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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB  
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

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

Defendants.

CV 74-204 TUC DCB  
(Consolidated Case)

1                                   **SPECIAL MASTER’S REPORT TO THE COURT ABOUT THE**  
2                                   **RESTRUCTURING OF FRUCHTHENDLER ELEMENTARY SCHOOL**  
3                                   **AND THE CREATION OF SABINO MIDDLE SCHOOL**

4                   **OVERVIEW**

5                   The USP, an order by the Court on August 22, 2012 and the letter appointing the Special  
6                   Master require the District to submit to the Court, the plaintiffs and the Special Master any  
7                   proposal that affects the assignment of students to schools thereby potentially affecting the  
8                   provisions of the USP. This Notice and Request for Approval (NARA) procedure (*see* Section  
9                   X.C of the USP) must include a Desegregation Impact Analysis (DIA). After reviews, comments,  
10                  and possible objections by the plaintiffs and responses by the District, the Special Master is  
11                  required to submit a report to the Court. According to the Court’s ruling on August 22, 2012  
12                  (Doc. 1385), if the Special Master opposes the Request for Approval, the Court shall set a  
13                  briefing schedule for responses from the parties. If the Special Master recommends that the Court  
14                  approve the Request for Approval, there would be no additional briefings.

15                  On February 9, 2015, USD submitted a proposal to the Governing Board to add a sixth  
16                  grade at Fruchthendler Elementary School and create a seventh and eighth grade middle school  
17                  on the campus of Sabino High School. Information presented to the Board was submitted to the  
18                  plaintiffs and Special Master on that date. This information is included in a memo to the  
19                  plaintiffs and Special Master dated March 4, 2014 (*see* Exhibit A). The Governing Board  
20                  approved the plan on February 10. The Fisher plaintiffs objected to the TUSD proposal on  
21                  February 12, 2015 (*see* Exhibits B, and B1-B6). On February 17, 2015, the Mendoza plaintiffs  
22                  also objected to the plan approved by the Governing Board (*see* Exhibit C).

23                  On March 4, 2015, the District resubmitted its original plan and a more elaborate DIA as  
24                  well as responses to concerns of the Fisher and Mendoza plaintiffs (*see* Exhibit A). The Special  
25                  Master submitted questions to the District on April 1 and April 2 to which the District responded  
26                  Master submitted questions to the District on April 1 and April 2 to which the District responded  
27                  Master submitted questions to the District on April 1 and April 2 to which the District responded  
28                  Master submitted questions to the District on April 1 and April 2 to which the District responded

1 on April 7, 2015 (*see* Exhibit D). On April 8, 2015, the Special Master prepared a summary of  
2 the report to the Court urging the District to withdraw the plan for Sabino and endorse the plan  
3 for Fruchthendler in order to avoid requiring a decision by the Court. On April 9, 2015, the  
4 Department of Justice responded saying that if the District and I agreed on implementing the  
5 Fruchthendler plan, they would not object (*see* Appendix F).  
6

7 In analyzing the initial Fruchthendler/Sabino proposal by TUSD, I have divided the issue  
8 into two parts. First is the question of whether a sixth grade should be added to Fruchthendler.  
9 The second question is whether a seventh and eighth grade middle school should be added to the  
10 Sabino High School campus. For the reasons set forth below, the Special Master supports the  
11 request for the approval of the addition of the sixth grade to Fruchthendler Elementary School and  
12 recommends that the Court not approve the Sabino proposal as presented.  
13

#### 14 **FRUCHTHENDLER**

15 In Exhibit 3 of Exhibit A, the District outlined significant educational and developmental  
16 benefits to students likely to result from the sixth grade addition at Fruchthendler. The Mendoza  
17 plaintiffs argue that if these benefits are so great, the District should be developing sixth grade  
18 additions to schools that serve greater numbers of African American and Latino students. While  
19 this is a legitimate argument, it does not undermine the benefits of adding the sixth grade to  
20 Fruchthendler. While there is a disconcerting absence of analysis of the economic benefits and  
21 costs of this addition, the information provided allows a rough estimate suggesting that the costs  
22 of the grade restructuring can readily be covered by additional state revenues per student from  
23 students who were not or would not be attending TUSD schools. Adding a sixth grade at  
24 Fruchthendler could have a small negative effect on the racial composition of Magee middle  
25 school. The District estimates that Magee would lose 10 students to the sixth grade addition at  
26 Fruchthendler, and thus the impact on the overall racial composition of Magee would be quite  
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1 small. Moreover, if the District works to introduce sixth grade students at Fruchthendler to  
2 Magee, it is possible that some of the students who would otherwise leave TUSD would attend  
3 Magee (see discussion below relating to Magee).

4 **THE SABINO MIDDLE SCHOOL PROPOSAL**

5 The Special Master recommends that the Court not approve the District's proposal to create a  
6 middle school on the Sabino High School campus for three reasons:  
7

- 8 1. The likely negative impact on Magee Middle School.
- 9 2. The financial costs.
- 10 3. The likelihood that a Sabino middle school would have such low enrollment as to  
11 limit the educational opportunities of students who attend the school.

12 **IMPACT ON MAGEE MIDDLE SCHOOL**

13 The District argues that the creation of a middle school at Sabino will have a negligible  
14 effect on the racial composition of Magee. However, there is really no way to accurately assess  
15 the effect on racial composition based on past choices made when the Sabino option was not in  
16 the picture. It is hard to imagine that most families that live near Fruchthendler and almost all of  
17 the students who live north and east of Fruchthendler would not choose to attend Sabino rather  
18 than Magee (note that Sabino High School is an A school and Magee is a C school). Most of  
19 these students are white. As the proportion of white students decline at Magee, there is a  
20 substantial likelihood that the number of white families now choosing Magee would decrease  
21 exponentially. In short, I believe that establishing a Sabino middle school would likely reduce the  
22 opportunities over time for students in Magee to experience an integrated education.  
23

24 Since white families are more likely to have higher incomes than Latino and African  
25 American families, the loss of white students would change the socioeconomic demographics of  
26 Magee. And, since the economic and educational backgrounds of students' families are highly  
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1 correlated with student achievement, the overall achievement of students at Magee is likely to  
2 decline if a middle school is established at Sabino.

3 **COSTS**

4 While the District is not proposing to use 910 G funds on the development and continuing  
5 operation of the proposed Sabino middle school, funds invested in the Sabino option will come  
6 from scarce resources that could be invested in pursuing the goals of improving the quality of  
7 education and the levels of integration throughout the District. Indeed, the District has recently  
8 indicated that it might be necessary to back away from some commitments of matching funds to  
9 facilitate the implementation of reading programs to be supported in some schools from 910 G  
10 funds.  
11

12 The District indicates that about \$230,000 would be necessary to renovate Sabino and that  
13 there would be additional costs of about \$260,000 per year in increased transportation costs. But  
14 these are not the only costs that would be involved. Teachers, administrators and other staff  
15 would need to be hired. Because of the small size of the school (see below), there are likely to be  
16 inefficiencies – as the District has argued when it has proposed closing small schools. To be sure  
17 some teachers and staff could be transferred from Magee as its enrollment declines, but the  
18 District does not provide a comprehensive analysis of the costs and economic benefits of the new  
19 school (there would be increased revenue if the District captures students who are not likely to  
20 enroll in Magee or another District school).  
21

22 But whatever the cost, it is clear that this investment would not enhance integration and,  
23 as suggested, could well have a negative effect on student achievement of the students remaining  
24 at Magee. Moreover, one might ask whether the funds that would be needed to implement a  
25 middle school at Sabino could be used to strengthen programs at Magee thereby increasing the  
26 likelihood that families that now choose not to enroll in Magee would choose Magee in the future.  
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1     **EFFECTS ON EDUCATIONAL OPPORTUNITIES**

2             While the District clearly intends that Sabino be a high-quality middle school, it would be  
3 by far the smallest middle school in the system. Even if the most ambitious of the District's  
4 estimates of student enrollment were realized, it would be only half the size of the average middle  
5 school enrollment in TUSD. There is no analysis of what the curriculum at a school enrolling  
6 170 students (the District's estimate) would look like, but unless school is overstaffed, the  
7 number of course options students would probably be limited. Moreover, professional  
8 development for teachers would be affected in a negative way and the opportunities to build  
9 teacher teams that are involved in professional learning communities would be negatively  
10 affected. Elaborate procedures are to be implemented to avoid the interaction of middle and high  
11 school students. This would limit student access to the shared library. And, it is easy to imagine  
12 that students in the middle school would want to attend athletic events at the high school.  
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15     **PROCESS ISSUES**

16             The District moved forward with these proposals without the parent and public  
17 consultations that typically accompany decisions such as these. It sought parental commitments  
18 to enroll their students at Fruchthendler without Court approval. The new middle school was  
19 publicized in ways that might lead parents to believe that this option would be available next year.  
20 The District argues that it is adhering to the established NARA procedures – which do not *require*  
21 consultation with the plaintiffs and the Special Master prior to Board action. Moreover, the  
22 District indicates that it shared the DIA with the Special Master several days before formal action  
23 by the Board.<sup>1</sup> The District asserts that this is not a boundary change and therefore is not subject  
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26             <sup>1</sup> I reviewed the proposal and at that time indicated that I did not feel that the proposal would  
27 significantly affect the integration of Magee but indicated that this was tentative and that additional  
28 analysis and the positions of the plaintiffs could lead me to a different conclusion.

1 to Board policies requiring public engagement. While the establishment of a Sabino middle  
2 school would not involve formal boundary change, the District's proposal focuses on the benefits  
3 of the middle school initiative being premised on the attractions of the site to families living in  
4 what could easily be described as the school's boundaries.

5  
6 While the Fisher and Mendoza plaintiffs object to the process and apparently<sup>2</sup> feel that this  
7 is grounds for disapproving both of the proposals, the addition of a sixth grade at Fruchthlender  
8 seems to meet the NARA procedures, narrowly defined, and, therefore should not be denied on  
9 procedural grounds.

10 Respectfully submitted,

11  
12 /s/

13 \_\_\_\_\_  
Willis D. Hawley  
Special Master

14 Dated: April 15, 2015  
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27 2 I use the term "apparently" because both the Fisher and Mendoza plaintiffs, in objecting to the  
28 overall proposal express their concerns about process without differentiating between the two parts of the  
District's proposal.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2015, I electronically submitted the foregoing SPECIAL MASTER'S REPORT TO THE COURT ABOUT THE RESTRUCTURING OF FRUCHTHENDLER ELEMENTARY SCHOOL AND THE CREATION OF SABINO MIDDLE SCHOOL for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.  
[wbrammer@rllaz.com](mailto:wbrammer@rllaz.com)

Oscar S. Lizardi  
[olizardi@rllaz.com](mailto:olizardi@rllaz.com)

Michael J. Rusing  
[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

Patricia V. Waterkotte  
[pvictory@rllaz.com](mailto:pvictory@rllaz.com)

Rubin Salter, Jr.  
[rsjr@aol.com](mailto:rsjr@aol.com)

Kristian H. Salter  
[kristian.salter@azbar.org](mailto:kristian.salter@azbar.org)

Zoe Savitsky  
[Zoe.savitsky@usdoj.gov](mailto:Zoe.savitsky@usdoj.gov)

Anurima Bhargava  
[Anurima.bhargava@usdoj.gov](mailto:Anurima.bhargava@usdoj.gov)

Lois D. Thompson  
[lthompson@proskauer.com](mailto:lthompson@proskauer.com)

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Andrew H. Marks for  
Dr. Willis D. Hawley,  
Special Master