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9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

10 ROY and JOSIE FISHER, et al.,)

No. CV 74-90 TUC DCB

11 Plaintiffs,)

12 UNITED STATES OF AMERICA)

**FISHER PLAINTIFFS' OBJECTION
TO DEFENDANT TUSD'S 10/23/15
MAGNET SCHOOL STIPULATION**

13 Plaintiff-Intervenor,)

14 vs.)

15 ANITA LOHR, et al.,)

16 Defendants,)

17 SIDNEY L. SUTTON, et al.,)

Submitted to United States District
Judge David C. Bury on 11/02/15

18 Defendants-Intervenors,)

19 MARIA MENDOZA, et al.,)

20 Plaintiffs,)

21 UNITED STATES OF AMERICA)

No. CV 74-204 TUC DCB

22 Plaintiff-Intervenor,)

23 vs.)

24 TUCSON UNIFIED SCHOOL)

25 DISTRICT NO. ONE, et al.,)

26 Defendants.)

1. FISHER PLAINTIFFS OBJECT TO THE 10/23/15 MAGNET STIPULATION

COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by and through counsel undersigned, Rubin Salter, Jr. to submit the instant objection to the entirety of Defendant Tucson Unified School District's (hereinafter TUSD or District or Defendant) 10/23/15 "Stipulation Regarding 40th Day Magnet School Enrollment Data and Stipulation regarding Magnet School Supplemented Improvement Plans" (document number 1858 filed 10/23/15).

In its 10/23/15 stipulation, the District explains that it "has requested that the Special Master and Court refrain from any action regarding the magnet status of the six programs [at (1) Ochoa ES (2); Bonillas ES; (3) Holladay ES; (4) SAFFORD K8; (5) Utterback MS; and (6) Cholla HS] until they have had the full 201516 school year to implement both the integration and the achievement components of their Improvement Plans, and that their progress towards the integration goals be measured based on the 40th day enrollment for the 201617 school year" (at page 8 of document number 1858 filed 10/23/15 emphasis added).

The District acknowledges that, while one other party (the Mendoza Plaintiffs) did conditionally join the District in stipulating to the terms of the proposed order, "the Fisher Plaintiffs have expressed opposition to this stipulated resolution" and the Department of Justice (hereinafter DOJ) has taken "no position on the specific conditions [...] negotiated between TUSD and the Mendoza Plaintiffs" (idem at 2 emphases added). Special Master Willis Hawley (hereinafter SM) has since notified the parties of his opposition to the terms of the stipulation and his intention to make recommendations addressing the stipulation's inadequacies in his forthcoming report on the status of magnet schools (see attached 10/27/15 draft of SM's report on the status of magnet schools). Although the Fisher Plaintiffs share the SM's opposition to the 10/23/15 stipulation, they must unfortunately also oppose the SM's forthcoming recommendations where they fail to resolve their concerns that:

1 (1) The District's stipulation seeks to resolve, between two parties, a matter directly
2 implicating the interests of all four parties to this case;

3
4 (2) The District's stipulation to defer withdrawal of magnet status to the 2016-17 school year
5 (hereinafter SY) is irrational (and counter to the intent of the USP and this Court's prior
6 orders) insofar as it delays withdrawal of magnet status at schools that have already proven
7 ineffective as magnets (and consequently also delays the establishment of new and potentially
8 effective magnet programs at other schools) beyond the impending timeline to unitary status;

9
10 (3) The District's stipulation improperly ignores (or worse attempts to supplant) the criteria for
11 withdrawal of magnet status already set forth in the controlling orders issued by this Court
12 interpreting the USP, a stipulation between all (not just two) of the four full parties to this case;
13 and

14
15 (4) The District's stipulation and proposed order if adopted by this Court would further
16 encourage the District in its reported willingness to undermine the credibility and viability of
17 the collaborative desegregation process by systematically agitating parents and staff at affected
18 schools with a campaign of misleading information about the fiscal and programmatic
19 consequences of the SM's recommended withdrawal of magnet status. At 03:17:52 in the
20 video of the TUSD GB's 09/29/15 special meeting, TUSD GB member Michael Hicks asked
21 TUSD General Counsel Julie Tolleson whether "the information that the principals are
22 disseminating to the parent groups and to everyone [went] through [the District's] Legal
23 [Services Department]" (see <http://tusd1.org/contents/govboard/gbvideo092915.html>).
24 Continuing, Hicks explained that: "It's my understanding that Ochoa and another school, I
25 think two other schools have petitions that the principals are disseminating to the parent groups
26 and asking the parent groups to sign it and then it basically takes away [...]. It's saying that
27 they want to be added to the process, because they're here now and the Mendozas and Fishers
28 are, basically, have no stand[ing] in TUSD anymore. Did this information come through [the
District's] Legal [Services Department]? [...]. I'm trying to figure out if it's been appropriate

1 for TUSD staff to be pushing individuals to sign petitions for this” (idem). And then in
2 response to TUSD General Counsel Tolleson's admission that "I don't think our people should
3 ever push people to sign petitions, period" (idem), Hicks observed that "Okay, well, they're
4 doing it [...]. My problem with some of this is we're now, again, we're feeding into this, and
5 we're [...]. I think we're heading for a fight we're going to end up losing. And, it's, we're going
6 to be losing, because of our arrogance" (idem). Continuing at 03:27:40 in the video, TUSD
7 GB member Mark Stegeman expresses his concern that it is the District, and not the plaintiffs
8 or the Special Master, that is driving litigation in this case: “over the past seven years when
9 we've been in conflict with the Special Master, on various points, how often do we win that
10 debate, in this court? [...] I feel that it doesn't take much reading between the lines to
11 understand how the court feels about this issue and it's a fair question to ask at this point: who
12 is running up the litigation costs in this case, honestly? And I'm thinking that we are [...]. I
13 understand that formally speaking every time the Special Master wants something, he is
14 initiating it, um, but I, I don't know, I'm, I'm concerned and I think the court expressed a
15 similar concern a few months ago about the, where the litigiousness is coming from here in
16 practice [...] (idem). At 03:32:17 in the video, TUSD GB member Stegeman asked District
17 staff to confirm that: “on Wednesday, September 16th, parent-teacher conferences were held at
18 Ochoa [...]. During the conference parents were presented with two documents and one
19 petition to sign. Parents were asked to review the documents and follow up as requested.
20 Parents were also asked to sign a petition which was placed before them during the
21 parent-teacher conference, which requests that MALDEF provide legal representation to
22 parents” (idem). These concerns, raised by two TUSD GB members, have been echoed by the
23 SM in a draft of his report to the Court. See attached 10/27/15 draft of SM’s report at pages
24 6-7 where it explains that “[t]he atmosphere created in the district is such that action now to
25 withdraw magnet status would likely be seen as arbitrary and unfair thus undermining both the
26 District and the perceived rationality of the USP [...]. It is important that there be a record,
27 however limited, of the chain of events that could lead to postponing the withdrawal of magnet
28 status from some schools. There is considerable misinformation about these events and the
related court order. For example, a senior District leader was quoted in local media implying

1 that the initiative to defer action on the withdrawal of magnet status was developed by the
2 District and that it was the product of a collaborative effort among all the parties” (emphasis
3 added).

4
5 **1.2. CONCLUSION**

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7 On the basis of the facts and law set forth above, the Fisher Plaintiffs respectfully ask this
8 Court to sustain the substantive and procedural objections raised herein and deny the relief
9 requested in the District’s stipulation. Further, the Fisher Plaintiffs respectfully request the
10 opportunity to respond to the SM’s forthcoming recommendations regarding the withdrawal of
11 magnet status.

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13 Respectfully submitted this 2nd day of November, 2015

14
15 s/ Rubin Salter, Jr.

16 RUBIN SALTER, JR., ASBN 01710

17 Counsel for Fisher Plaintiffs
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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 2nd day of November, 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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