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9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

10 ROY and JOSIE FISHER, et al., )  
11 )  
12 Plaintiffs, )  
13 )  
14 Plaintiff-Intervenor, )  
15 vs. )  
16 ANITA LOHR, et al., )  
17 )  
18 Defendants, )  
19 SIDNEY L. SUTTON, et al., )  
20 )  
21 Defendants-Intervenors, )  
22 )

No. CV 74-90 TUC DCB  
**FISHER PLAINTIFFS' OBJECTION  
TO DEFENDANT TUSD'S  
06/11/15 FINAL REVISED  
COMPREHENSIVE MAGNET  
PLAN (CMP)**

Submitted to United States District  
Judge David C. Bury on 06/18/15

23 MARIA MENDOZA, et al., )  
24 )  
25 Plaintiffs, )  
26 )  
27 UNITED STATES OF AMERICA )  
28 )  
Plaintiff-Intervenor, )  
vs. )  
TUCSON UNIFIED SCHOOL )  
DISTRICT NO. ONE, et al., )  
Defendants. )

No. CV 74-204 TUC DCB

1 **1. FISHER PLAINTIFFS OBJECT TO TUSD’S 06/11/15 FINAL REVISED CMP**

2  
3 COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter Fisher Plaintiffs), by and  
4 through counsel undersigned, Rubin Salter, Jr. (hereinafter Fisher counsel) to object to  
5 “the Final Revised Comprehensive Magnet Plan [(hereinafter CMP)] as approved by the  
6 [Tucson Unified School District (hereinafter the District or Defendant)] TUSD  
7 Governing Board [(hereinafter GB)] on June 9, 2015” (at page 2 of document number  
8 1808). The final form of the revised CMP was entered into record by Defendant TUSD  
9 on 06/11/15 as document number 1808-3.

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11 **1.1. STATEMENT OF CASE AND FACTS**

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13 Counsel undersigned states as follows:

14 1. On 01/16/15, this Court ordered Defendant TUSD to “file a Revised CMP,  
15 including Improvement Plans, within 4 months of the filing date of this Order” (at lines  
16 10-11 of page 18 of order filed 01/16/15 as document number 1753).

17 2. On 05/15/15, in timely compliance with this Court’s 01/16/15 order,  
18 Defendant TUSD filed a copy of its “Revised Comprehensive Magnet Plan [(CMP)]  
19 together with the 2011 Magnet Study and the 20 Individual School Improvement Plans”  
20 (entered into record on 05/15/15 as document numbers 180-1803-1).

21 3. On that same date, Mendoza counsel, Juan Rodriguez circulated an email to  
22 the SM and counsel explaining that, “[i]n light of the fact that the Governing Board will  
23 review any proposed CMP changes on June 9 instead of June 2, as indicated in the  
24 District’s redlined changes to the CMP process document, (a change which Mendoza  
25 Plaintiffs are fine with), Mendoza Plaintiffs now request that the parties agree that the  
26 Special Master and Plaintiffs may have until Friday, May 29 to provide any comments  
27 and objections to the District’s filing instead of Tuesday, May 26” (see attached  
28 Rodriguez 05/15/15 email regarding CMP briefing schedule).

1           4.       On 05/17/15, the SM circulated a revised briefing schedule for the CMP,  
2 stipulating that the “District submits [the] revised CMP to the Court - May 15, 2015  
3 [whereafter the] Plaintiffs and special master provide comments and objections, if any, by  
4 May 29 [whereafter the] District decides whether to make revisions and submits to the  
5 Governing Board on June 9 [whereafter the] District submits to the Court as soon as  
6 possible [...] [whereafter the] Plaintiffs and special master submit comments to the Court  
7 within five days of Districts [sic] submission to the Court District submits reply to the  
8 Court within five days of the last submission by the Plaintiff or Special Master  
9 [whereafter the] Special master submits recommendation to the Court within five days  
10 [whereafter] The Court may decide to request additional briefings” (see attached Hawley  
11 05/17/15 email and SM CMP briefing schedule).

12           5.       On 05/18/15, Mendoza counsel Rodriguez circulated an email to the SM  
13 and counsel explaining that, “[f]or clarity, I write to confirm that each of the five-day  
14 periods in the CMP schedule include only business days. Further, to avoid any confusion  
15 in the future, I also want to confirm that the parties each have seven business days after  
16 submission of your recommendation to the Court to file objections (with no additional  
17 time for electronic/mail filing), if any” (see attached Rodriguez 05/18/15 email regarding  
18 CMP briefing schedule).

19           6.       On 05/29/15, the Fisher and Mendoza Plaintiffs submitted their respective  
20 comments on and objections to the District’s revised CMP (see attached 05/29/15 Fisher  
21 and Mendoza comments and objections). Fisher counsel also submitted an urgent request  
22 for information (RFI) necessary to the evaluation of the revised CMP (see attached Fisher  
23 05/29/15 CMP RFI).

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1           7.       On 06/10/15, District counsel Sam Brown circulated an email to the SM  
2 and counsel explaining that the District was “preparing to file [the final, revised version  
3 of the] CMP approved by Governing Board at [its 06/09/15] meeting, and would like to  
4 reference (and notice for the Court) the agreed-upon briefing schedule. However, after  
5 Dr Hawley sent his memo on May 17, 2015, the Mendozas asked for two minor  
6 modifications [...]. TUSD agrees to the modifications” (see attached Brown 06/10/15  
7 email regarding stipulation to CMP briefing schedule).

8           8.       On that same date both Mendoza counsel Rodriguez and DOJ counsel Zoe  
9 Savitsky circulated separate email stipulations to the modified CMP briefing schedule on  
10 behalf of their respective parties (see attached 06/10/15 Rodriguez and Savitsky emails  
11 regarding Mendoza and DOJ stipulation to CMP briefing schedule).

12           9.       On 06/11/15, SM Hawley circulated an email stipulation to the revised  
13 CMP briefing schedule (see attached Hawley 06/11/15 email regarding SM stipulation to  
14 CMP briefing schedule).

15           10.      On 06/12/15, Fisher counsel circulated a conditional email stipulation to the  
16 revised CMP briefing schedule, explaining that “[t]he Fisher Plaintiffs are willing to  
17 stipulate to the expedited CMP briefing schedule as modified per Juan’s  
18 recommendations. This stipulation is made in the interest of moving ahead with the  
19 filing and implementation of the CMP, and in the understanding that the District’s  
20 forthcoming response to the Fisher [05/29/15 CMP] RFI will occur, if not by 06/12/15,  
21 then certainly in advance of the deadline for responding to the SM’s CMP R&R” (see  
22 attached Salter 06/12/15 email regarding Fisher stipulation to CMP briefing schedule  
23 emphasis added).

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1           11.    On 05/31/15, 06/02/15 and again on 06/03/15, SM Hawley circulated his  
2 comments on the Fisher and Mendoza Plaintiffs' 05/29/15 objections to the CMP,  
3 explaining that having "the opportunity to review the comments of the Fisher and  
4 Mendoza plaintiffs on the CMP [...] helped [him] clarify [his] thinking about the districts  
5 [sic] most recent plan" (see attached 05/31/15, 06/02/15 and 06/03/15 SM comments on  
6 plaintiff objections to CMP).

7           12.    In his 05/31/15 comments, SM Hawley explained that "[a]s the Fisher  
8 plaintiffs point out, the district should clarify what it means when it says that magnet  
9 funding will be continued for a year after magnet status is discontinued. This clearly  
10 makes no sense. First, if a school's magnet status is no longer in place, those  
11 expenditures need to sustain that status should be withdrawn. Second, it is important to  
12 recognize, as the district has in my conversations with staff and as the Fisher plaintiffs  
13 observe, withdrawal of magnet status because of poor academic performance means that  
14 students in that school deserve resources needed for school improvement. This is  
15 different from the magnet funding that the school had enjoyed but that clearly had not  
16 made much of a difference in school improvement. Third, those instances where magnet  
17 status is being withdrawn because the school is not making adequate progress with  
18 respect to integration, a different calculation is needed [...]. So, the district should reword  
19 this aspect of the CMP to indicate that if magnet status is withdrawn, the funding needs  
20 of the school involved would be reevaluated" (see attached 05/31/15 SM comments on  
21 plaintiff objections to CMP).

22           13.    In his 06/02/15 comments, SM Hawley explained that "[t]he Fisher  
23 plaintiffs argue that continuing to support schools the District has identified as  
24 'problematic' is wasteful and unproductive. I do believe that the loss of magnet status by  
25 these schools, as well as others, is very likely. The District, and particularly the  
26 Governing Board, has been unwilling to take relevant action" (see attached 06/02/15 SM  
27 comments on plaintiff objections to CMP).

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1           14.    On 06/11/15, Defendant TUSD filed a copy of “the Final Revised  
2 Comprehensive Magnet Plan as approved by the TUSD Governing Board on June 9,  
3 2015” (at page 2 of document number 1808 with the CMP entered into record as  
4 document number 1808-3).

5           15.    On 06/13/15, SM Hawley circulated a memorandum raising his concerns  
6 with District staff misrepresentations regarding plaintiff and SM feedback on the CMP.  
7 The misrepresentations were made before the TUSD GB in support of the  
8 Superintendent’s recommendation that the GB approve the CMP (see attached SM  
9 06/13/15 memorandum). Specifically, the SM explained that “[a]t the June 9 meeting of  
10 the Governing Board, the Superintendent asked for approval of the magnet plan. [The  
11 GB approved the] Plan [with a] 3 to 2 vote perhaps believing that this was a tentative  
12 endorsement. The Board did not have any budget numbers for the magnet plan and was  
13 told that the plaintiffs and the special master essentially agreed with the plan as presented  
14 in May. [I]t is not the case that I had signed off on the plan or that the plaintiffs had”  
15 (idem).

16           16.    In that same memorandum, the SM objected that “[o]n page 5, in the  
17 second paragraph, the [final revised comprehensive magnet] plan says that schools that  
18 have shown substantial progress towards integration will have until June 2017 to meet  
19 USP integration standards. That is not correct. I will be making my recommendation to  
20 the Court with respect to magnet status based on integration in October 2016. Between  
21 October and June, there is no way that a school could change its integration status”  
22 (idem). Continuing, the SM notes that, “[o]n p.9, the district says that if a school is to  
23 lose magnet status at the end of the year, its magnet funding would be continued for  
24 another year. I believe it would be appropriate to continue at least a significant part of  
25 what was magnet funding into the next year but not for magnet purposes. This may be  
26 what the district means but, if so, it should be clarified. In short, magnet level funding  
27 for school[s] losing magnet status should be repurposed and, perhaps, reduced” (idem  
28 emphasis added).

1           17.    On 06/18/15, District counsel Brown circulated an email response to the  
2 Fisher Plaintiffs' 05/29/15 CMP RFI, stating that "[o]n May 29, 2015 we received an RFI  
3 from the Fishers, attached to the comments to the CMP [...]. We have reviewed your  
4 request and provide the following response: RFI #1: the term 'Problematic' is not used in  
5 the CMP. We therefore cannot respond to your request for data related to 'Problematic'  
6 magnet schools. RFI #2: no schools are using the 'exclusionary option' - the District is  
7 not going to proceed with the 'exclusionary option' with Ochoa Elementary" (see  
8 attached Brown 06/18/15 email response to Fisher 05/29/15 CMP RFI).

9           18.    On 06/18/15, Fisher counsel replied to amend and renew the Fisher  
10 05/29/15 CMP RFI, explaining that "In reference to your 06/18/15 email response to the  
11 first request made in the Fisher Plaintiffs' 05/29/15 CMP RFI: [y]ou are correct, after the  
12 Fisher Plaintiffs submitted their CMP RFI on 05/29/15, the District did eliminate the  
13 label 'problematic' from the language of the final, revised CMP (entered into record on  
14 06/11/15 as document number 1808-3). The elimination of the label did not, however,  
15 extend to the elimination of the (now unlabelled) category of magnet schools. As you are  
16 certainly aware, the category remains and includes the same schools grouped according  
17 to the same criteria. The suggestion that the District is somehow incapable of responding  
18 to the Fisher Plaintiffs' request for information regarding this category of schools is  
19 frankly discouraging. By copy of this email, please consider the Fisher Plaintiffs'  
20 05/29/15 CMP RFI formally amended to request information regarding 'the extant  
21 category of magnet schools formerly labelled problematic.' The requested information  
22 remains relevant and necessary to the evaluation of the CMP. The Fisher Plaintiffs  
23 reiterate their expectation that the District will respond to the first half of their 05/29/15  
24 CMP RFI in advance of the deadline for filing responses to the SM's forthcoming CMP  
25 R&R (see Salter 06/11/15 email regarding stipulation to CMP briefing schedule where it  
26 states that '[t]he Fisher Plaintiffs are willing to stipulate to the expedited CMP briefing  
27 schedule [...] in the interest of moving ahead with the filing and implementation of the  
28 CMP, and in the understanding that the District's forthcoming response to the Fisher RFI



1 will occur, if not by 06/12/15, then certainly in advance of the deadline for responding to  
2 the SM's CMP R&R' with emphasis added). In reference to your 06/18/15 email  
3 response to the second request made in the Fisher Plaintiffs' 05/29/15 CMP RFI: [t]he  
4 CMP filed 05/15/15 as document number 1803 provides at page 10 that: '[t]he District  
5 created an exclusionary option for schools that are highly performing but have little  
6 chance of integrating. The District selected Ochoa for this exclusionary option. This  
7 option, called Lighthouse, involves creating a lab school environment where highly  
8 successful teachers share their expertise and classrooms as models. As a Lighthouse  
9 School, Ochoa would no longer be a magnet school and would accept only open  
10 enrollment and neighborhood students. The school would continue to receive magnet  
11 funding for three years beginning in 2015-16.' If, as you state in your email response to  
12 the Fisher 05/29/15 CMP RFI, 'the District is not going to proceed with the 'exclusionary  
13 option' with Ochoa Elementary,' then that decision is not evident in the language of the  
14 CMP on record with the Court as document number 1808-3, which document provides at  
15 page 5 that: 'The District created an exclusionary option for schools that are highly  
16 performing but have little chance of integrating. The District selected Ochoa for this  
17 exclusionary option. This option, called Lighthouse, involves creating a lab school  
18 environment where highly successful teachers share their expertise and classrooms as  
19 models. As a Lighthouse School, Ochoa would no longer be a magnet school and would  
20 accept only open enrollment and neighborhood students. The school would continue to  
21 receive magnet funding for three years beginning in 2015-16' (at page 5 of document  
22 number 1808-3). If you are suggesting that the District intends to revise the language of  
23 the Plan, it should amend its filing accordingly. Absent such amendment, the Fisher  
24 Plaintiffs must assume, in drafting their response to the CMP, that the wording of the  
25 filing on record accurately reflects the District's plans for its magnet schools. Whatever  
26 the District's plans for Ochoa, the Fisher Plaintiffs must assume that the 'exclusionary  
27 option' remains an option the District may choose to exercise at some later date and that  
28 the Fisher Plaintiffs' request for information regarding 'schools that would meet the



1 criteria for the ‘exclusionary option’ remains, therefore, relevant and necessary to the  
2 evaluation of the CMP. On that basis, and by copy of this email, the Fisher Plaintiffs  
3 formally reiterate their expectation that the District will respond to the second half of  
4 their 05/29/15 CMP RFI in advance of the deadline for filing responses to the SM’s  
5 forthcoming CMP R&R.’ (see attached Salter 06/18/15 email reply to Brown 06/18/15  
6 email response to Fisher 05/29/15 CMP RFI).

7 19. On 06/18/15, the Fisher Plaintiffs filed the instant objection to the District’s  
8 06/11/15 final revised CMP.

## 9 10 **1.2. THE FISHER PLAINTIFFS OBJECT TO THE DISTRICT’S CMP**

11  
12 The Fisher Plaintiffs have conducted a careful review of Defendant TUSD’s final revised  
13 CMP. The final revised form of the CMP was approved by the TUSD GB at its 06/09/15  
14 meeting and entered into record on 06/11/15 as document number 1808-3. Based on that  
15 review, and in addition to the substantive and procedural concerns raised below, the  
16 Fisher Plaintiffs strenuously object to the Plan’s unjustifiably extended timelines for the  
17 withdrawal of magnet status and the redirection of funding. The Fisher Plaintiffs are  
18 extremely concerned that the CMP fails to take timely action to withdraw magnet status  
19 and redirect magnet funding away from the five schools identified as formerly identified  
20 as “problematic,” (at page 6 of TUSD CMP entered into record on 06/11/15 as document  
21 number 1808-3). The CMP clearly fails to honor its obligations under the Court’s  
22 01/16/15 order and the governing language of the Unitary Status Plan (hereinafter USP)  
23 where it proposes to waste, for another two school years,<sup>1</sup> a major portion of its limited  
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25 <sup>1</sup> Although it is not completely clear from the wording of the Plan, it seems that even if  
26 the Special Master (hereinafter SM) decides in the Fall of 2015 that the five magnet  
27 schools formerly labelled “problematic” should - as the District predicts in its Plan (at  
28 page 5 of document number 1808-3) - have their magnet status withdrawn, the District

1 magnet budget at magnet schools it predicts will do nothing to aid integration. Whatever  
2 political considerations may have given rise to this planned inaction, the current iteration  
3 of the Plan must fall in the face of federal law where it would delay the much-needed and  
4 long-awaited overhaul of the District’s magnet programs. Justice delayed is justice  
5 denied and where - as here - a District operates under the jurisdiction of a federal  
6 desegregation order, it must implement its remedial desegregation plan with all due  
7 speed.

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9 **1.2.1. Withdrawal of magnet status and redirection of funding must be timely**

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11 The version of the magnet plan of action entered into record on 05/15/15 stated that the  
12 twenty current magnet schools had been classed into three normative categories on the  
13 basis of the schools respective (1) state letter grade and (2) likelihood of meeting USP-  
14 mandated integration requirements. The three categories were labelled “maintaining,”  
15 “intermediate” and “problematic.” The 05/15/15 plan of action further explained that  
16 “Problematic [schools are] (C or D schools with little chance of meeting the integration  
17 requirements of the USP” (at pages 10-11 of document number 1803 filed 05/15/15). Of  
18 the District’s twenty magnet schools, five (Cragin, Pueblo, Holladay, Robison and  
19 Utterback) are grouped in the category labelled “problematic” in the 05/15/15 version of  
20 the CMP. That category of schools is identified as likely to have magnet status and  
21 funding withdrawn. The 06/11/15 version of the CMP includes a table showing the same

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23 will continue to allocate magnet funding to those schools all the way through the end of  
24 the following 2016-17 school year (hereinafter SY). If this is in fact the policy actually  
25 being proposed (and again the wording of the Plan is ambiguous on this point), then the  
26 Plan all but ensures that the status quo will remain undisturbed up and probably following  
27 to the District’s likely motion for unitary status at the end of the 2016-17 SY, which  
28 would clearly defeat the purpose of the CMP.

1 three categories of schools (formerly labelled “maintaining,” “intermediate” and  
2 “problematic”), but without their identifying labels. The third category of magnet  
3 schools includes the same five schools, assumedly categorized according to the same  
4 performance criteria (at page 6 of document number 1808-3 filed 06/11/15). Thus, the  
5 categorization of the schools remains identical in both versions of the CMP. The third  
6 category of schools is still identified as likely to have magnet status and funding  
7 withdrawn. Not now, not over the Summer, not even at the end of the upcoming 2015-16  
8 SY, but only at the end of the 2016-17 SY. In their 05/29/15 CMP RFI, the Fisher  
9 Plaintiffs asked the District to provide the percentage of the overall magnet budget for the  
10 2014-15 SY and the 2015-16 SY allocated to these schools. The magnet plan of action  
11 states that “[p]roblematic schools have been granted magnet funding for the 2015-16  
12 school year. This funding is to be allocated towards student achievement [...]. After  
13 analysis of 2015-16 40th day enrollment data, these schools are highly likely to have  
14 magnet status withdrawn” (idem emphasis added). The plan further specifies that, “[i]n  
15 the Fall of 2015, the Special Master will review 40th day enrollment data to determine  
16 whether magnet schools have met the USP integration goal for incoming grades and  
17 cohorts beginning with those grades that began in 2014-15. This analysis will be the first  
18 determining factor in identifying which magnet program will be eliminated at the end of  
19 the 2015-16 school year” (idem at 12). However, the plan then states that “[i]f a magnet  
20 is eliminated at the end of the year due to achievement deficits, the school will receive  
21 the magnet funding allocated during the budgeting process for the following year [and]  
22 [s]tudents attending the school under magnet status will receive transportation until they  
23 reach the highest grade at that school” (idem). Thus, the action plan acknowledges that,  
24 as we stand at the end of the 2014-15 SY, the District has already concluded - on the one  
25 hand - that fully five of the District’s twenty magnet “schools [enrolling a significant  
26 percentage of the total number of students attending magnet schools] are highly likely to  
27 have magnet status withdrawn” (idem) and - on the other - that these clearly ineffective  
28 magnet schools should continue to drain a significant percentage of the District’s overall

1 magnet budget (what percentage exactly should be determined by the District’s response  
2 to the accompanying RFI), not just through the end of 2015, but all the way through the  
3 end of the 2016-17 SY. The internal inconsistency apparent in these two conclusions (the  
4 first evidence-based and logical, the second frankly unfathomable) suggests that the  
5 integrity of the District’s plan was compromised in the face of political pressure.

6 In addition to the magnet schools formerly labelled “problematic,” the CMP also  
7 recognizes that Ochoa ES is not a feasible magnet and has, therefore, taken an  
8 “exclusionary option” (idem at 5).<sup>2</sup> Unfortunately, on the basis of the CMP, it is not clear  
9 what criteria were used to select Ochoa for the “exclusionary option” and whether the  
10 application of those same criteria to other current magnets would recommend the same  
11 option. The Plan also fails to state whether such criteria were applied systematically to  
12 all current magnets and - if so - with what result and - if not - why not. These are all  
13 questions raised, but not answered, by the CMP. Without the information requested in  
14 their 05/29/15 CMP RFI, the Fisher Plaintiffs are compelled to object to the current draft  
15 of the CMP. Together with the five magnet schools formerly labelled “problematic” and  
16 already recognized as likely to lose their magnet status, the Fisher Plaintiffs have no way  
17 of knowing exactly how many of the District’s twenty magnets would qualify for  
18 inclusion in the category formerly labelled as “problematic” or meet the criteria for the  
19 “exclusionary option.” Without a timely response to their CMP RFI, the Fisher Plaintiffs  
20 must conclude that a significant percentage of the District’s twenty magnets may well not  
21 pass muster as magnets, and yet somehow inexplicably remain identified and funded as  
22 magnet schools. Should this prove true, it would obviously undo the remainder of the  
23 CMP. It is undeniable that changes to schools, however well-intentioned and -justified,  
24 however good or bad, are likely to incur stakeholder resistance. But delaying changes  
25 already recognized as necessary, such as the withdrawal of magnet status at the five

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27 <sup>2</sup> See Fisher Plaintiffs’ discussion *infra* at pages 17-19 of the District’s apparent informal  
28 assertion that it has since reconsidered its plans for Ochoa.

1 schools formerly labelled “problematic” and identified as “highly unlikely” to succeed as  
2 magnets means that the remaining time left before the District is authorized to move for  
3 unitary status will be needlessly wasted and thousands of students will continue to attend  
4 what can only be characterized as sham magnet schools. Any private business  
5 identifying problems of this magnitude, but deciding to wait more than two years to make  
6 the necessary changes would soon go bankrupt. If the District’s leadership can muster  
7 the political will to make the necessary changes in a timely manner, then it must fall to  
8 the SM and the Court to intervene and ensure that the changes are made and made while  
9 there is still time to verify (and just trust) that the District’s magnet plan is effective  
10 before the District moves for unitary status. Beyond “maintain[ing] basic school  
11 functions,” schools likely to lose magnet status are likely to have high concentrations of  
12 low SES minority students - exactly the student population that requires extra support to  
13 overcome the challenges detailed in Professor Gary Orfield’s 2014 memorandum on the  
14 benefits of integration. The Fisher Plaintiffs believe that these schools be targeted for  
15 additional assistance to counterbalance the challenges they face. That assistance,  
16 however, will be part of a zero-sum funding equation where the opportunity to  
17 “magnetize” a school will come at the cost of implementing viable educational  
18 interventions that are not naively predicated on a school’s wan hopes of succeeding as a  
19 magnet. There are magnet school sites that are simply not conducive to attracting diverse  
20 enrollment (whether because of parental perceptions of the safety of the neighborhood or  
21 because of travel times). With a number of centrally located school sites sitting in disuse,  
22 the Fisher Plaintiffs believe TUSD should begin migrating student enrollment into more  
23 readily integrated sites (whether by reopening closed central campuses, closing peripheral  
24 campuses or expanding central campuses).<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>3</sup> See the Fisher Plaintiffs’ attached 06/13/14 proposal regarding “[f]actors considered to  
27 identify closed schools as candidates for use as centrally located magnets [and] [c]losed  
28 schools (with candidates for use as centrally located magnets appearing in bold).”

1 **1.2.2. Evaluation of magnets should include socioeconomic measures**

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3 The Fisher Plaintiffs believe that, to be effective under the requirements of the USP, a  
4 magnet school will serve students who would otherwise attend ethnically and racially  
5 imbalanced schools and - by virtue of the siting and targeted marketing of the magnet -  
6 will offer those students the benefit of attending an integrated and academically excelling  
7 school. The use of a dynamic measure of the impact of the magnet on student enrollment  
8 and achievement might well mean that a “C” school working with a high percentage of  
9 low SES students is actually making a greater contribution to the integration of the  
10 District than an “A” school working with higher SES students. Any fair and useful  
11 assessment of magnets will have to capture that distinction. It is not clear from the CMP  
12 that the current evaluation of magnets isn’t biased in favor magnets working with  
13 relatively less challenged student populations. The Fisher Plaintiffs believe this warrants  
14 further investigation and modification of the CMP if the concerns are proven valid.

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16 **1.2.3. Tension between quality and quantity of magnets warrants further evaluation**

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18 There is inherent tension between the equally laudable goals of reaching as many  
19 students as possible and of sufficiently concentrating limited resources to fully support  
20 magnets. The CMP seems to favor the former over the latter goal. It might be  
21 worthwhile to identify criteria to use to assess whether this is really the optimal use of  
22 limited funds (as opposed to increasing funding at a smaller set of magnets or striking  
23 some balance between the two goals).

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1 **1.2.4. TUSD staff misrepresented plaintiff and SM feedback on CMP to TUSD GB**

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3 At its 06/09/15 meeting, the TUSD GB voted to approve the final revised version of the  
4 CMP on the recommendation of TUSD Superintendent Sanchez.<sup>4</sup> While it is certainly  
5 appropriate for TUSD staff to make recommendations to the GB, the Fisher Plaintiffs are  
6 extremely concerned that the GB was not presented with (or so much as informed of the  
7 existence of) the substantial body of plaintiff and SM feedback calling for further  
8 revision of CMP. The Fisher Plaintiffs believe that this is not an isolated incident, but is  
9 rather a recurring and major flaw in the review process that should be addressed by this  
10 Court. The GB itself has questioned the adequacy of the review process. Specifically,  
11 TUSD GB member Michael Hicks expressed concern with approving the CMP before the  
12 Plan was reviewed in light of plaintiff and SM feedback. In response, Superintendent  
13 Sanchez inaccurately claimed that the CMP already enjoyed the SM’s conditional  
14 approval (after 3:36:12 in the video of the TUSD GB’s 06/09/15 meeting). TUSD GB  
15 member Mark Stegeman objected that “a magnet plan without budgets attached [...]”  
16 seems hard to interpret [...]. We have not received any indication of what is the funding  
17 that goes with these designations, so [...] I’m a little uncomfortable approving a magnet  
18 plan in the absence of budgets” (idem). GB member Stegeman then reiterated GB  
19 member Hicks’ concern about approving the CMP without first benefitting from SM and  
20 plaintiff feedback. In fact, GB member Stegeman explicitly asked whether the plaintiffs  
21 were satisfied with the Plan. In response to his inquiry, TUSD staff inaccurately claimed  
22 that “[the plaintiffs] received [the CMP] in May and [the District] received comments and  
23 they were all favorable” (idem emphasis added).” Superintendent Sanchez agreed with  
24 that claim. The GB then voted 3 to 2 to approve the Plan (with Stegeman and Hicks in  
25 the minority). A cursory review of the video footage of the GB meeting shows that

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27 <sup>4</sup> At 3:36:12 of video footage of 06/09/15 TUSD GB presentation and vote on the CMP  
28 accessed at <http://www.tusd.k12.az.us/contents/govboard/gbvideo060915.html>



1 TUSD staff - wittingly or unwittingly - grossly misrepresented the nature of the plaintiff  
2 and SM feedback in its bid to fast-track the approval of the CMP. The Fisher Plaintiffs  
3 are concerned that the District's actions undermine this Court's expressed desire that the  
4 parties endeavor, wherever possible to keep the GB sufficiently well-informed to allow it  
5 to make intelligent decisions:

6 The concern is that the USP calls for the parties to work together to implement the  
7 USP, with the District having the benefit of input from the Plaintiffs before it acts.  
8 The Special Master put it best: [t]he fact that the Board takes action signals to the  
9 community its intent to go forward [...]. The purposes of review [...] include  
10 providing the District with input with respect to its decisions, not simply to allow  
11 for a veto. The District includes the Board [...]. This is true [...] the Board did not  
12 have the benefit of any perspective that the plaintiffs and the Special Master might  
13 offer [...]. [W]hen the Board acts without considering input from the Plaintiffs and  
14 the Special Master, [...] the Board has not acted consistently with the USP  
15 requirement that it consider the impact of its proposals in respect to its obligations  
16 under the USP (at pages 4-5 of order filed 06/12/15 as document number 1809  
17 emphasis added and internal quotes and citations omitted).

18 The GB's decision to approve the Plan - made without knowledge of the numerous and  
19 substantial concerns raised by the plaintiff s and the SM - has forced the plaintiffs to  
20 spend additional and unnecessary hours litigating the details of a plan that would have  
21 been resolved more efficiently and cost-effectively through continued collaboration. The  
22 actions taken by District staff to hide the feedback provided by the SM and the plaintiffs  
23 improperly divest the District's publically elected GB of its ability to knowingly and  
24 intelligently act in the best interests of its students. The Fisher Plaintiffs, for these  
25 reasons, respectfully ask this Court to sustain the their objections to the final, revised  
26 version of the CMP and further to direct the SM to develop a standard protocol to ensure  
27 that, in the future, plaintiff and SM feedback meaningfully informs the GB's actions.  
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1 **1.2.5. District’s response to respond to Fisher 05/29/15 CMP RFI is inadequate**

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3 On 05/29/15, together with their initial comments on and objection to the District’s  
4 05/15/15 CMP, the Fisher Plaintiffs submitted an “urgent request for information  
5 necessary to the evaluation of the CMP” (see attached Fisher 05/29/15 CMP RFI and  
6 Salter 05/29/15 email regarding Fisher objection to and comments on 05/15/15 CMP).  
7 On 06/11/15, Fisher counsel circulated an email stating that “[t]he Fisher Plaintiffs are  
8 willing to stipulate to the expedited CMP briefing schedule [...] in the interest of moving  
9 ahead with the filing and implementation of the CMP, and in the understanding that the  
10 District's forthcoming response to the Fisher RFI will occur, if not by 06/12/15, then  
11 certainly in advance of the deadline for responding to the SM's CMP R&R” (see attached  
12 Salter 06/11/15 email regarding Fisher stipulation to CMP briefing schedule). On  
13 06/18/15, District counsel Brown circulated an email response to the Fisher Plaintiffs’  
14 05/29/15 CMP RFI, stating that “[o]n May 29, 2015 [the District] received an RFI from  
15 the Fishers, attached to the comments to the CMP [...]. We have reviewed your request  
16 and provide the following response: RFI #1: the term ‘Problematic’ is not used in the  
17 CMP. We therefore cannot respond to your request for data related to ‘Problematic’  
18 magnet schools. RFI #2: no schools are using the ‘exclusionary option’ - the District is  
19 not going to proceed with the ‘exclusionary option’ with Ochoa Elementary” (see  
20 attached Brown 06/18/15 email response to Fisher 05/29/15 CMP RFI). The District is  
21 correct, after the Fisher Plaintiffs submitted their CMP RFI on 05/29/15, the District did  
22 eliminate the label “problematic” from the language of the final, revised CMP (entered  
23 into record on 06/11/15 as document number 1808-3). The elimination of that label did  
24 not, however, extend to the elimination of the (now unlabelled) category of magnet  
25 schools. The category is retained in the final, revised version of the CMP and includes  
26 the same schools grouped according to the same criteria. The suggestion that the District  
27 is somehow incapable of responding to the Fisher Plaintiffs’ RFI regarding this category  
28 of schools is both implausible and objectionable. In reply to the District’s inadequate

1 nonresponse to the Fisher RFI, Fisher counsel formally amended the Fisher Plaintiffs’  
2 05/29/15 RFI to request information regarding “the extant category of magnet schools  
3 formerly labelled problematic” (see attached Salter 06/18/15 email reply). The  
4 information requested from the District remains extremely relevant and absolutely  
5 necessary to the careful evaluation of the CMP. It defies credulity that the District could  
6 believe that eliminating the label from a category of schools would somehow render that  
7 category invisible and immune to further inquiry. For these reasons, the Fisher counsel  
8 renewed his request that the District would respond to the first half of the Fisher 05/29/15  
9 CMP RFI in advance of the deadline for filing responses to the SM’s forthcoming CMP  
10 R&R (see Salter 06/11/15 email regarding stipulation to CMP briefing schedule). The  
11 CMP filed 05/15/15 as document number 1803 provides at page 10 that:

12       The District created an exclusionary option for schools that are highly performing  
13 but have little chance of integrating. The District selected Ochoa for this  
14 exclusionary option. This option, called Lighthouse, involves creating a lab school  
15 environment where highly successful teachers share their expertise and classrooms  
16 as models. As a Lighthouse School, Ochoa would no longer be a magnet school  
17 and would accept only open enrollment and neighborhood students. The school  
18 would continue to receive magnet funding for three years beginning in 2015-16.

19  
20 If, as District counsel states in his email response to the Fisher 05/29/15 CMP RFI, “the  
21 District is not going to proceed with the ‘exclusionary option’ with Ochoa Elementary,”  
22 then that decision is not evident in the language of the CMP on record with the Court as  
23 document number 1808-3, which document provides at page 5 that:

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1 The District created an exclusionary option for schools that are highly performing  
2 but have little chance of integrating. The District selected Ochoa for this  
3 exclusionary option. This option, called Lighthouse, involves creating a lab school  
4 environment where highly successful teachers share their expertise and classrooms  
5 as models. As a Lighthouse School, Ochoa would no longer be a magnet school  
6 and would accept only open enrollment and neighborhood students. The school  
7 would continue to receive magnet funding for three years beginning in 2015-16 (at  
8 page 5 of document number 1808-3).

9  
10 Thus, the language describing the “exclusionary option” is identical in both versions of  
11 the CMP. If the District is suggesting that it intends, at some point in the future, to revise  
12 the language of the CMP, then it should amend its filing accordingly. Absent such  
13 amendment, the plaintiffs, the SM and this Court must assume that the wording of the  
14 filing on record accurately reflects the District’s plans for its magnet schools. Whatever  
15 the District’s current plans for Ochoa, the Fisher Plaintiffs must assume that the  
16 “exclusionary option” remains an option that the District may choose to exercise at some  
17 later date and that the Fisher Plaintiffs’ request for information regarding “schools that  
18 would meet the criteria for the ‘exclusionary option’” remains relevant and necessary to  
19 the evaluation of the CMP. For that reason, Fisher counsel renewed his request that the  
20 District respond to the Fisher 05/29/15 CMP RFI in advance of the deadline for filing  
21 responses to the SM’s forthcoming CMP R&R.

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**1.3. CONCLUSION**

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On the basis of the foregoing facts and law, the Fisher Plaintiffs respectfully ask this Court to sustain the substantive and procedural objections raised herein and direct the District to revise the CMP accordingly.

Respectfully submitted this 18th day of June, 2015

s/ Rubin Salter, Jr.

RUBIN SALTER, JR., ASBN 01710

Counsel for Fisher Plaintiffs

**2. CERTIFICATE OF SERVICE**

I declare and certify that a full, correct and true copy of the foregoing document was electronically transmitted to the CM/ECF system for filing and transmittal of a notice of electronic filing to the following CM/ECF registrants on this 18th day of June, 2015. I certify further that, on this date, the CM/ECF system’s service-list report showed that all participants in this case were CM/ECF registrants.

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