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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenors,

v.

Anita Lohr, et al.,

Defendants,

Sidney L. Sutton, et al.,

Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS'
OBJECTIONS TO THE SPECIAL
MASTER'S REPORT TO THE COURT
ABOUT THE RESTRUCTURING OF
FRUCHTHENDLER ELEMENTARY
SCHOOL AND THE CREATION OF
SABINO MIDDLE SCHOOL (DOCKET
NO. 1790)**

Hon. David C. Bury

1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
7 al.,

8 Defendants.

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Introduction

Mendoza Plaintiffs object to the Special Master's Report to the Court About the Restructuring of Fruchthendler Elementary School and the Creation of Sabino Middle School ("F/S R&R") to the extent it (1) recommends that this Court approve the addition of a 6th grade at Fruchthendler Elementary School notwithstanding that (a) that action, as evidenced by the District's own documents, materially benefits students attending a predominantly white school even as the District fails to provide comparable benefit to students attending other of its K-5 elementary schools, including, in particular, students in K-5 schools that the USP classifies as racially concentrated because their Latino enrollment exceeds 70% of the school's total enrollment and (b) the addition of a 6th grade to Fruchthendler Elementary School will undermine efforts by the District's magnet schools to recruit white students to attend those schools, particularly given the District's announcement, unaddressed by the Special Master in the F/S R&R, that addition of the 6th grade at Fruchthendler Elementary School is part of a plan to create an east side "Fruchthendler-Sabino Honors Pipeline"; (2) discounts the objections of the Mendoza and Fisher Plaintiffs to the process that the District followed notwithstanding that that R&R itself acknowledges that the District "sought parental commitments to enroll their students at Fruchthendler **without Court approval**" (F/S R&R at 6; emphasis added); and (3) fails to address the Mendoza Plaintiffs' showing that the District's plan to create a "Fruchthendler-Sabino Honors Pipeline" that would disproportionately benefit the District's white students provided an independent basis to recommend that the District's proposal be denied in its entirety because that proposal would interfere with the District's performance of its obligations under the USP to integrate its schools to the maximum extent practicable, including, as this Court recognized most recently in its Order dated January 16, 2015 (Docket No. 1753), to integrate its magnet schools.

Mendoza Plaintiffs note that the Special Master failed to include with his filing of the F/S R&R a copy of Mendoza Plaintiffs' Additional Objections to the

Proposed Fruchthendler/Sabino Plan (“Mendoza Plaintiffs’ Additional Objections”). Accordingly, they have attached a copy of that document hereto as Exhibit A. They respectfully request the Court to give the Mendoza Plaintiffs’ Additional Objections the same weight the Court accords to the documents the Special Master filed with the F/S R&R.

Addition of a 6th Grade to Fruchthendler Elementary School Not Only Fails to Promote Integration of TUSD’s Elementary Schools; It Also Interferes with TUSD’s Performance of its Obligation to Integrate its Schools, Particularly its Magnet Schools, and Favors a Predominantly White School Over Schools in the District that Are Predominantly Latino

When the USP was adopted Fruchthendler Elementary School had the largest percentage of white students of any elementary school in the District. (See USP, Docket No. 1448-1, at Appendix C, showing a student body that in 2011-12 was 68.6% white.) That remained the case when the District filed its most recent Annual Report in October 2014. (See Annual Report, Docket No. 1686-8, Appendix II-23, p.1, showing a student body that was 68% white in 2013-14.) Fruchthendler is not an integrated school. The USP is clear that an integrated school is one in which no racial or ethnic group varies from the District average for that grade level by more than +/- 15 percentage points. (USP, Section II, B, 2.) As of the October 2014 Annual Report, the white population of Fruchthendler exceeded the percentage of white students at the elementary school grade level by 45%, the white enrollment at the K-5 grade level in the District then standing at 23%. (Annual Report, Docket No. 1686-8, Appendix-23, p.1.)¹

Yet, as stated by the District: “the objective [of the plan to add a 6th grade to Fruchthendler Elementary School] is to **attract and retain mostly Anglo students** who typically leave TUSD schools....” (TUSD Memorandum to Dr. Hawley dated March 4, 2015, attached to the F/S R&R as Exhibit A (“TUSD Memo”), at p. 2; emphasis added.)

¹ Mendoza Plaintiffs endeavored to provide a similar comparison as of the 40th day of this school year but were unable to do so because TUSD’s on line statistical information is not accessible at this time. They acknowledge that the data attached to the F/S R&R at Exhibit B4 indicates that the percentage of white students attending Fruchthendler on the 40th day of this school year stood at 65.3% but have no reason to believe its status as the elementary school with the largest percentage of white students in the District has changed since the time of the October 2014 Annual Report.

1 Therefore, it is clear that through the addition of a 6th grade to Fruchthendler Elemenatry
 2 School, the District intends to move the school even further away from being integrated
 3 than currently is the case.²

4 The District has clearly articulated the benefits to be derived by attending 6th grade
 5 in an elementary as opposed to a middle school setting and has undertaken to further
 6 enhance such benefits by announcing the creation of a “Fruchthendler-Sabino Honors
 7 Pipeline”. (See Exhibit A, at Exhibit 4 thereto, providing a copy of a post card mailed to
 8 families living in the attendance zones around Fruchthendler Elementary School
 9 announcing the “Honors Pipeline”).)

10 Attached to the Mendoza Plaintiffs’ Additional Objections (Exhibit A hereto) as
 11 Exhibit 3 is a document entitled “Sixth grade at Fruchthendler 2015-16” that was
 12 retrieved from the Fruchthendler Elemenatry School web site. After discussing the
 13 proposed curriculum, including “a focus to prepare [6th graders] for honor’s courses at
 14 Sabino,” as well as electives and after school programs to be made available to the 6th
 15 graders (Exhibit 3 at 1), the letter goes on to provide “a brief summary of research of
 16 ‘Factors Favoring Sixth Grade in Elemenary School’ ” (Exhibit 3 at 3). Among other
 17 points, the letter lists the following:

18 “Sixth graders in elementary school test higher than those in middle school.
 19 ...[R]searchers... found that sixth graders in elementary school scored higher than
 20 their peers in middle school on standardized end of grade tests. A recent study in
 the Philadelphia school system concurred with the [referenced] Duke study.

21 ² TUSD suggests that the Mendoza and Fisher Plaintiffs’ objections are based on “long-
 22 outdated demographics of the school” and that the “addition of sixth grade will not
 23 compromise the school’s integration status.” (TUSD Memo at 4.) As noted above,
 24 Fruchthendler Elementary School is not now integrated; therefore, “compromising” that
 25 status is hardly the issue. What is the issue is whether and to what extent the District’s
 26 proposal furthers integration of Fruchthendler and the District more broadly. In that
 27 regard, the data on which the District relies is not nearly as telling as it suggests. Even as
 28 the District asserts that the *percentage* of white students in the school has been declining, it
 fails to address the data relating to the actual number of students of different races and
 ethnicities attending the school. That data reveals that the actual *number* of Latino
 students attending the school has declined since the adoption of the USP while the number
 of African American students has barely changed. Appendix C to the USP (Docket No.
 1448-1) shows that in the 2011-12 school year, there were 95 Latino students enrolled in
 Fruchthendler. By this school year, the number had fallen to 88. (F/S R&R at Exhibit
 B4.) The comparable numbers for African-American enrollment are six students in 2011-
 12 and seven in 2014-15.

1 “Research reveals that school-to-school transitions negatively impact academic
2 achievement. The fewer transitions, the better chance a student has of completing
3 high school. If there is a transition into a new school for high school instruction,
4 grade 7 is preferable to transitioning in later years.

5 “Sixth graders in middle school have more behavioral problems than their peers in
6 elementary school.

7 “The researchers found that students who attended middle school in the sixth
8 grade were twice as likely to be disciplined relative to their counterparts in
9 elementary school.”

10 TUSD has more than twenty K-5 elementary schools in addition to Fruchthendler
11 Elementary School. According to the District’s October 2014 Annual Report (Docket
12 No. 1686-8, Appendix II-23, p.1), many of these schools have large Latino populations
13 and higher percentages of African American students than does Fruchthendler, and
14 numbers of them are classified as racially concentrated. So far as the Mendoza Plaintiffs
15 have been able to determine, the District’s statements concerning the benefits of having
16 students attend 6th grade in an elementary as opposed to a middle school setting have not
17 been shared with the parents of students attending those schools. Nor has the District
18 given any indication that it intends to take any action to reconfigure any of these schools
19 to provide students currently attending those schools “another choice!” (Exhibit 3 to
20 Exhibit A at 1), as it is offering the students currently attending Fruchthendler
21 Elementary School.

22 After reciting that “the objective [of the plan] is to attract and retain mostly Anglo
23 students,” the District’s March 4 Memo goes on to assert that the plan to add 6th grade to
24 Fruchthendler should be approved because it “does not endorse or encourage the
25 movement of Anglo students from other TUSD schools.” (TUSD Memo at 2.) Mendoza
26 Plaintiffs suggest that this assertion in fact establishes why the District’s plan must be
27 rejected by this Court. Notably absent from this statement is any undertaking to recruit
28 **non-Anglo** (that is, Latino, African American, and Native American) students to
Fruchthendler so that they, too, may experience the benefits of attending 6th grade in an
elementary school setting. Equally absent is any commitment by the District to provide

1 the benefits of attending 6th grade in an elementary school setting to the hundreds of
 2 Latino and African American students currently attending K-5 schools elsewhere in the
 3 District.³ Finally, the District's statement of its objective underscores that it intends to
 4 provide parents of white children additional reason to have their children attend
 5 predominantly white Fruchthendler Elementary School (with the goal, if the Sabino
 6 portion of the plan were to go forward, of later attending predominantly white (62%
 7 according to the District's October 2014 Annual Report, Docket No. 1686-8, Appendix
 8 II-23, p.2) Sabino High School) and, in the process, additional reason **not** to enroll those
 9 students in one of the District's magnet programs. Yet, as recently as January 16, 2015,
 10 when it issued its Order concerning the District's proposed magnet school plan (Docket
 11 No. 1753), this Court recognized that most of the magnet schools in the District must
 12 work aggressively to attain integrated status. This Court also recognized that:

13 [i]ntegration and student achievement are linked together because the goal of a
 14 magnet school is by definition to 'attract a racially diverse student body by
 15 creating a school so distinctive and appealing --so magnetic-- that it will draw a
 16 diverse range of families from throughout the community eager to enroll their
 17 children, even if it means having them bused to a different, and perhaps, distant
 neighborhood. To do so, the magnet schools must offer educational programs of
 high caliber that are not available in other area schools.' (2011 Magnet Study
 (Doc. 1738) at 3.)

18 Order, Docket No. 1753, at 10. The District's Fruchthendler plan offers an educational
 19 program that removes any incentive for parents of white students who have the option of
 20 attending Fruchthendler to send their children to a TUSD magnet school. Rather than
 21 approve the addition of a 6th grade to Fruchthendler Elementary School and the creation
 22 of an "honors pipeline" to predominantly white Sabino High School, this Court should
 23

24 ³ Simply by way of example, Mendoza Plaintiffs note that K-5 Maldonado Elementary
 25 School, located in the southwest quadrant of the District, like Fruchthendler, is not now
 26 being used to capacity. (See Exhibit 5 to Exhibit A which reports Maldonado at a 65.5%
 27 utilization rate as of March 21, 2014 as compared to Fruchthendler with a reported 90.2%
 28 utilization rate.) Therefore, like Fruchthendler, this school has the space to add a 6th grade.
 But, unlike Fruchthendler, it is racially concentrated with an enrollment that is 85% Latino
 according to the information filed with the District's last Annual Report. (Doc. 1686-8,
 Appendix II-23 p.1.) And, unlike Fruchthendler, its parents are not being told about and
 offered the benefits of having their children attend 6th grade in an elementary school
 setting.

1 direct the District to create comparable opportunities in the racially concentrated magnet
 2 elementary schools, including honors pipelines to the not yet integrated magnet high
 3 schools, so that they can provide the academic excellence and opportunities that will
 4 further their efforts at integration.

5 **The “Process” the District Followed with Respect to the Fruchthendler/Sabino Plan**
 6 **Provides Independent Basis to Reject the Entirety of the Plan**

7
 8 In the F/S R&R, the Special Master notes that even before it filed its Notice and
 9 Request for Approval with the Court and before the Court had had an opportunity to
 10 consider his R&R recommending against approval of at least a portion of the plan (much
 11 less Mendoza Plaintiffs’ objection to that R&R for failing to recommend against
 12 approval of the plan in its entirety), the District had announced the plan and “sought
 13 parental commitments to enroll their students at Fruchthendler without Court approval.”
 14 (F/S R&R at 6.) See also, Exhibit 3 to Exhibit A, the letter on the Fruchthendler
 15 Elementary School web site, announcing the addition of the 6th grade to that elementary
 16 school and including nothing close to a suggestion of the need for Court approval, and
 17 Exhibit 4 to Exhibit A, the postcard labeled “Fruchthendler-Sabino Honors Pipeline –
 18 Community Survey Invitation,” announcing, *inter alia*, tours of Sabino “to hear more
 19 about the outstanding programs that will be offered at Sabino” and soliciting interest in
 20 “sending your child to a newly designed honors pipeline program...culminating in your
 21 child having the opportunity to attend a 2013 National Blue Ribbon High School,” again
 22 without any suggestion of the need for Court approval.

23 In its Notice and Request for Approval of Grade Expansions at Fruchthendler
 24 Elementary School and Sabino High School (“F/S NARA”), the District devotes
 25 significant space to an explanation of why it contends it could not have consulted with
 26 the plaintiffs and the Special Master early in the process. It thereby seeks to justify the
 27 timing of its responses to the plaintiffs’ and the Special Master’s requests for information
 28 and its responses to their objections. Notably absent from that F/S NARA is any
 discussion of the fact that immediately after Governing Board approval of the plan, the

1 District commenced implementation, thereby leaving the Special Master and the
2 plaintiffs to object to a “*fait accompli*.”

3 Mendoza Plaintiffs suggest that it not only is inappropriate to put the Special
4 Master and the plaintiffs in the position of appearing to be challenging an existing
5 program (especially in a circumstance where they argued for input earlier in the
6 process); it also constitutes disrespect for this Court and its orders. Plainly, when it
7 entered an order expressly providing that the “District must provide the Special Master
8 with notice and a request for approval of...changes to student assignment patterns...”
9 (Order Appointing Special Master, Docket No. 1350, at 3), this Court did not anticipate
10 that the District would proceed to implement such changes in advance of Special Master
11 (and, where necessary, Court) approval. Yet, that is what has occurred.

12 Because the District failed to obtain approval before going forward to implement
13 its Fruchthendler-Sabino plan and failed to accord this Court’s order the respect to which
14 it is entitled, this Court should disapprove the plan in its entirety.

15 **The F/S R&R Fails to Address an Important, Additional Basis on Which to Deny
16 Approval of the Portion of the District’s Plan that Seeks to Create a Sabino “Middle
17 School”**

18 Mendoza Plaintiffs concur with all of the reasons set forth by the Special Master
19 in support of his recommendation that the Court deny approval to so much of the
20 District’s proposal as relates to the addition of 7th and 8th grades at Sabino High School to
21 create a “Sabino Middle School.” However, they believe that there is yet another
22 independent reason, not addressed by the Special Master, that also strongly supports that
23 recommendation.

24 As noted above, the District touts the proposed addition of 7th and 8th grades to the
25 Sabino site as part of “a newly designed honors pipeline program in Tucson Unified
26 School District” (Exhibit A hereto at Exhibit 4) and has stated on the Fruchthendler web
27 site that a focus of the new 6th grade will be “to prepare [all students] for honor’s courses
28 at Sabino....” (Exhibit A hereto at Exhibit 3, p. 1.) Further, as discussed more fully
above, this honors pipeline has been created with the “objective [of] attract[ing] and

1 retain[ing] mostly Anglo students....” (TUSD Memo at 2), and it is being offered in two
2 schools (Fruchthendler and Sabino) that already are predominantly white.

3 Mendoza Plaintiffs believe that the existence of such an “honors pipeline” at “A”
4 level Sabino will hasten the exodus of white students from “C” level Magee Middle
5 School that Dr. Hawley discusses at pages 4 and 5 of the F/S R&R.

6 Mendoza Plaintiffs also believe that the creation of the announced “honors
7 pipeline” in two predominantly white schools, particularly when coupled with an avowed
8 purpose to attract and retain white students (and no suggestion of any outreach to attract
9 Latino and African American students living outside the two schools’ attendance areas),
10 violates the District’s obligation to work to maximize the integration of its schools and to
11 eliminate the vestiges of its past discrimination. In this regard, they again note that the
12 creation of the “Fruchthendler-Sabino honors pipeline” is the creation of a strong reason
13 for white families to whom the plan is directed to decline to send their children to the
14 District’s magnet schools. Further, as this Court knows given its Order of February 13,
15 2015 (Docket No. 1771) relating to Advanced Learning Experiences, the USP requires
16 the District to increase the participation of African American and Latino students in a
17 wide range of programs and courses grouped together in the USP as “advanced learning
18 experiences”. The “honors pipeline” is not expressly addressed in the USP because
19 there was no “honors pipeline” when the USP was negotiated. But there can be no
20 question that it is precisely the sort of advanced learning experience which would have
21 been included in the USP had it then existed. Nor can there be any doubt that Latino and
22 African American students would benefit from the opportunity to participate in such a
23 pipeline program. Accordingly, Mendoza Plaintiffs assert, the plan should be rejected
24 on the additional ground that, as developed and marketed by the District, it is
25 inconsistent with the District’s USP obligations to provide Latino and African American
26 students meaningful access to advanced learning experiences.
27
28

Conclusion

For the reasons set forth above and in the section of the F/S R&R relating to “The Sabino Middle School Proposal”, this Court should reject the District’s plan to add a 6th grade to Fruchthendler Elementary School, 7th and 8th grades to Sabino High School, and to create a “Fruchthendler-Sabino Honors Pipeline.”

Dated: April 23, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2015, I electronically submitted the foregoing Mendoza Plaintiffs' Objections to the Special Master's Report to the Court About the Restructuring of Fruchthendler Elementary School and the Creation of Sabino Middle School (Docket No. 1790) to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I further certify that on April 23, 2015, I sent an e-mail copy of the foregoing to the following that is not a CM/ECF registrant:

Special Master
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Dated: April 23, 2015

/s/ Olia Golinder