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IN THE UNITED STATES DISTRICT COURT

FOR THE 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)

RESPONSE TO FISHER PLAINTIFFS' OBJECTIONS TO TUSD'S FINAL REVISED COMPREHENSIVE MAGNET PLAN

CV 74-204 TUC DCB
(Consolidated Case)

Maria Mendoza, et al.

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.

Defendants.

Tucson Unified School District #1 ("TUSD"), by and through undersigned counsel, responds to the Fisher Plaintiffs' Objection to TUSD's Revised Comprehensive Magnet Plan (ECF 1815) as follows.

I. Introduction

On January 16, 2015, the Court entered an order requiring TUSD to file a Revised CMP in four months ("Comprehensive Magnet Plan Order"). *See* ECF 1753. The Comprehensive Magnet Plan Order also required that TUSD, in consultation with the Special Master, work with its schools to prepare individual school improvement plans during the three months following the order. Between February and May 2015, the District worked closely with the Special Master and his Implementation Committee member, Dr. Rebecca Montaño, to finalize the Revised Comprehensive Magnet Plan and its individual plans. *See* Declaration of M. Taylor ("Taylor Decl.") ¶ 2. To permit a lengthy period of time for feedback and comment, TUSD provided revised individual magnet school plans to the Special Master on March 13, 2015. Taylor Decl. ¶ 3. The time spent reviewing magnet plan issues and conferring with the superintendent, assistant superintendent, district administrators and principals is reflected in both the invoices of the Special Master (7.9 hours in February, 10.9 hours in March, 2.5 hours in April and 20 hours in May on the Revised CMP) and of Dr. Montaño (15 hours in February, 13.5 hours in March, 2.5 hours in April and 3.2 hours in May on the Revised CMP). *See* Taylor Decl. ¶¶ 4-5, Ex. A, Special Master Invoices, Ex. B, Dr. Montaño Invoices.

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On May 15, 2015, TUSD filed the Revised Comprehensive Magnet Plan and the individual magnet school plans. *See* ECF 1803. Following further collaboration, on June 11, 2015, TUSD filed the board-approved Revised Comprehensive Magnet Plan. On June 18, 2015, the Mendoza and Fisher Plaintiffs filed objections to the plan. *See* ECF 1808. In an effort to address the objections raised by the Plaintiffs, and in consultation with the Special Master, TUSD has made further revisions to the Comprehensive Magnet Plan. The nature of these revisions will require board approval. A redlined version of the revised Plan with the further revisions is attached to Martha Taylor's declaration as Exhibit C. As discussed below, the Fisher Plaintiffs' objections have been addressed either by: (1) the January Comprehensive Magnet Plan Order, or (2) modifications to the Comprehensive Magnet Plan which address the Fisher objections and the Special Master now considers those issues resolved. Accordingly, TUSD requests the Court to enter an order approving the Comprehensive Magnet Plan so that TUSD may move forward with implementation.

II. The Fisher Plaintiffs Are Re-Raising Previously Addressed Objections.

The first three objections raised by the Fisher Plaintiffs relate to: (1) the timing of withdrawal of magnet status; (2) the criteria for evaluation of magnet status (they are arguing socioeconomic measures should be included); and (3) the allegation that there are an excessive number of magnet schools in TUSD. Each of these objections was fully litigated before the court-ordered revision of the Comprehensive Magnet Plan and the objection provides no basis for revisiting the Court's prior decision. On December 9, 2014, the Special Master made a report and recommendation on several issues including: (1) whether the process for withdrawal of magnet status is "too slow; (2) whether the criteria for withdrawing magnet status should be modified; and (3) whether the Court should find that there are "too many" magnet schools in TUSD. *See* ECF 1730. TUSD briefed the issues. *See* ECF 1735. The Court's disposition of those arguments is reflected in the Comprehensive Magnet Plan Order. The Court should disregard these re-urged and previously-resolved objections in their entirety.

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Moreover, any remaining issues regarding continuing magnet funding after withdrawal of magnet status and the timing of Special Master recommendations on integration likewise have been resolved. *See* Taylor Decl. ¶ 8, Ex. E, Special Master 6/23/15 Email "Changes in the CMP" ("Magnet funding will not be continued beyond the year in which funding is withdrawn but schools that had been magnet schools will be funded as needed to meet student needs. This can exceed formula funding. [. . .] My recommendations with respect to integration will take place no later than October of the two school years remaining and recommendations relating to academic performance will be made as soon as the data from the previous year becomes available.") *See also* Exhibit C, Redlined Revised Comprehensive Magnet Plan.

III. The Board Meeting Transcript Reflects Accurate Communications on the Magnet Process

The Fisher Plaintiffs launch into a two-page, unjustified and unsupported, complaint that there is a problem in the Governing Board review process because TUSD administration purportedly failed to inform the governing board of the Fisher Plaintiffs' objections. The Fisher Plaintiffs do not identify one issue or objection they believe should have been raised to the Governing Board but was not. Indeed, the majority of the Fisher's objections are not issues the Governing Board should be reconsidering given that the Court already has put the issues of the pillars, timing, and number of magnets to rest in its January Comprehensive Magnet Plan Order.

The Fisher Plaintiffs argue specifically that TUSD leadership inaccurately represented to the Governing Board that the Special Master had expressed "conditional approval." The Fisher Plaintiffs do not explain what they meant by "conditional approval" or why that would be inaccurate. The following is the statement made at 3:36:12 in the meeting video:

> Yes ma'am. So Richard will come back up and walk us through the Magnet Plan and I believe we didn't get an email on the magnet plan. It is a study/action item and if the board feels that they have enough information I would recommend that the board consider approving the comprehensive

> magnet plan. We've been firing different renditions back and forth, the courts been looking at them back and forth. At this point, we've had a member of the special master's implementation team work side by side with former Asst. supt. Steve Holmes on this project so there's a lot of synchronicity between the special master's implementation team and the district on this and there were quite a few conversations with principals on sites with this so there's a lot of work that's gone into it. So the quicker the principals get the Board's green light to begin advertising and knowing what they're going to be held accountable for, the better they can prepare their campus plans. I just wanted to put that bug in the Board's ear. Mr. Foster please.

The phrase "conditional approval" is not used. Instead, Dr. Sanchez explains that the Comprehensive Magnet Plan was developed in collaboration with the Special Master's implementation team. This statement is accurate and is supported by the declaration of Martha Taylor and the invoices of the Special Master and his implementation committee member who each devoted many hours to working with the District on the Comprehensive Magnet Plan.

IV. TUSD Has Responded to the RFIs and There is No Exclusionary Option

TUSD responded to the Fisher Plaintiffs' request for information. *See* Taylor Decl. ¶ 8, Ex. F, TUSD Response to Fisher Plaintiffs' RFI.

The Fisher Plaintiffs object that although the District stated it would not proceed with the exclusionary option for Ochoa Elementary, that decision was not evident in the Revised Comprehensive Magnet Plan filed with the Court last month. That revision now has been made. *See* Exhibit C, Redlined Revised Comprehensive Magnet Plan. The Special Master confirmed the resolution of this exclusionary issue with all parties. *See* Taylor Decl.¶ 8, Ex. E, Special Master 6/23/15 Email "Changes in the CMP" ("There is no exclusionary option either now or in the future.")

V. Conclusion

Based on the foregoing, TUSD respectfully requests that the Fisher Plaintiffs' objections be overruled and that the Court enter an order permitting TUSD to proceed with implementation of the Revised Comprehensive Magnet Plan filed herewith.

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DATED this 26th day of June, 2015.

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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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