

1 Anurima Bhargava
2 Zoe M. Savitsky (CA # 281616)
3 James Eichner (DC #460587)
4 U.S. Department of Justice
5 601 D Street, NW Suite 4300
6 Washington, DC 20004
7 Telephone: (202) 305-3223
8 zoe.savitsky@usdoj.gov
9 james.eichner@usdoj.gov
10 Attorneys for Plaintiff-Intervenor

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 ROY and JOSIE FISHER, et al.,)
10 Plaintiffs,)
11 UNITED STATES OF AMERICA,)
12 Plaintiff-Intervenor,)
13 vs.)
14 ANITA LOHR, et al.,)
15 Defendants,)
16 and)
17 SIDNEY L. SUTTON, et al.,)
18 Defendants-Intervenors.)

CIVIL ACTION
NO.: 74-90 TUC DCB
(consolidated case)

18 MARIA MENDOZA, et al.,)
19 Plaintiffs,)
20 UNITED STATES OF AMERICA,)
21 Plaintiff-Intervenor,)
22 vs.)
23 TUCSON UNIFIED SCHOOL)
24 DISTRICT NO. ONE, et al.,)
25 Defendants.)

THE UNITED STATES'
COMMENTS REGARDING THE
TUCSON UNIFIED SCHOOL
DISTRICT NO. ONE'S
COMPREHENSIVE MAGNET PLAN

1

2 **I. Introduction and Summary**

3 The United States submits the following comments regarding the Tucson Unified
4 School District No. One's ("TUSD" or "District") Comprehensive Magnet Plan ("CMP"),
5 as filed with this Court on May 15, 2015 [ECF No. 1803]. Specifically, this filing sets
6 forth the United States' position that this Court should approve the CMP if the CMP is
7 consistent with this Court's orders and with applicable federal law, and should not sustain
8 objections to the CMP that are based on disagreements over programmatic choices not
9 governed by those authorities.

10

11 **II. Background**

12 In its February 6, 2013 Order [ECF No. 1436], this Court approved the Unitary
13 Status Plan ("USP"), which included, among other things, standards for the CMP. USP §
14 (II)(E)(3) [ECF No. 1450]. Between June 2013 and July 2014, the Mendoza Plaintiffs, the
15 Fisher Plaintiffs, the United States (collectively, "Plaintiffs"), the District (collectively,
16 "Parties"), and the Special Master engaged in extensive discussions regarding the CMP,
17 exchanging multiple drafts, comments, objections, and requests for information. During
18 this time, this Court also agreed to several extensions of time to allow those ongoing
19 discussions. *See* June 7, 2013 Order [ECF No. 1477]; December 2, 2013 Order [ECF No.
20 1510]; April 2, 2014 Order [ECF No. 1572]; June 20, 2014 Stipulation [ECF No. 1627].
21 On July 15, 2014, the District's Governing Board approved the CMP.

22 On July 25, 2014, the Mendoza and Fisher Plaintiffs each requested a Report and
23 Recommendation on the CMP. Following additional comments and edits to the CMP, the
24

1 Special Master filed a Report and Recommendation regarding the CMP on November 26,
2 2014 [ECF No. 1721]; on December 9, 2014, the Special Master filed a revised version of
3 that Report and Recommendation [ECF No. 1730] (collectively, “CMP R&Rs”). This
4 Court adopted in part and denied in part the CMP R&Rs’ recommendations, and ordered
5 the District to file a Revised CMP within four months (i.e., by May 16, 2015), and to
6 consult with the Special Master during that time on individual magnet school Improvement
7 Plans. January 16, 2015 Order [ECF No. 1753] (“Jan. 2015 Order”) at 18. After the
8 exchange of further comments and edits, TUSD filed the revised CMP on May 15, 2015
9 [ECF No.1803], and filed the Board-approved CMP on June 11, 2015 [ECF No. 1808].

11 **III. Applicable Orders**

12 This Court has issued several substantive orders governing the content of the CMP:
13 its February 15, 2013 Order [ECF No. 1447] (“Feb. 15 2013 Order”), the February 20,
14 2013 Orders (entering the final USP) [ECF No.s 1449, 1450] (“USP”)¹, and its Jan. 2015
15 Order.² Those orders include some general and a number of specific requirements that the
16 CMP must meet.

17 As a general matter, the Feb. 15, 2013 Order directs the District to ensure that the
18 CMP “create[s] academic incentives for students to attend schools strategically located
19 outside their demographically concentrated neighborhoods to maximize integration.” Feb.
20 15, 2013 Order at 7. The USP, which the Parties developed and the Court approved,
21 similarly contemplates that magnet schools and programs will serve as one of four student
22

23 ¹ A revised version of the USP that solely fixed typographical errors was entered by the Court on November 6, 2014.

24 ² This Court has issued a number of orders with respect to deadlines for the CMP, as noted above, as well as various
25 orders regarding the District’s budget which have implications for the CMP. However, this section is limited to the
26 court orders that speak directly to the substance of the CMP.

1 assignment strategies to integrate the District's schools. USP § (II)(A)(1). The document
2 then defines a magnet school or program as one that:

3 focuses on a magnet theme, such as a specific academic area, a particular career or a
4 specialized learning environment; attracts students of diverse racial and ethnic
5 backgrounds; and encourages students to choose a school other than their
6 attendance boundary school to participate in the magnet theme offered at that
7 program or school,

8 USP § (II)(E)(1), and requires the District to develop a Magnet School Plan, USP §
9 (II)(E)(3).

10 The USP then sets forth the specific requirements for the Magnet School Plan (i.e.,
11 the CMP). Namely, in creating the CMP, the District must take into consideration six
12 different factors, including whether to create, change, or terminate certain magnet
13 programs or schools; whether and how to structure enrollment (attendance boundaries,
14 admissions criteria) for each school or program; and whether magnet personnel have the
15 qualifications to successfully implement their programs. USP § (II)(E)(3)(i)-(vi). Then,
16 the CMP itself must set forth a procedure and schedule for making any changes to
17 programs or schools (including adding or eliminating programs), providing related
18 professional development, engaging African American and Latino families, and
19 identifying magnet school and program integration goals. USP § (II)(E)(3)(vii)-(xi).

20 In its Jan 2015 Order, this Court added several requirements for the CMP.
21 Specifically, this Court required the CMP to include: (1) the information required by
22 TUSD's magnet evaluation criteria for current magnet programs, using the rubric
23 developed for this purpose; (2) an explanation of how magnet schools fit into an overall
24 magnet feeder school plan and whether magnet schools will have boundaries; (3) the

1 specific activities that must be undertaken by each school to attain magnet status; (4) an
2 assessment of the budgetary requirements of the plan, including transportation costs; and
3 (5) Improvement Plans for individual magnets that identify specific measures necessary to
4 address deficiencies, including a timeline and annual benchmarks. Jan. 2015 Order at 16-
5 17.³ That Order also required the District to consult with the Special Master in the creation
6 of Improvement Plans for each magnet school. *Id.* at 17-18.

7 **IV. Discussion**

8 The Orders detailed above obligate the District to make numerous changes to its
9 magnet schools and programs, including how it creates and evaluates magnets, and then
10 sustains, improves, or terminates magnets; how it transports, enrolls, and provides
11 resources for students in those magnet schools and programs; how it trains the personnel
12 responsible for implementation; and how it engages families and community stakeholders
13 in magnet programs, schools, and processes. This Court's Orders do not, however, require
14 specific programmatic choices, so long as the District's selected approach fulfills the
15 criteria set forth in those Orders.
16

17 Thus far, comments and objections to the District's CMP have not centered on
18 potential inconsistencies with the Court's orders or with applicable case law, but have
19 instead focused on disagreements with various particulars of the District's selected
20 approach. *See, e.g.*, May 29, 2015 Mendoza Plaintiffs' Comments and Objections to Filed
21 CMP at 5 (*e.g.*, "Plaintiffs suggest that rather than have these [magnet] coordinators spend
22 time supporting recruitment efforts, that they instead focus only on academic achievement,
23

24 ³ In that Order, the Court also separately approved the outcome determinative criteria and the three-year review cycle
25 proposed in the District's revised CMP. *Id.* at 11, 17.

1 particularly as those efforts are more complimentary to coordinators’ primary role in
2 managing their school’s curriculum and would therefore result in greater efficiency”); May
3 29, 2015 Fisher Objection to TUSD’s 5/15/15 CMP at 5 (“schools likely to lose magnet
4 status are likely to have high concentrations of low SES minority students - exactly the
5 student population that requires extra support to overcome . . . challenges . . . The Fisher
6 Plaintiffs believe that these schools be targeted for additional assistance to counterbalance
7 the challenges they face”); May 17, 2015 Special Master Comments on the Revised CMP
8 at 1 (“One of the values of the Tully proposal is that it will allow us to better understand
9 the value-added of GATE programming for students with very different levels of
10 achievement. To that end, all students admitted to [Tully] should be tested but their scores
11 should not be released to teachers or families”).

13 The standards in this Court’s Orders and in applicable Federal law are the standards
14 by which the CMP should be evaluated. If the District’s CMP meets those standards, then
15 this Court should approve the CMP.

16 **V. Conclusion**

17 The United States respectfully requests that this Court take account of the
18 comments raised above and review the District’s CMP in light of the appropriate standard.

20 Respectfully Submitted,

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22 /s/ Zoe M. Savitsky
23 VANITA GUPTA
24 Principal Deputy Assistant
25 Attorney General

23 Dated: June 18, 2015

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Civil Rights Division

ANURIMA BHARGAVA, Chief
ZOE M. SAVITSKY
JAMES EICHNER
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Suite 4300
Washington, D.C. 20530
Tel: (202) 305-3223
Fax: (202) 514-8337

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

William Brammer
Oscar S. Lizardi
Michael J. Rusing
Patricia L. Victory
Rusing, Lopez & Lizardi, PLLC
6363 N. Swan Rd., Suite 151
Tucson, Arizona 85718

Julie C. Tolleson
Tucson Unified School District
Legal Department
1010 E 10th St.
Tucson, AZ 85719

Rubin Salter, Jr., Esq.
Kristian H. Salter
177 N. Church Ave., Suite 903
Tucson, Arizona 85701-1119

Lois D. Thompson
Jennifer L. Roche
Proskauer Rose LLP
2049 Century Park East, Suite 3200
Los Angeles, California 90067

Juan Rodriguez
MALDEF
634 S. Spring Street, 11th Floor
Los Angeles, California 90014

I hereby certify that on June 18, 2015, I electronically transmitted the attached document to the following, who is not a CM/ECF registrant:

Dr. Willis Hawley
2138 Tawes Building, University of Maryland
College Park, MD 20742
wdh@umd.edu

Dated: June 18, 2015

/s/ Zoe M. Savitsky