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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,  
Plaintiffs,

Case No.: 4:74-cv-00090-DCB

v.

Tucson Unified School District No. 1,  
Et al.,  
Defendants.

FISHER'S OPPOSITION TO DEFENDANT TUSD'S  
MOTION FOR PARTIAL UNITARY STATUS

Maria Mendoza, et al.,  
Plaintiffs,

CASE NO. CV 74-204 TUC DCB

v.

Tucson Unified School District No. 1,  
Et al.,  
Defendants.

**INTRODUCTION**

On February 20, 2013, this Court approved the Unitary Status Plan (hereinafter USP). (Doc. 1450) The plan was the result of a carefully crafted and negotiated plan between the Plaintiff's and, Defendant's all with the consultation of the agreed upon and court appointed Special Master, Willis Hawley (hereinafter Special Master). The Special Master's role was to assist in the implementation of programs designed to carefully address factors outlined by the Court pursuant to *Green v. New Kent County School Bd.*, 391 U.S. 430. Those factors, referred to as *Green* factors include student assignment, transportation, assignment of administrators and certified staff, extracurricular activities, quality of education, facilities (technology), family and

1 community engagement, and lastly accountability and transparency, which includes the Evidence  
2 Based Accountability System which will be discussed below.

3 On March 20, 2017, Tucson Unified School District (hereinafter TUSD) moved for partial  
4 unitary status in six areas in which they believe they have met legal threshold to request such  
5 status and eliminate Court oversight as to those factors outlined in their motion. (See Doc. 2005)  
6 The USP allows for TUSD to move for partial or complete unitary status at any time after the  
7 2016-2017 school year. (Doc. 1450, § XI.A.2.) TUSD contends that they have meet the legal  
8 standard set forth in *Freeman v. Pitts*, 503 U.S. 467(1992), in the following areas: Transportation,  
9 Extracurricular activities, Family and Community Engagement, Facilities, Technology and  
10 Evidence Based Accountability System.  
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13 Fisher Plaintiff's recognize the importance of the court's duty in this school  
14 desegregation case to press forward with the mandate expressed by the U.S. Supreme Court of  
15 "[r]eturning schools to the control of local authorities at the earliest practicable date [because it]  
16 is essential to restore their true accountability in our governmental system." *Id* at 467, 490.  
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18 In *Freeman* the Court noted several factors to be considered in determining whether this  
19 court should consider a request for partial unitary status. Those factors are, "whether there has  
20 been full and satisfactory compliance with the decree in those aspects of the system where  
21 supervision is to be withdrawn; whether retention of judicial control is necessary or practicable  
22 to achieve compliance with the decree in other facets of the school system; and whether the  
23 school district has demonstrated, to the public and to the parents and students of the once  
24 disfavored race, its good faith commitment to the whole of the court's decree and to those  
25 provisions of the law and the constitution that were the predicate for judicial intervention in the  
26 first instance." *Id* at 491. In order to meet the aforementioned standard TUSD bears the burden  
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1 of showing their substantial compliance. In order to judge whether TUSD has meet such a  
2 burden all parties agreed that TUSD was to provide all parties and the Special Master with an  
3 annual report. (Doc. 1450, §I.D.5) The purpose of the report is to provide all parties with  
4 information (to include relevant data) concerning TUSD's efforts towards compliance for all area  
5 outlined in the USP. The Special Master was tasked by this Court with the duty of overseeing the  
6 implementation of the USP, and giving recommendations to the court regarding TUSD's good  
7 faith compliance with the USP. (Doc. 1350, Order appointing Special Master) Eventually, the  
8 Special Master will also be tasked with making a final recommendation to the Court as to  
9 whether TUSD has ultimately achieved unitary status. *Id.*

12 The USP provides that the Special Master must file an annual report which assesses  
13 TUSD's compliance with the USP. (Doc. 1450 § X.E.4) On March 22, 2017, the Special Master  
14 disseminated his Annual report (SMAR) to all parties. In his report he made no finding of non-  
15 compliance regarding the areas of the USP in which TUSD seeks Unitary Status. (Exhibit #1)  
16 However, the Special Master's report does not address whether TUSD has meet the standard of  
17 “full and satisfactory compliance” which is necessitated in order for this Court to determine if  
18 TUSD has met the legal requirements to allow this Court to withdraw supervision in those areas  
19 TUSD has moved for partial unitary status. *Freeman* at 491-492.

## 21 I. LEGAL AUTHORITY

22 The principles outlined above by the Court in *Freeman* and its progeny dictate the legal  
23 standards by which this Court is to review TUSD's request for partial unitary status. (1) Has the  
24 school district operated in “Good Faith” with the desegregation decree since it was entered. (2)  
25 Whether the vestiges of past discrimination have been eliminated to the extent practicable. (3)  
26 Finally, has the school district reached full and substantial compliance with the Court's decree for  
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1 a reasonable period of time. *See Freeman v. Pitts*, 503 U.S. 467, 491-92, 498 (1992); *see also*  
2 *Fisher v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1134-35 (9th Cir. 2011); USP § I.C.1.

3  
4 Additionally, the Court retains jurisdiction over the case unless and until the court finds  
5 that TUSD has meet its burden regarding the elimination of the past “vestiges of  
6 discrimination....to the extent practicable” regarding all Green factors to include school  
7 operations, including student assignment, faculty, staff, facilities, extracurricular activities, and  
8 transportation. *Fisher* at 1144. The Court within its discretion may “order an incremental or  
9 partial withdrawal of its supervision and control.” *Freeman* at 489.  
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## 11 **II. ARGUMENT**

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13 It is with full recognition and appreciation of this mandate that Fisher Plaintiffs  
14 respectfully object to TUSD’s motion for Partial Unitary Status on the following grounds.

### 15 **A. TRANSPORTATION**

16  
17 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
18 Mendoza Plaintiff’s that TUSD is not in compliance with the USP in this area. The Fisher  
19 Plaintiff’s would also add the following remarks.

20 TUSD efforts to seek partial unitary status as it regards to transportation are premature.  
21 Allowing TUSD unitary status as to this factor could upset the compliance measure being taken  
22 with to other Green factors which TUSD has not asked for unitary status like student assignment  
23 and quality of education. The Special Master notes in the March 22 SMAR that TUSD is  
24 complying satisfactorily in the area of transportation, however he notes that commitments TUSD  
25 has made in other Green factors should be continued by stipulation should this Court believe that  
26 TUSD has met its burden. SMAR at 1.  
27

1 Our nation's highest court held in *Freeman* that Green factors may be related or  
2 interdependent of one another. *Freeman*, 503 U.S. At 497(Two or more *Green* factors may be  
3 intertwined or synergistic in their relation.") As such, the District Court is not required to find  
4 TUSD has met its burden. Rather, the Court may maintain supervision in order to assist the Court  
5 in assessing compliance for other parts of the decree. *Jenkins by Jenkins v. Missouri*, 122 F.3d  
6 588, 600 (8th Cir. 1997)

8 The Court in *Jenkins* noted that "the transportation factor was so closely bound to student  
9 assignment that the uncertainty affecting the student assignment vestige also prevented a finding  
10 of unitariness as to transportation" *Id* at 599. The case at bar is no different than that of *Jenkins*.  
11 It should go without saying that the use of transportation by TUSD is critical in fulfilling the  
12 other requirements of the USP for which TUSD has yet to seek unitary status. This  
13 interconnectedness is perhaps most apparent in transportation. The USP is clear in its language  
14 regarding how critical a component transportation is. ("[t]he District shall utilize transportation  
15 services as a critical component of the integration of its schools,") USP § III.A.1. Should TUSD's  
16 motion be allowed it could set off a cascade of problems for the other Green factors by effecting  
17 the racial balance of schools through limiting transfers and Magnet school attendance. Given the  
18 intertwined nature of transportation to student assignment TUSD must **first** show compliance in  
19 student assignment prior to any dismissal of the transportation factor.

## 22 **B. FAMILY AND COMMUNITY ENGAGEMENT**

24 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
25 Mendoza Plaintiff's that TUSD is not in compliance with the USP in this area. The Fisher  
26 Plaintiff's would also add the following remarks.

1 The USP is explicit as it pertains to the factor of family and community engagement. The  
2 USP expressly states (in the “Magnet Program” subsection) that the “District, through its Family  
3 Center(s) and other recruitment strategies set forth in this Order, shall recruit a racially and  
4 ethnically diverse student body to its magnet schools and programs to ensure that the schools are  
5 integrated to the greatest extent practicable.” USP § II.E.2. However, despite TUSD's statements  
6 regarding their compliance with this provision it would appear they have fallen short of full and  
7 satisfactory compliance in this area. The District has been deficient in getting critical Family  
8 Resource Centers, whose role is crucial in providing much needed support for family and  
9 community engagement, up and fully staffed. It has taken over three years to become  
10 operational.

13 Fisher Plaintiff's primary objection goes squarely to TUSD's slow implementation of the  
14 family resource centers. Of the available centers all but one has been open for more than a year.  
15 Others have been open for less than a year. Given that these centers are essentially in their  
16 nascent stages, it is difficult to determine what, if any, impact they have had towards the  
17 achieving the stated goals outlined in the USP.

19 Additionally, the Special Master in his SMAR advises that TUSD can do more by  
20 connecting the bridge between the student's home and school by taking a “two-way approach”  
21 which is supported by current thinking, rather than the one way approach TUSD is currently  
22 utilizing. (See exhibit #1) The Special Master also notes that many positions for community  
23 liaisons have gone unfilled. TUSD has not made enough effort to recruit full-time community  
24 liaisons. (See exhibit #1)

1 Lastly, there is very little evidence that TUSD has taken the appropriate steps to  
2 adequately advertise the resource centers to families of African-American and Latino students  
3 who could benefit most from the implementation of the centers.

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5 **C. EVIDENCE BASED ACCOUNTABILITY SYSTEM**

6 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
7 Mendoza Plaintiff's and Department of Justice that TUSD is not in compliance with the USP in  
8 this area. The Fisher Plaintiff's would also add the following remarks.

9 The Special Master in his SMAR explicitly states the following:

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11 *Before the district is granted unitary status for the part of Section X of the USP that deals with*  
12 *EBAS, clarity is needed about the adequacy of the number and placement of MTSS facilitators,*  
13 *how EBAS and the MTSS system are integrated, and how the MTSS system will work in the*  
14 *absence of facilitators whose primary role is to facilitate the effective use of information on*  
*student behavior and academic performance beyond the designation of MTSS "Leads".*  
(Exhibit #1)

15 As of the filing of this response TUSD has not presented evidence that they have  
16 answered the substantive questions the Special Master lays out above. It would appear that there  
17 is much more work to be done in order to make sure that the EBAS system that has been put in  
18 place is functional and serving the purposes of the system outlined in the USP § X.A.1. Without  
19 further clarity, Fisher Plaintiffs believe that the motion for unitary status in this area is premature.  
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21 **D. FACILITIES**

22 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
23 Mendoza Plaintiff's that TUSD is not in compliance with the USP in this area.

24 **E. TECHNOLOGY**

25 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
26 Mendoza Plaintiff's that TUSD is not in compliance with the USP in this area. The Fisher  
27 Plaintiff's would also add the following remarks.

1 As the Special Master Points out in his SMAR, TUSD cannot tell Plaintiff's and the Court  
2 whether students are using technology in such a manner as to benefit them. The Special Master  
3 indicates that it is access that is more equitable than utilization. The Special Master makes note  
4 that TUSD cannot demonstrate whether student who use computers in class are using them for  
5 development of basic skills or what the Special Master calls "high order" knowledge and skills.  
6 Students will do what their teachers instruct them to do on the computers. As such, the Special  
7 Master notes that teachers need proficiency in order to maximize learning opportunities that such  
8 technology can provide. (Exhibit #1) By TUSD's own admission they have much to do in the  
9 area of training teachers to use the technology in a manner which promotes "high order"  
10 thinking.  
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13 Furthermore, Fisher Plaintiffs are suspicious of the claim that all schools are able to  
14 provide equal access to technology and software. TUSD has not provided Plaintiffs with a school  
15 by school inventory of equipment and facilities. Had TUSD provided such a list, Plaintiffs would  
16 have been able to verify TUSD's claim of equal access to technology and software. One example  
17 of this is Dietz K-8, which is missing a computer and science lab for the middle school students,  
18 which is required for middle schools in the district. This calls into question the veracity of  
19 TUSD's claim that they have provided the mandated access to technology. Without further  
20 clarity, Fisher Plaintiffs believe that the motion for unitary status in this area is premature.  
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#### 23 **F. EXTRACURRICULAR ACTIVITIES**

24 Fisher Plaintiffs adopt the arguments and exhibits which support the arguments of the  
25 Mendoza Plaintiff's that TUSD is not in compliance with the USP in this area. The Fisher  
26 Plaintiff's would also add the following remarks.  
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1 This is another area in which TUSD motion for unitary status is simply premature. In  
2 particular, a large component of this factor is related to transportation. Facilitating the transfer of  
3 students to extracurricular activities is essential to the mission of the USP in this area. These  
4 extracurricular activities are not limited to athletics. Integration is facilitated in this area by  
5 drawing students to attend school out of their home school area to schools where extracurricular  
6 activities are offered that may not be in their home school area. As such, this area is too closely  
7 tied to Transportation to allow for unitary status.  
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9 **III. CONCLUSION**

10 For the foregoing reasons, the Fisher Plaintiffs opposes as premature the District's  
11 motion for unitary status as to transportation, family and community engagement, extracurricular  
12 activities, facilities, technology and the EBAS. Should the court grant partial unitary status for  
13 those areas which have been outlined as intertwined, TUSD should be ordered to continue its  
14 efforts in these areas to the extent required to comply with the remaining provisions of the USP.  
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18 Respectfully submitted this 28th day of April, 2017  
19 s/ Rubin Salter, Jr.  
20 RUBIN SALTER, JR., ASBN 01710  
21 Counsel for Fisher Plaintiffs  
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**CERTIFICATE OF SERVICE**

The foregoing document was lodged with the Court electronically through the CM/ECF system this 28<sup>th</sup> 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