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

Roy and Josie Fisher, et al.,
Plaintiffs
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.,
Defendants,
and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

No. CV-74-00090-TUC-DCB

Maria Mendoza, et al.,
Plaintiffs,
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.
Defendants.

No. CV-74-0204-TUC-DCB

ORDER

Clarification: Special Master's Report and Recommendation Regarding Unitary Status

1 On May 17, 2017, the Court denied as premature the Defendant’s Motion for
2 Partial Unitary Status. Apparently, the Court confused the parties by asking for a
3 timeline, including deadlines, for submittal to this Court of the Report and
4 Recommendation regarding the attainment of unitary status in TUSD, which is due at the
5 close of SY 2016-2017. On May 24, the Court received an email from the Special Master
6 explaining that the parties are at odds regarding the meaning of the Court’s directive.
7 *See* Attachment. TUSD believes the Court means for the Special Master to prepare the
8 Report and Recommendation, first, and for the parties to respond thereafter. The
9 Plaintiffs object and argue that the District must first move for unitary status because the
10 Special Master, like the Judge, is “not like a pig[] hunting for truffles buried in briefs.”
11 *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991).

12 It seemed to go without saying that TUSD, which bears the burden of showing it
13 has attained unitary status, must move this Court to end its oversight of the USP. *Fisher*
14 *v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1134–35 (9th Cir. 2011) (citing *Missouri v.*
15 *Jenkins*, 515 U.S. 70, 89 (1995)). What the Court envisioned when it asked for a briefing
16 schedule for the SY 2016-2017 status report regarding unitary status was something akin
17 to the annual reports, which are initiated by TUSD and followed by the Special Master’s
18 Annual Report, with similar opportunities for objections from the parties. In light of the
19 fast approaching October 1st deadline for TUSD’s SY 2016-2017 annual report, the Court
20 calls for the “Reporting”¹ required for each USP component to include an analysis of the
21 status for attaining unitary status. This will streamline the reporting requirements for SY

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28 ¹ *See* USP § § II.K, III.C, IV.K, V.F, VI.G, VII.E, VIII.C, IX.C, X.F.

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2016-2017 and avoid duplication of efforts for all parties, including the Court.

Dated this 25th day of May, 2017.



Honorable David C. Bury
United States District Judge

May 24, 2017

To: The Honorable David C. Bury

From: Willis Hawley, Special Master

Re: Clarification of Court Order (Doc. 2033)

On Monday, May 22 the parties met by phone in response to the Court's Order (Document 2023) filed on May 17 to develop the timelines and deadlines for filing the Special Master's report and recommendation regarding unitary status.

This memo seeks clarification from the Court regarding its request about which the parties have taken very different positions.

The district believes that it should not have to decide whether to petition the Court for unitary status until the Special Master prepares his recommendations with respect to whether the district has met all of its obligations spelled out in the USP and is therefore eligible for unitary status. To expedite the process, the district offers to provide all data and reports required by the USP for the 2016-17 school year earlier than normally required under the USP (October 1, 2017). The district further agrees to provide the narratives, as well as the data, for elements of the 2016-17 Annual Report relevant to unitary status. The district's primary concern is that the Special Master's report not be linked or tied to any decision by the district to seek full unitary status. In addition, the district also believes that it is important that the Special Master's report not be set so late in the next school year that it de facto results in another school year of supervision by the Court.

On the other hand, the Mendoza plaintiffs assert that in its pursuit of unitary status, the district must first file a motion as provided for in the USP XI.A.2.* They argue that the district can't simply provide all its data for the current year and for the past years via its annual reports to the parties, and with the Special Master and the Court, and say in effect "something in there says we have achieved unitary status, you need to find it." The Mendoza plaintiffs argue that we would be back to a version of the scenario that the Court complained about and refused to accept in the past. Neither the Special Master nor the Court should have to "rut around" through the record to piece together the facts that the district says supports a finding of unitary status (See Doc 1239) Significantly, notwithstanding the fact that DOJ had concluded that the district's annual reports on file when the district first sought unitary status demonstrated "compliance", the Court refused to accept such an approach and wrote, "This Court is hard-pressed without spending hours upon hours reading through the record to piece together the facts it needs to support the finding of unitary status" and then quoted *United States v. Dunkel*, 927F. 2D 955, 956 Seventh Circuit 1991; "Judges are not like pigs hunting for truffles buried in briefs". The Mendoza plaintiffs and that neither are Special Master's responsible for hunting for documentation in the years of annual reports and other district data. In its order, the Court then directed the district to file a comprehensive report to support its request for finding of unitary status. The district should do the same thing this time around

The Mendoza plaintiffs argue that if the District insists on going forward with the pursuit of unitary status at the end of this school year, it therefore should file a motion inclusive of all the data and

information it needs to support its application. Based on the information the district now has, its motions should be filed on a date to be stated by the district after September 1, 2017.

Based on the discussion on May 22, it appears that the Fisher plaintiffs agree with the Mendoza plaintiffs. The Department of Justice indicated that it does not have a position on the intent of the Court's May 17 order at this time.

- In this paragraph I am paraphrasing a memo submitted by the Mendoza plaintiffs to the parties on May22, 2017.