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

ROY and JOSIE FISHER, et al.,  
Plaintiffs

No.: CV 74-90 TUC DCB  
(Lead Case)

UNITED STATES OF AMERICA,  
Plaintiff-Intervenor,

CV 74-204 TUC DCB  
(Consolidated Case)

v.

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

**FISHER PLAINTIFFS' MOTION  
TO STRIKE PORTIONS OF THE  
SPECIAL MASTER'S 6/12/2018  
RESPONSE TO OBJECTIONS  
TO 2016-2017 ANNUAL REPORT  
(DOC. 2111) RELATING TO ALE  
STANDARDS AND  
DISCUSSION/FINDINGS  
RELATING TO A "25%  
PLUS/MINUS" INTEGRATION  
MEASURE, INCLUSIVE OF  
TABLE II-I THERETO  
PURSUANT TO LR CIV.  
7.2(m)(1)**

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

TUCSON UNIFIED SCHOOL DISTRICT  
NO. ONE, et al.  
Defendants.

Submitted to United States District  
Judge Hon. David C. Bury On  
6/28/2018

COMES NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by and through counsel undersigned, Rubin Salter, Jr., submits this motion to strike portions of the Special Master's Response to the Objections to 2016-2017 Annual Report (Doc. 2111) relating to lowering GATE eligibility criteria from 20:4 to 20:15 and a "25% plus/minus" novel measure for integration from 8:4 to 8:23, from 10:5 to 10:8, and from 11:3 to 11:6 and Table II-I thereto. Fisher Plaintiffs file this motion to strike in full compliance with LR Civ. 7.2(m)(1) wherein a motion to strike is generally allowed "if it seeks to strike any part of a filing or submission on the ground that it is prohibited (or not authorized) by a statute, rule, or court order," (LR Civ. 7.2(m)(1)).

## **Argument**

### **1.1 Advanced Learning Experiences (Self-Contained and Pullout GATE)**

The Fisher Plaintiffs wish to strike the portion of the Special Master's Response to Objections to 2016-2017 Annual Report (Doc. 2111) that is in regard to Advanced Learning Experiences specifically the Special Master's suggestion to lower the eligibility scores of self-contained and pullout GATE programs from 20:4 to 20:15. The recommendations made by the Special Master to lower, in any amount, the cut score for self-contained and pullout GATE programs are in direct violation of the USP (Doc. 1405 at 29), specifically Section V(A)(3)(a)(i) which instructs the District to "increase the number and percentage of African American and Latino student, including ELL students, receiving GATE services...in a fair and nondiscriminatory manner that does not have an adverse impact on any student based on his/her race." In his 2016-2017 Annual Report, the Special Master indicates that Anglo students have exceeded the 15% goal for self-contained and pullout GATE programs while African-American and Latino students have not (Doc. 2096 at 34:5-11). He further states that the District shall be awarded unitary status for self-contained and pullout GATE if the eligibility scores for these

1 programs are lowered (*Id.* 35:3-7). This action generates an explicit prejudice towards African-  
2 American students, as it is clear that the lowering of the standards of eligibility functions only  
3 to increase the number of African-American students that can participate. While their white  
4 classmates are already exceeding the USP provision of 15%, African-American students, under  
5 the Special Master's interpretation, apparently need a lowered measurement to reach the same  
6 goal. The Fisher Plaintiffs must emphasize the damage on African-American students of  
7 lowering qualifications in order to potentially accommodate the court ordered number and  
8 percentage of students of a certain race. The adverse effects of such prejudiced action,  
9 regardless of explicit intent, are clear and "generates a feeling of inferiority as to their status in  
10 the community that may affect their hearts and minds in a way unlikely ever to be undone,"  
11 (*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)). Though the Fisher Plaintiffs  
12 presume that the Special Master did not explicitly intend on this action to generate adverse  
13 effects, the recommendation of the Special Master for the District to lower eligibility criteria in  
14 order to be awarded unitary status is clearly discriminatory and in no way indicative of a good  
15 faith motion towards integration. Additionally, the Special Master indicates in his 2016-2017  
16 Annual Report that at his request, the District analyzed the effect of lowering the cut scores by  
17 2 deciles for SY 2017-2018 and found no significant effect of increasing African-American  
18 students (Doc. 2096 at 34:18-28). In regard to SY 2016-2017, the Special Master reveals a  
19 significant increase for Latino students and then admits only a "small number of African-  
20 American students would have been eligible," (Doc. 2096 at 34:24-28). This recommendation  
21 thus contradicts the USP at Section V(A)(3)(a)(i) because no significant increase is evident.  
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## 26 **1.2 Discussion/findings that use a "25% plus/minus" measure of integration**

27 The Fisher Plaintiffs also wish to strike the portion of the Special Master's Response to  
28 Objections to 2016-2017 Annual Report relating to all discussion/findings that use a "25%

1 plus/minus” measure of integration from 8:4 to 8:23, from 10:5 to 10:8, and from 11:3 to 11:6  
2 and Table II-I thereto. The Special Master’s action to recommend that the District be granted  
3 unitary status in regard to student assignment (excepting magnet schools) violates the Order  
4 Appointing the Special Master (Doc. 1350) that states that he is to make findings of fact “as to  
5 the District’s compliance with the USP provisions,” (Doc. 1350 at 8:12-13) because he makes  
6 said recommendation based upon a novel measure of integration that is not a previously agreed  
7 upon provision of the USP. While the USP states that neither of the current definitions for  
8 integration were “designed to produce a numeric integration goal” (Doc. 1909 at 14), it appears  
9 that the Special Master’s unilateral adjustment to these exact numeric definitions justifies his  
10 recommendation that the District should be awarded unitary status. The Special Master’s  
11 justification that the District has made “good faith” efforts towards integration and thus should  
12 be awarded unitary status in regard to student assignment (excepting magnet schools) is merely  
13 from a novel consideration of integrative status that throws out one definition in the USP (the  
14 70% cap definition) and significantly expands the range of the other definition by a total of 20%  
15 (15% definition). The Fisher Plaintiffs wish to express their dissatisfaction with the Special  
16 Master’s two recommendations referenced above that only either adjust or lower measurements  
17 or criteria. The Fisher Plaintiffs argue that these changes do not encourage the District to make  
18 good faith efforts towards integration.

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22 Additionally, the Special Master misrepresented the position of the Fisher Plaintiffs on in  
23 his 6/12/18 Special Master’s Response to Objections to 2016-2017 Annual Report (Doc. 2111).  
24 The Fisher Plaintiffs are gravely concerned that a Court decision made without accurate facts  
25 and representations of all parties would prove harmful to the Fisher Plaintiffs. The Fisher  
26 Plaintiffs humbly request to correct the record in one instance where the Special Master  
27 misrepresented the position of the Fisher Plaintiffs in regard to the teacher shortage.  
28

On page 15 of the Special Master's 6/12/2018 Response to Objections to 2016-2017 Annual Report, he states the following: "The Fisher plaintiffs assert, without any evidence and in the face of widespread consensus to the contrary, that there is no shortage of teachers." This statement of the Fisher Plaintiff's position is patently untrue as the Fisher Plaintiffs are aware of the teacher shortage and instead argue that the District's practices for recruitment of African-American teachers are antiquated, inept, and out of touch with the recruited community. Inept recruitment of African-American teachers fails to interest even the limited number of teachers that are available. This argument was put forth by the Fisher Plaintiff's in their initial objection to the Special Master's Annual Report but instead was dismissed and equated to a denial of the existence of an African-American teacher shortage. The Fisher Plaintiff's suggest updating recruitment strategies to appeal to the interests of African-American teachers and recommend partnering or at least recruiting heavily at Historically Black Colleges and Universities (HBCU's) with strong teacher training programs. Further, the population of African-American's with a non-teaching degree but are interested in becoming teachers is an unaddressed resource.

The Fisher Plaintiffs are aware of the Court's order indicating no further pleadings following the Special Master's Response to Objections to his 2016-2017 Annual Report and file this motion separately and in full compliance under LR Civ. 7.2(m)(1).

Respectfully submitted,

*Rubin Salter, Jr.*

Rubin Salter, Jr.

Attorney for the Fisher Plaintiffs

Dated: June 28, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2018, I electronically submitted the foregoing **FISHER PLAINTIFFS' OBJECTIONS AND OBSERVATIONS TO THE SPECIAL MASTER'S ANNUAL REPORT** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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