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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Roy and Josie Fisher, et al.,
13
14 Plaintiffs

15 v.
16 United States of America,
17
18 Plaintiff-Intervenor,

19 v.
20 Anita Lohr, et al.,
21
22 Defendants,

23 and
24 Sidney L. Sutton, et al.,
25
26 Defendants-Intervenors,

27 Maria Mendoza, et al.
28
29 Plaintiffs,

30 United States of America,
31
32 Plaintiff-Intervenor,

33 v.
34 Tucson Unified School District No. One, et al.
35
36 Defendants.

CV 74-90 TUC DCB
(Lead Case)

**NOTICE AND REQUEST FOR
APPROVAL OF GRADE
EXPANSIONS AT
FRUCHTHENDLER
ELEMENTARY SCHOOL AND
SABINO HIGH SCHOOL**

CV 74-204 TUC DCB
(Consolidated Case)

1 The Tucson Unified School District, No. 1 (“TUSD” or the “District”), by and
2 through undersigned counsel, submits this Notice and Request for Approval for: (1) adding
3 a 6th grade component to Fruchthendler Elementary School (currently a K-5 school); and (2)
4 adding 7th and 8th grade components to Sabino High School. Both actions were approved
5 by TUSD’s Governing Board on February 10, 2015. *See* Declaration of Martha Taylor
6 (Taylor Decl.), ¶8, Exhibit 6, Minutes and Presentation Materials from Governing Board
7 meeting on February 10, 2015. This request is made pursuant to the January 6, 2012 Order
8 Appointing Special Master (ECF No. 1350) and this Court’s August 22, 2012 Order (ECF
9 No. 1385). The proposal seeks both to retain students who have been choosing non-TUSD
10 options (such as adjacent districts and charter schools) and to attract new entrants to TUSD
11 from nearby non-District schools. The District’s analysis, discussed in its March 4, 2015
12 “Response to Objections and Request for Approval,” indicates that the proposal will
13 generate new Average Daily Membership (ADM) revenue for the District as a result of
14 retained/recruited students without causing an adverse impact on desegregation. *See* Taylor
15 Decl., ¶12, Exhibit 9, “Response to Objections and Request for Approval.”

16 **Background**

17 A high percentage of middle-school aged students living in the area surrounding
18 Fruchthendler Elementary School (“Fruchthendler”) and Sabino High School (“Sabino”) do
19 not attend TUSD schools for grades 6 through 8. Some area students attend the nearest
20 TUSD middle school, Magee, but many students who leave TUSD after fifth grade for
21 middle school outside the district do not return at all. As a result, TUSD loses funding, and
22 the decline of its Anglo student population is exacerbated (thereby frustrating efforts to
23 recruit Anglo students to other TUSD schools for integration purposes).

1 In the fall of 2014, the principals of Fruchthendler and Sabino engaged in grass-roots
2 discussions with their respective communities and site staff for options on how to address
3 the aforementioned issues. One idea was to turn Fruchthendler into a K-8 school, but the
4 school was not large enough for such an expansion. After conducting staff surveys, holding
5 meetings with site staff members, and preparing research, the principals jointly developed a
6 proposal to expand Fruchthendler from a K-5 school to a K-6 school, and to expand Sabino
7 from a conventional 9-12 grade high school to add a separate 7th and 8th grade component.
8

9 On January 26, 2015, the Special Master communicated to the parties his
10 understanding that TUSD was considering grade expansions at these sites, that TUSD had
11 engaged in a Desegregation Impact Analysis (DIA), and that TUSD would share the
12 information (and consult with the Plaintiffs) if the Governing Board expressed support for
13 the proposal. The Special Master encouraged TUSD to give the Plaintiffs a “heads up
14 early.” See Taylor Decl., ¶3, Exhibit 2, Emails from the Special Master on January 26,
15 2015.¹
16

17 On January 27, 2015, the Fruchthendler and Sabino principals jointly presented an
18 information item (meaning no action was requested or required) to the Governing Board to
19 outline the proposal for grade expansions at their respective sites. The presentation included
20 a discussion of the potential enrollment impacts and the potential for retaining and even
21
22

23 ¹ Prior to knowing whether the Governing Board was interested in the proposal, and
24 prior to gathering background information, it made little sense to engage the Special Master
25 and Plaintiffs. Such “pre-engagement” is not required by the USP or by a USP-related
26 court order. In good faith, TUSD did not engage the parties on a proposal from two
27 principals. Such engagement would have resulted in dozens of staff hours and resources
28 spent responding to requests for information, and tens of thousands of dollars in legal fees
based on a proposal that had not yet been presented to the Governing Board. An expectation
that TUSD will consult with the Special Master and Plaintiffs on every principal’s idea,
before consulting with its own Governing Board, is unreasonable and impracticable.

1 recapturing students residing in the area. *See* Taylor Decl., ¶4, Exhibit 3, Minutes and
 2 Presentation Materials from Governing Board meeting on January 27, 2015.

3 On February 2, 2015, the Special Master wrote to TUSD’s Interim Senior Director
 4 for Desegregation, Martha Taylor, and indicated that his “views only count on this with
 5 respect to impact on integration...it is time to get the comment and review process
 6 underway.” *See* Taylor Decl., ¶5, Exhibit 4, Email from the Special Master on February 2,
 7 2015. It was clear to Mrs. Taylor that the Special Master was trying to work towards a
 8 resolution without burdening the court with additional filings and litigation. *See* Taylor
 9 Decl., ¶5.
 10

11
 12 On February 6, 2015, TUSD’s Director of Student Assignment Bryant Nodine, Mrs.
 13 Taylor, and the principals of Fruchthendler and Sabino met via teleconference with the
 14 Special Master to discuss the proposal for a little more than one hour. At the meeting, the
 15 Special Master indicated that keeping more students attending district schools was good, he
 16 acknowledged that no school would become more racially concentrated as a result of the
 17 proposal, he acknowledged that the proposal was not an issue of desegregation, and that he
 18 did not see any integration impediments (but did not know about any views the Plaintiffs
 19 would have). *See* Taylor Decl., ¶6.
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21
 22 On February 9, 2015, TUSD sent a preliminary DIA to the Special Master and the
 23 Plaintiffs. *See* Taylor Decl., ¶7, Exhibit 5, Email from M. Taylor to the Special Master and
 24 the Plaintiffs on February 9, 2015. As with the DIA on the “Fremont Lot” in November
 25 2014², TUSD staff concluded that the Fruchthendler-Sabino proposal had no desegregative
 26

27
 28 ² On November 18, 2014, TUSD’s Governing Board approved the sale of a vacant, undeveloped lot, the “Fremont Lot.” TUSD presented a Desegregation Impact Analysis

1 impact on surrounding schools. And, the Special Master had indicated in preliminary
 2 conversations with TUSD staff that he did not feel this was a desegregation issue, and did
 3 not see any integration impediments. So, as with the “Fremont Lot” proposal, TUSD
 4 worked with the Special Master to collaborate and try to find a non-litigious resolution.
 5

6 On February 10, 2015, TUSD staff presented a study/action item to the Governing
 7 Board, including desegregation impact analyses regarding the potential effects on racial and
 8 ethnic student enrollment at the subject schools and neighboring schools. *See* Taylor Decl.,
 9 ¶8, Exhibit 6, Minutes and Presentation Materials from Governing Board meeting on
 10 February 10, 2015.
 11

12 On February 12, 2015, in response to TUSD’s email of February 9, 2015
 13 (transmitting the preliminary DIA), counsel for the Fisher Plaintiffs emailed objections to
 14 the proposal to the Special Master and Parties. The Special Master responded as follows:
 15

16 The USP refers to the appointment order (1/6/12) for the process for objections
 17 (see pp.3-4). The district need not consult prior to making any proposal
 18 although it is desirable that it should do so. Once the district makes a proposal,
 19 plaintiffs may file objections within 20 days of receipt of the notice and the
 20 district has 20 days from receipt of the objections to respond. Following that,
 21 the special master shall make a report to the court setting forth proposed
 22 findings of fact and conclusions with respect to said notice no later than 30
 23 days after the objections and the district response to objections.

24 So, I take it that this is your formal objection and the district has 20 days to
 25 respond. We have not yet heard from the Mendoza and [sic] plaintiffs and
 26 DOJ; that may affect the actual schedule of my response. I will do what I can
 27 to expedite this matter once I hear from all of the parties.
 28

(DIA) to the Special Master and to the Plaintiffs. The DIA concluded that the action had no
 desegregative impact on surrounding schools. The Special Master had not objection to the
 sale, and counsel for the Mendozas, the Fishers, and the Department of Justice stipulated to
 the subsequently-filed Notice and Request for Approval (NARA). *See* Taylor Decl., ¶2,
 Exhibit 1, Notice and Request for Approval for the sale of the “Fremont Lot,” filed by
 TUSD on November 24, 2014 (ECF #1719).

1 See Taylor Decl., ¶9, Exhibit 7, Fisher objections from February 13, 2015. On Friday,
2 February 13, 2015, Counsel for the Fishers responded, “[y]es, please consider the email
3 dated February 12, 2015 at 5:12pm to be the Fisher Plaintiffs’ formal objection. Id. At that
4 point, TUSD was on notice that it had 20 days to respond to the Fisher objections (no later
5 than March 5, 2015), but TUSD had only submitted a preliminary DIA – not a formal
6 NARA.
7

8
9 On Friday, February 13, 2015, TUSD staff began immediately working to finalize a
10 formal request. However, on the following Tuesday, February 17, 2015, counsel for the
11 Mendozas submitted their objections via email. See Taylor Decl., ¶10, Exhibit 8, Mendoza
12 objections from February 17, 2015. At that point, TUSD was on notice that it had 20 days
13 to respond to the Mendoza objections (no later than March 9, 2015). Rather than submitting
14 a formal request, and then submitting separate responses to each party’s objections, TUSD
15 determined it would provide one comprehensive document designed to provide detailed
16 information analyzing impacts on desegregation, responding to objections and concerns,
17 and providing certain information that had been requested by the Special Master and
18 Plaintiffs. See Taylor Decl., ¶11.
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20
21 Between February 17, 2015 and March 4, 2015, TUSD staff members prepared a
22 detailed, universal response to the Fisher and Mendoza objections, and to the concerns and
23 questions raised by the Special Master. On March 4, 2015, Mrs. Taylor emailed TUSD’s
24 response and request to the Special Master and the Plaintiffs pursuant to the timeline
25 communicated by the Special Master on February 13, 2015. See Taylor Decl., ¶12, Exhibit
26 9, Email from M. Taylor and “Response to Objections and Request for Approval.”
27
28

Notice and Request

TUSD makes no substantive changes at this time to its original “Response to Objections and Request for Approval” submitted to the Special Master and Plaintiffs on March 4, 2015. *Id.*, Exhibit 9. Based on the foregoing, and based on the information contained in TUSD’s March 4, 2015 “Response to Objections and Request for Approval,” TUSD respectfully requests that the Court approve: (1) the grade expansion to add a 6th grade component at Fruchthendler Elementary School; and (2) the grade expansion to add 7th and 8th grade components at Sabino High School.

DATED this 14th day of April, 2015

TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT

s/ Samuel E. Brown
Samuel E. Brown

ORIGINAL of the foregoing filed via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case, as listed below.

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