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9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

9 ROY and JOSIE FISHER, et al.,)

No. CV 74-90 TUC DCB

10 Plaintiffs,)

11 UNITED STATES OF AMERICA)

12 Plaintiff-Intervenor,)

13 vs.)

14 ANITA LOHR, et al.,)

15 Defendants,)

16 SIDNEY L. SUTTON, et al.,)

17 Defendants-Intervenors,)

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.)

**FISHER PLAINTIFFS' RESPONSE IN
OPPOSITION TO THE SPECIAL
MASTER'S 11/05/15 REPORT AND
RECOMMENDATION REGARDING
THE STATUS OF MAGNET
SCHOOLS**

Submitted to United States District
Judge David C. Bury on 11/13/15

No. CV 74-204 TUC DCB

1 **1. FISHER PLAINTIFFS ARE OPPOSED TO THE SM'S 11/05/15 REPORT AND**
2 **RECOMMENDATION REGARDING THE STATUS OF MAGNET SCHOOLS**

3
4 COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by and
5 through counsel undersigned, Rubin Salter, Jr. to submit the instant opposition to the Special
6 Master's 11/05/15 "recommendations related to whether schools that have not met their goals
7 for integration should retain magnet status" (document number 1864 filed 11/05/15). In his
8 11/05/15 report, the Special Master (SM) recommends that "that decisions about removing
9 magnet status should be deferred until the 2016-17 school year" (at page 2 of document
10 number 1864 filed 11/05/15). Additionally, the SM asks this Court to "approve the District's
11 [subsequently filed] proposed court order that [...] defers removal of magnet status from
12 schools and programs that did not meet their integration benchmarks this year but may do so
13 next fall" (idem at 5). The proposed order endorsed by the SM was only entered into record in
14 this case on 11/06/15 as document number 1865-1.¹ The proposed order accompanied a
15 stipulation entered into by the District and the Mendoza Plaintiffs and filed on the same date
16 (as document number 1865). The Fisher Plaintiffs have already lodged their objection to the
17 earlier version of the stipulation. Because the concerns raised in the Fisher Plaintiffs'
18 11/02/15 objection to the District's first magnet stipulation (document number 1858 filed
19 10/23/15) apply equally to the second magnet stipulation (document number 1865 filed
20 11/06/15), the Fisher Plaintiffs present those concerns again here. The Fisher Plaintiffs object
21 to the SM's recommendation where it fails to resolve their concerns that:

¹ The instant response is filed timely insofar as the Fisher Plaintiffs' initial agreement to a reduced seven-day response time to the SM's 11/05/15 R&R was rendered insufficient when the SM filed his report recommending this Court's approval of a proposed order not yet entered into record. The referenced proposed order was filed by the District the following day (on 11/06/15) as document number 1865-1. In light of the need to review and respond to the content of the District's filing before being able to meaningfully evaluate the SM's R&R, the Fisher Plaintiffs were constrained to amend their agreement to a reduced response time to the SM's R&R from seven to eight days (from 11/12/15 to 11/13/15).

1 **1.1. THE PROPOSED ORDER WOULD IMPROPERLY REVISE THE USP**

2
3 The District's second 11/06/15 stipulation improperly seeks to resolve, between two parties, a
4 matter directly implicating the interests of all four parties to this case. The Fisher Plaintiffs
5 had no input into either the first or the second stipulation, nor would they be contractually
6 bound by the terms of either stipulation. If adopted by this Court, the proposed order endorsed
7 in the SM's R&R would lead to a legal quagmire insofar as it rests on a stipulation entered into
8 by two parties in this multiparty Civil Rights proceeding that would revise the terms of the
9 Unitary Status Plan (hereinafter USP) approved by order of this Court and agreed to by all
10 four parties in this case.

11
12 **1.2. THE PROPOSED ORDER WOULD EVISCERATE THE DISTRICT'S**
13 **COMPREHENSIVE MAGNET PLAN**

14
15 The District's second 11/06/15 stipulation improperly seeks to defer withdrawal of magnet
16 status until the 2016-17 school year (hereinafter SY). It would be irrational and counter to the
17 intent of the USP and this Court's prior orders to delay withdrawal of magnet status at schools
18 that have already proven ineffective as magnets. Doing so would delay the establishment of
19 new and potentially effective magnet programs at other schools beyond the impending timeline
20 to unitary status and in so doing would excuse the District of its obligation to integrate its
21 schools.

22
23 **1.3. THE PROPOSED ORDER WOULD INVITE FURTHER ATTACKS ON THE**
24 **ROLE OF THE SM AND PLAINTIFFS IN THE REMEDIAL DESEGREGATION**
25 **PROCESS**

26
27 The District's second 11/06/15 stipulation and proposed order, if adopted by this Court,
28 would further encourage the District in its evidenced willingness to undermine the credibility

1 and viability of the collaborative desegregation process by systematically agitating parents and
2 staff at affected schools with a campaign of misleading information about the fiscal and
3 programmatic consequences of the SM's recommended withdrawal of magnet status. The
4 Fisher Plaintiffs are concerned lest this Court - in its understandable desire to reassure magnet
5 parents and staff - issue an order that would in any way encourage the District to resort to
6 similar behavior in the future.

7
8 **1.3.1. THE PROPOSED ORDER WOULD TACITLY APPROVE THE DISTRICT**
9 **ADMINISTRATION'S KNOWING DISSEMINATION OF MISINFORMATION TO**
10 **MAGNET PARENTS AND STAFF**

11
12 At 03:17:52 in the video of the TUSD GB's 09/29/15 special meeting, TUSD GB member
13 Michael Hicks asked TUSD General Counsel Julie Tolleson whether "the information that the
14 principals are disseminating to the parent groups and to everyone [went] through [the
15 District's] Legal [Services Department]" (see
16 <http://tusd1.org/contents/govboard/gbvideo092915.html>). Continuing, Hicks explained that:
17 "It's my understanding that Ochoa and another school, I think two other schools have petitions
18 that the principals are disseminating to the parent groups and asking the parent groups to sign
19 it and then it basically takes away [...]. It's saying that they want to be added to the process,
20 because they're here now and the Mendozas and Fishers are, basically, have no stand[ing] in
21 TUSD anymore. Did this information come through [the District's] Legal [Services
22 Department]? [...]. I'm trying to figure out if it's been appropriate for TUSD staff to be
23 pushing individuals to sign petitions for this" (idem emphasis added). And then in response to
24 TUSD General Counsel Tolleson's admission that "I don't think our people should ever push
25 people to sign petitions, period" (idem), Hicks observed that "Okay, well, they're doing it [...].
26 My problem with some of this is we're now, again, we're feeding into this, and we're [...]. I
27 think we're heading for a fight we're going to end up losing. And, it's, we're going to be losing,
28 because of our arrogance" (idem emphasis added). Continuing at 03:27:40 in the video, TUSD

1 GB member Mark Stegeman expresses his concern that it is the District, and not the plaintiffs
2 or the Special Master, that is driving litigation in this case: “over the past seven years when
3 we've been in conflict with the Special Master, on various points, how often do we win that
4 debate, in this court? [...] I feel that it doesn't take much reading between the lines to
5 understand how the court feels about this issue and it's a fair question to ask at this point: who
6 is running up the litigation costs in this case, honestly? And I'm thinking that we are [...]. I
7 understand that formally speaking every time the Special Master wants something, he is
8 initiating it, um, but I, I don't know, I'm, I'm concerned and I think the court expressed a
9 similar concern a few months ago about the, where the litigiousness is coming from here in
10 practice [...] (idem emphasis added). At 03:32:17 in the video, TUSD GB member Stegeman
11 asked District staff to confirm that: “on Wednesday, September 16th, parent-teacher
12 conferences were held at Ochoa [...]. During the conference parents were presented with two
13 documents and one petition to sign. Parents were asked to review the documents and follow
14 up as requested. Parents were also asked to sign a petition which was placed before them
15 during the parent-teacher conference, which requests that MALDEF provide legal
16 representation to parents” (idem).

17 18 **1.3.2. THE DISTRICT HAS INCITED PARENTS AND STAFF AGAINST THE SM**

19
20 At an earlier GB meeting, TUSD GB member Stegeman expressed his concerns with what he
21 characterized as the "counterproductive" and "confrontational tone" of TUSD Superintendent
22 Sanchez's opposition to any withdrawal of magnet status, specifically explaining that he had
23 “concerns about how we as a district have managed the relationship with the plaintiffs and the
24 Special Master over the last couple of years. I think we're in this place partly because we have
25 mismanaged that relationship. I'm very concerned about the comments I've heard tonight, here
26 and there, which seem to be personal comments about the Special Master. I think that's
27 counterproductive. I've heard, I'm concerned about the confrontational tone that has
28 occasionally appeared in these presentations. I think that's counterproductive” (at 02:50:40 in

1 the video footage of the 09/08/15 TUSD GB meeting accessible at
2 <http://livestream.com/tucsonunifiedlive/events/3048767> emphasis added). These concerns,
3 raised by two TUSD GB members, were echoed by the SM in an early draft of his report to the
4 Court. Unfortunately, the SM, in the face of the confusion and hostility created by the
5 District's actions, decided to remove from his final report his concerns with the District's
6 dissemination of misinformation.² While the Fisher Plaintiffs respect and share the SM's
7 concern to alleviate the atmosphere of mistrust and hostility generated in the magnet
8 community towards the desegregation process generally and the plaintiffs and Special Master
9 specifically, they are nevertheless compelled to object to the lack of good faith evidenced in
10 the District's actions, lest their silence encourage the District to resort to such divisive and
11 counterproductive tactics in the future negotiations with the plaintiffs and Special Master.

12 **1.3.3. THE SUPERINTENDENT MISREPRESENTED SM'S RECOMMENDATIONS**

14
15 As the Fisher Plaintiffs explained in their 06/18/15 objection to the District's comprehensive
16 magnet plan, "[w]hatever political considerations may have given rise to this planned inaction,
17 the current iteration of the Plan must fall in the face of federal law where it would delay the
18 much-needed and long-awaited overhaul of the District's magnet programs. Justice delayed is
19 justice denied and where - as here - a District operates under the jurisdiction of a federal
20 desegregation order, it must implement its remedial desegregation plan with all due speed" (at
21 page 10 of document number 1815 filed 06/18/15 emphasis added). TUSD Superintendent

² See attached 10/27/15 draft of SM's report at pages 6-7 where it explains that "[t]he atmosphere created in the district is such that action now to withdraw magnet status would likely be seen as arbitrary and unfair thus undermining both the District and the perceived rationality of the USP [...]. It is important that there be a record, however limited, of the chain of events that could lead to postponing the withdrawal of magnet 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 that the initiative to defer action on the withdrawal of magnet status was developed by the District and that it was the product of a collaborative effort among all the parties" (emphasis added).

1 H.T. Sanchez has undermined the credibility of the desegregation process by knowingly
2 feeding TUSD parents and staff inaccurate information about the SM's initial proposal to
3 withdraw magnet status at several TUSD schools. The SM has confirmed that on Friday
4 09/04/15, he met in person with TUSD Superintendent Sanchez in Tucson, Arizona and
5 summarized the contents of his forthcoming report regarding the withdrawal of magnet status
6 (see attached Hawley 11/09/15 email). The SM confirmed that, at that meeting, he explicitly
7 stated that defunding was not feasible or desirable, and therefore, not at issue. The SM
8 confirmed that he even went so far as to explore, for the Superintendent's benefit, possible
9 arguments for the maintenance of current funding levels at schools that might lose their
10 magnet status (such as maintaining current desegregation funding levels for Cholla's popular
11 IB program, because it increases equitable access to ALEs). Despite this, Superintendent
12 Sanchez rallied the principals of impacted magnet schools at a specially convened TUSD GB
13 meeting on 09/08/15, where he effectively asked the GB for their approval to appeal the SM's
14 initial recommendation (made in his attached report of the same date) to withdraw magnet
15 status at some schools.

16 17 **1.3.4. MAGNET PRINCIPALS MISREPRESENTED SM'S RECOMMENDATIONS**

18
19 The SM confirmed that he also met individually with each of the principals at ten magnet
20 schools in first week of September. According to the SM, in his meetings with the principals,
21 he never equated withdrawal of magnet status with defunding or the elimination of successful
22 and popular programs. To the contrary, the SM reports that he explained that it would not be
23 feasible or desirable to reduce desegregation funding at the impacted schools because the
24 District's practice of using the magnet funds to supplant M&O funds had made it impossible to
25 withdraw desegregation funding without leaving schools without basic services. The SM also
26 explained that the predominantly minority student populations served by the impacted schools
27 were especially deserving of supplemental desegregation funding. The meeting
28 Superintendent Sanchez convened with his principals at District headquarters is described by

1 an anonymous TUSD whistleblower (see <http://tinyurl.com/ncdonn3>). Although the Fisher
2 Plaintiffs have no way to verify the anonymous account, the account has appeared in local
3 online media and gives some indication of the District's loss of credibility in the eyes of one
4 local online news outlet. On that basis, the Fisher Plaintiffs believe the account offers a
5 relevant illustration of the media coverage of the District's recent actions. The anonymous
6 source reports that, "[o]n Friday September 4th [TUSD Superintendent H.T. Sanchez] met
7 with [the] principals [of Safford M K-8, Bonillas MES, Cholla MHS, Ochoa MES, Utterback
8 MMS and Pueblo MHS, respectively Steve Gabaldon, Jennifer Ambrosia, Frank Armenta,
9 Julio Moreno, Robin Dunbar and Auggie Romero] and told them that he had met with the
10 Special Master who had informed him that he would be recommending that about half a dozen
11 magnet schools lose their magnet standing and that they would be stripped of their
12 desegregation funding [...]. HT informed the principals listed above that he and the Board
13 majority were looking for each of them to show total support for their schools and the District
14 and instructed them on what they were to do and say - in detail, beginning with that they were
15 to go before the Board (on September 8th) and attest to the desperate need for desegregation
16 dollars at their schools and state that they have been fully supported by him and the
17 administration. Other instructions that they received from HT during the following days
18 included the followingz [...] [1] They were to rally their staffs and parents and explain that [it]
19 is the Special Master and the Mendoza Plaintiffs - who are responsible for the situation of each
20 of their schools potentially losing their magnet standing - all due to the USP and the mandate
21 to integrate magnet schools [2] They were to immediately plan for meetings - first with their
22 staffs and then with their parents - which HT and his staff would attend to rally them in protest
23 of the Special Master and Plaintiffs [...] [3] They were to use the form letters (written by HT)
24 to have parents sign and send to the court and the Plaintiffs [...] [4] Ochoa was to work with
25 the political operatives from Casa Maria (Brian Flagg and Cesar Aguirre) to win over the
26 politicos in South Tucson and to initiate petitions for parents to sign" (idem). The magnet
27 principals took their marching orders from the Superintendent and - wittingly or unwittingly -
28 alarmed the staff and parents at their schools by disseminating the inaccurate information.

1.3.5. CHOLLA STAFF MISREPRESENTED THE SM'S RECOMMENDATIONS

1
2
3 The Fisher Plaintiffs have attached a letter dated 09/21/15 appealing to parents of Cholla
4 students to contact class counsel in Fisher v TUSD to express their opposition to the
5 withdrawal of Cholla's magnet status and funding. The letter is signed by Cholla Principal
6 Frank Armenta and claims that the loss of magnet status would result in a loss of \$1.1 million
7 in funding (see attached Armenta 09/21/15 correspondence).
8

1.3.6. SAFFORD STAFF MISREPRESENTED THE SM'S RECOMMENDATIONS

9
10
11 The principal of Safford sent out a similarly misleading letter to the parents of Safford
12 students. The Fisher Plaintiffs have attached a photograph of a letter sent to Safford K-8
13 parents signed by Safford Principal Steven Gabaldon and Safford's IB/Magnet Coordinator.
14 The letter claimed that Safford was in danger of losing over 800 thousand dollars in funding
15 and asked parents to attend a family and staff event at the school on 10/02/15 to help TUSD
16 staff put a stop to the SM's "alarming proposal." The letter asks Safford parents to "help
17 sound the alarm" and goes on to explain that the principal "need[s] [their] help with saving
18 [their] child's school. Safford K-8 is in danger of losing \$897,000 [...]. Safford magnet
19 families will no longer get transportation for their children, we no longer will be able to offer
20 after school tutoring or enrichment activities [...]. Friday, October 2, we will have a special
21 Safford family and staff event in our court yard area [...]. We are asking that you come to your
22 child's school [...] to help us with putting a stop to this alarming proposal from the special
23 master. If you wish for the court to represent you as a TUSD/Safford parent we will have a
24 petition for you to sign. You can also choose to write a letter to the representative of the
25 plaintiffs saying that you wish for Safford to keep its magnet status and funding. We will
26 provide you with some light refreshments [...]. [signed by] Mr. Steven Gabaldon, Principal &
27 Ms. Ilse Billings (IB/Magnet Coordinator)" (see attached Gabaldon correspondence).
28 Similarly inaccurate information appears on Safford's official website (at

1 <http://edweb.tusd1.org/Safford/>). The school's homepage explains that it needs the help of the
2 Safford community, because "Dr. Willis Hawley is the court-appointed special master of the
3 TUSD Desegregation Lawsuit and is recommending that Safford K-8 Magnet School be
4 demagnetized and stripped of its funding. This would cut over \$878,000 to our school's
5 funding [...]. "Our IB program is the strongest card in our hand. It has become, more than
6 anything else, what makes our school unique, attractive to families, academically rigorous, and
7 relevant [...]. Why would someone want to take that away from us? This effort can only
8 backfire [...]." -- Mr. Erik Yoder, Safford K-8 teacher of 22 years [...] Please help us maintain
9 our magnet status and keep the funding that belongs to our students. We all believe in the
10 Safford K-8 Magnet School International Baccalaureate Program. Please call, write, and email
11 the plaintiffs and court below expressing your support for Safford K-8 Magnet School to
12 remain a Magnet Community School and maintain its funding. Your voice makes a
13 difference! Thank you!" (emphasis added).

14 **1.3.7. OCHOA STAFF MISREPRESENTED THE SM'S RECOMMENDATIONS**

15
16
17 Perhaps most disturbing is the Superintendent's micromanagement of the petition and
18 letter-writing campaign conducted at Ochoa EMS. The Fisher Plaintiffs have attached the
19 affidavit of Lourdes Molina, a member of the Ochoa site council and the grandmother of an
20 Ochoa student. In her affidavit, Ms. Molina states that she "was asked to participate as the
21 parent member for the Site Council at Ochoa and [...] attended [her] first Site Council meeting
22 on September 15, 2015. In addition to other Site Council members, Superintendent H.T.
23 Sanchez and Julie Tollison [sic] were present for this meeting at Ochoa. Dr. Sanchez advised
24 the Council that it was imperative for all involved to maintain the Magnet status and
25 accompanying Magnet funding for Ochoa. He advised the Council that should Ochoa lose its
26 Magnet status, it would also lose funding in the amount of \$211,000.00. Consequently, the

1 Council voted unanimously to support the Magnet plan and not support the Report and
2 Recommendation by the Special Master” (see attached Molina 11/09/15 affidavit).³ Ms.
3 Molina states further that “[i]mmediately following the Site Council meeting, [she] attended
4 the parent meeting located at the Ochoa library. Dr. Sanchez addressed those in attendance
5 and [...] told the audience that Ochoa would be losing \$211,000.00 should it lose its Magnet
6 status [...]. The following day, September 16, 2015, I went to Ochoa to volunteer in my
7 granddaughter’s class. As classes were coming to an end, I was asked by Jeanette Gabaldon,
8 the Magnet Coordinator, to review a petition that was going to be distributed to parents that
9 evening during the Parent/Teacher conferences. I made suggestions about the Spanish
10 translation and suggestions about the grammar. I [also] took notes for the Site Council
11 meeting on September 15, 2015” (idem). The Fisher Plaintiffs have attached hereto full and
12 true copies of the Ochoa petition and a “Sample Letter to be read or written to the plaintiffs
13 and court” (see attached Ochoa sample letter). The Ochoa petition repeats the
14 Superintendent’s false claims where it states in relevant part that “Dr. Hawley is the court
15 appointed special master and is recommending Ochoa and other TUSD magnet schools be
16 stripped of funding. This would mean a cut of over \$211,000 to Ochoa [...]. If you would like
17 [...] MALDEF to represent you and your child/children please sign this petition asking for
18 representation” (see attached Ochoa petition). In an 11/10/15 media interview, TUSD GB
19 member Hicks described the Superintendent’s actions as a “scare tactic to get parents and
20 everybody in an uproar [...] a well orchestrated manipulation by district administration. I
21 find it despicable and I find it very disheartening” (<http://tinyurl.com/p9m223q>).

³ Note that TUSD General Counsel Julie Tolleson was subsequently, directly and explicitly asked by TUSD GB member Michael Hicks whether the information distributed at Ochoa came “through [the District’s] Legal [Services Department] [...]. I’m trying to figure out if it’s been appropriate for TUSD staff to be pushing individuals to sign petitions for this” (at 03:17:52 in the video of the TUSD GB’s 09/29/15 special meeting: <http://tusd1.org/contents/govboard/gbvideo092915.html>). Rather than acknowledge her presence, and full knowledge of the source of the material developed, at the 09/15/15 Ochoa site council meeting held with Dr. Sanchez, Tolleson hypocritically answered that “I don’t think our people should ever push people to sign petitions, period” (idem).

1.3.7. SAFFORD STAFF UNWITTINGLY MISREPRESENT SM'S**RECOMMENDATIONS**

A particularly striking example of the corrosive effect the Superintendent's actions have had on community and staff support for the desegregation process is found in an article written by Mr. Sandy Merz, a teacher at Safford K-8 magnet school (see <http://tinyurl.com/pdstwxq>). A link to the article appears on Safford's official homepage (<http://edweb.tusd1.org/Safford/>). The Fisher Plaintiffs believe discussion of the article is warranted here, because the article's serious inaccuracies demonstrate how effective the Superintendent's campaign of misinformation has been in generating misunderstanding of and hostility to the desegregation process among TUSD parents and staff. The author of the article is not, however, completely misinformed. He does acknowledge that the purpose of seeking and maintaining magnet status under the USP is to increase classroom-level integration (and academic achievement) and that Safford K-8 has not succeeded in meeting even the very modest goals it set for itself last year for increasing classroom-level integration. Where the article departs from the truth is when it claims the Special Master sought to strip Safford of its funding. The record in this case shows that no one - not the Special Master, not the Mendoza Plaintiffs, not the DOJ, not the Fisher Plaintiffs, not this Court - has ever suggested that withdrawal of magnet status should result in "stripping funding" or the elimination of popular or promising programs, such as Safford's IB program. To the contrary, the Special Master and counsel and representatives for the Fisher and Mendoza Plaintiff classes have all - unanimously, repeatedly and clearly - emphasized the need to continue funding successful programs at schools where magnet status is withdrawn at

1 or above current funding levels.⁴ TUSD Superintendant H.T. Sanchez and TUSD General
2 Counsel Julie Tolleson were well aware of this fact well prior to the TUSD GB meeting held
3 on 09/08/15 where several TUSD magnet principals were rallied by Superintendent Sanchez to
4 oppose withdrawal of magnet status. In early October, Fisher counsel received
5 correspondence from Safford staff opposed to the withdrawal of magnet status at their school
6 (see attached 10/04/15 Billeci and 10/06/15 Chavez emails). A cursory review of the
7 correspondence shows that the Safford educators were seriously misinformed about what the
8 proposed withdrawal of magnet status would entail for their school's funding and programs.
9 Safford curriculum facilitator and literacy specialist, Kathryn Chavez wrote that "[t]he
10 upheaval set forth by the Special Master's recommendation made shortly before 40th day of
11 school has taken focus away from instruction and learning and instead created a chaotic setting
12 in which students are trying to make sense of a situation taken out of context" (see attached
13 10/06/15 Chavez email). In a separate email, Safford teacher Nancy Billeci wrote that she was
14 "already starting to budget and make cuts in my expenses in case [she] lose[s] [her] job. I am
15 very sad for myself and my students that my program will be cut if we lose magnet status. We

⁴ On 06/13/15, SM Hawley circulated a memorandum explaining that, "[o]n p.9, the district says that if a school is to lose magnet status at the end of the year, its magnet funding would be continued for another year. I believe it would be appropriate to continue at least a significant part of what was magnet funding into the next year but not for magnet purposes" (at page 6 of document number 1815 filed 06/18/15 emphasis added); On 06/18/15, the Fisher Plaintiffs explained that "[b]eyond 'maintain[ing] basic school functions,' schools likely to lose magnet status are likely to have high concentrations of low SES minority students - exactly the student population that requires extra support [...]. The Fisher Plaintiffs believe that these schools [should] be targeted for additional assistance to counterbalance the challenges they face. That assistance, however, will be part of a zero-sum funding equation where the opportunity to "magnetize" a school will come at the cost of implementing viable educational interventions that are not naively predicated on a school's wan hopes of succeeding as a magnet. There are magnet school sites that are simply not conducive to attracting diverse enrollment (whether because of parental perceptions of the safety of the neighborhood or because of travel times). With a number of centrally located school sites sitting in disuse, the Fisher Plaintiffs believe TUSD should begin migrating student enrollment into more readily integrated sites (whether by reopening closed central campuses, closing peripheral campuses or expanding central campuses)" (at page 13 of document number 1815 filed 06/18/15 emphasis added)

1 are 60 minutes from the border, so, of course, we are going to have a higher percentage of
2 Mexican students. I love my job and my students. Please consider having Safford K8 Magnet
3 International Baccalaureate World School keep our Magnet status” (see attached 10/04/15
4 Billeci email). The Fisher Plaintiffs have attached evidence showing that TUSD
5 Superintendent Sanchez conducted a systematic campaign of misinformation at school-site
6 meetings to agitate TUSD staff and parents to attack the role of the Special Master, the
7 Plaintiffs and their counsel and class representatives in the desegregation process. If the
8 hard-working and well-intentioned staff at Safford K-8 were informed that withdrawal of
9 magnet status would not result in the defunding of Safford's IB program, but rather would
10 allow the the school to redirect funding from its unsuccessful efforts to market a
11 majority-minority school to parents of Anglo students to simply increasing the quality of
12 programming offered at the school, then they might not oppose the withdrawal of magnet
13 status at all. In fact, given their reasonable frustration with the challenges of attempting to
14 desegregate a minority-majority school system, they might actually support withdrawal of
15 magnet status. In this context, it is evident that the frustration Mr. Merz directs at the Special
16 Master in his article is entirely misplaced. If he had received accurate information about the
17 actual positions taken by the parties in this case (instead of the misinformation disseminated by
18 District administration), then Mr. Merz might well redirect his frustration at his employer for
19 knowingly misinforming him and the rest of the TUSD community about the consequences of
20 withdrawal of magnet status. The article echoes a sentiment frequently expressed by
21 Superintendent Sanchez and the TUSD GB majority where it implies that the Special Master's
22 Maryland residence makes him somehow less qualified to serve as the Special Master in this
23 desegregation case. The suggestion makes little sense. Dr. Hawley has spent much of his long
24 career working to help increase the educational opportunities available to minority students
25 around the nation, most recently with the Southern Poverty Law Center. There is no one of his
26 stature or with his degree of experience in the field of school desegregation residing in Tucson.
27 The Fisher Plaintiffs, while certainly not always in full agreement with Dr. Hawley’s
28 recommendations, recognize nonetheless that our community is extremely fortunate that he has

1 agreed to serve as Special Master in this case and undertake the significant commute between
2 Tucson and Baltimore. He is appropriately compensated for his time, as are Mr. Merz and
3 TUSD Superintendent Sanchez. Whether or not the Court ultimately approves the Special
4 Master's recommendation to give the District's magnet schools another year to try to meet their
5 integration and achievement goals, the Fisher Plaintiffs believe it is essential to mitigate the
6 very harmful effect of the District's misinformation campaign by directly addressing and
7 rejecting the Superintendent's misconduct in its ruling. Nothing less is likely to dissuade the
8 District - through the office of its Superintendent - from continuing its campaign to discredit
9 the desegregation process and avoid the accountability contained in the District's remedial
10 desegregation plan. Left unchecked, the Superintendent's efforts will continue to erode public
11 confidence in the desegregation process. The Fisher Plaintiffs are concerned that District's
12 second stipulation, endorsed in the Special Master's report and recommendation to this Court,
13 left unopposed, would tend to encourage the District in what can only be characterized as a
14 deliberate and hostile campaign of misinformation (*idem*). It is clear that the District has
15 resorted to agitating seriously misinformed staff and parents to avoid accountability and
16 further delay a necessary, if politically unpopular, decision, the withdrawal of magnet status.

17 18 **1.2. CONCLUSION**

19
20 Under the terms of the proposed order endorsed by the SM in his report to this Court, any of
21 the District's remaining magnets finding themselves in similar situation in the 2016-17 SY
22 could reasonably expect to receive yet another school year to attempt to retain their magnet
23 status. Such delay in the withdrawal of magnet status would encroach upon (or likely extend
24 beyond) the current 2017 timeline to a unitary status determination.⁵ The proposed order
25 would provide special treatment for one school, to wit, Holladay, while failing to address the
26 needs of similarly situated schools in danger of losing their magnet status because of their lack

⁵ Section XI (A) (2) of the Unitary Status Plan (USP) provides in relevant part that “[a] motion for the determination of complete unitary status shall not be filed prior to the end of the 2016-2017 school year” (at page 61 of document number 1713 filed 11/06/14 emphasis added).

1 of academic progress. It is unfair and divisive to play favorites amongst the District's
2 magnets. The approach (reluctantly) endorsed by the SM is neither systematic nor likely to be
3 perceived as equitable and should, therefore, be rejected by this Court. The precious few
4 months remaining before the District is authorized to move for unitary status will be needlessly
5 wasted and millions of desegregation dollars will be misspent in a futile effort to market
6 racially and ethnically concentrated magnet schools to the parents of Anglo students. That time
7 and money would be better spent improving the quality of education offered to the
8 predominantly minority students attending those racially isolated schools and - looking
9 strategically to the future - attracting both Anglo and minority students into more centrally
10 located (and therefore more readily integrated) magnet sites. The faculty and staff at Safford,
11 for example, have expressed their belief that their programs, while not successful in attracting
12 significant numbers of Anglo students into their minority-majority school, are nevertheless
13 academically successful programs that serve the very population the vestiges of past
14 segregation so greatly harmed. The Fisher Plaintiffs wholeheartedly support their desire to
15 maintain or increase current desegregation funding levels, where they can show that the
16 funding is supporting excellent and exceptional programming. That said, the Fisher Plaintiffs
17 see no reason to link such funding to the continuance of clearly unsuccessful efforts to market
18 Safford K-8 to Anglo students. If the District's leadership cannot - or will not - summon the
19 political will to make these very clearly necessary and logical changes in a timely manner, then
20 it must fall to this Court to intervene and ensure that the overdue withdrawal of magnet status
21 is made and made while there is still time to verify, and merely trust, that - going forward - the
22 District's remaining magnets are functioning effectively before the District moves for
23 complete unitary status. On the basis of the facts and law set forth above, the Fisher Plaintiffs
24 respectfully ask this Court to sustain the substantive and procedural objections raised herein
25 and deny the proposed order endorsed in the Special Master's R&R and instead direct the
26 District to do what it should have already done, to wit: develop transitional budgets and plans
27 at those magnet schools that failed to meet their integration goals, so that the parents and staff
28 at the schools will be reassured that the removal of magnet status will not mean the "stripping"

1 of desegregation funding or the loss of successful programs. The criteria for the withdrawal of
2 magnet status are unambiguous, they were reached by agreement between all of the parties to
3 this case and by order of this Court and they should not be ignored because the District
4 Superintendent has acted in bad faith by systematically cultivating public and institutional
5 misunderstanding of and resistance to the remedial desegregation process. The Fisher
6 Plaintiffs respectfully ask this Court to direct the SM to apply the already established criteria
7 for withdrawing magnet status and closely monitor and report to the Court on the sufficiency
8 of the District's transitional budgets and plans for each impacted school. Anything less would
9 be a disservice both to the worthy goals of the remedial desegregation process and to the
10 seriously misinformed and understandably concerned families and staff of the impacted
11 magnet schools.

12
13 Respectfully submitted this 13th 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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1 **2. CERTIFICATE OF SERVICE**

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3 I declare and certify that a full, correct and true copy of the foregoing document was
4 electronically transmitted to the CM/ECF system for filing and transmittal of a notice of
5 electronic filing to the following CM/ECF registrants on this 13th day of November, 2015. I
6 certify further that, on this date, the CM/ECF system's service-list report showed that all
7 participants in this case were CM/ECF registrants.

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