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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROY and JOSIE FISHER, et al.,
Plaintiffs,
Plaintiff-Intervenor,

No. CV 74-90 TUC DCB

vs.

ANITA LOHR, et al.,
Defendants,
SIDNEY L. SUTTON, et al.,
Defendants-Intervenors,

FISHER PLAINTIFF'S OBJECTION
TO SPECIAL MASTER'S 04/06/17
REPORT AND RECOMMENDATION
REGARDING CONTESTED
BUDGET REALLOCATION

MARIA MENDOZA, et al.,
Plaintiffs,
UNITED STATES OF AMERICA
Plaintiff-Intervenor,

No. CV 74-204 TUC DCB

vs.

TUCSON UNIFIED SCHOOL

1 DISTRICT NO. ONE, et al.,)
 2)
 3 Defendants.)
 4)
 5)

6 **1. THE FISHER PLAINTIFFS OBJECT TO SM BUDGET REALLOCATION**

7 **R&R**

8 COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by
 9 and through counsel undersigned, Rubin Salter, Jr. to object to Special Master (SM) Willis
 10 Hawley’s 04/06/2017 report and recommendation (R&R) regarding Contested Budget
 11 Reallocation (filed 04/06/2017 as document number 2008).

12 **A. The State is Responsible for funding Capital Projects such as Roof Repair**

13 School Districts in every state are required to maintain their properties in good working
 14 order. The District is no different then any other school district around the country who is confronted
 15 with maintenance and repair of aging facilities.

16 The District notes several sources of funding in Exhibit A of the SM’s R&R for the repair
 17 of the roof at Carrillo. While it may be true that the State has stripped some areas of funding and
 18 inadequately funded other sources, at the existing moment there does appear to be a source of
 19 funding for the repair of roofs. If actual safety issues are present or significant deficiencies are noted,
 20 the District may use the State Facilities Board Grant application process to make the needed repairs.

21 The talk of leaking roofs as mentioned by the SM are pure speculation at this moment. The
 22 District cannot point to any existing roof or other site problems at Carrillo which would act as a
 23 deterrent to the minimal progress Carrillo has made towards integration. No current discussion of
 24 safety or disrepair issues have been noted by the District to Fisher Plaintiffs. Rather, the District is
 25 using a predictive tool, the FCI, discussed in the R&R’s attached Exhibit A which references when
 26

1 a building should receive preventative maintenance.

2 The District cannot provide statistical evidence of a correlation between the FCI score for
3 Carrillo's roof and Integration of the school. In fact it would appear that the modest progress towards
4 integration at Carrillo was uninhibited by the condition of the roof or any other facilities based
5 issues. Thus, it would appear that the integration of Carrillo would continue unabated by any
6 objective standard as no problem currently exists to deter parents from enrolling their children at
7 Carrillo.

8 9 **B. Proceeds from Sale of District Property could fund Capital Improvements**

10 The District over the course of the last year has sold or leased property which it owned over
11 the last few years. One example of such was the sale of Reynolds elementary for 1.4 million dollars
12 in February of last year. (**TUSD Sells Closed Elementary for 1.4 Million** -
13 [http://tucson.com/news/local/education/tusd-sells-closed-elementary-for-m/article_bc814cde-8ca](http://tucson.com/news/local/education/tusd-sells-closed-elementary-for-m/article_bc814cde-8ca6-5356-80e7-38db08907a86.html)
14 [6-5356-80e7-38db08907a86.html](http://tucson.com/news/local/education/tusd-sells-closed-elementary-for-m/article_bc814cde-8ca6-5356-80e7-38db08907a86.html)) Former Superintendent HT Sanchez indicated at the time that the
15 proceeds from the sale of that property would be used "to repair and upkeep facilities given that
16 state funding for those purposes has diminished". *Id.* The funds were earmarked for the purposes of
17 funding the repair of schools like Carrillo. How the District distributed those funds and for what
18 purpose is a question for the District to answer. If the District failed to adequately assess and disperse
19 maintenance repair funds from the Reynolds sale to a site like Carrillo the SM should not reward
20 them by allowing the District to raid 910g funds to make up for their mismanagement.

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22 **C. There is no clear and defensible link to the USP and the use of 910g funds for this**
23 **purpose.**

24 In the R&R the SM attempted to justify the use of 910g funds by for the roof repair by noting
25 that Carrillo "is a high performing magnet school that is making gains towards becoming integrated,
26 it is important that serious deficiencies in facilities (*e.g.*, a leaking roof) be repaired in order not to

1 deter families from choosing Carrillo, which would impede the integration of that school.” (Doc.
2 2008 at page 2)

3 Fisher plaintiffs do not believe that the very modest gains towards integration justify such
4 a position. The raw data simply does not support the SM’s contention that Carrillo is making gains.
5 The District presented data to the Fisher Plaintiff’s which from a percentage standpoint appear to
6 justify the SM’s position. However, a closer look at the raw data suggests the gains are deminimus
7 and certainly do not support the reallocation of 910g funds for roof repair.

8 According to district efforts Carrillo experienced significant improvements in integration.
9 To support this claim the district cites figures showing that over the last 4 years 2012-2013 - 2016-
10 2017) Carrillo’s non-latino population has doubled from 11% in 2012-2013 to 22% in 2016-2017.
11 Again, this is what the District cites as evidence of significant improvement in integration and
12 reducing racial concentration.

13 However, when looked at in terms of actual student increases and not percentages it paints
14 a much different picture. Raw data shows that the number of Anglo students had a net increase of
15 18 students, going from 13 in 2012-2013 to 31 in 2016-2017. As it pertained to black students the
16 increase is even more lackluster. Black students saw a net increase of 6 students going from 10 in
17 2012-2013 to 16 in 2016-2017.

18 The significant integration that the District and SM cite in the R&R is neither supported by
19 the raw numbers nor the reality that Carrillo is still 78% Hispanic. Fishers do not see these figures
20 supporting a claim of significant integration or reduction in racial concentration. These figures are
21 not healthy enough to support any legal justification to deviate from the supplanting restriction which
22 is in place to safeguard 910g funds from becoming the District’s slush fund to make up for budget
23 shortfalls.

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1 **D. Expenditure of 910g funds for this purpose sets a dangerous precedent**

2 The Fisher Plaintiffs are concerned that should this Court allow for the dispersal of 910g
3 funds for Carrillo roof repair based upon the SM's tenuous assertion that Carrillo is making gains
4 towards integration would set a dangerous precedent. The door could be opened for other schools
5 with modest gains towards integration to make similar claims with leftover 910g funds. The result
6 could be a raid on 910g funds for purposes which are tangential at best to the Districts Court ordered
7 obligation towards integration. The end result could be a lack of funding for programs and services
8 essential to the desegregation effort.

9 Furthermore, as the SM states in his R&R, the leftover funds which the District seeks to use
10 are only available to disbursement for this purpose because of the District's inability to fill vacant
11 positions. These are positions that the District was ordered to fill pursuant to the USP and was unable
12 to do so.

13 In addition to their failure to fill the mandated positions, SM cites the fact that Carrillo is high
14 achieving as a basis for approving the District's request. What the SM and the District fail to
15 acknowledge is that this puts the District in compliance with the USP. Meeting this requirement
16 does not warrant a reward.

17 Should this court allow the District to use these funds in the manner in which they have
18 requested it would be tantamount to a reward for not fulfilling their obligations under the USP on
19 one hand, and a reward for doing exactly what they were ordered to do on the other hand. The
20 District's compliance or lack there of with provisions of the USP that they helped draft and agreed
21 to does not merit a reward. Should the Court agree with the SM's R&R the District will lack less
22 incentive to do what is mandated by the Court if they know they will receive some benefit if they can
23 make even a remote connection to the purpose of integration.

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CERTIFICATE OF SERVICE

The foregoing document was lodged with the Court electronically through the CM/ECF system this 8th day of APRIL, 2017, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

s/ Kristian H. Salter
Attorney

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