UNITED STATES DISTRICT COURT

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)

ORDER

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(consolidated case)

On November 19, 2015, the Court adopted the Revised Comprehensive Magnet Plan (Revised CMP), pursuant to the Special Master's Report and Recommendation (R&R) and the Stipulation between the Plaintiffs Mendoza and the District. On December 3, 2015, the District filed a Motion for Reconsideration and Clarification. The District asserts that modifications made by the Court to the Magnet Stipulation include manifest errors because: "the Order states that the parties stipulated to transition plans (which they did not) and the Special Master recommended the Court order transition plans (which he did not))." (Motion for Reconsideration (Doc. 1.) The District argues that the transition plans must be stricken or further briefing must be allowed. The imposition of a May 2016 deadline for developing transition plans impedes the District's discretion under the CMP of how and when to martial its limited resources. The District complains that the Court's clarification of ¶ E somehow precludes it from performing the tasks anticipated in ¶ E as agreed to by the District and the Mendoza Plaintiffs.

The Court was not confused when it ". . . approve[d] the Stipulation (Second) to continue tracking progress towards integration being made by schools currently in the CMP, as recommended by the Special Master, which requires: the simultaneous development of transitional plans to ensure that if at such time these schools are removed from the CMP any extraordinary programs which have been developed in the quest for magnet status are not lost and to ensure that the academic needs of students at these schools, especially underachieving students, are met, programmatically and fiscally, upon the loss of magnet status." (Motion for Reconsideration (Doc. 1872) at 3 (quoting Order (Doc. 1870) at 6.) First, the Stipulation requires the District to aggressively seek to increase integration at all of its magnet schools and programs, (Stipulation (Doc. 1865) ¶ D), and for Dr. Becky Montano, . . ., [to], at a minimum, provide a progress report to the District, the Plaintiffs, and Special Master no less frequently than quarterly, beginning the fourth calendar quarter of 2015, *id.* ¶ G. The Court approved the provision in the Stipulation which requires tracking the progress of integration

being made by the schools currently in the CMP. There is no need to clarify the Court's order regarding the development of transitional plans. "'The Special Master [did] not recommend that the Court require such plans,'" (Motion for Reconsideration (Doc. 1872) at 3) (quoting R&R (Doc. 1865) at 4) (emphasis in R&R), but the District ignores the preceding sentence: "The District should develop transition plans for all magnet schools and programs should their magnet status be withdrawn during the 2016-17 school year," (R&R (Doc. 1864) at 4.) The Court required the District to do this for the magnet schools[1] subject to the Stipulation; the Court was not confused.

The District ignores the fact that the Fisher Plaintiffs were not a party to the Stipulation. The Fisher Plaintiffs, like the Court, were concerned that all the evidence currently compiled in this case reflects these schools will in all likelihood be unable to retain magnet status. The Court could not approve the Stipulation without requiring the development of transitional plans for these schools to ensure the students attending them will continue to benefit from the USP if magnet status is withdrawn. *See* USP (Doc. 1713) § V: Quality of Education (requiring equal academic opportunities for African American and Latino Students as follows: § A (access and support in advanced learning experiences); § C (dual language programs to be academically rigorous); § E(1)(6)(7) (student engagement and support, and adoption of strategies to improve academic achievement and educational outcomes)).

The District objects to the Court's modification of ¶ E, which as stipulated to by the parties stated: "By March 1, the District shall develop and propose initiatives to increase the number of students attending integrated schools within the District." In addition, the Court required "that TUSD research and propose alternative, more integrative, magnet themes or

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[1]The Court mistakenly identified Holladay Elementary School as failing to meet its integration goals. Holladay Elementary School and has included in the Stipulation by agreement due to its vulnerability for losing magnet status related to academic performance issues. (Order (Doc. 1870) at 4.)

programs and to assist the schools in assessing the strength of their existing magnet programs and themes in comparison to any stronger more integrative programs." (Order (Doc. 1870) at 10.) Plaintiffs Mendoza join in the Motion for Reconsideration only as to this part. The addition made by the Court in no way precludes the District from developing and proposing by March 1, initiatives to increase the number of students attending integrated schools within the District. The Court intended only for the District to consider, within the context of these initiatives, the integrative strength of various magnet strategies. The Court does not require the District to propose magnet alternatives for each school; the Court does not conflate the concept of integration initiatives with Improvement Plans.

Finally, further briefing is not required. The issues were fully briefed and presented to the Court. (Order (Doc. 1870) at 2-4 (describing procedural posture of case for adopting CMP). The 30-day response time referenced by the District applies in the event the Special Master recommends "magnet status be withdrawn," (Order (Doc. 1753) at 18), which he has not done. The Court will not remove its references to the 70% USP definition of integration, which must be the underpinning for any integration benchmark set in an Improvement Plan.

The Court denies the Motion for Reconsideration. The Court did not patently misunderstand the parties nor make an error of apprehension. There has been no major or significant change in controlling law, nor any change in the facts, considered by the Court before it issued its Order on November 19, 2015. This is not the rare circumstance warranting reconsideration. *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983); *see also, Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992). There is no manifest error of law or fact nor any newly discovered evidence. *School Dist. No. 1J, Multnomah County, Oregon v. AcandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). The District should not ask the Court to rethink what it has already

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thought through--rightly or wrongly. *Above the Belt, Inc.*, 99 F.R.D. at 101; *See Refrigeration Sales Co. v. Mitchell-Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983).

Accordingly,

IT IS ORDERED that the Motion for Reconsideration (Doc. 1872) is DENIED.

DATED this 10th day of December, 2015.

David C. Bury
United States District Judge