submit this R&R to the Court, the District requested that I withhold such submission pending a meeting of the parties in Tucson on October 1-2 in hopes that we could resolve differences and avoid going to the Court. Since that time, several efforts have been made to bring the District's policies and the proposals in

the R&R that I had drafted into alignment. While these efforts have resulted in some changes in the District's Comprehensive Magnet Plan, fundamental differences remain and we have exhausted the possibilities for avoiding the submission of an R&R. I have included, as Attachment A, the most recent proposal from the District to align its CMP with the recommendations I made in the R&R.

Because this has gone on for so long and families are making choices that might be influenced by the proposed changes I ask the Court to order in this R&R, I request that the Court expedite action on the proposals that I make. Because of the urgency of bringing closure to the issues in contention and the fact that the changes in the CMP the District suggests it is willing to make were not formally approved I have only added to the September version of the R&R (that the District had considerable time to consider) in a few instances and have identified those changes with italics to draw attention to them. According to the procedures set forth in the USP, the parties will have an opportunity to file their objections to this R&R after which I hope the Court can act as quickly as possible.

*November 11, 2014, the Mendoza plaintiffs responded to district suggestions for potential revisions in the CMP in which they request an R&R on points with which they disagree. On November 12, 2014, the Fisher plaintiffs concurred with the comments of the Mendoza plaintiffs. However, how the court responds to recommendations in this R&R could affect the Mendoza request and my response to it. Moreover, to engage the Mendoza request for an R&R in the midst of the process of which this R&R is a part could open the door to further review of the CMP and further delay in reaching a much-needed resolution of important issues in the districts proposed CMP. I've included the November 11 comments by the Mendoza plaintiffs as Attachment B should the Court wish to examine them.*

## **Background**

In July 2013, the District staff presented a magnet plan to the Governing Board and that plan that was rejected. On November 13, 2013 (*see Exhibit D*), what has become known as Magnet Plan 3.0, was approved by the Governing Board. Because of the lateness in the school year and the fact that a Comprehensive Magnet Plan was scheduled for development during the 2013-14 school year, the plaintiffs and the special master expressed objections but deferred request for R&R with the expectation that their concerns would be considered (*see Exhibit D*). Whether these concerns were seriously considered it is difficult to know, but these concerns were not addressed in the Comprehensive Magnet Plan adopted by the Governing Board on July 15, 2014 (*see Exhibits E1 and E2 the latter is an amended section of the July 15 plan*).

There are a significant number of communications relating to the Comprehensive Magnet Plan. An initial draft of the CMP was submitted to the plaintiffs and the special master on May 14, 2014. This draft was significantly revised and submitted on June 27, 2014 (*see Exhibits F-1 to F-5*). On July 7, 2014 the Mendoza plaintiffs provided comments on the Plan and the Fisher plaintiffs submitted their comments on July 9, 2014 (dated July 7). *See Exhibits G and H*. The special master's comments on the CMP were provided to the parties on July 8, 2014 (*see Exhibit I*). On July 14, 2014 the Mendoza plaintiffs added to their comments and joined in the special master's concern about the evaluation criteria provided and the CMP (*see Exhibit J*). As noted above, the Governing Board passed the CMP on July 15 and on July 25 the Mendoza and Fisher plaintiffs both requested an R&R. On August 6, 2014 TUSD responded to both the Mendoza and Fisher requests for R&R (*see Exhibits K and L*).

Following submission of the draft R&R on September 12, the District responded on September 19, 2014 (*see Exhibit O*) inviting me to essentially revise the magnet plan. As noted above I declined to do so. On September 29, 2014 I made minor revisions in the R&R reflecting the District's September 19 decision not to respond at that time to the September 12 draft R&R (*see Exhibit N*).

Following efforts by phone to align the CMP with my draft R&R, on November 3, 2014, the District revised and justified its proposed “pillars” that represented criteria for evaluating magnet schools and programs (see Exhibit P) to which I responded on November 4, 2014 (see Exhibit Q).

On November 11, the District revised the CMP again (see Exhibit R-1) to which I responded on November 9, 2014 (see Exhibit R-2). On November 11, 2014, the Mendoza plaintiffs responded to the revised CMP and my comments on that plan see Exhibit R-3). On November 17, 2014, the District made additional revisions in the CMP (see Exhibit S) to which I responded that same day (see Exhibit T).

### **Context for My Analysis**

I have studied school desegregation and magnet plans for almost 40 years and played a role in shaping desegregation plans in other Districts. I have published books and numerous articles on school desegregation. While I hope I am wrong, I do not believe that the Comprehensive Magnet Plan will significantly increase the number of students in TUSD who will have the opportunity to learn in a school that meets the criteria for integration established in the USP. The major reasons for this conclusion are outlined in my July 8, 2014 report to the parties (see Exhibit I), a summary of which was presented to the Governing Board on July 13, 2014. Exhibit I builds on a number of other reports on the magnet plan that I presented to the parties over the last year or so and identified these general problems with the CMP:

- The criteria for evaluating magnet plan and determining their future are unambiguous and do not place sufficient emphasis on integration and academic achievement.
- The provisions of the plan related to removing magnet status are cumbersome and will be difficult to implement.

Moreover, there are virtually no investments being made in magnet programs that would enhance the quality of teaching and learning in the schools other than the investments intended to ensure that teachers and

principals understand and can implement the themes of the schools in which they serve. However, themes themselves have no necessary relationship to quality. For example, one of the two magnet schools that has an A rating (Carillo) has no theme and the other A magnet has a theme that is, at best, vague. The District argues for sustaining Carillo as a magnet even though it has been unsuccessful until recently in attracting a more diverse student body. To the extent that it has been successful in becoming more integrated, its success has nothing to do with its theme because it has none. Indeed, by requiring Carillo to adopt a theme to which it appears there is marginal commitment, the District runs the risk of reducing the effectiveness of one of its few A schools. In no magnet school does the District propose to invest in research-based practices to improve schools – such as the reduction of class size in a targeted way, the provision of incentives for excellent teachers and school administrators to serve in the school, or restructuring the school day to foster collaboration and professional development.

That said, there are limits on issues I can raise with the Court and I will keep those directly related to provisions of the USP.

As the District argues, there is no certain way to know what the outcome of the District's plans for magnet programs and schools will be. This is true because parent options for where they send their children to school are greater in Arizona than in any other state. This means, I believe, that the District must be given the benefit of the doubt in some of its proposals. At the same time, if the District makes decisions – which I believe it has – which undermine the chances that magnet schools will serve the role they are intended to serve in the USP, that should be taken into account, along with many other considerations, when decisions are made with respect to unitary status.

## **Plaintiffs Objections, District Response, Analysis and Recommendations**

### **Objection 1: Themes and Locations of Magnet Schools**

The plaintiffs object to the creation of Cragin and Mansfield as magnet schools and the continuation of Utterback.

#### District Position

The District argues that it carefully considered alternatives and provides reasons that it arrived at these decisions.

#### Analysis

While the positions of the plaintiffs are well reasoned, there is no systematic way to determine what the outcomes of these decisions by the District will be, especially with respect to the establishment of the new magnets.

#### Recommendation

I recommend that the District be allowed to determine where new magnet schools should be located and, at least in the short run, allowed to continue schools and programs as magnets that appear to be highly unlikely to be successful magnets. (See discussion of Objection Four.)

### **Objection 2: The Number of Magnet Schools is Unsustainable**

The Fisher and Mendoza plaintiffs argue, directly and indirectly, that the District has too many magnet schools given resources it is willing to allocate to them and that this results in the magnet schools being less effective in achieving integration and improving academic achievement than they could otherwise be.

### District Position

The District argues that the USP does not require the elimination of existing magnet schools and programs. While it makes no commitment to reduce the number of magnet schools, the District points out that it has put in place criteria and procedures for withdrawing magnet status from some schools.

### Analysis

I have not heard a single District employee or Board Member say that the current number of magnet school is financially or educationally viable, much less the addition of magnets proposed in 2014-15. It seems reasonable to conclude that the wording in the USP implied that some magnet schools and programs would be eliminated and replaced given very critical findings of the District-sponsored study of magnet schools in 2011. Nonetheless, the District says that it will eliminate some magnet schools and programs that it determines are not viable but, as I indicate in the discussion of Objections Three and Four, the likelihood that this will happen in time to significantly reallocate resources to new initiatives or improve those that appear promising but need additional support is not great.

### Recommendation

I recommend that the criteria and processes for determining withdrawal of magnet status now provided for in the Comprehensive Magnet Plan be changed so as to facilitate decisions to eliminate unviable magnet programs and schools. The specifics of these recommendations are spelled out in my recommendations with respect to Objections Three and Four below. I do not believe that the Court should specify the specific number of magnet schools and programs that the District should offer.

### **Objection Three: Criteria for Determining Magnet Status**

The Fisher and Mendoza plaintiffs argue, and join with the special master in this regard, that the criteria for evaluating magnet schools and programs

should place greater emphasis on integration and that some criteria should be re-categorized and others eliminated.

### District Position

The District asserts that it has carefully studied the criteria for evaluating the viability of magnet schools and programs and that it has taken into account the recommendations of the special master and the plaintiffs in the development of its final version of these criteria. It says that it consulted with parents, its magnet school expert, and made use of criteria for improving magnet schools developed by a national organization. *Over the last several weeks, the District seems to have agreed to limit the criteria for assessing progress towards integration and measures of academic achievement. (See attachment A.)*

### Analysis

#### Overview

The criteria and processes for determining magnet status are critically important to the success of the Comprehensive Magnet Plan.

I address the process in Objection Four. The criteria and the way they are used will determine which programs are sustained and which lose their magnet status. When magnet status is withdrawn from unsuccessful programs and schools, this will allow for the initiation of more promising programs and schools or the investment in existing programs that need further support thus improving the opportunity students have for attending a high-quality integrated school.

The history of magnet programs in TUSD, including the discussions that led to the current plan and Board action, suggests that it will be very difficult for the Board to withdraw magnet status from existing programs and schools. Families whose children are now in magnet schools or who live in neighborhoods served by magnet schools will forcefully advocate for sustaining their programs even in the face of compelling evidence that the schools are unlikely to meet the standards for integration set forth in the



USP. Those standards will be contested, small gains will be touted as evidence of future success, District staff will be blamed for inadequate recruitment efforts, and the case will be made for just a little more time. We do not need to guess that these events will occur because they have already characterized the response to the plan presented by staff to Board last summer.

Criteria for determining whether magnet status for a program or school will need to have the following characteristics if they are to facilitate the making of difficult decisions:

1. They must focus on integration and educational quality.
2. They must be unambiguous and objectively measurable.
3. They must have clearly defined benchmarks to allow assessment of rates of progress toward achieving integration and educational quality (*e.g.*, a grade of B or better using state criteria or an alternative measure of quality specified by the District that is readily measurable).

The criteria specified in the Comprehensive Magnet Plan fail to meet these three standards.

There are a number of problems with the criteria used for evaluating magnet schools and programs: they do not assign adequate weight to integration and academic excellence, they are confusing because there are a number of different criteria or standards, they conflate process and product providing more weight to the former than they should, and there are problems with the content of several other criteria. I focus on the first two of these and deal with the others in the process.

### The Importance of Integration and Academic Achievement

The criteria set forth in Appendix F of the Comprehensive Magnet Plan, which are grouped into five categories called pillars, will be the determining criteria for determining magnet status. In principle, a school or program could attain 100 points. However, only 50 of those points deal with

integration and academic achievement. While the so-called diversity pillar (which I think the District is renaming the racial and ethnic integration pillar) has 35 points, only 25 of the points actually address integration. The other 10 are assigned if a school uses “all available” recruitment methods (and why wouldn’t they?), not whether these yield the desired results. The Academic Excellence pillar has a possible 35 points but only 25 of these points deal with actual student performance; the other 10 are awarded if the school tried to increase performance in various ways. And, the goals for academic performance don’t deal with “Excellence” but with being better than average. The District’s proposal sets the standard at the equivalent of above average. It seems unlikely that parents would be motivated to select a school that was slightly above average. Moreover, because additional resources are invested in magnet schools, we would expect them to perform at markedly higher levels than other schools. Of course, academic excellence is critical to achieving and sustaining integration.

In short, only half of the points available to determine a school’s or a program’s viability as a magnet relate to the only two outcome measures in the evaluation matrix that should determine magnet status.

In addition, there are serious problems with the measures the District proposes to use with respect to integration and academic performance. It is not clear that the measures that the District proposes to use will assess the conditions it wants to promote, a point I return to in my recommendations. For example, a heavily racially concentrated school that is making significant but insufficient progress in recruiting students from other ethnic backgrounds could be ranked higher than a school that is less racially concentrated but is making less progress toward integration and therefore more likely to become integrated. With respect to the measures of academic performance, not only are the goals set too low, but a measure that claims to focus on the elimination of disproportionality does not, in fact, assess the narrowing of the gap in academic achievement among different ethnic groups.

A primary goal of the USP is to move from a focus on what is being done to a focus on the effects of those processes, practices, and policies. But the

criteria for evaluating magnet schools and programs put as much emphasis on processes as they do on outcomes. So, the school community that wishes to sustain itself as a magnet could place a considerable amount of emphasis on processes and thus survive without bringing about significant changes in integration and/or academic performance. This is particularly true because many of the Plan's process criteria do not assess quality of the effort. Process and outcome (product) criteria serve different purposes; the outcome criteria should be used to determine whether magnet status should be sustained and the level of effort that should be invested in those programs deemed to be worthy of improvement. Process criteria should be used to identify strengths and problems and to focus on investment of time, money and expertise on those aspects of the school or program that are most in need of additional improvement. The CMP criteria do not make this distinction. Numerous studies show that the improvement of process does not necessarily lead to improvements in outcomes for a number of reasons.

#### The Problem of Multiple Criteria

Throughout the CMP, there are numerous criteria or standards that should be applied in making various decisions. The most important of these seem to be those in the Magnet Evaluation Matrix (based on Appendix K). But, on p.39, the CMP requires each school to develop "specific and measurable goals" for eight "components." These standards/criteria overlap but are different from those in the Evaluation Matrix. Which goals are schools to work on and how is progress on the eight to be scored? Will local goals trump District goals? Appendix I identifies "percentage at entry level moving toward integration." Are these goals and, if not, what are the goals schools should meet regarding progress toward integration? Can they set these themselves?

There are issues with respect to other criteria that I identified those in my July 8, 2014 memo to the parties (Exhibit I).

## Recommendation

The District should be required to determine whether magnet status is withdrawn based on two criteria: (1) racial and ethnic integration including progress toward that goal and (2) the academic outcomes of its students. A magnet school must succeed on both of these measures. So, an A school that is not integrated should lose magnet status should it fail to make measured progress toward integration. (There are other ways to sustain A schools consistent with the intent of the USP even if magnet status is withdrawn).

I do not propose a particular set of rubrics and note that the more complex the assessment criteria are, the less likely they are to bring about the outcomes they are meant to achieve and the greater the likelihood that unintentional consequences will come from the implementation of the measures.

I recommend that the measure of integration to be used be straightforward and easily understood and measured. Integration is defined in the USP. Schools that do not meet this definition of integration should have to be integrated for the grades (K, 6, 9) *no later than the 40th day of the fall term in 2015 and each year thereafter. These cohorts must remain integrated so that the school can achieve integrative status as these cohorts move through the grades in each school.*\* This provision would require that the racial composition of each cohort be sustained over time. If a school does not meet these annual goals, it would lose magnet status.

Goals for academic outcomes should be set so that standards that would be equivalent to the attainment of at least a solid B grade for the school using state rules. If the District believes that the state grading system is inadequate, it should propose an alternative that differentiates school quality in a meaningful way. In addition to the aggregate school level performance, the District's proposal that all that students in all ethnic

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\* This is not a substantive change; it is added for clarification and is consistent with the District's understanding (see Attachment A).

categories show increases of student achievement in reading and math at all grade levels should be a measure of academic achievement for the school. But, overemphasizing the narrowing of the achievement gap has at least two downsides. First, this goal can be seen as lowering the achievement levels of the highest groups. Second, schools can have a limited influence on student achievement, especially with respect to reading and language arts, because non-school influences have a substantial effect on student learning as it is measured by standardized achievement tests. Improving the achievement of all students to the highest level of the highest achievers is an important goal but it should not be made a test of whether a school maintains its magnet status.

If these measures are to be applied firmly and fairly, the District must set specific scores that trigger withdrawal of magnet status for each school. *Schools should not be allowed to set their own goals for when and how they achieve magnet status.* The District wants to use a multi-dimensional rubric for scoring. As noted, there is no need for such a rubric for integration with respect to academic performance measures and the “cut-off” points should be determined *as priori* based on reasonable estimates that ultimate goals can be attained. A school that starts as a C school and makes limited progress toward solid B status should lose its magnet status if the benchmarks are set for achieving excellence in three or four years are not met.

#### **Objection Four: The Process for Removal of Magnet Status**

The Fisher plaintiffs object to what they considered the vagueness and uncertainty that characterize processes for removal of magnet status. They also argue that evidence of compliance with the USP is not likely to be demonstrated until after the 2017-18 school year, if then.

#### District's Position

The District asserts that the process for removal of magnet status is spelled out in detail in its magnet plan. *In recent discussions about possible changes in the CMP, the District argues that a school need not make progress on both measures simultaneously. This proposal would allow a*

*school to retain magnet status for as much as four years even if it makes no progress toward integration (see Attachment A).*

### Analysis

The District's process for determining magnet status appears to be relatively specific although the point at which a school's magnet status is withdrawn is not specified. This fact and other aspects of these processes will have the effect of excessively delaying action to withdraw magnet status.

As noted above, I have not heard a single District employee or Board Member say that the current number of magnet school is financially or educationally viable. An indication of why this is so is the very small (\$44,000) investment the District is prepared to make in Cragin for its start-up year. In short, unless the District is proposing a significant increase in overall funding of magnet schools, the only money available for new options is going to come from magnet schools that are discontinued. Of course, all current magnet schools could become integrated but that is very unlikely as is the prospect of all of them becoming high quality schools in the near future.

Under the Board-approved CMP, no current program or school not already eliminated can be terminated for at least two years, even those that are seen as the most likely to lose magnet status. Consider, for example, Utterback. 2014-15 is the base line year for this school.

After one enrollment cycle, Utterback will be given one year to improve. It is not clear whether this means only with respect to integration criteria (as implied in Appendix F, the five pillars measure). And it is not clear what would constitute improvement? Say Utterback gains five points in the improvement year but is still 10 points away. Would status be withdrawn in the face of certain community protest? (The community advisory group recommends a five year turnaround period). But, let's say that Utterback is removed from magnet status in the Spring of 2016. The school using the now available resources would have a year of planning (according to the CMP). Thus, no new magnet school until 2017-18. What if a school is

waiting for Utterback (or some other magnet school to fail) and is ready to go in 2016-17. Aside from the message that sends to the struggling magnets, would one expect a new magnet to be successful in integrating (or further integrating) its student body in the start-up year?

And, the CMP process would not even eliminate magnet status in a school like Holladay that inexplicably, given its very low score on the mock evaluation and its backward movement in integration, is identified as an “Improvement School” not subject to losing magnet status until 2017.

The CMP processes for withdrawing magnet status – and thus making more integrative use of the resources invested in unsuccessful magnets – virtually ensure that significant progress in developing a collection of magnet school and programs that markedly increase the opportunities for students to engage in an integrated education will not be effectively achieved before the time the District hopes to be declared unitary. There are two reasons why this is so. First, the process for removing magnet status will allow schools to delay a decision on removal of status for an unacceptably long period of time. Second, as noted in the discussion of Objection Three, the criteria for evaluating magnet schools, and particularly for removing magnet status, are ambiguous and complicated when the withdrawal of magnet status should focus entirely on (1) the potential for racial and ethnic integration and (2) academic achievement and related student outcomes.

### Recommendation

In a recommendation with respect to criteria (Objection Three), I proposed that only integration and academic excellence should be considered in determining magnet status. If those criteria were operationalized, decisions could be made about terminating magnet status when progress toward the specified targets were not realized. So, instead of creating different classes of schools that become subject to withdrawal of magnet status on different timelines that are based on the criteria the District now uses, it would use the criteria developed as a response to the recommendation in the discussion of Objection Three. Because magnet status must depend on achieving both integration and academic excellence,

decisions could be made on each of these sets of criteria separately. For example, the failure to make reasonable progress towards achieving integrated status can be determined at the beginning of the school year rather than at the end when academic achievement is measured. This would speed the removal of magnet status in cases where little progress towards integration was being made in time to reallocate resources to other schools or to schools that have been identified as potential magnet sites. Moreover, new sites would have almost a full year to plan for implementation during the next year thus moving new schools into place a year earlier than anticipated by the District's process outlined in the CMP.