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**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)

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)

1 **REPORT AND RECOMMENDATION REGARDING TRANSITION PLAN**

2 **BACKGROUND**

3 On January 17, 2017, the District submitted its transition plans for the six schools that
4 are losing magnet status (*see* Exhibit A). On January 31, 2017, the Mendoza plaintiffs and the
5 Special Master identified their objections (*see* Exhibits B and C). The Fisher plaintiffs
6 submitted their objections on February 1, 2017 (*see* Exhibit D). On February 9, 2017, the Special
7 Master clarified his position on the District’s proposals (*see* Exhibit E). Altogether, there were
8 48 objections that the District identified and to which it responded on February 7, 2017 (*see*
9 Exhibit F). The Department of Justice did not file objections; reference to the plaintiffs in this
10 report applies only to the Mendoza and Fisher plaintiffs.
11

12 **OBJECTIONS**

13 Exhibit F is a useful description of the specific objections so they are not repeated here.
14 These objections dealt with a broad range of issues and overlapped to some extent. Topics dealt
15 with in these objections are:
16

- 17 1. The inadequacy of training and professional development.
- 18 2. Additional sites for dual language programs.
- 19 3. The inadequacy of efforts to improve the academic achievement of African
20 American students.
- 21 4. Inattention to the need for greater school integration.
- 22 5. The excessive use of consultants.
- 23 6. The inadequacy of family engagement efforts.
- 24 7. The need to identify research that supports the introduction of proposed programs.
- 25 8. The complexity of the plans.
- 26 9. Need to start implementation of plans as soon as possible.
- 27
- 28

1 **DISTRICT RESPONSE TO OBJECTIONS**

2 The responses of the District to these objections can be described, in general terms, as
3 follows:

- 4 • The District agrees to adjust the plans to meet the objection (10 instances).
- 5 • The District believes that the plans or District-wide initiatives address the issues
6 raised by the plaintiffs and Special Master (25 instances).
- 7 • The District had sought to explain elements of its plans but was not given the time
8 to do so (four instances). The District agreed to meet with the plaintiffs to discuss
9 these concerns.
- 10 • The District “noted” the expressed concerns (four instances).
- 11 • The remainder of the responses to objections would be (1) “other,” (2) should be
12 dealt with during the coming budget process, or (3) seemed unresponsive
13 (probably because the District may have missed the intent of the objection).

14 **EXPLANATIONS FOR LIMITING RECOMMENDATIONS FOR
15 CHANGING THE DISTRICT’S PROPOSED TRANSITION PLANS**

16 It would not be productive to consider each of the objections and the District’ response
17 thereto. This would result in another round of arguments about the adequacy of the District’s
18 plans. In its December 27, 2016 order dealing with budget process (Doc. 1981), the Court made
19 clear that the District should be given considerable discretion at this stage of the District’s pursuit
20 of unitary status:

21 In the last years of judicial oversight, the Court finds it is important for the
22 District to act of its own accord and be accordingly held accountable.

23 This admonition from Court is one of three reasons for limiting the recommendations by the
24 Special Master for changes in the transition plans. A second is that it is critically important that
25 the transition plans be approved as soon as possible so that:

- 26 1. The District can move forward to develop more detailed elements of the plans.
- 27 2. Steps necessary to the successful implementation of the plans be taken as soon as
28 possible (*e.g.*, so that leadership teams can be trained and get to work – a need

1 identified by both the Mendoza plaintiffs and the Special Master in their
2 objections).

3 3. Detailed budget proposals can be developed.

4 4. The plans can be in place this August when students return to school.

5 The transition plans did not include budgets for each school or for the support at the
6 District level to facilitate implementation. As noted above, in many cases the District's response
7 to objections was to say that it is capable of successfully implementing the plans. This assertion
8 can be examined in the review of the budget.

9
10 A third reason for limiting proposals to alter the District's transition plans is that many of
11 the objections raised by the plaintiffs and the Special Master focus on what is missing from these
12 plans. An example of how difficult it would be for the Court to respond to many of the objections
13 by the plaintiffs and the Special Master is the problem the Court would have in addressing the
14 concerns of the Fisher plaintiffs that the District's plans for the schools do not adequately address
15 the fact that African American students are achieving at lower levels than any ethnic group other
16 than Native Americans. The District's response to this continuing and justifiable concern of the
17 Fisher plaintiffs, is to say that it is committed to improving the achievement of all students.
18

19 The problem the Court would have in requiring the District to meet this concern of the
20 Fisher plaintiffs is that there are no African American-specific ways to teach math or English/
21 language arts. There are, however, strategies the District has putatively adopted that would, if
22 implemented effectively, improve the achievement of different ethnic groups. These strategies
23 include:

- 24 • Tier 1 instruction (as pointed out by the Fisher plaintiffs) that would be especially
25 effective when such instruction incorporates culturally responsive pedagogy.
- 26 • Culturally relevant curricula.
- 27 • Family engagement.
- 28

1 The Court could direct the District to do a better job with these strategies and no doubt the
2 District would agree to do its best. But, of course, the District is trying to do its best already and
3 if classroom instruction were highly effective, achievement in the schools for all students would
4 be higher than it is. As is the case with many school districts, when problems are identified the
5 initial response is to add a new program rather than to look first at the adequacy of the key
6 influences on student achievement – such as the quality of teaching.
7

8 In any event, even if the District were directed to do better, what could the Court
9 mandate? The reality is that the evaluation of teachers as practiced in TUSD does not appear to
10 provide information that would allow for the identification of teachers who are especially
11 effective teaching African American students or who are in particular need of help in improving
12 their teaching of African American students.¹ And, there is no ongoing evaluation of the various
13 approaches to introducing culturally relevant curricula or variations in family engagement efforts.
14

15 **RECOMMENDATIONS**

16 **New Programs Should Be Research-Based**

17 The District should not introduce new programs in the transitioning schools unless it can
18 show either (1) that the efficacy of the program is supported by research that (a) meets the
19 methodological standards required by publication in a peer-reviewed journal and (b) is not
20 conducted by the vendor of this program, or (2) there is empirical evidence that the program has
21 been implemented successfully in TUSD with positive outcomes for students.
22

23 **The Introduction of Dual Language Programs Should Be Deferred**

24 The District should not implement dual language programs at Pueblo or at Ochoa in the
25 coming year. These schools are struggling and their plans – absent dual language – will require
26

27 ¹ Other than the fraction of teachers who appear to be ineffective with all students.
28

1 expertise and commitment that will need to be developed for the plans to be effective. Adding
2 dual language programs in the schools is likely to undermine the effectiveness of other aspects of
3 the plans. Moreover, implementing dual language programs in the schools is unlikely to have any
4 effect on integration. On the other hand, dual language can be a tool for integration if it is
5 implemented effectively at sites that are likely to draw students in addition to Latino students.

6
7 **Plans Should Identify Positions that Will Not be Needed After Initial Implementation**

8 These plans include a number of new positions and consultants. The justification for
9 many of these appointments is that they are needed to facilitate transition. The District
10 acknowledges that some of these positions will not be needed over time. For example, on page
11 16 of the District's response to the Special Master and the plaintiffs (Exhibit F), the District
12 states:

13
14 With the exception of specialized training such as reading recovery
15 certification and continuing support for balanced literacy implementation,
16 the district recommended programs do not require specialized training
outside of initial implementation and data analysis.

17 Similarly, the District has identified positions that are not related to specific programs but
18 are directly related to the transition itself and still others that have no clear relevance to the
19 content of the transition plans that set the six schools apart from other schools in the District (*see*
20 Exhibit C, page 3).

21 The transition plans for the six schools and for central staff needed to support schools in
22 their initial implementation should identify positions and expenditures that will be phased out no
23 later than 2019-20. This will encourage the schools to develop the capacity to perform the
24 functions these short-term employees will be performing and to avoid further proliferation of non-
25 instructional roles.
26

27 **A Timeline for Essential Steps in Implementing the Transition Plans**

28 The Court should direct the District to provide a timeline identifying the activities that are

CERTIFICATE OF SERVICE

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I hereby certify that on, February 21, 2017, I electronically submitted the foregoing **REPORT AND RECOMMENDATION REGARDING TRANSITION PLAN** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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