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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 MENDOZA
PLAINTIFFS' OBJECTIONS TO
TUSD'S FINAL REVISED
COMPREHENSIVE MAGNET
PLAN**

CV 74-204 TUC DCB
(Consolidated Case)

1	Maria Mendoza, et al.
2	Plaintiffs,
3	United States of America,
4	Plaintiff-Intervenor,
5	v.
6	Tucson Unified School District No. One, et al.
7	Defendants.

8 Tucson Unified School District #1 (“TUSD”), by and through undersigned counsel,
9 responds to Mendoza Plaintiffs’ Objection to TUSD’s Final Revised Comprehensive
10 Magnet Plan (ECF 1813) as follows.

11 **I. Introduction**

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

3 On May 15, 2015, TUSD filed the Revised Comprehensive Magnet Plan and the
4 individual magnet school plans. *See* ECF 1803. Following further collaboration, on June
5 11, 2015, TUSD filed the board-approved Revised Comprehensive Magnet Plan. On June
6 18, 2015, the Mendoza and Fisher Plaintiffs filed objections to the plan. *See* ECF 1808. In
7 an effort to address the objections raised by the Plaintiffs, and in consultation with the
8 Special Master, TUSD has made further revisions to the Comprehensive Magnet Plan. The
9 nature of these revisions may require further board approval. A redlined version of the
10 revised Plan with the further revisions is attached to Martha Taylor's declaration as Exhibit
11 C. As discussed below, the Mendoza Plaintiffs' objections have been addressed either by:
12 (1) modifications to the Comprehensive Magnet Plan which address the Mendoza
13 objections; or (2) the Special Master, after considering the objections, recommending that
14 no revisions be made. Accordingly, TUSD requests the Court to enter an order approving
15 the Plan so that TUSD may move forward with implementation.

16 **II. The Mendoza Plaintiffs' Objection to the USP-Compliant Deficit Model**
17 **Strategies is Largely Moot.**

18 The Mendoza Plaintiffs attempt to imply there is a USP requirement for asset model
19 strategies. There is not. The Mendoza Plaintiffs offer no expert testimony or evidence to
20 support that deficit model strategies should not be used (or what TUSD programs they are
21 defining as deficit model strategies). Instead, the Mendoza Plaintiffs rely heavily on a
22 quote from the Special Master explaining a benefit of asset model strategies. However, they
23 inexplicably omitted the last of the three sentences of the Special Master's magnet
24 memoranda where he also explained the benefits of deficit model strategies:

25
26 There are good reasons for focusing attention on building the skills and
27 dispositions of students who are falling behind and need to achieve at higher
28 levels. So, when is a strategy a deficit strategy? Some of the most successful
programs for bringing students up to speed use small group instruction and
individual tutoring... Excellent teachers almost always use student grouping

1 for specific purposes that relate to student learning needs, student interests,
 2 particular curriculum goals and other considerations. This allows teachers to
 reduce the teacher-student ratio for periods of time and engage in
 individualized instruction more.

3 *See* 1815-8 at 3 (attached to Fisher Objection). Accordingly, to the extent deficit model
 4 strategies are used, the Special Master does not reject that as an available strategy.

5 The Mendoza Plaintiffs' primary objection to use of deficit model strategies is the
 6 Revised Comprehensive Magnet Plan's reliance on paraprofessionals. ECF 1813 9-10. The
 7 Special Master's only expressed concern was to request that the District "[a]ffirm that the
 8 use of paraprofessionals to implement interventions for struggling students should be
 9 significantly limited in ways that that embody the principles outlined above." ECF 1815-8
 10 at 5. This issue is moot because the District subsequently confirmed that paraprofessionals
 11 will not be used to provide remediation for students who are underachieving. *See* Taylor
 12 Decl. ¶ 8, Ex. E, Special Master 6/23/15 Email "Changes in the CMP".

13 **III. The Comprehensive Magnet Plan Complies With This Court's Order**

14 **A. The Comprehensive Magnet Plan Includes Transportation**

15 The Mendoza Plaintiffs object to the Revised Comprehensive Magnet Plan based
 16 upon the erroneous assumption that the Plan lacked adequate student transportation to
 17 ensure that students could take advantage of the magnet programming.. However, the
 18 District already has created a comprehensive transportation plan as part of the USP
 19 requirements. This plan includes magnet schools. Nevertheless, the District has further
 20 amended the Revised Comprehensive Magnet Plan to include transportation for extended
 21 day programs. *See* Further Revised Comprehensive Magnet Plan, Ex. C; *see also* Taylor
 22 Decl. ¶ 8, Ex. E, Special Master 6/23/15 Email "Changes in the CMP" (confirmation that
 23 "transportation will be provided to all students who are involved in activities beyond the
 24 school days when individual magnet school plans call for such learning activities.")

25 **B. The Mendoza Plaintiffs' Objections to Benchmarks Are Moot**

26 Individual magnet school plans that identified goals and benchmarks not as high as
 27 the current school academic performance measures were modified. *See* Further Revised
 28

1 Comprehensive Magnet Plan, Ex. C. Accordingly, this issue is moot. *See* Taylor Decl. ¶ 8,
 2 Ex. E, Special Master 6/23/15 Email “Changes in the CMP” (confirmation that “goals for
 3 individual schools must be at least as high as the current school measures of academic
 4 performance.”)

5 **C. The Mendoza Plaintiffs’ Request that the Comprehensive Magnet Plan**
 6 **Specify Theme/Feeder Patterns Should be Rejected.**

7 Each TUSD magnet school has a magnet “theme.” Many of these themes (for
 8 example, Fine Arts or STEM) can be found at each grade level (elementary, K/8, middle,
 9 and high school). As students move to a new grade level, they may have the opportunity to
 10 “pipeline” into another school that continues their magnet theme. Pipeline students obtain
 11 priority in lottery admissions for oversubscribed schools, for example. The Mendoza
 12 Plaintiffs contend the Comprehensive Magnet Plan is flawed because it does not list by site
 13 the magnet pipelines available to students. The revised Plan already addresses
 14 comprehensive magnet programs that have specific themes for Kindergarten through
 15 twelfth grade but does not list specific schools. Magnet theme pipelines long have been set
 16 forth for public reference in an attachment to District policy. *See* TUSD Policy JFB,
 17 Exhibit JFB-E2. These theme-based pipeline patterns do not need to be duplicated in the
 18 Comprehensive Magnet Plan.

19 Moreover, the likely changes to come in magnet programming suggest that it is
 20 inadvisable to identify the feeder pattern within the current plans. The Special Master aptly
 21 explains the reasoning:

22
 23 It is desirable to identify feeder patterns for schools with common themes at
 24 different grade levels. ***But to insist on the identification of such patterns in***
 25 ***this version of the CMP seems problematic.*** A year from now it is likely that
 26 a number of current magnets will no longer have magnet status. Given the
 27 array of themes (and the weakness of some of the themes), it is not clear what
 28 the patterns would be. And, having studied magnet schools to some extent, I
 am less convinced than those who did the magnet school study for TUSD that
 pipelines have a significant effect on family choice. Indeed, as I have noted in
 other commentary about magnet schools, location, racial and socioeconomic
 composition, and perceptions of school quality often trump themes (some
 themes are seen as proxies for school quality—such as STEM).

1 See ECF 1815-7 at 2. The Special Master did not recommend TUSD make any revisions in
2 this regard and TUSD agrees none are needed.

3 **IV. The Mendoza Plaintiffs Have Failed to Point to Any USP “Inconsistencies”**

4 **A. The Tully Magnet is Consistent with the USP**

5 No doubt recognizing the applicable legal standard – that a District’s implementation
6 strategies should be invalidated only where they violate the Constitution or court order¹ –
7 the Mendoza Plaintiffs’ posture their objection to the Tully plan as an argument that the
8 GATE magnet is “inconsistent” with the USP. However, they cite no USP provision which
9 explicitly or implicitly prohibits this strategic choice to strengthen the Tully magnet
10 program by revising its theme. The Mendoza Plaintiffs complain that a GATE program
11 cannot be a magnet program and that the removal of the testing requirement will stigmatize
12 Tully students. TUSD believes that students will benefit from this program and that the
13 Mendoza Plaintiffs are splitting hairs regarding whether ALE programs and magnet
14 programs must always be mutually exclusive. International Baccalaureate (IB) programs are
15 both ALEs and magnet themes in the District. There is no limitation in the USP or
16 elsewhere in law that tracks or supports the Mendozas’ legal theory.

17 The Special Master agrees the GATE program at Tully has merit: “There is good
18 reason to believe that, given quality teaching, almost all students would benefit from the
19 types of instruction and curricula found in GATE programs. Similarly, the practice of
20 opening up AP courses to all students is generally seen to be a success.” ECF 1815-8 at 2.
21 Indeed, the Special Master’s only recommendation to TUSD regarding Tully was to
22 *enhance* funding for Tully. ECF 1815-8 at 5. TUSD has done this. *See* Tully Improvement
23 Plan, ECF 1803 at 228 (\$234,467.27 budget); *see* amended Tully Improvement Plan, ECF
24

25 ¹ *See United States v. South Bend Community School Corp.*, 511 F. Supp. 1352,
26 1360 (N.D. Ind. 1981); *see also Mendoza v. United States*, 623 F.2d 1338, 1345 (9th Cir.
27 Ariz. 1980)(“If the school officials present a plan which will correct the violations found,
28 and it does not infringe upon other rights in the process, the District Court must approve
that remedy even if the Court does not believe it was the most desirable plan which could
have been selected.”)

1 1816 at 95 (\$ 276,461.75 budget). The Special Master has approved the amended Tully
 2 Improvement Plan. *See* Taylor Decl. ¶ 7, Ex. D, Special Master 6/20/15 Email “CMP R&R”
 3 (“On the site plans, Tully looks fine. . . .”)

4 **B. Dual Language Magnets Are Not Currently Effective Tools for**
 5 **Integration**

6 The Mendoza Plaintiffs object that the Revised Comprehensive Magnet Plan does
 7 not add additional dual-language programs. In doing so, they rely on a partial USP quote,
 8 which does not require additional dual language programs. USP § II.E.3.i states (in full) that
 9 the District must:

10
 11 (i) *consider* how, *whether*, and where to add new sites to replicate successful
 12 programs and/or add new magnet themes and additional dual language
 13 programs, focusing on which geographic area(s) of the District are best suited
 14 for new programs *to assist the District in meeting its desegregation*
 15 *obligations*;

16 ECF 1713 at 10 (emphasis added).

17 Accordingly, the District must *consider* whether to add more dual language
 18 programs in order to assist its desegregation efforts. Here, TUSD determined that dual
 19 language programs were not likely to assist the District in meeting its desegregation
 20 obligations because existing dual-language schools have not been effective instruments for
 21 integration. In fact, the magnet status for one of the District’s most successful dual
 22 language programs – Davis Elementary – is in jeopardy precisely because of the school’s
 23 failure to meet integration targets. The choice not to pursue integration via new dual
 24 language magnets is well-reasoned and within the District’s discretion to make.

25 The Special Master concluded the same:

26 The Mendoza plaintiffs object to the District’s decision not to implement
 27 additional dual language programs. This is certainly a legitimate concern but
 28 it does not seem to be an issue that should be resolved in the context of the
 CMP. There are two dual language schools that are magnets. Neither is
 integrated. Other Districts have found dual language programs to be effective
 instruments for integration. TUSD has not. If neither Davis nor Roskruge,
 both of which have good reputations, cannot be integrated it seems reasonable
 for the District to conclude that adding another dual language magnet would

1 not result in increasing the number of students who have the opportunity to
attend an integrated school.

2 See ECF 1815-7 at 4. The Special Master did not recommend TUSD make any revisions in
3 this regard.

4 **C. Ochoa Is No Longer a Lighthouse School**

5 TUSD has agreed to no longer designate Ochoa as a lighthouse school. See Further
6 Revised Comprehensive Magnet Plan, Ex. C (Ochoa as lighthouse removed). Accordingly,
7 this issue is resolved. See Taylor Decl. ¶ 8, Ex. E, Special Master 6/23/15 Email “Changes
8 in the CMP”. (“Ochoa will not be a lighthouse school. . . .”)

9 **V. Individual Magnet School Improvement Plans Have Been Filed and Set For**
10 **Briefing By Agreement of the Parties.**

11 The Mendoza Plaintiffs object to the Revised Comprehensive Magnet Plan because
12 the individual magnet school improvement plans were not attached. However, the
13 individual plans were filed on June 19, 2015. See ECF 1816. As explained therein, the
14 individual plans were not filed concurrently with the Revised Comprehensive Magnet Plan
15 because, although there were no substantive programmatic changes, they needed to have
16 the accurate cost estimates vetted for each plan as part of the 910(G) budgeting process. See
17 ECF 1816. The Special Master and parties have arrived at a revised briefing schedule to
18 address the individual plans. See ECF 1817. It is hoped the Court will have approved the
19 proposed schedule by the time of this filing. Because the Mendoza Plaintiffs’ objections
20 were made without having seen the individual plans, TUSD will address any comments
21 they may have regarding them pursuant to the revised briefing schedule after the Mendoza
22 Plaintiffs have reviewed them.

23 **VI. Conclusion**

24 Based on the foregoing, TUSD respectfully requests that the Mendoza Plaintiffs’
25 non-mooted objections be overruled and that the Court enter an order permitting TUSD to
26 proceed with implementation of the Further Revised Comprehensive Magnet Plan filed
27 herewith.

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1 DATED this 26th day of June, 2015.

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17 **ORIGINAL** of the foregoing filed via the CM/ECF
18 Electronic Notification System and transmittal of a
19 Notice of Electronic Filing provided to all parties
20 that have filed a notice of appearance in the District
21 Court Case, as listed below.

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