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

<p>15 Roy and Josie Fisher, et al., Plaintiffs, 16 v. 17 Tucson Unified School District No. 1, et al., 18 Defendants. 19</p>	<p>4:74-cv-00090-DCB (Lead Case)</p>
<p>20 Maria Mendoza, et al. Plaintiffs, 21 v. 22 Tucson Unified School District No. 1, et al., 23 Defendants. 24</p>	<p>CV 74-204 TUC DCB (Consolidated Case)</p>

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 27 **OBJECTION TO SPECIAL MASTER’S REPORT AND RECOMMENDATION**
 28 **REGARDING PROFESSIONAL LEARNING FOR TECHNOLOGY [ECF 2193]**

1 The Court directed the District to file a professional learning plan for teacher
2 proficiency in using technology to facilitate student learning. The Court indicated that it
3 would reconsider unitary status in this area of the USP upon the filing of that plan. [ECF
4 2123, p. 151.]

5 The District filed its plan on December 6, 2018, as directed. [ECF 2152-1.] In
6 response, the Special Master filed a report recommending that the Court deny unitary status
7 and order the District to undertake a series of new and additional tasks relating to
8 professional learning for teacher proficiency in use of technology in instruction. [ECF 2193,
9 p. 4.] Without waiving the objections set out and incorporated below, the District reports
10 that it has commenced an effort to comply with these new recommendations, and will report
11 further on those efforts as appropriate.

12 However, the District objects because the Special Master's recommendation was
13 made (a) without any finding or evidence (nor could there be) that the District's teachers are
14 somehow less competent in the use of technology for instruction than the average district in
15 this state or in the nation, (b) without any finding or evidence that professional learning in
16 technology for instruction is in some way administered differentially by the District in a
17 manner such as to disadvantage teachers of students in the plaintiff classes, (c) despite the
18 complete absence of any causal connection to the improper conduct found by Judge Frey,
19 and the absence of any remaining vestige of that conduct found by Judge Frey in 1978 (ECF
20 345). Simply put, the Special Master has made his recommendation solely on the basis that
21 he thinks the District can do a better job in administering and assessing professional
22 learning in the use of technology for instruction. That may be true, but that is not the
23 standard for continuing federal court supervision of elected local officials of school
24 districts.¹

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¹ The District does not mean to suggest by this objection that that the Special Master's
recommendations are not sound, or that the District should not adopt them. The District
merely objects that adoption of the recommendations may not properly be required as a
condition for termination of court supervision in this case.

1 Under the *Green* case,² decided in 1968 in the context of a wide swath of Southern
2 school districts that had expressly abjured the constitutional prohibition on segregating
3 students, the *purpose* of requiring compliance with a desegregation decree for a time before
4 terminating supervision was to provide some assurance that the school district had in fact
5 committed to the underlying principles that forbid *de jure* segregation, and thus would not
6 revert to segregated status after termination of supervision.

7 Here, the District's commitment to the underlying prohibition against *de jure*
8 discrimination cannot fairly be said to be in doubt. The District has for years had formal
9 policies prohibiting such discrimination. For the last five years, the District has striven
10 mightily to comply with the thousands of individual requirements of the USP and its
11 required action plans and orders. This satisfies the *Green* purpose for requiring extended
12 compliance, and thus exhausts the limits of the federal courts' constitutional authority to
13 direct the operations of this locally-governed state-authorized school district, which are
14 accorded special priority in American jurisprudence.³ In short, whether in the Special
15 Master's judgment (or in the Court's judgment) there may be better or more effective ways
16 to accomplish the District's educational goals – is at this point in 2019 simply beyond the
17 proper limit of the Court's constitutional authority to direct the operations of the local
18 elected officials of the District. The District is committed to the underlying prohibition
19 against *de jure* discrimination; it has provided professional learning in the use of technology
20 for years, there is no evidence that the District's teachers are particularly or differentially
21 inept in using it, and the District has committed to a plan to continue providing this
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25 ² *Green v. County School Board*, 391 U.S. 430 (1968).

26 ³ “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 professional learning and to individually assess teachers’ competence.⁴ That is more than
2 *Green* either requires or permits, and that is all the Court’s order requires. The District
3 respectfully urges the Court to reject the recommendation of the Special Master, and declare
4 the District unitary regarding its operations under § IX.B.1.iv and B.4.⁵

5 RESPECTFULLY SUBMITTED on March 15, 2019.

6 **STEPTOE & JOHNSON LLP**

7 */s/ P. Bruce Converse*
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9 **TUCSON UNIFIED SCHOOL DISTRICT**
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26 ⁴ Contrary to the Special Master’s assertion, data on individual teacher competence is not
27 merely aggregated, it is individually tracked and used to target additional professional
learning for individual teachers in areas in which the assessment reveals additional need.

28 ⁵ The District further incorporates by reference its objections to continued federal court
supervision set out in ECF 2099, 2075 and attachments, and 2005.

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Certificate of Service

The foregoing document was filed with the Court electronically through the CM/ECF system on March 15, 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 _____