

From: Juan Rodriguez
To: "Willis D. Hawley"; Patricia V. Waterkotte; Brown, Samuel; Anurima Bhargava; James Eichner; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky
Cc: Tolleson, Julie; Taylor, Martha; William Brammer; TUSD
Subject: RE: Dietz
Date: Wednesday, May 13, 2015 11:06:30 AM

Dear Special Master Hawley,

Mendoza Plaintiffs write in response to the District's May 8 email below. Mendoza Plaintiffs clarify that with respect to NARAs, they believe it to be reasonable for the District to do things like determine costs associated with proposed changes at its schools, and even attempt to get bids from contractors as it simultaneously seeks approval from the Court. However, the District has gone far beyond that with respect to the Dietz NARA. At its April 14, 2015 meeting, the Governing Board granted approval for the District to "proceed with contracts ...to relocate ...portable classrooms to Dietz" (April 14, 2015 Governing Board Agenda, action item #33, attached to the District's NARA filing as Exhibit 2.) This occurred weeks before the District provided Plaintiffs and the Special Master with any notice of the proposed changes at Dietz, and without so much as an acknowledgement, as far as we know, at the Governing Board meeting or in the agenda that Court approval is required. Such an acknowledgement would at least have signaled to the public that the Governing Board decision is subject to Court approval.

Moreover, contrary to the District's assertion, its own documents reveal that it did not work on "parallel tracks" or "simultaneously" seek Court approval while preparing for, but not implementing, the proposed changes. The District indicated that it first received the request for portables from Dietz's principal in mid-January. (May 1, 2015 Dietz NARA Memo (dated April 30, 2015), attached to the District's NARA filing as Exhibit 3, at 1, n.1.) Then, in February and March, central and site staff came together to develop and complete a plan for the proposed changes at Dietz. (District's NARA filing at 2.) In March, it also sought a proposal from contractors, and, as referenced above, sought and obtained Governing Board approval for the contracts on April 14, 2015. (*Id.* at 2-3.) It was only then, "[a]fter the Governing Board approved the contract, [that] staff immediately began developing the Desegregation Impact Analysis (DIA) and other information to present to the Special Master and Plaintiffs." (*Id.* at 3.) Providing the Plaintiffs and Special Master with the Dietz NARA months after the central staff began developing the Dietz plan, and weeks after the Governing Board approved a specific contract for the Dietz portables is not "simultane[ity]" or "parallel tracks."

Mendoza Plaintiffs agree with the Special Master that under the District's approach, "the Board does not have the benefit of any perspective that the plaintiffs and the SM might offer" and that "[t]he purposes of review under NARA include providing the District with input with respect to its decisions, not simply to allow a veto." (Special Master Hawley's May 8, 2015 email re: Dietz.) Mendoza Plaintiffs are now even more concerned with the lack of information provided to the Governing Board, as the District admits that it was only "[a]fter the Governing Board approved the contract, [that staff] began developing the [DIA]." (District's NARA filing at 3.) Thus, it appears that the District has acted on the Dietz NARA without any regard to or interest in the desegregation impact of its decision. Highlighting the lack of interest in such information, even if only for

informational purposes, is the fact that the Dietz contract was approved as part of a consent agenda, along with 39 other items, suggesting little time was spent discussing the NARA. If the District desires to integrate its schools in good-faith, it is of utmost importance that, as the Court recently stated specifically about NARAs, it follow “the USP requirement [to] comprehensively consider the proposal, pursuant to applicable USP criteria, in an effort to increase the integration of TUSD schools.” (Court’s May 12, 2015 Order at 5.) For these reasons, Mendoza Plaintiffs maintain their request that the Special Master report the District’s noncompliance with the USP to the Court and that he request the Court to take appropriate action.

Thanks,

Juan Rodriguez | Staff Attorney

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From: Willis D. Hawley [mailto:wdh@umd.edu]

Sent: Friday, May 08, 2015 1:17 PM

To: Patricia V. Waterkotte; Juan Rodriguez; Brown, Samuel; Anurima Bhargava; James Eichner; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky

Cc: Tolleson, Julie; Taylor, Martha; William Brammer; TUSD

Subject: RE: Dietz

The fact that the Board takes action signals to the community its intent to go forward and presents the plaintiffs and me with a practical fait accompli—that is, we are in the position of overturning a Board action. Moreover, the Board does not have the benefit of any perspective that the plaintiffs and the SM might offer. The purposes of review under NARA include providing the District with input with respect to its decisions, not simply to allow for a veto. The District includes the Board.

It would seem that the Board would not want to have its actions denied by the Court unless the intention is to build a case that the plaintiffs and the SM are usurping its functions and prerogatives. As to practicality, the only delay that is likely would be a few days should the

matter go to the Court.

The fact that the Board acted before the matter in the past was submitted seems irrelevant. In the Dietz case, the District learned in a few days that there would be objections.

Bill Hawley

From: Patricia V. Waterkotte [<mailto:pwaterkotte@rllaz.com>]

Sent: Friday, May 08, 2015 3:44 PM

To: Juan Rodriguez; Brown, Samuel; Willis D. Hawley; Anurima Bhargava; James Eichner; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky

Cc: Tolleson, Julie; Taylor, Martha; William Brammer; TUSD

Subject: RE: Dietz

Counsel/Dr. Hawley:

As it has done in the past, the District can approve contracts, obtain licenses, seek court approval, etc. simultaneously. This has been no different with the NARAs. See the attached last four NARAs filed with the Court. Each indicates the board had approved the proposal before the NARAs were filed. Clearly these actions were not implemented until Court approval was given – indeed, it was sought in every instance, and no board action stated that Court approval would be sought before implementing the action - and this one is no different.

The District agrees that it should not implement an action without required Court approval. But the idea that the District should not take any affirmative steps towards an action until the Court approves the action is unreasonable and impractical. And taking steps towards an action does not create a “fait accompli.” A fait accompli means the parties would have no option but to accept the action – which is clearly not the case here. The parties have been presented with an option to agree to the action, or to go through the formal NARA process. A proposed timeline for briefing with the Court has even been developed and presented to the parties.

Suppose the District did not take any steps and instead “worked with the SMP” for several months on every potential proposal. Then, after spending dozens of hours and multiple weeks obtaining approval from the SMP, the District put out a request for proposals only to find out a needed license cannot be obtained, or there are no reasonable bids from contractors to do the work, or the board did not support the proposal. It is entirely reasonable for the District to work on parallel tracks: seek to obtain contracts, obtain necessary licensing, and obtain court approval simultaneously. That such prudent, reasonable action can be misconstrued as an act of bad faith strains credulity.

Mendozas now ask for a report to the Court because they “do not believe the District will follow proper procedures as required by the USP and Order appointing the Special Master unless its failure to do so is brought to the attention of the Court”. To which USP or Court-Ordered

procedures do the Mendozas refer? There is no USP or Court Order directing the District not to obtain board-approval until the Court approves a NARA. To the contrary, re I(D)(1) items, the USP and related court orders expressly require the District to obtain superintendent or board approval of action plans on day 61 of the stipulated process, even before the plaintiffs file a request for an R&R, before an R&R is submitted, and long before the Court rules on the R&R. See ECF 1581 at 3. This situation is not a I(D)(1) situation, of course, but this assertion that the District is acting in bad faith before the Court approves of an action (merely by taking steps toward the action, not actually implementing it) is not supported by the orders in this case or the USP.

With this clarification, we hope the Mendozas will reconsider their request to the Special Master that this be brought to the Court's attention so that we may avoid unnecessary and costly briefing.

Thanks,

Patricia

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From: Juan Rodriguez [<mailto:jrodriguez@MALDEF.org>]

Sent: Thursday, May 07, 2015 4:48 PM

To: Brown, Samuel; Willis D. Hawley; Anurima Bhargava; James Eichner; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky

Cc: Tolleson, Julie; Taylor, Martha; William Brammer; TUSD

Subject: RE: Dietz

Dear Special Master Hawley,

I am following up on my email of yesterday below, after Mendoza Plaintiffs learned that TUSD's Governing Board approved of District contracts for the relocation of portables to Dietz in mid-

April.

In Mendoza Plaintiffs' April 7 objection to the proposed configuration changes at Sabino and Fruchthendler, they noted that "[t]ime and time again, TUSD has not waited for approval from the Court before moving forward with an initiative that in fact requires the Court's concurrence and that raises serious issues as to its good faith commitment to removing the vestiges of its past discrimination[,]" as they similarly did in their filed objection. Notwithstanding this, and that the Plaintiffs and Special Master have repeatedly asked that the District include Plaintiffs in the development of plans and initiatives early on, we now find that the District has begun implementation of the proposed relocation of portables to Dietz K-8 without following the procedures of the USP and Court Order Appointing the Special Master.

Attached is the TUSD document detailing the "Portable Relocation to Dietz K8 School" action item, and the Agenda indicating that on April 14, 2015, over two weeks before the Plaintiffs and Special Master were presented with the May 1, 2015 Dietz NARA, the Governing Board approved the District's entering into contracts with Kittle Design and Construction for the relocation of the portables to Dietz. Notably, and in contradiction to the April 14th approval, the District asserted on May 1 that "this matter just began bubbling up from the school site, so it has been brought to your attention as soon as the District had the information it believed you would want" in the hope of avoiding something like the Sabino/Fruchthendler "dustup." Highlighting the District's lack of good faith in following the required procedures is the fact that Mendoza Plaintiffs pointed out the Sabino/Fruchthendler "*fait accompli*" a mere week before the Governing Board approved the Dietz portables, and that the attached April 14th agenda item states that the Dietz plan had already "been developed and approved by the school administrators[,]" therefore suggesting that the NARA request could have been presented to the Plaintiffs and Special Master well before April 14.

Mendoza Plaintiffs do not believe the District will follow proper procedures as required by the USP and Order appointing the Special Master unless its failure to do so is brought to the attention of the Court. Mendoza Plaintiffs therefore request that the Special Master report this instance of noncompliance to the Court under USP Section X,E,6 when he files his report concerning the Dietz NARA with the Court and that he request the Court to take appropriate action.

Thank you,

Juan Rodriguez | Staff Attorney

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From: Juan Rodriguez

Sent: Wednesday, May 06, 2015 5:49 PM

To: 'Brown, Samuel'; Willis D. Hawley; Anurima Bhargava; James Eichner; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky

Cc: Tolleson, Julie; Taylor, Martha; Brammer@rllaz.com; TUSD

Subject: RE: Dietz

Dear Sam,

Mendoza Plaintiffs have reviewed the District's NARA regarding two portables sought to be added to Dietz K-8, and its responses to the Special Master's requests for information, and have serious concerns as detailed below.

First, Mendoza Plaintiffs are concerned with what appears to be implementation of major changes at schools originating at the school site level without the District's careful consideration of the District-wide consequence of those changes, and in particular, the fact that comparable benefit is not being afforded schools with larger concentrations of Latino students. At page three of its NARA, the District indicates that "[u]nder new leadership at Dietz, the K-8 has converted from its original model (self-contained 6-8th grade), to a more-traditional middle school in which students rotate from room to room for core subjects and electives." The District indicated that the CORE enrichment classes that would be provided in the portable classrooms at Dietz would "address[] an important need for 5th graders because the 5th grade to 6th grade transition is the most difficult transition during the K-12 years."

As was stated in their Fruchthendler/Sabino NARA objection, Mendoza Plaintiffs are concerned that given the benefits the District cited for the proposed Fruchthendler configuration change, that it has not sought similar configuration changes at its westside elementary schools. Similarly, Mendoza Plaintiffs are now also concerned that the CORE enrichment classes that would be provided in portables at Dietz are not being provided in a way equitable to its Latino students. The District indicates that CORE classes are provided at three westside schools and would be provided at three eastside schools (including Dietz), notwithstanding that the number of middle and K-8 schools in the westside, which is predominately Latino, far outnumber those on the eastside. Mendoza Plaintiffs request that the District address the apparent unequal access to CORE enrichment classes and the relative benefits to students in the K-8 schools of the self-contained vs. the more traditional middle school model, assuming for these purposes that notwithstanding the change advocated at Fruchthendler, it does not move more of its 6th grades into a K-6 rather than a K-8 setting. They further suggest that the District closely analyze major site-level driven changes at its schools, particularly when budgetary implications are involved as appears to be the case with the Dietz move away from a self-contained sixth through eighth grade model, to ensure that the District is taking a consistent approach in making site-level decisions and that it not find itself unable to provide comparable enrichment classes in those more heavily Latino schools because of budgetary constraints that apparently are not interfering with the current Dietz proposal.

We also seek clarification on another point. The move away from the "self-contained" model for sixth to eighth graders that has necessitated the request for CORE enrichment classes for 6th graders directly contradicts the approach the District took with Fruchthendler Elementary School, that is, seeking its reconfiguration to add 6th grade in part so as to delay the transition of its students into a traditional middle school. Mendoza Plaintiffs have trouble making sense of the District's contradictory approaches for addressing the transition of 5th graders into 6th grade in these two east side school scenarios.

Mendoza Plaintiffs are constrained to not agree with the proposed addition of two portables at Dietz K-8 without some kind of District plan to address the unequal access to CORE enrichment classes that would be perpetuated by the addition of the portables. Finally, Mendoza Plaintiffs also seek to understand whether the District is saying that there are a disproportionately large number of Exceptional Education students at Dietz (and, if so, whether it understands why that is the case) and whether there are any issues of disproportionate representation of Latino and African American students in that cohort. Further, they ask whether there are any questions of stigma or diminished status in the decision to place Exceptional Education staff in portables and to conduct testing in that location.

Thanks,

Juan Rodriguez | Staff Attorney

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From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]

Sent: Tuesday, May 05, 2015 5:04 PM

To: Willis D. Hawley; Anurima Bhargava; James Eichner; Juan Rodriguez; Lois Thompson; Rubin Salter Jr.; Zoe Savitsky

Cc: Tolleson, Julie; Taylor, Martha; Brammer@rllaz.com; TUSD

Subject: Dietz

Dr. Hawley/Counsel: please see attached our responses to the questions posed re the Dietz portables. We would like to get a stipulation from all parties to move forward with this action, please indicate your position by COB tomorrow. Thank you, Sam

Samuel Emiliano Brown
Tucson Unified School District

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