

RUSING LOPEZ & LIZARDI, P.L.L.C.
6363 North Swan Road, Suite 151
Tucson, Arizona 85718
Telephone: (520) 792-4800
J. William Brammer, Jr. (State Bar No. 002079)
wbrammer@rllaz.com
Patricia V. Waterkotte (State Bar No. 029231)
pvictory@rllaz.com

TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT
1010 E. TENTH STREET
TUCSON, AZ 85719
(520) 225-6040
Julie Tolleson (State Bar No. 012913)
Julie.Tolleson@tusd1.org
Samuel E. Brown (State Bar No. 027474)
Samuel.Brown@tusd1.org

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs
v.
United States of America,
Plaintiff-Intervenor,
v.
Anita Lohr, et al.,
Defendants,
Sidney L. Sutton, et al.,
Defendants-Intervenors,

Maria Mendoza, et al.
Plaintiffs,
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.
Defendants.

CV 74-90 TUC DCB
(Lead Case)

**RESPONSE TO FISHER AND
MENDOZA PLAINTIFFS'
OBJECTIONS TO TUSD'S
NOTICES AND REQUESTS FOR
APPROVAL OF GRADE
EXPANSIONS AT:**

- (1) BORMAN ELEMENTARY
SCHOOL;**
- (2) COLLIER ELEMENTARY
SCHOOL;**
- (3) DRACHMAN K-6 SCHOOL;**
- (4) FRUCHTHENDLER
ELEMENTARY SCHOOL; AND**
- (5) SABINO HIGH SCHOOL**

CV 74-204 TUC DCB
(Consolidated Case)

1 **I. Introduction**

2 The District submits its Response to the Fisher Plaintiffs’ and Mendoza Plaintiffs’
3 objections to the District’s Notices and Requests for Approval (NARAs) of proposals to
4 expand grades at Borman, Collier, and Fruchthendler elementary schools, and at Sabino
5 high school (neither party objects to the requested grade expansion at Drachman elementary
6 school). The Department of Justice (“DOJ”) did not object to the NARAs. The NARAs and
7 Desegregation Impact Analyses (DIAs) contain data and analysis assessing the proposals’
8 impact on the District’s desegregation obligations, specifically, and its USP obligations,
9 generally. *See* ECF 1869. The Special Master should weigh appropriately the selectively
10 biased opinions offered by the Plaintiffs’ objections, and the extent to which the underlying
11 assertions supporting their objections are based on gross mischaracterizations of facts or
12 inaccurate data. Even if the underlying assertions are accepted as true (which they are not),
13 the proposals’ projected impact – a one percent change of one racial group at three schools
14 – would not warrant denial of the requests.

15 However, the NARAs and DIAs describe a positive projected impact far greater than
16 one percent. The District designed the proposals to improve integration at six of the seven
17 affected schools (and to maintain the racial/ethnic balance at the seventh school) to meet its
18 student assignment obligations (USP §II), to enhance efforts to fulfill its quality of
19 education obligations (USP §V), and to improve the impact of incentive transportation
20 (USP §III), family engagement (USP §VII), and extracurricular activities (USP §VIII). As
21 described in the NARAs, the District developed the proposals using the appropriate
22 processes, considered the proposals within the context of the USP to eliminate (to the extent
23 practicable) negative effects on USP goals and programs, and ensured that the proposals
24 would not adversely impact the District’s student assignment obligations or exacerbate
25 ethnic imbalances. Each proposal complies with the Unitary Status Plan (USP), this
26 Court’s Orders, and the Constitution.¹ On balance, the requests should be approved.

27 _____
28 ¹ “A school board’s affirmative duty does not compel it to adopt the most
desegregative student assignment alternative available, but to act in good faith within the

1 **II. The Special Master Should Recommend Approval of the NARAs**

2 **A. Borman and Drachman Proposal**

3 The Mendoza and Fisher Plaintiffs do not object to the Drachman proposal, nor does
 4 the DOJ. Neither the Mendoza Plaintiffs nor the DOJ object to the Borman proposal.
 5 Fisher Plaintiffs object to the Borman proposal, asserting it will have a segregative impact,
 6 but they fail to provide any evidence or data that such a segregative impact will result.² The
 7 District assessed the impacts of the Borman and Drachman proposals on its desegregation
 8 obligations.³ Although both proposals improve integration, Fisher Plaintiffs confusingly
 9 object to the Borman proposal while supporting the Drachman proposal. ECF 1877 at 2,
 10 lines 19-22.

11 The Fisher objections rely on non-USP definitions, and mischaracterizations of data
 12 and Facts (“Borman is an *identifiably White* and *racially concentrated school...*”) to
 13 support their arguments. Id. at 9, emphasis added. However, Borman is not a racially
 14 concentrated school (53% white), and the USP neither uses nor defines the term
 15 “identifiably White school” (and, if it did, Magee also could be considered “identifiably
 16 White” at 48%). The Fisher Plaintiffs object to the District’s reference to Borman’s “level
 17 of diversity,” but themselves refer to schools’ relative level of diversity in arguing against
 18
 19

20 practical limitations.” *Taylor v. Ouchita Parish Sch. Bd.*, 965 F. Supp. 2d 758 (W.D. La.
 21 2013).

22 ² Fisher Plaintiffs restate their years-old objections to District efforts to expand
 23 Smith elementary school. The Borman request must be analyzed on its own merit, not
 24 through the lens of a pre-USP effort made under different circumstances and processes in
 25 2007.

26 ³ See ECF 1869-2 and 1869-4 (Borman and Drachman DIAs). Neither proposal
 27 causes a “change in the racial-ethnic composition” of either school. Id. 1869-2 at 4 and
 28 1869-4 at 4. But, through ancillary mitigation measures, the Borman proposal “offer[s]
 additional opportunities to increase integration districtwide” and will increase the
 attractiveness of Roberts-Naylor to provide “more opportunities for students to attend an
 Integrated school” (ECF 1869-2 at 5), and the Drachman proposal will “help to retain
 students in a magnet program which is becoming more integrated.” (ECF 1869-4 at 6).

1 the Borman request.⁴ Borman is just as (or in some cases more) diverse than other
 2 elementary schools considered “Integrated” under the USP. *See* Ex. 1, Declaration of
 3 Bryant Nodine (“Nodine Decl.”), ¶2, Ex. 1-A.

4 The Fisher Plaintiffs’ objection claims the Borman proposal is “segregative in design
 5 and effect,” suggesting instead that the District should “propose ways to attract those same,
 6 predominantly White, students currently lost to the Charter Sector into Roberts-Naylor,
 7 where their enrollment would have an integrative, instead of a segregative, impact.” *Id.* at
 8 9. They, however, offer no evidence either that students “lost to the Charter Sector” are
 9 “predominantly White,” or that the Borman proposal is segregative in design or that it will
 10 have a segregative effect.⁵ Moreover, the NARA describes precisely what the Fisher
 11 Plaintiffs propose: strategies designed to enhance academic achievement and attractiveness
 12 at Roberts-Naylor to promote integration.⁶ In light of this evidence, the Fisher Plaintiffs’

13
 14 ⁴ The Fisher Plaintiffs request a districtwide analysis of the impact of K-8
 15 conversions on the District’s desegregation obligations, arguing the District first should
 16 show that K-8 conversions “result in more TUSD students attending **relatively less diverse**
 17 schools for the 6th, 7th and 8th grades” than if they attended their neighborhood middle
 18 school. *Id.* at 3 (emphasis added). If the relative level of diversity is an appropriate
 19 measure for analyzing the impact of K-8 conversions districtwide, it is likewise an
 20 appropriate measure for analyzing the impact of the Borman proposal. The Borman
 21 proposal will not result in 6th–8th grade students attending a “relatively less diverse” K-8
 22 TUSD school in lieu of attending a more diverse TUSD middle school; the vast majority of
 23 these students are not attending *any* TUSD school. *See* ECF 1869-2 at 2 (“...a charter
 24 school located on the base enrolls approximately 90% of 6th-8th grade students currently
 25 living on [the base]”).

26 ⁵ The Borman DIA projects “no change to the racial-ethnic composition at Borman”
 27 (ECF 1869-2 at 4) and “virtually no impact on middle schools” (*Id.* at 5). To attempt to
 28 prove a segregative effect, Fisher Plaintiffs grossly mischaracterize the facts, claiming
 “...*the districtwide average for White enrollment at grades K8 is 20%.*” *Id.* at 7 (emphasis
 added). The K8 level average for white student enrollment is not 20%, it is 11%. Nodine
 Decl, ¶3. The white student population at Roberts-Naylor K-8 school (11%) is the same as
 the districtwide average for K-8 schools.

⁶ *See* ECF 1869-2 at 2 (“Proposal-specific strategies to promote integration and/or
 other USP activities: AVID at Roberts-Naylor [] could operate to provide more students
 with an opportunity to attend an integrated school, and to prepare African American and
 Latino students for success in core classes and Advanced Learning Experiences (ALEs)
 such as GATE and pre-AP classes.”); and at 5 (“As an ancillary measure, the District is

1 assertion that the District's Borman proposal is "segregative in design and effect" defies
2 logic and must be rejected.

3 Despite its references to an effort to expand Smith Elementary almost a decade ago,
4 mischaracterizations of USP standards, misuse of data, and recommended District actions
5 (which already are included in the Borman proposal), the Fisher objections fail to show how
6 the Borman proposal will result in negative impacts on the District's USP obligations. The
7 Borman proposal draws more students to a school with a 47% non-white student population
8 (*see* Nodine Decl., ¶4), eliminates student transitions from elementary school to middle
9 school (or, leaving TUSD altogether), and does not exacerbate ethnic imbalances at Borman
10 (and likely will operate to improve integration and academic achievement at nearby
11 Roberts-Naylor K-8 school). The District's Borman proposal therefore must be approved.

12 **B. Collier and Fruchthendler Requests**

13 The Mendoza objection asks the Special Master to deny the Collier and
14 Fruchthendler proposals because they would "take each of those schools further away from
15 integration." ECF 1876 at 3. Their objection disregards the District's revised analyses
16 showing that the enrollment (through incentive transportation) of only 30 students at Collier
17 would move it "7% to 8% closer" to being integrated, and 30 at Fruchthendler would move
18 it "4% to 5% closer to being integrated." ECF 1869 at 11, lines 23-25 and at 15, lines 8-10.
19 If the "District's new analysis on express busing" is excluded, the Collier and Fruchthendler
20 proposals would result in an increase of their white populations "**by one percent.**" ECF
21 1876 at 4, lines 12-14, emphasis added.⁷ It would be unreasonable to deny these requests
22

23 proposing to develop AVID at nearby Roberts-Naylor K8 school (an Integrated School) to
24 increase its attractiveness, thereby providing more opportunities for students to attend an
Integrated school").

25 ⁷ The initial projected impacts on the white student populations at Collier and
26 Fruchthendler are actually **less than one percent** (the DIAs used whole numbers): Collier
27 would go from 61.9% (122 of 197) to 62.5% (145 of 232), representing a change of **.6%**;
28 Fruchthendler would go from 65.3% (228 of 349) to 65.5% (264 of 403), representing a
change of **.2%**. *See* ECF 1869-3 at 5 and ECF 1869-5 at 5.

1 due to a one percent change; it would strain credulity to deny the requests based on changes
2 of .6% and .2%. The Special Master must approve actions that at best would improve
3 integration by five or eight percent, and at worst would increase a school's majority-white
4 student population by less than one percent.

5 The Fisher Plaintiffs' objections misrepresent the District's proposals as privileging
6 one class of students over another, ignoring that the Drachman proposal overwhelmingly
7 benefits Latino students at Drachman, that the Borman proposal benefits a
8 disproportionately high African American student population at Borman (14% vs the
9 elementary average of 9%), and that K-6 and K-8 conversions districtwide have
10 overwhelmingly benefited minority students.⁸ Their objections distort the facts in order to
11 support their assertion that the District is seeking to "establish a favored feeder pattern for a
12 favored class." ECF 1877 at 16, lines 12-13. The existing distribution of the District's K-6
13 and K-8 schools and feeder patterns reflects that if any "class" of students has been
14 "favored" it has been students on TUSD's Westside who have far greater access to schools
15 with a K-6 or K-8 model. And, four of the seven schools impacted and benefitted by the
16 District's proposals (Borman, Collier, Magee, and Roberts-Naylor) have African American
17 student populations that are higher than the District averages for their respective levels.
18 Declaration of Bryant Nodine, ¶ 5.

19 The Fisher Plaintiffs assert that the District's DIAs are flawed by an "unjustifiable
20 reliance on 'current patterns of choice.'" Id. at 13, lines 14-18. The Mendoza Plaintiffs
21 assert that "[d]ata on existing use of incentive transportation ... would provide much more
22 useful insight..." ECF 1876 at 8, lines 3-4. But, the Fisher Plaintiffs believe the impact
23 analyses should be "based on potential (as opposed to current) school choice patterns."
24

25 ⁸ See ECF 1869 at 12, lines 9-19, finding that even with the proposed grade
26 expansions "Westside Latino and African American students have, and will continue to
27 have, far greater access to the educational benefits of K-6/K-8 schools than their Eastside
28 Anglo peers" because of the greater number of K-6/K-8 schools located on TUSD's
Westside (11) than are located on TUSD's eastside (4)).

1 ECF 1877 at 13, lines 24-27. Thus, depending on which of the Mendoza or Fisher
 2 Plaintiffs' objection one reads, the District's DIAs are deficient either because they rely on
 3 existing data or because they do not.

4 **C. Sabino Request**

5 The Fisher Plaintiffs' objections call on the District to amend its proposals by
 6 "attracting or incentivizing or facilitating the transfer of a commensurate number of
 7 predominantly nonwhite (and low SES) students from other TUSD schools." ECF 1877 at
 8 17, lines 21-24 (emphasis in original). The District's transportation services already are
 9 designed to accomplish those goals.⁹

10 The preliminary Sabino DIA projected an increase of Sabino's white population of
 11 less than one percent, moving from 58.0% (586 of 1009) to 58.7% (781 of 1329),
 12 representing a change of .7%. See ECF 1869-9 at 37, Table 2. Both the Fisher and
 13 Mendoza Plaintiffs, in their comments on the preliminary DIAs, recommended the District
 14 revise its projections to reflect the impact of various mitigation ("counterbalancing")
 15 strategies. After conducting parent surveys to gauge interest in express busing to Sabino,
 16 the District accordingly revised the Sabino DIA. The revised Sabino DIA, based on
 17 conservative estimates, reflects the projected impact of these strategies would be a 4-5%
 18 movement towards integration "in two racial-ethnic categories (Anglo and Hispanic)."
 19 ECF 1869 at 17, lines 16-19.¹⁰

21 ⁹ See ECF 1869-6 at 2 ("Students living within the boundary of a Racially
 22 Concentrated school could attend Sabino through open enrollment. For students whose
 23 enrollment would increase integration at Sabino, the District would provide free
 24 transportation in the form of an express bus from a central location to Sabino (perhaps
 25 combine 6th graders open enrolled to Collier/Fruchthendler with 7th and 8th graders open
 26 enrolled to Sabino). An increase in non-Anglo students at Sabino would move it towards
 27 the definition of an Integrated School.")

28 ¹⁰ TUSD has recommended postponing implementation of the Sabino proposal
 until the 2017-18 school year, and to phase it in a grade at a time, in order to give the
 District further time to plan and implement its promotional and other strategies. Declaration
 of Bryant Nodine, ¶ 7.

1 The Fisher Plaintiffs’ objection opines, “the District’s counterbalancing proposals
2 show little likelihood of attracting sufficient non-White enrollment” (ECF 1877 at 17, lines
3 25-26). The data, however, show that a 4-5% movement towards integration in two racial-
4 ethnic groups would more than sufficiently counterbalance a .7% increase of the white
5 student population at Sabino. The Mendoza Plaintiffs’ objection reflects their belief that the
6 District has “grossly over-estimated the number of parents who would take advantage of
7 [incentive transportation with express busing]” (ECF 1876 at 6, lines 13-14). The District
8 surveyed parents of 6th and 7th grade students on the Westside, and over 850 parents of
9 students in those areas indicated an interest in express busing to Sabino. Had the District
10 also surveyed parents of 8th through 10th grade students, there likely would have been
11 responses from well over one thousand interested parents. From the 874 parents indicating
12 interest in express busing, the District applied a conservative estimate of 150 students (three
13 buses, each with 50 students) to inform its revised projections. See ECF 1869 at 6. The
14 application of a 150-student estimate based on interest from over 850 parents (from a
15 survey that did not even include all applicable grades) does not constitute a “grossly over-
16 optimistic” analysis of the likely impacts of express busing.¹¹

17 Moreover, it would be unreasonable to deny the Sabino proposal due to a one
18 percent change; it would strain credulity to deny the request based on a change of .7%. The
19 Special Master must approve an action that at best would improve integration by five
20 percent, and at worst would increase a school’s white student population by less than one
21 percent.

22
23
24 ¹¹ The Mendoza Plaintiffs’ objection suggests that current incentive transportation
25 utilization proves the exaggeration of the District’s express bus estimates. However, the
26 estimates are based on surveys which sought to gauge interest in incentive transportation
27 *with express buses* which would cut travel times in half. Although current data on incentive
28 transportation (with travel times up to ninety minutes) is instructive, it is not reasonable to
rely solely on existing data to project potential impacts of incentive transportation with
express buses. Thus, as suggested by the Fisher Plaintiffs, the District based its analyses “on
potential (as opposed to current) school choice patterns.” ECF 1877 at 13, lines 24-27.

D. Magee

The Fisher Plaintiffs note they are “extremely disappointed that the District [did not explore] ways to increase the diversity at schools like Magee MS and RobertsNaylor [sic].” ECF 1877 at 13, lines 11-13. But, the District did explore strategies to increase the diversity at Magee, a school that must increase its non-Anglo student population to move towards the USP definition of integration. These strategies include express busing that “may move [Magee] ‘6% closer to being integrated in two racial-ethnic categories (Anglo and Hispanic)’” and enhancing the educational quality of Magee to increase its attractiveness and improve academic achievement. ECF 1869 at 8.

The Mendoza Plaintiffs’ objections likewise appear to ignore completely the data in favor of unsubstantiated opinion, claiming the proposals “[c]ould Well Propel Magee to Become a Racially Concentrated School as Magee Could Lose Over 20% of its White Students.” ECF 1876 at 9, lines 20-23. They assert this could happen “in the near future.” *Id.* at 10, lines 3-6. This statement is not fact-based, nor is the argument that follows it for over two pages of the objection. Magee’s current white student population is 48%, and its Latino student population is 35%. Declaration of Bryant Nodine, ¶(5). Of TUSD’s ten middle schools, Magee (along with Gridley) has the lowest Latino student population. *Id.* Magee’s Latino population would have to double for it to become racially concentrated. If the District’s estimate of a potential 6% change to integration at Magee is “grossly exaggerated,” how will the Special Master and the Court assess the Mendoza Plaintiffs’ estimate of a potential 35% change to Magee? Without supporting evidence, the Mendozas further argue loss of White students at Magee will be exacerbated by the placement of an alternative to suspension program. There is no support that most parents are aware of this, willing to change schools for this reason, and/or that such a concern would be held disproportionately by White parents.

Although the District **is not advocating** for reducing any school’s white student population as a desegregation strategy, the facts and data matter: the white student population at Magee (48%) exceeds the middle school average (23%) by 25%. If, as the

1 Mendoza Plaintiffs suggest, Magee’s white student population was reduced to 28%, and its
2 Latino student population increased to 55%, the result would be **an Integrated School**
3 **under the USP**.

4 The Mendoza Plaintiffs’ objection questions why the District has developed
5 mitigation strategies for Magee in connection with the current grade reconfiguration
6 proposals. Again, the data (and the Plaintiffs’ historical objections and concerns) are
7 instructive. During the review and comment process, the Special Master (*see* ECF 1869-7
8 at 35), the Department of Justice (*see* 1869-7 at 34), the Fisher Plaintiffs (*see* ECF 1869-7 at
9 50, and the Mendoza Plaintiffs (*see* 1869-7 at 40) all indicated a strong preference that the
10 District develop such strategies to strengthen Magee in light of the proposals. For the
11 Mendoza Plaintiffs to have made these recommendations and, after the District incorporates
12 the strategies into its proposal then criticize the District for not having done so before the
13 recommendations were made is disingenuous as best. Moreover, had the District made
14 these proposals outside the current context, the Mendoza Plaintiffs, based on their previous
15 objections, likely would have opposed these proposed strategies for Magee. Among the
16 District’s 10 middle schools, Magee’s student body has the highest percentage of white
17 students (48%). The Plaintiffs thus far have characterized every District attempt to develop
18 new student programs at eastside schools (where, coincidentally, significant numbers of
19 African American students are enrolled) as catering to white parents, or unjustifiably
20 directing resources at what they deem to be “white” schools.

21 Furthermore, although the Mendoza Plaintiffs object to the Collier, Fruchthendler,
22 and Sabino proposals because they “are not integrated and represent the schools with the
23 highest percentages of white student populations for their school grade levels” (ECF 1876
24 at 3:1-4), they seek an order requiring programmatic changes at Magee, a school that is also
25 “not integrated” and represents the school “with the highest percentages of white student
26 populations” of all middle schools. The programmatic changes proposed for Magee operate
27 within the context of the Collier, Fruchthendler, and Sabino proposals to promote
28 integration overall in the Sabino high school area. Mendoza Plaintiffs’ request to

Tucson Unified School District – Legal Department
1010 East 10th Street, Room 24
Tucson, Arizona 85719
Telephone: (520) 225-6040

1 implement changes at the TUSD middle school with the highest white student population so
2 that it does not lose white students, while denying the underlying proposals, would operate
3 to move Magee further away from the USP definition of integration. The Mendoza
4 Plaintiffs’ position is irreconcilable: deny the Collier, Fruchthendler, and Sabino proposals
5 because they will result in a one percent increase to their white student populations, but
6 direct the District to implement changes at Magee that will likely increase its white student
7 population (if accomplished outside of the proposals).

8 **III. The Fisher Plaintiffs’ Bias Objection is Unsupported**

9 The Fisher Plaintiffs object generally that the SAC was biased because the majority
10 of its members were TUSD employees and/or the parents of students attending the schools
11 at issue. ECF 1877 at 4. Although they explain their belief that TUSD employees may be
12 biased in favor of the proposals’ because they worked on their development, they fail to
13 explain either the nature of any alleged bias on the part of the parents, or identify why any
14 parent would be biased in favor of the several other schools under consideration (where
15 their children were not enrolled!).

16 **IV. Conclusion**

17 Based on the foregoing, TUSD requests the Special Master recommend approval of
18 each grade expansion the NARA proposes.

19 DATED this 23rd day of December, 2015.

20 **RUSING LOPEZ & LIZARDI, P.L.L.C.**

21
22 s/ J. William Brammer, Jr.
23 J. William Brammer, Jr.
24 Patricia V. Waterkotte
25 Attorneys for Tucson Unified School District No.
26 One, et al.

27 **TUCSON UNIFIED SCHOOL DISTRICT**
28 **LEGAL DEPARTMENT**
Julie C. Tolleson
Samuel E. Brown
Attorneys for Tucson Unified School District No.
One, et al.

Tucson Unified School District – Legal Department
1010 East 10th Street, Room 24
Tucson, Arizona 85719
Telephone: (520) 225-6040

1 **ORIGINAL** of the foregoing filed via the CM/ECF
2 Electronic Notification System and transmittal of a
3 Notice of Electronic Filing provided to all parties
4 that have filed a notice of appearance in the District
5 Court Case, as listed below.

6 **ANDREW H. MARKS**
7 Attorney for Special Master
8 Law Office of Andrew Marks PLLC
9 1001 Pennsylvania Ave., NW
10 Suite 1100
11 Washington, DC 20004
12 amarks@markslawoffices.com

13 **LOIS D. THOMPSON CSBN 093245**
14 **JENNIFER L. ROCHE CSBN 254538**
15 Attorneys for Mendoza Plaintiffs
16 Proskauer Rose LLP
17 2049 Century Park East, Suite 3200
18 Los Angeles, California 90067
19 (310) 557-2900
20 lthompson@proskauer.com
21 jroche@proskauer.com

22 **JUAN RODRIGUEZ, CSBN 282081**
23 **THOMAS A. SAENZ, CSBN 159430**
24 Attorney for Mendoza Plaintiffs
25 Mexican American LDEF
26 634 S. Spring St. 11th Floor
27 Los Angeles, CA 90014
28 (213) 629-2512
jrodriguez@maldef.org
tsaebz@maldef.org

RUBIN SALTER, JR. ASBN 001710
KRISTIAN H. SALTER ASBN 026810
Attorney for Fisher, et al., Plaintiffs
177 North Church Avenue, Suite 903
Tucson, Arizona 85701-1119
rsjr2@aol.com

1 ZOE M. SAVITSKY CAN 281616
2 JAMES EICHNER
3 Attorneys for Plaintiff-Intervenor
4 Educational Opportunities Section
5 Civil Rights Division
6 U.S. Department of Justice
7 950 Pennsylvania Avenue, SW
8 Patrick Henry Building, Suite 4300
9 Washington, DC 20530
10 (202) 305-3223
11 anurima.bhargava@usdoj.gov
12 zoe.savitsky@usdoj.gov
13 james.eichner@usdoj.gov

14 s/ Jason Linaman

Tucson Unified School District – Legal Department
1010 East 10th Street, Room 24
Tucson, Arizona 85719
Telephone: (520) 225-6040

15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

TUCSON UNIFIED SCHOOL DISTRICT

LEGAL DEPARTMENT
1010 E. TENTH STREET
TUCSON, AZ 85719

(520) 225-6040

Julie Tolleson (State Bar No. 012913)

Julie.Tolleson@tusd1.org

Samuel E. Brown (State Bar No. 027474)

Samuel.Brown@tusd1.org

RUSING LOPEZ & LIZARDI, P.L.L.C.

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Telephone: (520) 792-4800

J. William Brammer, Jr. (State Bar No. 002079)

wbrammer@rllaz.com

Patricia V. Waterkotte (State Bar No. 029231)

pvictory@rllaz.com

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs

CV 74-90 TUC DCB
(Lead Case)

v.

United States of America,

Plaintiff-Intervenor,

**DECLARATION OF BRYANT
NODINE**

v.

Anita Lohr, et al.,

Defendants,

CV 74-204 TUC DCB
(Consolidated Case)

Sidney L. Sutton, et al.,

Defendants-Intervenors,

Maria Mendoza, et al.

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.

Defendants.

Tucson Unified School District – Legal Department
1010 East 10th Street, Room 24
Tucson, Arizona 85719
Telephone: (520) 225-6040

1 I, Bryant Nodine, declare under penalty of perjury that the following statements are
2 true:

3 1. I am the Director of Planning Services and I am designated to supervise the
4 implementation of student assignment strategies, for Defendant Tucson Unified School
5 District No. One (“TUSD”) and have held this position since the 2014-15 school year. For
6 14 years previously, I held various positions within the District where I was responsible for
7 student assignment and planning for housing students at schools, including students whose
8 neighborhoods had been moved from one school attendance area to another, or students
9 new to the district as a result of additional housing construction, or enlarging the capacity of
10 schools to accommodate growth in the numbers of students in a school’s attendance area. I
11 have personal knowledge of the facts stated herein.

12 2. The level of diversity at Borman is equal to or, in some cases, greater than the
13 level of diversity at other elementary schools that are “Integrated” under the USP. *See*
14 **Exhibit 1-A, Level of Diversity.**

15 3. Roberts-Naylor’s white student population (11%) is the same as the
16 districtwide average for K-8 schools (11%). *See Exhibit 1-B, 2015-16 40th Day*
17 **Demographic Enrollment Data.**

18 4. Based on 40th day data from 2015-16, Borman has a 47% non-white student
19 population (23% Latino, 14% African-American, 7% multi-racial, 3% other). *See Exhibit*
20 **1-B, 2015-16 40th Day Demographic Enrollment Data.**

21 5. Four of the seven schools impacted by the proposals (Borman, Collier,
22 Magee, and Roberts-Naylor) have African American student populations that are higher
23 than the District averages for their respective levels: elementary and K-8 average is 9%
24 compared to Borman (14%), Collier (11%), and Roberts-Naylor (26%); middle school
25 average is 8% compared to Magee at 11%. Magee’s White student enrollment is 48%,
26 while its Latino enrollment is 35%. Of TUSD’s ten middle schools, Magee and Gridley
27
28

Tucson Unified School District – Legal Department
1010 East 10th Street, Room 24
Tucson, Arizona 85719
Telephone: (520) 225-6040

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

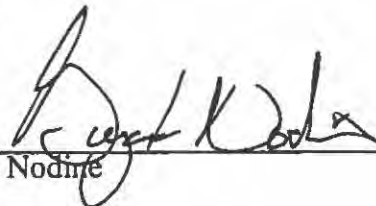
have the lowest Latino student populations. *See Exhibit 1-B, 2015-16 40th Day Demographic Enrollment Data.*

6. I facilitated the formation of the Student Assignment Committee (“SAC”) to assist the District with examining and exploring possible grade reconfigurations in District schools. Sign-in sheets collected at each SAC meeting denotes those in attendance, including support staff, and their individual status (parent, employee, etc.). *See, e.g., Exhibit 1-C, SAC Meeting Sign-In Sheet from August 10, 2015.*

7. As a result of feedback from the Plaintiffs and Special Master, the District chose to recommend delaying implementation of the Sabino Jr. High proposal until the 2017-18 school year to permit the District to develop and implement appropriate promotional and other strategies.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

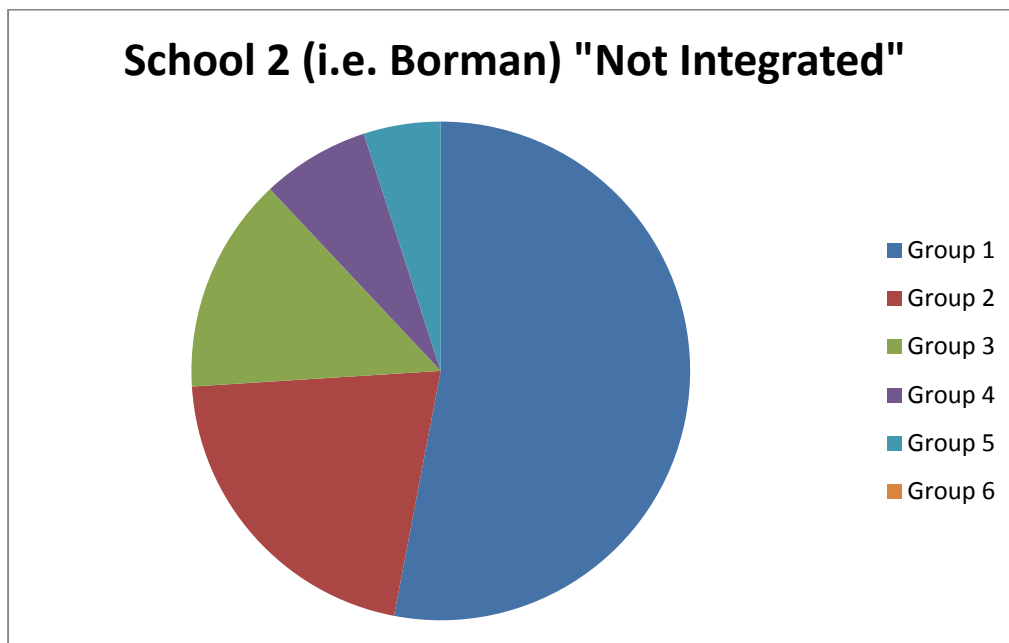
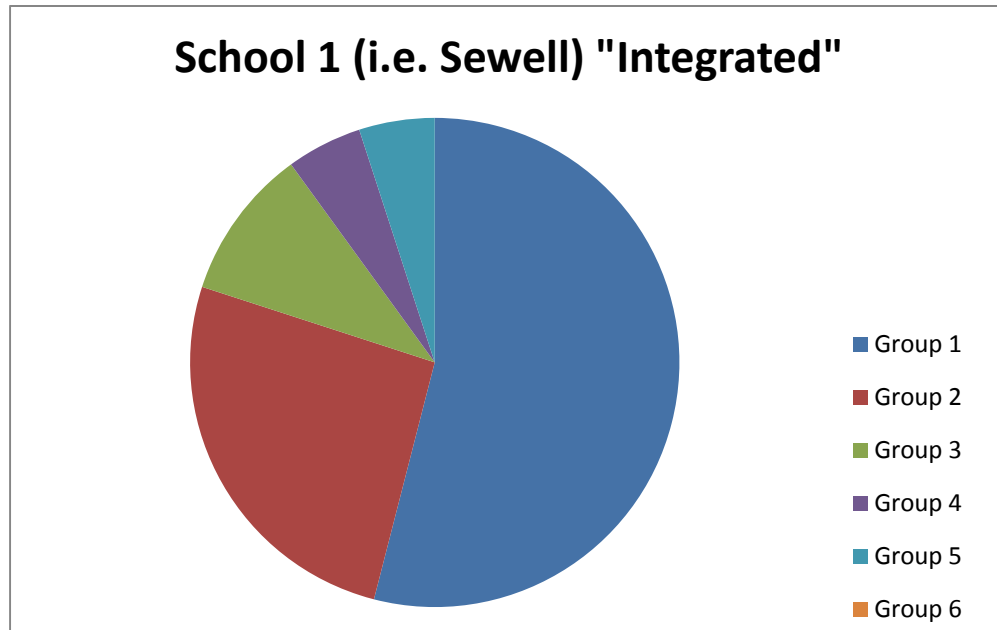
DATED this 16 day of December, 2015.


Bryant Nodine

ATTACHMENT 1-A

EXHIBIT 1-A, LEVEL OF DIVERSITY

Borman's Anglo population is 54% and its Latino population is 23%, were those numbers reversed (54% Latino and 23% Anglo) Borman would be considered "Integrated" under the USP. Consider two schools, both with a mix of students that is roughly 50% of one Group 1, 20-25% of Group 2, 10-15% of Group 3, and 5% or less of all other groups (see graphs below). Both have the same level of diversity, although depending on the race of the groups, each school's status under the USP is deemed to be different. In School 1, group 1 is Hispanic and group 2 is Anglo. In School 2, group 1 is Anglo and group 2 is Hispanic. The level of diversity at both schools is roughly the same, only the groups are different. The students in Schools 1 and 2 experience the same level of diversity – meaning they have the same opportunities to interact with students from a different race.



ATTACHMENT 1-B

EXHIBIT 1-B

2015-16 40TH DAY DEMOGRAPHIC DATA¹

	White		African American		Hispanic/Latino		Native American		Asian/Pacific Islander		Multi Racial		Total
	N	%	N	%	N	%	N	%	N	%	N	%	
1516 ES Avg	3982	22%	1610	9%	10530	59%	686	4%	320	2%	689	4%	17817
Borman	237	53%	60	14%	94	21%	█	0%	20	5%	31	7%	443
Collier	134	62%	24	11%	45	21%	█	1%	█	1%	█	3%	216
Fruchthendler	221	62%	21	6%	91	26%	█	1%	█	1%	14	4%	356
1516 K-8 Avg	919	11%	726	9%	5962	71%	437	5%	107	1%	242	3%	8393
Roberts-Naylor	67	11%	162	26%	338	54%	14	2%	32	5%	█	1%	622
1516 MS Avg	1589	23%	559	8%	4082	60%	231	3%	126	2%	200	3%	6787
Magee MS	296	48%	66	11%	219	35%	10	2%	14	2%	13	2%	618
1516 HS Avg	3334	24%	1238	9%	8309	59%	411	3%	384	3%	440	3%	14116
Sabino HS	549	57%	57	6%	283	30%	█	1%	22	2%	40	4%	957

¹ The data provided has been redacted to protect personally identifiable information in accordance with USP § I(D)(9) and in accordance with applicable federal and state law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

ATTACHMENT 1-C

Meeting Sign-In



Architecture Engineering Planning Interiors

177 N Church Ave
Suite 755
Tucson, AZ 85701
tel 520/ 882-0698
www.dlrgroup.com

Date / Time August 10, 2015 5:30 pm
Meeting Type Options Meeting for the Student Assignment Committee
Location Duffy Elementary School

Attendees:	Name	Phone:	School Affiliation	E-mail:	Present
	Kristen Bury	612-201-1002	Drachman Parent	Kbury10k@gmail.com	
	Ruben Lopez	520-635-9431	Drachman Parent	Ruben082404@yahoo.com	
	Krystal Enriquez	520-429-2590	Drachma Magnet Coordinator	Krystal.enriquez@tusd1.org	x
	Stacy Dutton	520-228-6040	Davis Monmouth + Borman	Stacy.dutton_2@us.af.mil	x
	Rosanna Ortiz-Montoya	520-225-2014	Morgan Maxwell Principal	Rosanna.ortiz-montoya@tusd1.org	
	Jorge Leyva	520-369-8082	Sabino Parent	tucsonazusa@msn.com	x
	Holly Hammel	520-225-6000	TUSD	Holly.hammel@tusd1.org	x
	Chandra Thomas	520-908-4300	Robbins Principal	Chandra.thomas@tusd1.org	
	Jay Campos	520-235-1657	Sabino Staff	Edward.campos@tusd1.org	
	Tina Rustard	520-869-9221	Sabino Parent	terustard@msn.com	x
	Jennifer Guy	520-780-0043	Fruchthendler Parent	Mjguy2001@cox.net	x
	Mary Anderson	520-360-2820	Fruchthendler Principal	Mary.anderson@tusd1.org	x
	Matt Munger	520-730-6059	Sabino Principal	Matthew.munger@tusd1.org	x
	Marcos Jones	520-225-4882	TUSD	Marcus.jones@tusd1.org	x
	Angie Mendoza	520-390-9163	TUSD	Angelita.mendoza@tusd1.org	x
	Jesus Celaya	520-225-1500	Drachman Principal	Jesus.celaya@tusd1.org	x



Architecture Engineering Planning Interiors

177 N Church Ave
Suite 755
Tucson, AZ 85701
tel 520/ 882-0698
www.dlrgroup.com

Meeting Sign-In

Date	July 22, 2015 6:00 pm				
Meeting Type	Kick-Off Meeting for the Student Assignmer Committee				
Location	Duffy Elementary School				
Attendees:	Name:	Phone:	School Affiliation	E-mail:	
	Natalie Levidiotis	940-337-2919	Borman Parent	natalielevidiotis@yahoo.com	
	Tracy Willis	520-424-5790	Borman Parent	K9copswife@aol.com	
	Christina Pizarro	520-904-8893	Borman Teacher	Christine.pizarro@tusd1.org	X
	Bryant Nodine	520-241-4940	TUSD	Bryant.nodine@tusd1.org	X
	Kathy Sisler	520-907-3287	Borman Principal	Katherine.sisler@tusd1.org	
	Paul Larson	520-225-4811	Transportation	Paul.larson@tusd1.org	
	Aissa Mendez	214-235-4117	Fruchthendler Teacher	Aissa.Mendez@tusd1.org	X
	Linda Harrington	520-419-9575	Collier Parent	Linda.jharrington@gmail.com	X
	Lisa Langford	520-584-4800	Collier Principal	Lisa.Langford@tusd1.org	X
	Lori DeBough	520-991-2881	Collier Teacher	Lori.debough@tusd1.org	
	Autumn Szlemko	5220-481-2810	Collier Parent	aszlemko@gmail.com	X
	Larry Barela	520-906-0995	Fruchthendler Parent	hoboism@cowboys.uwyo.edu	X
	Charlotte Patterson	520-225-6400	School Community Services	Charlotte.patterson@tusd1.org	X
	Sue Gray	602-381-8580	DLR Group	Sgray@dlrgroup.com	X
	Katrina Leach	602-381-8580	DLR Group	kleach@dlrgroup.com	X

