

November 2, 2015

Delivered in Person

The Honorable David C. Bury  
United States District Court  
Evo A. DeConcini U.S. Courthouse  
405 West Congress Street, Suite 6170  
Tucson, Arizona  
85701-5065

Honorable Judge Bury:

I write this letter as a single Tucson Unified School (TUSD) Governing Board Member, representing only my views, which are based on my actual experience as one member of the Board. It is communication that reflects a minority opinion and it is one that will not find its way to you without my direct communication. In order for the Court to better understand the need for me to communicate directly, I must explain what has led to the current situation and the impact that it has on the Court's supervision of the desegregation court order/TUSD Unitary Status Plan.

The Board is currently severely divided in the most critical aspects of its operation. The "split" is most visibly seen in the votes that are taken by the Board but the division is also seen or experienced in many other ways. The Board majority is comprised of Adelita Grijalva, Cam Juarez and Krystal Foster. Dr. Mark Stegeman and I make-up the Board minority. The votes commonly result in a 3:2 split with the Board majority voting mostly in favor of the recommendations put before them by the Superintendent. Over time, the opportunity for members of the Board minority to ask critical questions pertaining to an agenda item or to request information from the administration has become increasingly hampered. There is no question but that the division in voting has become significantly more prominent with the current administration, which is now two years and several months.

Many times my "no" vote reflects the lack of and/or drastically late information that the Board has received prior to an expected discussion on an item or the actual vote on an item. Board members should not be expected to vote on items which lack information or that pose concern over questionable processes that have been applied. Nor should Board members be expected to discuss an item for which the materials have been presented just prior to or during the Board meeting. Additionally, processes involving hiring, approval of contracts, salary increases are greatly inconsistent and are absent the credibility that these processes deserve. Additionally, sometimes it appears that Board members who comprise the majority are provided with information that is not provided to the Board minority. There have also been situations where the Board votes on items based on what I believe to be, not only deficient information, but also misinformation. The situation is dysfunctional and one that does not serve the best interest of students or the community. Over the course of the last two years my confidence in what is recommended to the Governing Board has eroded.

The dynamics within the District appear to be defined on a very personal level, which is whether Board members, staff members, administrators and community members support

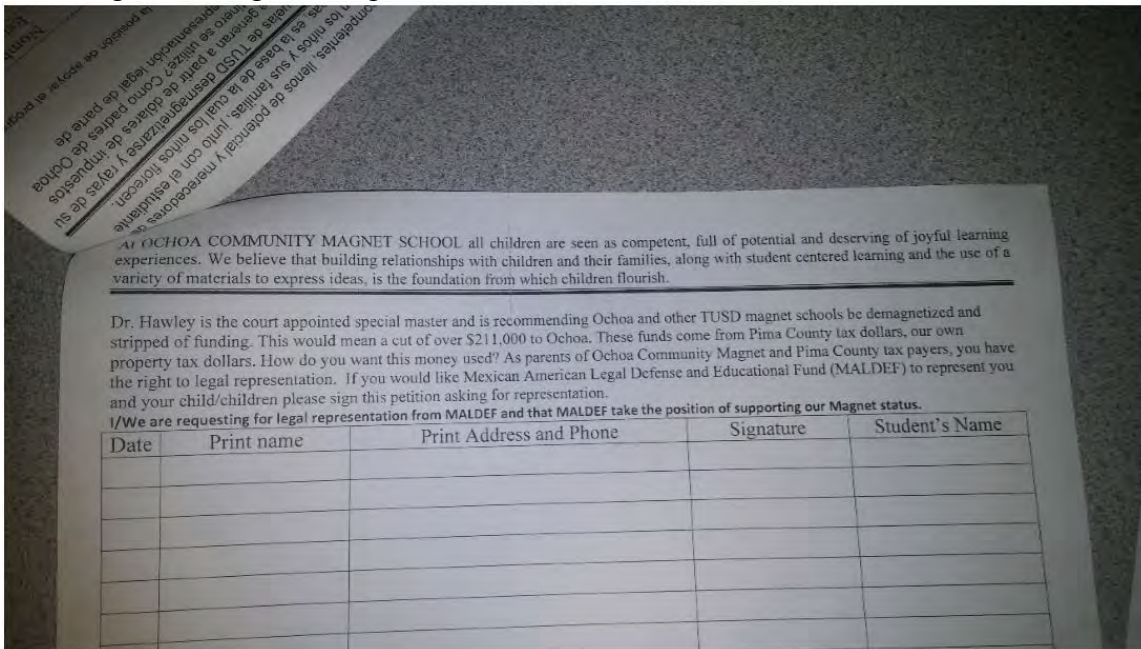
the current superintendent or not. Those who disagree with positions taken by the superintendent do not seem to fair well. This is what brings me to how the current situation within TUSD impacts the desegregation court order, exemplified by how the recent magnet school issue has arrived where it is.

The court order that was issued on January 16, 2015 regarding the Comprehensive Magnet Plan (CMP) was jolting to me as a school board member who voted in favor of the CMP. It embarrassed me for my June 15, 2014 vote of confidence in the Plan- which was then submitted to the Court. Strangely enough the plan was approved unanimously in a meeting that was set up to include the Special Master and the Fisher and Mendoza attorneys. (I was later informed that the plaintiffs' legal counsel had not agreed to attend the meeting.) The January 2015 court order clearly pointed out many of the flaws of the CMP, along with numerous omissions. The Court provided a clear list of requirements for the District to follow in developing its revised CMP and specifically ordered that each magnet school develop their own magnet school plan along with outlining many areas of information that should be included in the newly developed plan. Without such instruction it is not clear that the individual magnet schools would have been included in the planning, since they had not been previously. It is items such as this one during which Board Members are told many things that we – or more clearly- I, then realize were inaccurate and should have not gained my approval.

While I am hesitant to share information that has been provided to me by individuals who greatly fear retaliation, I am compelled to share some of what has been shared with me, however, I will not reveal any sources. With the supervision of the central administration, the magnet schools began work on their plans subsequent to the January 2015 court order, without the benefit of current or historical budget information and with direction to strictly follow the template that was provided to them by central administration that required the schools to repeat prepared wording in many areas, while including school theme and program information as well as their budgets. (As some later date, the magnet schools were provided with the 2014-15 budget for their schools.) Some schools were specifically directed to 'forget about the integration requirements' and to 'focus instead on bringing up achievement levels for low achievers.' The direction to focus primarily on low-achieving students without consideration of all the other parts that make up a magnet school, including integration seems to outright contradict the Unitary Status Plan and the January 2015 court order. Thus, what is included in the newly submitted plans, I am told, is not necessarily what is being carried out. I have been told that meetings with magnet principals often included the suggestion that the Special Master should be blamed for all magnet matters.

Culpability has become a constant theme in all issues concerning the desegregation court order, well beyond the magnet schools. The Court, the Special Master, and the Mendoza and Fisher Plaintiffs are often criticized, which has created resentment and division within the District against the USP, in general. The attacks have most recently become much more personal in nature. From my perspective- a campaign has been waged against each of the noted entities. For example, much of what the schools are being told by central administration is not correct. The Special Master informed the Superintendent that he was planning to recommend to the Court that five of the magnet schools (Bonillas, Ochoa, Safford, Utterback and Cholla) lose their magnet status based on their failure to meet the integration goals but would wait until after the meetings with all of the parties were held on October 5<sup>th</sup> and 6<sup>th</sup>.

After the Superintendent was informed about what the Special Master was proposing to do, he met with administrators on September 4, 2015 from the schools which “coincidentally” resulted in the widespread distribution of flyers and petitions being provided to parents, along with suggested letters for parents to use in communicating with the Court, Special Master, and the plaintiffs (suspected to be written by either the superintendent or the principal). One statement found within a petition states, “Dr. Hawley is the Court appointed special master and is recommending that Ochoa and other schools be demagnetized and **stripped of their funding.**” The stripping of funds was not proposed by Dr. Hawley formally or otherwise- to the best of my awareness. The following is an image of the petition that was circulated.



Based on the information which had been provided to them by the superintendent, each principal (Bonillas, Ochoa, Safford, Utterback, Cholla and Pueblo principals) provided a presentation on Tuesday, September 8, 2015. The September 10, 2015 Superintendent’s Newsletter states, “As discussed at the Governing Board meeting on Tuesday, the Special Master who oversees the district's desegregation court order has indicated he will recommend that several of our schools be stripped of their magnet status. At the meeting, principals of those schools, shown above, expressed their dismay about Special Master Bill Hawley's recommendation. We are working to set up town hall meetings with parents whose children attend these schools. We will announce them as soon as possible. This is an important issue for the schools, the district and the Tucson community as a whole. Please learn more here.” A link on this article was placed prominently on the TUSD web site for several days, which is video-taped excerpts from each of the principals’ presentations of September 8, 2015. The link is: <http://www.tusd1.org/contents/distinfo/spotlight/0909magnet.asp>

Dr. Hawley clarified his position in a letter he sent directly to the Board on September 11, 2015 which states, “In my memo to the parties (which I encourage you to request from the Superintendent or your counsel—the press had it), I proposed a strategy for maintaining significant support from “deseg funds” for the five schools for the

foreseeable future in order to ensure that excellent programs are sustained and the needs students who are struggling are met.” Without regard to the facts, the misinformation campaign continued. Meetings were held at some or all of the schools, attended by the Superintendent and his leadership team. The superintendent made statements which have been paraphrased to me- indicating that funding would be stripped at the schools, that the Special Master is from Maryland (implying that this disqualifies him as a Special Master for TUSD), that the Plaintiffs and their Representatives do not live within TUSD boundaries (I have been informed that most of the Representatives do live within TUSD boundaries), that the Mendoza legal counsel are located in LA (again, implying this somehow disqualifies them to work on the case), that the plaintiffs and their representatives are outdated, that parents in attendance at the meeting should be the ones representing the children in TUSD in the law suit and that they should communicate their desire for this representation to the Court and MALDEF.

One specific example of the rhetoric is as follows, made from a Safford Middle School teacher after he attended a school meeting with the superintendent and other central administrators: *“According to our district superintendent, HT Sanchez, the special master is from Maryland. He takes his cues from plaintiff representatives who have not had children in the district for decades and only one of whom still lives within its boundaries (and accordingly pays property taxes that pay for the magnet programs). Only one of the plaintiff representatives' lawyers is local; the rest are from California. The district pays their legal costs which are over \$1,000,000, so far. (My school's magnet budget is just under \$900,000.)”* <http://www.teachingquality.org/content/blogs/sandy-merz/ok-special-master-you-name-latino-students-we-shouldn-t-welcome>

The link to the teacher’s blog is referenced on the Safford Middle school web site and is attached. Petitions and flyers are found on many of the websites of the above named schools.

On October 5<sup>th</sup> and 6<sup>th</sup> the Special Master met with all of the parties involved. I was in attendance much of the time on both days. Those in attendance from both the Fisher and Mendoza party conveyed extreme concern over the District’s involvement in dispersing inaccurate misinformation and in lodging personal attacks. District officials wanted to know who, when and where- while at the same time denying that anything inappropriate had occurred. The superintendent was absent both days. Evidently TUSD legal counsel attended the school meetings at which the described actions took place; during which the superintendent encouraged members of the Mendoza class to displace the Mendoza Plaintiffs and their Representative- based on information provided only by the Defendant- TUSD. While I question the appropriateness of TUSD legal counsel standing by while the administration provides disparaging and untrue comments to parents (mostly Hispanic class members), I understand that my opinion as one board member becomes a mute voice in attempting to deal with this issue at the Board level. To me it is very clear that the District has not met its obligations at the magnet schools and that the blame is all being swung in the direction of the Court, the Special Master and the plaintiffs. The flyers, petitions, meetings, comments during call to the audience and reoccurring messages are not just happenstance or taking place by mere coincidences.

A board meeting had been scheduled at Duffy on October 27, 2015 which is located between Swan and Craycroft on 5<sup>th</sup> Street. The Court ruled on the use of desegregation funds for the remodeling of the site since the District argued that doing so was done based on TUSD and the Office for Civil Rights Agreement to resolve a complaint. On



September 29, 2015 the Board was asked by the Superintendent to change the meeting to 1010 East 10<sup>th</sup> Street, located off of Park Avenue and 10<sup>th</sup> Street and from October 27, 2015 to October 6, 2015. The reason provided was to have the administration present the year-end report on the budget. On the surface it appeared as something logical, although, now I recall that no reason was given for changing the location of the meeting. The new location for board meetings- at the Duffy site- has been highly publicized and changing the location, in my view is not a good practice but since there was one single item on the agenda the entire board voted for the requested change. With all of other facts now known, it seems that the meeting was changed to accommodate magnet school parents and students who had been rallied to speak during call to the audience in opposing demagnetizing their schools as well as removing funding from the schools.

Transportation had even been offered to parents from the Ochoa neighborhood by Casa Maria Catholic Worker Community staff, Brian Flagg and Cesar Aguirre. The 1010 East 10<sup>th</sup> location is much closer to the schools which were represented during call to the audience than the Duffy facility, which calls to question why Duffy was selected as the new board meeting facility by the administration.

While parents made statements that reflected many of the words noted in the flyers and petitions, as well as those voiced by central administration at meetings which they had attended, loud applause and cheers filled the room. Some stated that integration at their school was impossible when it is clear that limited effort has been made in this area from these schools. While others spoke with differing opinions, they were heckled. Order was not called by the Board leadership. Was the change in location a mere coincidence? Probably not.

At the end of the call to the audience Board members are typically allowed to request follow-up to any comments that were made and/or address criticism, however, this was not allowed at this particular meeting. The Board President called for an immediate recess, which prohibited Board policy from being followed. TUSD Governing Board Policy Section B: Board Governance and Operations- Procedures for Board Members Policy Code: BDAA states: "At the conclusion of the Call to the Audience, the Governing Board President will ask if individual members wish to respond to criticism made by those who have addressed the Board, wish to ask staff to review a matter, or wish to ask that a matter be put on a future agenda. When a Governing Board member has spoken about a particular member of the public's criticism, or asked that a particular matter be reviewed by staff, or asked that a particular matter be put on a future agenda, he/she will not be recognized again until others who wish to speak have spoken." Was it just a mere coincidence that no allowance was made for comments or a request for follow-up? Again, not likely. Your honor, I am not a person with a legal background, but even I see that the overwhelming circumstantial evidence in what I have described leaves little doubt that there has been an orchestrated campaign to smear the Special Master and the plaintiffs.

As the call to the audience took place, the speakers were being video-taped. The board meetings are captured via video as standard practice, but this seemed to be in addition to the regular taping that was taking place, similar to taping the principals who gave their presentation on September 8, 2015. The video of the principals has already been utilized in this campaign and at some point it is likely that the one of those speaking during call to the audience also will be used in this campaign. Certainly this goes beyond coincidence since individuals are being directed to film the sessions.

As recent as today I have received information that a forum is being held on November 9, 2015 by invitation of the Casa Maria Catholic Community staff with the intent of asking (demanding) that Dr. Hawley be removed as the Special Master, which means that the stated campaign now is calling for the removal of the plaintiffs, their representatives, and now the Special Master. The flyers are less apparent about the agenda but what is actually being stated is much more inflammatory. The forum invitation indicates that students from two of the magnet schools will be performing. This seems like a very warped way of using children to motivate their parents to attend a festivity to then be lobbied to sign petitions and or listen to more of the referenced rhetoric- which is all about blaming. The rhetoric has all led to this point and, in my opinion, these ideas have been instigated by the TUSD administration. The administration is wanting to displace those whose work has shown that the District remains non-compliant with the USP and has failed to rid itself of the Court's supervision. Attached I have included petitions which are being circulated along with the flyers that have been distributed to parents and community members.

I do not believe that TUSD has or is supporting the magnet schools to the degree needed to maintain their magnet status and the District is shirking its failures by blaming others. I see the Special Master and the plaintiffs as wanting to work with District officials to more quickly move things along and I see the District's effort going in the opposite direction. The District casts blame and focuses on the differences among the parties instead of attempting to bring about resolution or agreement.

Many do not view me as an advocate of desegregation but the more I have come to understand why we remain under the court order, the more I see that it is the District's failures that have us where we are today. I do support and respect the court order processes which are in place as well as have respect for those involved in the process. I do support the law (the Unitary Status Plan is the law). I do support fairness. I do support accountability. I am concerned that political efforts have attempted to contaminate the court processes as well as blame those involved in the law suit with the exception of the guilty party. I see little to no respect paid to the plaintiffs, their legal counsel, and their representatives or to the Special Master. All of this means that there is also no respect being shown to the Court.

I know I will come under further criticism and condemnation from the Board majority and the TUSD administration, however, when I took my oath as a TUSD Governing Board Member I did not swear loyalty to them. The oath I took was to support the Constitution of the United States, the Constitution and Laws of the State of Arizona and that I would faithfully and impartially discharge the duties of a Governing Board Member, which I believe should focus on what is best for students.

I thank you for taking the time to read this and hope that it is of some value to the Court.

Sincerely,

Michael Hicks

Attachments: Safford web-site, petitions, prescribed letters for parents to sign, and flyers