

1 **TUCSON UNIFIED SCHOOL DISTRICT**  
LEGAL DEPARTMENT  
2 1010 E. TENTH STREET  
TUCSON, AZ 85719  
3 (520) 225-6040  
Robert S. Ross (State Bar No. 023430)  
4 Robert.Ross@tusd1.org  
Samuel E. Brown (State Bar No. 027474)  
5 Samuel.Brown@tusd1.org

6 **STEPTOE & JOHNSON LLP**  
201 East Washington Street, Suite 1600  
7 Phoenix, Arizona 85004-2382  
Telephone: (602) 257-5200  
8 Facsimile: (602) 257-5299  
P. Bruce Converse (005868)  
9 bconverse@steptoe.com  
Timothy W. Overton (State Bar No. 025669)  
10 toverton@steptoe.com

11 *Attorneys for Tucson Unified School District No. 1*

12  
13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al., 15 16 v. 17 Tucson Unified School District No. 1, et 18 al., 19 Defendants.	4:74-cv-00090-DCB (Lead Case)
--	----------------------------------

Maria Mendoza, et al. 21 22 v. 23 Tucson Unified School District No. 1, et 24 al., 25 Defendants.	CV 74-204 TUC DCB (Consolidated Case)
--	--

26  
27 **OBJECTION TO SPECIAL MASTER’S REPORT AND RECOMMENDATION**  
28 **REGARDING STUDENT SUPPORT DEPARTMENTS [ECF 2185]**

1 The Court directed the District to file plans for the post-unitary operation of the  
2 African American Student Services Department and the Mexican American Student  
3 Services Department. The Court indicated that it would reconsider unitary status in this  
4 area of the USP upon the filing of those plans. [ECF 2123, p. 150-51.]

5 The District filed its plans on December 6, 2018, as directed.<sup>1</sup> [ECF 2151-1 and  
6 2151-2.] None of the plaintiffs filed any objection to the substance of the plans within the  
7 time allotted by the Court, as extended by agreement of the parties.<sup>2</sup>

8 On January 29, 2019, the Special Master filed his R&R recommending that the  
9 District embark on an entirely new set of plans before unitary status is granted in this area.  
10 [ECF 2185.] Specifically, he wants the District to “draw up plans to support Latino and  
11 African American students in departments whose functions would be substantially different  
12 from those in the current reorganization plans submitted by the District.” [*Id.* at 3.] The  
13 Special Master then lays out his own educational plan for what he believes the District’s  
14 student support services departments should look like. [*Id.* at 3-8.]<sup>3</sup>

15 Under the *Green* case,<sup>4</sup> decided in 1968 in the context of a wide swath of Southern  
16 school districts that had expressly abjured the constitutional prohibition on segregating  
17 students, the *purpose* of requiring compliance with a desegregation decree for a time before  
18

---

19 <sup>1</sup> The plans were developed through extensive collaboration with both the Mendoza  
20 Plaintiffs and the Fisher Plaintiffs, including the hiring of an expert (at the request and  
21 recommendation of the Fisher Plaintiffs) who reviewed and approved AASSD operating  
22 plan.

22 <sup>2</sup> The Fisher Plaintiffs did not object to the Special Master’s original  
23 recommendations or to the District’s filing; the Mendoza Plaintiffs reported that they “have  
24 no objections to the substantive provisions of the AASSD and MASSD Operating Plans.”  
25 [ECF 2168 at 2.]

26 <sup>3</sup> Although the Special Master assert that “no other district in the country has such  
27 department,” the District has identified several other such departments in school districts  
28 nationwide. *See, e.g.*, South Bend Community School Corporation’s “African American  
Student and Parent Services” in Indiana ([www.sb.school/cms/One.aspx?portalId=68976&pageId=140941](http://www.sb.school/cms/One.aspx?portalId=68976&pageId=140941)), and Eastside Union High School District’s “African American  
Student Advocates” in San Jose, California ([www.esuhd.org/Students--Parents/Student--Parent-Groups/African-American-Student-Advocates/](http://www.esuhd.org/Students--Parents/Student--Parent-Groups/African-American-Student-Advocates/)).

<sup>4</sup> *Green v. County School Board*, 391 U.S. 430 (1968).

1 terminating supervision was to provide some assurance that the school district had in fact  
 2 committed to the underlying principles that forbid *de jure* segregation, and thus would not  
 3 revert to segregated status after termination of supervision.

4 Here, the District's commitment to the underlying prohibition against *de jure*  
 5 discrimination cannot fairly be said to be in doubt. The District has for years had formal  
 6 policies prohibiting such discrimination, and has devoted many millions of dollars to the  
 7 support of that commitment. Specifically in this area, the District has operated its AA and  
 8 MA student services departments since prior to the entry of the USP in 2013, and has  
 9 provided a plan for post-unitary operations of these departments. This satisfies the *Green*  
 10 purpose for requiring extended compliance, and thus exhausts the limits of the federal  
 11 courts' constitutional authority to direct the operations of this locally-governed state-  
 12 authorized school district, which are accorded special priority in American jurisprudence.<sup>5</sup>  
 13 This is particularly true in light of Judge Frey's express finding that differential academic  
 14 achievement of student groups was not causally attributable to, or a vestige of, the prior  
 15 discriminatory conduct at issue in this case:

16 District students, as hereinabove set forth, have historically exhibited  
 17 differences in performance on standardized tests as between Blacks, Mexican-  
 18 Americans and Anglos. Present scientific knowledge does not afford  
 19 satisfactory explanations for such differences, and **the existence of these**  
 20 **intergroup differences in average scores on standardized tests is a**  
 21 **common finding in school districts throughout the United States, and not**  
 22 **peculiar in any way to Tucson School District No.1.** Standardized test  
 23 results for School District No. 1 students indicate that **the intergroup**  
 24 **differences exist upon the entry of the students into the school system and**  
 25 **continue through the school career. Consistently lower test results for**  
 26 **minority group students do not support a reasonable inference of**  
 27 **unequal provision or delivery of educational services.** [ECF 345 at 167-  
 28 168 (emphasis added)].

23 In short, a difference of opinion as to how the departments ought to operate –  
 24 whether in the Special Master's personal judgment there may be "better" or "more

---

26 <sup>5</sup> "As we have long observed, 'local autonomy of school districts is a vital national  
 27 tradition.' *Dayton Bd. of Education v. Brinkman*, 433 U. S. 406, 410 (1977) (*Dayton I*).  
 28 Returning schools to the control of local authorities at the earliest practicable date is  
 essential to restore their true accountability in our governmental system" *Freeman v. Pitts*,  
 503 U.S. 467, 490 (1992).

1 effective” way to accomplish the District’s educational goals – is at this point in 2019  
2 simply beyond the proper limit of the Court’s constitutional authority to direct the  
3 operations of the District. The District is committed to the underlying prohibition against  
4 *de jure* discrimination; it has operated these departments to provide services required by the  
5 USP for years, and has committed to a plan to continue operating these departments. That  
6 is all that *Green* either requires or permits, and that is all the Court’s order requires. The  
7 District respectfully urges the Court to reject the recommendation of the Special Master,  
8 and declare the District unitary regarding its operations under USP §§V.E.7 and 8.

9 RESPECTFULLY SUBMITTED on February 13, 2019.

10 **STEPTOE & JOHNSON LLP**

11 */s/ P. Bruce Converse*  
12 P. Bruce Converse  
13 Timothy W. Overton

14 **TUCSON UNIFIED SCHOOL DISTRICT**  
15 **LEGAL DEPARTMENT**

16 Robert S. Ross  
17 Samuel E. Brown

18 Attorneys for Tucson Unified School District No. 1  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Certificate of Service**

The foregoing document was filed with the Court electronically through the CM/ECF system on February 13, 2019, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

*/s/ Diane Linn* \_\_\_\_\_