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UNITED STATES DISTRICT COURT

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DISTRICT OF ARIZONA

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Roy and Josie Fisher, et al.,)

9

Plaintiffs,)

v.)

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United States of America,)

11

Plaintiff-Intervenor,)

12

v.)

13

Anita Lohr, et al.,)

14

Defendants,)

15

and)

16

Sidney L. Sutton, et al.,)

17

Defendants-Intervenors,)

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_____)

CV 74-90 TUC DCB
(lead case)

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Maria Mendoza, et al.,)

20

Plaintiffs,)

21

United States of America,)

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Plaintiff-Intervenor,)

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v.)

CV 74-204 TUC DCB
(consolidated case)

24

Tucson Unified School District No. One, et al.,)

25

Defendants.)

26

_____)

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1 a plan “containing specific substantive programs and provisions to be implemented by the
2 TUSD to address all outstanding *Green* factors and all other ancillary factors.” (USP (Doc.
3 1713) at 5 (quoting Order (Doc. 1350).) On February 20, 2013, the Court approved the plan
4 prepared by the parties and the Special Master: the Unitary Status Plan (USP). The USP
5 includes a magnet component.

6 The USP affords all students an opportunity to attend an integrated school by using
7 four student assignment strategies to be developed by the District in consultation with the
8 Plaintiffs and the Special Master: attendance boundaries; pairing and clustering of schools;
9 magnet schools and programs, and open enrollment. The District is required to develop and
10 implement a coordinated process of student assignment incorporating all of these strategies
11 as appropriate. (USP (Doc. 1713), § II.A.1.) The USP has a target date of SY 2016-17 for
12 the District to attain unitary status. (USP (Doc. 1713) § XI.A.2.)

13 As of the drafting of the USP, the parties agreed that “[t]he District shall continue
14 to implement magnet schools and programs as a strategy for assigning students to schools
15 and to provide students with the opportunity to attend an integrated school. A magnet school
16 or program is one that: focuses on a magnet theme, such as a specific academic area, a
17 particular career or a specialized learning environment; attracts students of diverse racial and
18 ethnic backgrounds; and encourages students to choose a school other than their attendance
19 boundary school to participate in the magnet theme offered at that program or school.” *Id.*
20 § II.E.1. “Traditionally, magnet schools are distinct from other public schools because they
21 offer a specialized academic focus, theme, or pedagogy known as the magnet program. The
22 term ‘magnet’ refers to how the program is supposed to attract students from across the
23 boundaries of the district to attend the magnet school in addition to providing enriched
24 programs for neighborhood students.” (Notice Supplemental Documents (Doc. 1738, Ex. 1:
25 TUSD Comprehensive Magnet Program Review, Education Consulting Services, December
26 2011 (2011 Magnet Study) at 3.)

1 “The student assignment goal for all magnet schools and programs shall be
2 to achieve the definition of an integrated school, set forth [] [in] Section (II)(B)(2)).” (USP
3 § II.E.2), which is: “any school in which no racial or ethnic group varies from the district
4 average for that grade level (Elementary School, Middle School, K-8, High School) by more
5 than +/- 15 percentage points, and in which no single racial or ethnic group exceeds 70% of
6 the school’s enrollment.”

7 The USP required the District, by April 1, 2013, “to develop and provide to the
8 Plaintiffs and the Special Master a Magnet School Plan, taking into account the findings of
9 the 2011 Magnet School Study and ensuring that this Plan aligns with its other student
10 assignment strategies and recruitment efforts.” (USP § II.E.2.) “In creating the Plan, the
11 District shall, at a minimum: (i) consider how, whether, and where to add new sites to
12 replicate successful programs and/or add new magnet themes and additional dual language
13 programs, focusing on which geographic area(s) of the District are best suited for new
14 programs to assist the District in meeting its desegregation obligations; (ii) improve existing
15 magnet schools and programs that are not promoting integration and/or educational quality;
16 (iii) consider changes to magnet schools or programs, including withdrawal of magnet status;
17 (iv) determine if each magnet school or school with a magnet program shall have an
18 attendance boundary; (v) determine admissions priorities/criteria for each magnet school or
19 program and a process for review of those criteria; and (vi) ensure that administrators and
20 certificated staff in magnet schools and programs have the expertise and training necessary
21 to ensure successful implementation of the magnet.” (USP (Doc. 1713) § II.E.3) (emphasis
22 added).

23 “Pursuant to these considerations, the Magnet School Plan shall, at a minimum, set
24 forth a process and schedule to: (vii) make changes to the theme(s), programs, boundaries,
25 and admissions criteria for existing magnet schools and programs in conformity with the
26 Plan’s findings, including developing a process and criteria for significantly changing,
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1 withdrawing magnet status from, or closing magnet schools or programs, that are not
2 promoting integration or educational quality; (viii) add additional magnet schools and/or
3 programs for the 2013-2014 school year as feasible and for the 2014-2015 school year that
4 will promote integration and educational quality within the District, including increasing the
5 number of dual language programs; (ix) provide necessary training and resources to magnet
6 school and program administrators and certificated staff; (x) include strategies to specifically
7 engage African American and Latino families, including the families of English language
8 learner (“ELL”) students; and, (xi) identify goals to further the integration of each magnet
9 school which shall be used to assess the effectiveness of efforts to enhance integration.” *Id.*
10 (emphasis added).

11 Since adopting the USP, TUSD hired a Magnet Director to develop and implement
12 its Magnet Plan for school years 2013-2014 and 2014-2015, and adopted a 2013-2015
13 Magnet Plan. (CMP (Doc. 1730-2) at 30 (2013-14 Magnet Plan of Action), at 42 (2014-15
14 Supplement Magnet Plan of Action), *see also* (2012-2013 Annual Report (Doc. 1550-4), filed
15 1/31/2014, Appendix 13: 2013-2015 Magnet Plan). It adopted the CMP on July 15, 2014.
16 These plans, like the 2011 Magnet Study, recognize that many of the existing magnet
17 programs/schools need improvement or to be changed and/or eliminated. All the annual
18 plans have included recommendations for very specific improvements for each school.

19 According to the CMP, the existing magnet schools are: Elementary Schools
20 (**Borton, Bonillas, Carrillo, Drachman, Davis, Holladay, Ochoa, Tully, and Robison**);
21 K-8 Schools (**Booth-Fickett, Roskruge, and Safford**); Middle Schools (**Dodge and**
22 **Utterback**), and High Schools (**Catalina, Tucson, Palo Verde, Cholla**).¹ In 2013-14,
23 TUSD added **Cragin Elementary School** and **Mansfeld Middle School** as magnet schools.
24 (CMP (Doc. 1730-2) at 30-31, 34-39.)

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26 ¹The elementary and middle schools are total magnet schools. The high schools
27 operate magnet programs within the school instead of being total magnet school models.

1 integration as measured by ethnic composition of accepted application in incoming grades,
2 the school will be considered for elimination. (CMP (1730-2) at 26.

3 The Court admits to being confused regarding the interplay between the 3-year
4 improvement allowance and the one and two year enrollment cycle improvement provisions,
5 but does not need clarification because it rejects both. Generally, the Court understands that
6 the CMP provides for TUSD to track the existing magnet schools and programs beginning
7 in SY 2015-16, and after three years or in SY 2018-19, schools that are not “demonstrating
8 progress” toward integration will be considered for elimination. And, TUSD believes that
9 if and when magnet status is withdrawn, the District must continue funding a discontinued
10 magnet school for up to five more years, pursuant to USP § II.E.1. (CMP (Doc. 1730-2) at
11 26; TUSD Objection (Doc. 1735) at 6.)

12 The Court does not agree that the USP § 11.E.1 requires a magnet improvement
13 schedule precluding timely withdrawal of magnet status where a school or program does not
14 serve the purpose of integration. The USP provides: “Subject to its decisions, if any, to
15 withdraw or relocate magnet school status or programs, the District shall allow all students
16 currently enrolled in a magnet school or program to remain in that program until they
17 complete the highest grade offered by that school.” (USP § II.E.1.) The Court considers this
18 section in conjunction with the general, Overview, provision: “Subject to possible school
19 consolidations or closures or to any other changes contemplated herein, students may
20 continue at the school in which they are currently enrolled from the effective date of this
21 Order through the completion of the highest grade offered at that school.”

22 These provisions apply only to students enrolled in magnet schools or plans at the
23 time the USP was adopted, February 2012. Therefore, the longest limitation applies to a
24 student enrolled in kindergarten in SY 2011-12 at a K-8 school and would apply through
25 2019-2020, or five years from now. In 2011-12, like now, there were only three K-8 magnet
26 schools and it is unknown how many students, if any, this provision would affect. The Court
27

1 finds that until an existing magnet program is targeted for elimination, it is premature to
2 determine whether its elimination would affect any student protected under USP § II.E.1.
3 It makes little sense to base the schedule for improving magnet schools on a provision that
4 may not even be relevant. It makes little sense to interpret USP § II.E.2 as precluding the
5 timely elimination of non-functioning magnet schools or programs, which would be contrary
6 to the purposes and goals of the USP that all students to be afforded an opportunity to attend
7 an integrated school, USP § II.A.1, with a target date of SY 2016-17 for the District to attain
8 unitary status, USP § XI.A.2.²

9 In the R&R the Special Master recommends schools be withdrawn as magnets if they
10 fail to integrate their student bodies this next time around: SY 2015-16. The Mendoza
11 Plaintiffs argue that the schools need more time to improve, given the historic lack of
12 support, fiscal and administrative, the District has provided for magnet schools. Otherwise,
13 the Mendoza Plaintiffs agree with the Special Master's criticism of the CMP: 1) the criteria
14 for evaluating the magnet schools and programs is ambiguous and does not place sufficient
15 emphasis on integration and academic achievement; 2) the provisions for removing magnet
16 status are cumbersome and will be difficult to implement, and 3) the plan does not identify
17 the investments, financial and programmatic, necessary for a failed magnet school to become
18 a successful magnet school, both academically and to be integrated. In its Objection, TUSD
19 informs the Court that it revised the CMP on November 7, 2014, to simplify its
20 classifications of magnet schools to EXCELLING, STRATEGIC, and INTENSIVE and
21 distilled its test, as recommended by the Special Master, to be outcome determinative based
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26 ²Arguably, the provision would preclude changing or revising themes, but no party
27 has suggested as much, and the Court is not inclined to interpret a provision of the USP in
28 a way that would be contrary to the very purposes and goals of the USP.

1 on whether the school is integrated and an academic success. (Objection (Doc. 1735) at 3-5
2 (describing R&R as largely moot giving Revised CMP).³

3 The Revised CMP adopts these two goals as measurements for assessing the
4 effectiveness of a magnet school. In other words, a school must show progress towards
5 achieving the USP definition of an integrated school and towards enhancing the educational
6 quality of its magnet programs. (Revised CMP (Doc. 1721-19 at 6), see also (USP § II.E.3
7 (Doc. 1713) (requiring TUSD adopt Magnet Plan that promotes integration and educational
8 quality). Integration exists, pursuant to the definition in the USP § II.E.2, based on the
9 number of accepted magnet applications for entry grades K, 6, 9 and which is maintained at
10 the cohort grade levels.⁴ *Id.* at 6-7. Student Achievement for magnet status is reached based
11 on the magnet school receiving a letter grade of “A” or “B” as designated by the Arizona
12 Department of Education, and student achievement is tested pursuant to the following
13 standards: students score higher than the state median in reading and math on the state
14 assessment; the academic growth of all students at the school is higher than the state median
15 growth in reading and math, and growth at the bottom 25% of students at the school is higher
16 than the state median growth. *Id.* at 7. TUSD does not object to adding the Mendoza
17 Plaintiffs’ proposed standard: “the achievement gaps between the racial groups participating
18

19 ³There are two revisions 7/7/14 (Doc. 1721-19) and 11/14/14 (1730-12). The District
20 does not suggest any unique provision in the 11/14/2014 revision warranting separate
21 scrutiny. As it was, the Court was forced to consider multiple documents to conduct a
22 comprehensive analysis of the CMP, which included reviewing the following: the 2011
23 Magnet Study, the 2013-2015 Magnet Plan attached to the 2012-13 Annual Report, the CMP
24 adopted by the Board 7/15/2014, inclusive of the Magnet Plan of Action for 2013-14
25 (approved October 2013) and the Magnet Plan of Action 2014-15, and the Revised CMP of
26 7/7/14, inclusive of the approved Magnet Plan of Action for 2013-14 and a revised Magnet
27 Plan of Action 2014-15.

28 ⁴The CMP does not define or explain the term “cohort,” but the Court assumes this
means integration must be maintained as students enter the school at grade K and move
through grades 6 and 9.

1 in magnet programs is less than the achievement gaps between racial groups not participating
2 in magnet programs.”

3 Integration and student achievement are linked together because the goal of a magnet
4 school is by definition “to attract a racially diverse student body by creating a school so
5 distinctive and appealing – so magnetic – that it will draw a diverse range of families from
6 throughout the community eager to enroll their children, even if it means having them bused
7 to a different, and perhaps, distant neighborhood. To do so, the magnet schools must offer
8 educational programs of high caliber that are not available in other area schools.” (2011
9 Magnet Study (Doc. 1738) at 3.) In the best magnet schools, the magnet components, many
10 of which are associated with effective schools, add up to higher student achievement. *Id.*
11 In other words, high academic standards will draw students to a magnet school, and an
12 effective magnet program will improve student achievement.

13 Pursuant to the Revised CMP, TUSD also revised the Magnet Plan of Action 2014-
14 15, which reflects that Dodge MS and Palo Verde High School meet both tests, integration
15 and student achievement. Dodge MS and Palo Verde HS will proceed pursuant to a
16 Sustainability Plan. The following schools are “A” or “B” schools: Carrillo ES, Davis ES,
17 Drachman ES, Ochoa ES, Roskruge K-8, Mansfeld MS, and Cholla and Tucson high
18 schools. All of these schools are racially concentrated and must become integrated, pursuant
19 to an Improvement Plan. The remainder of the schools⁵ currently designated as magnet
20 schools do not meet the student achievement standards. They are C or D schools, and only
21 three of them, Booth -Ficket K-8, Borton ES and Cragin ES, are NOT racially concentrated.
22 Racially concentrated means a school “in which any racial or ethnic group exceeds 70% of
23 the school’s total enrollment.” (USP (Doc. 1713) § II.B.1. These schools need Improvement
24 Plans to become A or B schools and to attain integration.

25
26 ⁵Borton ES, Bonillas ES, Holladay ES, Tully ES, Robison ES, Cragin ES, Booth-
27 Fickett K-8, Safford K-8, and Utterback MS.

1 In the Revised CMP, TUSD designates schools as STRATEGIC, if they meet one
2 of the two tests, called tiers, and INTENSIVE if they meet neither tier. TUSD proposes to
3 evaluate each school every year in June, beginning June 2015. Under the Revised CMP,
4 schools labeled STRATEGIC have two years to move to EXCELLING, and if not moved to
5 EXCELLING by the end of SY 2016-17,⁶ the school “may be” considered for magnet status
6 elimination. Schools labeled INTENSIVE must move to STRATEGIC by the end of SY
7 2015-16 or be considered for magnet status elimination. (Revised CMP (Doc. 1721-19) at
8 23-24.)

9 The Court is satisfied that the outcome determinative criteria proposed in the
10 Revised CMP addresses the Special Master’s concerns for clarity, which is also a concern
11 for this Court. The criteria for evaluating the magnet plan in the CMP were ambiguous, and
12 the Court believes for the reasons explained by the Special Master for why they would have
13 been difficult to implement, the criteria would also have made judicial oversight and
14 monitoring difficult. The Court turns to the process and schedule proposed by TUSD for
15 withdrawing magnet status from the District’s existing magnet schools. The parties are at
16 odds regarding the time frame for closing ineffective magnet schools and programs.

17 B. CMP, Magnet School Plan: the Schedule

18 Only two schools in the Magnet Plan meet the definition of a magnet school or
19 magnet program by way of having strong academic standards and having integrated student
20 bodies. The CMP allows ineffective magnet schools and programs to exist until after SY
21 2018-19. The Revised CMP allows deficient magnet schools and programs to exist until
22 after SY 2016-17. Importantly, the schedule proposed by TUSD does not reflect a deadline
23 for elimination, but only a date when elimination will be “considered” by the District.
24 Additionally, TUSD has added new magnet schools with “C” ratings, Cragin and Mansfeld.

25
26 ⁶In other words, the period for improvement begins at the close of this school year (SY
27 2014-15) through SY 2015-16 and ends in June after SY 2016-17.

1 The addition of new magnet schools lacking strong academic programs will perpetuate cycles
2 of deficiency beyond the time allocated to improve the existing problem schools.

3 While the question has not been briefed by the parties, the Court is concerned that
4 unitary status may be difficult to attain when the USP's key component for integration, a
5 Magnet Plan, exists in name only. The CMP must reflect the ultimate operational Magnet
6 School Plan envisioned for TUSD and the process and schedule for how and when TUSD
7 will implement this Magnet School Plan, including how and when each school destined to
8 be included in the Magnet School Plan becomes an operative magnet school and/or program.

9 It is not as if TUSD does not know what needs to be done. Each of the existing 20
10 magnet schools/programs have been critiqued regarding their deficiencies since 2011, with
11 detailed annual recommendations spelled out for improvements.

12 For example, Tully's magnet designation is based on "Opening Minds through the
13 Arts" program (OMA). The 2011 Magnet Study recommended that Tully ES should not be
14 designated as a magnet because OMA was not a unique program. At least 20 other schools
15 in TUSD had the OMA program. (2011 Magnet Study (Doc. 1738) at 32.)

16 January 2013, the Magnet Program Director prepared a Comprehensive District
17 Evaluation of Magnet Programs. She applied similar indicators as those used in the 2011
18 Magnet Study and found similar problems. Tully was still a magnet school based on the non-
19 unique OMA program, with 17 other elementary schools having OMA programs and 3
20 middle schools also having OMA programs. (2013 District Evaluation (Doc. 1738) at 20.)

21 TUSD's responsive strategy for SY 2013-14 was for Tully to "revision" its OMA
22 magnet theme and implement a Science, Technology, Engineering and Math (STEM) theme;
23 magnet staff to work with Tully to create curriculum and provide professional development
24 resources, and forming community partnerships, with funding to be allocated for a Magnet
25 Coordinator. (2013-14 Magnet Plan (Doc. 1550-4, Attach B: Specific Site Level Findings
26 at 3), *see also* (Revised CMP (Doc. 1721), 2013-14 Magnet Action Plan, at 35.) The 2014-

1 15 Magnet Action Plan, reflects Tully will “develop a STEM theme,” with Tully having
2 significant potential to improve student achievement by using resources that are dedicated
3 to implementing STEM. *Id.* at 49.

4 Tully ES is a racially concentrated C school, which according to the CMP is still
5 continuing to develop a STEM theme. According to the Revised CMP, even if Tully has not
6 developed a STEM theme by the June 2015 annual review, another school year, SY 2015-16,
7 will pass before Tully is even “considered” for elimination from the Magnet Plan. Pursuant
8 to the CMP and the Revised CMP, Tully is not on a projectory to be an operational magnet
9 school before the target date for unitary status: SY 2016-17.

10 The Court has not looked at each school, but finds a plan to wait two or three years,
11 or longer, is not a comprehensive magnet plan for implementing an operational Magnet
12 School Plan in TUSD, especially since TUSD has been on this road towards improvement
13 since 2011 and has a wealth of detailed information regarding what is necessary to improve
14 the District’s magnet schools and programs, now.

15 The District has been studying the viability of these schools and programs to be
16 magnets since 2011. Every Magnet Plan and Magnet Action Plan since 2012 has specified
17 measures each school has taken or needs to take towards improvement. More importantly,
18 the District knows the components which must exist for it to have an effective Magnet
19 School Plan. For example, it must strategically place magnet schools in central locations,
20 generally, within an eight mile radius of the center of the District, because parents will not
21 send their children where travel time exceeds approximately 20 minutes. Students are
22 hesitant to cross perceived social/economical boundaries making the central corridor
23 especially appealing. (2012-13 Annual Report (Doc. 1559-4, Appendix 13: 2013-15 Magnet
24 Plan at 9; CMP (Doc.1730-2), 2013-14 Magnet Plan of Action, at 30; Revised CMP (Doc.
25 1721-19) at 20.). The CMP does not inform the Court as to whether the existing magnet

1 schools are even located in relevant areas of the District or identify other schools which are
2 strategically located so as to be candidates for the Magnet School Plan.

3 The District has developed criteria for assessing the viability of adding a new magnet
4 school, revising an existing magnet program, and/or relocating a magnet program. They look
5 at four key criteria: racial/ethnic composition; academic achievement; facility
6 condition/capacity; and geographic location. TUSD has devised a rubric for applying these
7 criteria, yet the CMP does not provide this rubric information for the existing magnet
8 schools.

9 Importantly, there are undisputed effective mechanism for improving academic
10 achievement, such as reduction of class size in a targeted way, incentives to draw excellent
11 teachers and school administrators to serve in a school, restructuring of the school day to
12 foster collaboration and professional development. (R&R (Doc. 1730) at 5.) The CMP does
13 not address how the District will improve academic achievement in approximately half of the
14 existing schools currently labeled magnets, which are C and D schools.

15 The District does not explain why magnet programs have been eliminated already
16 at some of its schools and other magnet program themes have been or are being entirely
17 changed, without waiting two or three enrollment cycles, or longer.

18 For example, the Magnet Plan of Action for 2013-14 reported that Catalina Magnet
19 High was currently phasing out its former magnet strands: Aviation, Health Care and, to a
20 lesser extent, the Terra Firm and adding an International and Dual Language theme, which
21 has had “proven success in other districts and should be replicated in TUSD.” (Revised CMP
22 (Doc. 1721-19), 2013-14 Magnet Plan of Action, at 30-31.) Tucson High School (Math and
23 Technology Strand) was approved for elimination in October 2014. (Revised CMP (Doc.
24 1721-19), 2013-14 Magnet Plan of Action, at 38.) It is revising its Science strand to reflect
25 a Natural Science focus. at 47. Pueblo High School is revising its Communications Arts
26 theme to Dual Language. *Id.* at 48.

1 The Court sees little difference in changing a magnet theme entirely as was done at
2 Catalina and Pueblo high schools and is being done at Tully ES and eliminating a magnet
3 program or school, except for funding. In the former circumstance magnet funding continues
4 to flow to the school and in the latter circumstances it ends. But, a Magnet Plan is not a
5 funding mechanism; it is a mechanism to improve integration. Other funding sources are
6 available to schools for capital improvements, operations, and to improve academic
7 achievement. Nothing prevents TUSD from continuing existing funding levels for two or
8 three enrollment cycles, the next five years, or any other length of time, for schools being
9 disfranchised of their magnet programs. Especially, where money might well be wasted on
10 developing themes at a school with little potential to integrate its student body, a school
11 could better use funding unencumbered by the burdens⁷ of trying to become a magnet school.
12

13 The Court does not disregard the Mendoza Plaintiffs point that existing magnet
14 schools have been starved of leadership and adequate resources for over 30 years, making
15 it difficult to assess which magnet plans might succeed with proper support. The Special
16 Master notes “there is no certain way to know what the outcome of the District’s plans for
17 magnet programs and schools will be . . . because parent options for where they send their
18 children to school are greater in Arizona than any other state.” (R&R (Doc. 1730-1) at 5.)
19 He is prepared, therefore, to give the District the “benefit of the doubt” in regard to its
20 proposals, except for District decisions which undermine the chances that magnet schools
21 will serve the role they are intended to serve in the USP. *Id.*
22

23
24 ⁷The Court refers here to: 1) the need for a strong marketing and recruitment program;
25 2) ongoing and continuous teacher development to remain cutting edge in the magnet content
26 area; 3) recruitment and retention of specialized teaching staff; 4) community support and
27 participation; and 5) data gathering, annual and 3-year reviews of student achievement to
ensure academic relevancy of the magnet theme. (Notice of Supp. (Doc. 1738), Ex. 1: 2011
Magnet Study at 4-6.)

1 The Court does the same, but cannot approve the CMP, adopted by the School Board
2 on July 15, 2014, or the Revised CMP. Neither is a comprehensive plan as required by the
3 USP. The Court has had to piece together information from the 2011 Magnet Study and
4 multiple magnet plans and magnet plans of action. The CMP does operate within the time
5 frame for attaining unitary status to create schools that function as magnet schools. The USP,
6 Section II.A.1, mandates: “Students of all racial and ethnic backgrounds shall have the
7 opportunity to attend an integrated school.”

8 The CMP fails to present for easy comparison and evaluation the basic rubric
9 information for the current magnet schools and programs or identify the strength of the
10 various magnet themes operating in these schools. The Court does not know how each
11 school fits into an overall magnet feeder school plan. In short, the CMP fails to reflect the
12 District’s vision for a meaningful operational Magnet School Plan, with it can support long
13 term. Within the context of implementing such a plan, the CMP fails to identify the specific
14 activities which must be undertaken by each school to attain magnet status. There is no
15 budgetary assessment as to how much money it will take to make the requisite improvements
16 or even how many schools it can maintain as magnets long term. There is no transportation
17 component in the CMP, which is the most expensive factor in operating a magnet school
18 system. School boundaries have not yet been factored into the plan. The CMP speaks to
19 developing Improvement Plans, but until detailed plans, complete with budget and resource
20 estimates, are prepared for a school, it is impossible to ascertain what actions, if any, a school
21 can undertake to attain true magnet status by the USP target date for attaining unitary status:
22 SY 2016-17.

23 By April 1, 2013, the District was required to develop the Magnet School Plan and
24 in creating the Plan the District was required to “consider changes to magnet schools or
25 programs that are not promoting integration and/or educational quality, including withdrawal
26 of magnet status.” (USP § E.3.) The District has identified which schools are failing to
27

1 operate as magnet schools. Because the CMP has been delayed does not necessitate further
2 delay in deciding what changes are necessary to attain a fully functioning Magnet School
3 Plan, including which, if any schools, should be eliminated. There is no reason to treat
4 eliminating magnet status differently from other types of program improvements such as
5 adding, revising, or transferring magnet programs. In short, the CMP must assess the
6 viability and desirability of the existing “name only” magnet schools to become operational
7 magnet schools. And for such schools, Improvement Plans must be prepared to identify the
8 specific measures necessary to address each deficiency precluding the school or program
9 from being a magnet, and must include a time line, with annual bench marks, for attaining
10 magnet status.

11 Given there has been extensive studying, reviewing, and reporting on TUSD’s
12 magnet schools since 2011, the Court is confident that the District has all the information
13 needed, but simply failed to present it in a comprehensive fashion which is the purpose of
14 the CMP. Accordingly, the CMP must be revised so it reflects an operational Magnet School
15 Plan, using the 2016-17 target date for reaching unitary status. Once operational, the regular
16 three-year review cycle proposed by the District is approved by the Court.

17 The District, in consultation with the Special Master, shall work with its schools to
18 prepare the Improvement Plans over the next three months, which shall identify clear and
19 specific annual bench marks for attaining magnet status by SY 2016-17. The Special Master
20 shall monitor compliance by each school regarding its Improvement Plan. The Special
21 Master shall file reports as necessary with the Court identifying any failure to attain a
22 requisite benchmark, and may accordingly recommend eliminating a magnet school or
23 program, or recommend that the school should be given more time and how much more time
24 should be allowed for the school to reach the missed improvement bench mark. The parties
25 will be afforded an opportunity to object to any recommendation by the Special Master that
26 magnet status be withdrawn from a school.

1 The Special Master, in consultation with TUSD, shall consult prepare a logical
2 schedule for data gathering and reporting by TUSD necessary to enable him to monitor the
3 Implementation Plans and report to the Court.⁸ In four months, TUSD shall file a Revised
4 CMP, which shall be a comprehensive gathering together of the relevant information,
5 including the Improvement Plans. The CMP should be a one-stop, road map for future
6 review by the Parties, the Special Master, the TUSD schools, this Court, and the public.

7 **Accordingly,**

8 **IT IS ORDERED** that the recommendations in the R&R (Doc. 1721, 1730) filed
9 by the Special Master are adopted in part and denied in part.

10 **IT IS FURTHER ORDERED** that the District shall file a Revised CMP, including
11 Improvement Plans, within 4 months of the filing date of this Order.

12 **IT IS FURTHER ORDERED** that the District, in consultation with the Special
13 Master, shall work with its schools to prepare the Improvement Plans over the next three
14 months, which shall identify clear and specific annual bench marks for attaining magnet
15 status by SY 2016-17. The Special Master shall monitor compliance by each school
16 regarding its Improvement Plan. The Special Master shall file reports as necessary with the
17 Court identifying any failure to attain a requisite benchmark, and may accordingly
18 recommend eliminating a magnet school or program, or recommend that the school should
19 be given more time and how much more time should be allowed for the school to reach the
20 missed improvement bench mark. The parties will have 30 days from the filing date of any
21 recommendation that magnet status be withdrawn to file a Response. The Special Master
22 shall file a Reply within 15 days of the filing date of any Response.

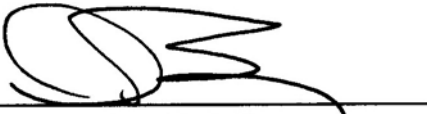
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26 ⁸The Special Master may work with the Magnet Department to ensure any Monthly
27 Magnet Report covers the data he will need for overseeing the Improvement Plans. (CMP
28 (Doc. 1730-2) at 20.)

1 **IT IS FURTHER ORDERED** that within 15 days of the filing date of this Order,
2 and after consulting with TUSD, the Special Master shall file the schedule for the gathering
3 of data and information necessary for him to monitor the Implementation Plans.

4 DATED this 14th day of January, 2015.

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9 David C. Bury
10 United States District Judge
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