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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 ROY and JOSIE FISHER, et al.,
13
14 Plaintiffs

CV 74-90 TUC DCB
(Lead Case)

15 v.
16 UNITED STATES OF AMERICA,
17
18 Plaintiff-Intervenor,

**RESPONSE TO SMAR
2016-17 ANNUAL REPORT**

19 v.
20 ANITA LOHR, et al.,
21
22 Defendants,

CV 74-204 TUC DCB
(Consolidated Case)

23 and
24 SIDNEY L. SUTTON, et al.,
25
26 Defendants-Intervenors,

27

28 MARIA MENDOZA, et al.
29
30 Plaintiffs,

31 UNITED STATES OF AMERICA,
32
33 Plaintiff-Intervenor,

34 v.
35 TUCSON UNIFIED SCHOOL DISTRICT
36
37 NO. ONE, et al.
38
39 Defendants.

40 COMES NOW, Plaintiffs Roy and Josie Fisher, by and through counsel undersigned,
41 Rubin Salter, Jr. submits the Response to SMAR 2016-17 Annual Report.

1 **Overview**

2 The Fisher plaintiffs (hereinafter Fisher(s)) agrees in principal with most of the Special
3 Masters reciting for the purpose of desegregation cases and the legal characterization of the
4 USP as a “consent decree.” However, Fisher’s believes that casting the USP as the most
5 comprehensive plan ever developed to remedy the vestiges of past discrimination and
6 segregation is a might too much.
7

8 The Fishers believes that the 14-15 school year is the appropriate starting point to
9 determine if the District has or is making significant progress toward becoming unitary.
10

11 In his 2016-17 Annual, the Special Master recommends partial unitary status to the
12 District in several areas while recommending continued supervision in other areas. The
13 Fishers are concerned that granting partial unitary status could cause the District to lose focus
14 in these areas and allow the situation to return to unsatisfactory levels. While there are no
15 studies that have tracked long term success of Districts placed under partial unitary status, we
16 do have studies which track long term success of full unitary status, and those studies have
17 shown that District’s revert to the previously segregated system.
18

19 The Fishers also question the lack of attention paid to the low academic achievement
20 rates of African American students. The “achievement gap” is only addressed indirectly.
21 Unitary status should not be awarded simply to falsely restore public confidence in the
22 District.
23

24 In its response, Fisher will agree to a few of the Special Master’s recommendations
25 and object where the best interest of black children has not been adequately addressed by the
26 Districts performance so far. Where Fishers deems it necessary they will make
27

1 recommendations for improvement of some programs required by the USP and even
2 eliminate unnecessary and unwarranted programs that do not contribute inclusiveness and
3 diversity.
4

5 **Dual Language**

6 The Fishers disagree with the Special Master's belief that integration has been met.
7 While integration may not be possible, it certainly can be enhanced. However, Fishers feel
8 that the District's policies create an atmosphere which does not promote integration. For
9 example the number of schools with dual enrollment language classes where there is no
10 English track prohibits parents from sending their students to those schools. Non Spanish
11 speakers will not attend a dual enrollment school and African American students who live in
12 the attendance area do not want to enroll in the dual language program are forced to leave
13 their school. These classes are not inclusive and violate ARS which requires that students be
14 placed in English immersion until they are competent in English.
15

17 **Extra-Curricular**

18 Black student's participation has significantly declined due to requirement such as,
19 cheerleading that can cost more than \$500 because students are required to buy their own
20 uniforms.
21

22 **Magnet Schools**

23 The recruiting focus for magnet schools is to attract Hispanics and Anglos to schools.
24 There is no focus on recruiting African-American students.
25

26 **Transportation**

27 Fishers have no disagreement.
28

1 **Staffing**

2 Fishers agree that little effort has been made to recruit and retain African American
3 employees. The District and Special Master believe this is due to a nationwide teacher
4 shortage. Fishers don't agree with this assertion. Fishers believe the District has failed to
5 institute appropriate recruitment measures. Additionally, the hiring for administrators does
6 not reflect issues addressed in the deseg order, ethnic diversity or the USP. (See the attached
7 Standards of Educational Leaders).
8

9
10 **ALE**

11 Fishers disagree with much of the Special Master's discussion of ALE. It is not
12 acceptable to use socioeconomic status as an excuse for low performance for African-
13 American students. He questions their cognitive ability even though in 2015-16, there was
14 57% increase of African-American students in self-contained 1-5GATE. This can be
15 attributed to the District's decision to take the recommendation from the Fishers to test all
16 students rather than wait for parents to sign their students up for testing. We believe once the
17 District determines that these students qualify for GATE, they should be placed in it. The
18 District is always willing to place students in remedial programs without parent consent, so
19 the same could be done with advanced classes.
20
21

22 Middle school enrollment of African-American students also increased noticeably.
23 This is a direct contradiction to the District's suggestion that they lower cut scores. Fishers
24 are strongly opposed to increased enrollment of African-American student enrollment by
25 lowering standards. The Special Master also encourages increasing the number of pre-AP
26 classes at middle schools. For this to be effective, the criteria and curriculum for these classes
27
28

1 need to be aligned with the College Board. Additionally, there is no focus on establishing
2 standards at the 8th grade level or at the earlier grades so that students are prepared for these
3 classes.
4

5 The Special Master writes extensively about the low number of AP classes at certain
6 schools and this is the reason for not granting partial unitary status for AP classes. The Fishers
7 wish to point out that if the District is going to increase the number of AP classes at Catalina,
8 Pueblo and Tucson High Schools, they need to be willing to run classes with lower numbers
9 in order to grow the program at these schools
10

11 Although he does not recommend unitary status for University High School, the
12 Fishers do not agree with his reasons. It is not true that students enrolling at UHS from
13 outside the District does not affect African-American or Latino enrollment. For example, in
14 the 2017-18 school year, there were over approximately 12 African-American students who
15 passed the admissions test, but missed the GPA score by one-tenth of a percent and were not
16 allowed to enroll while students from outside the District were recruited and enrolled at UHS.
17 Every space taken by a student outside of the District is a space not available for students in
18 the District. The District should be prohibited from taking in any more out of District student
19 because Rincon and University are both over capacity. If this continues they will be able to
20 push Rincon students out of their school; thus, creating a majority white school to the
21 detriment of African-American students.
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25 There is also discrepancy in when students take the admissions test. TUSD students
26 must take it during their 7th grade year, while out of District students take it during their 8th
27 grade year so their achievement level is one year advanced. Another policy that works against
28

1 African-American students is that TUSD students must enter in their 9th grade year, but out
2 of District students can enter at any grade level.

3
4 There are also a significant number of African-American students who meet the
5 admissions requirements, but choose not to enroll. The District needs to spend real time
6 finding out why after taking the test, these students choose not to enroll. This should be done
7 before adding an additional essay as part of the entrance requirements. As stated previously,
8 Fishers disagree with lowering standards in order to increase African-American enrollment.
9

10 **Culturally Responsive Pedagogy**

11 No disagreement.

12 **Culturally Relevant Course**

13
14 Fishers disagree with the decision to grant unitary status in this area. There are only
15 207 students enrolled in CRC classes with an African-American focus at the high school
16 level. At the most, this is only 7 classes. Fishers request that the African-American focused
17 classes be eliminated in order to focus on integrating that curriculum into the multi-cultural
18 classes. Multi-cultural classes have been adopted by the State of Arizona and to maintain
19 ethnic-based classes is counterproductive and goes against the concept of inclusion and
20 integration. To maintain these classes does not promote racial harmony. Instead it creates a
21 climate of disharmony and isolationism. This has been the Fisher's position since DOJ,
22 Mendoza's and Special Master included them in the USP against our recommendation. The
23 main concern has always been with the Latino focused classes and the District has also
24 showed very little interest in the African-American focused curriculum as evidence by the
25 fact that no one in the CRC Department has an Afro-centric background or perspective.
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1 **Completion Plan**

2 In general, Fishers believe that the completion plan does not allow anytime to see if
3 SMAR’s suggestions or changes will have a positive effect or not. Research on school
4 improvement, curriculum and organization change often finds what the Special Master calls
5 “implementation dip”, a period during which people need to learn new techniques and unlearn
6 less effective default behaviors. In layman’s term this means that it takes about three (3) years
7 to see if new programs are showing improvement. The time lines suggested by the Special
8 Master are generally too short. Fishers believe that this will lead to the District having to
9 meet the time line and that in turn will lead to an inferior product. This is a dangerous
10 approach to determine if the District is in fact meeting the requirements necessary to obtain
11 unitary status. Fishers fear that this will lead to watered down programs in order to meet the
12 Special Master’s timeline and goals.
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16 Fishers object to the completion plan for self-contained and pullout GATE is to alter
17 cut scores on the tests of cognitive ability. According to results of a study of the District
18 lowering the scores by 2 deciles, only a small number of African-American students in 2016
19 would have been eligible to participate in GATE programs.
20

21 **Technology**

22 The District has repeatedly misused technology funds. Some schools have adequate
23 resources, but the number of COWS and other equipment is not placed where there is the
24 greatest need.
25

26 **Facilities**

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1 Fishers do not agree. Based on the conditions of the facilities we do not know on what
2 he is basing the recommendation for partial unitary status in this area. The facilities are in
3 worse shape than they were when the Fisher-Mendoza suit was filed and when the USP was
4 initiated.
5

6 **Summary**

7 The Fisher Representatives continue to be concerned that the District consistently
8 focuses on irrelevant issues pertaining to African-American achievement. The Special
9 Master nor the District has presented, nor recommended that TUSD create a plan for
10 improving African-American achievement. When Fishers read the annual report, it appears
11 that African-American students are not part of this lawsuit and its only focus is on Latino
12 students. One can see from the SMAR that the District needs to do much more to improve
13 the quality of education that African-American students are receiving in TUSD. African-
14 American students were last in reading, math, language in 1974 the year this lawsuit was
15 filed. Forty years of futility on deseg efforts and after billions of dollars of deseg funds were
16 spent, African-American children are still last, not closing the achievement gap, and
17 disproportionately suspended from classes.
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21 Time is running out for the District to meet its court ordered obligations, if not now
22 when?
23

24 RESPECTFULLY SUBMITTED this 11th day of April, 2018.

25 LAW OFFICE OF RUBIN SALTER, JR.

26 /S/ Rubin Salter, Jr.
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28 Counsel for Fisher Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I electronically submitted the foregoing **RESPONSE TO SMAR 2016-17 ANNUAL REPORT** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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