

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**

<p>15 Roy and Josie Fisher, et al., Plaintiffs, 16 v. 17 Tucson Unified School District No. 1, et 18 al., Defendants.</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 23 al., 24 Defendants.</p>	<p>CV 74-204 TUC DCB (Consolidated Case)</p>

25
26
27 **OBJECTION TO SPECIAL MASTER’S REPORT AND RECOMMENDATION**
28 **REGARDING INCLUSIVE SCHOOL ENVIRONMENTS [ECF 2195]**

1 The Court directed the District to file a Notice and Report of Compliance with the
2 completion plan for maintaining inclusive school environment and professional learning
3 plan. The Court indicated that it would reconsider unitary status in this area of the USP
4 upon the filing of that plan. [ECF 2123, p. 150-51.]

5 The District filed its notice and report, with its professional learning plan, on
6 December 6, 2018, as directed. [ECF 2156 and 2156-1.] In response, the Special Master
7 filed a report acknowledging that “the District has met a reasonable test of its inclusiveness
8 and the effectiveness of efforts to reduce bullying.” [ECF 2195 at 4.] Despite this, the
9 Special Master went on to recommend that the Court order the District to

10 “go back to the drawing board in the development of its professional
11 development plan to focus attention on evidence-based practices and to use
12 the available data to target schools where support is needed (the plan does
specify particular schools in which it plans to implement some practices but
the rationale for these priorities is unstated).”

13 *Id.* (footnote omitted). Without waiving the objections set out and incorporated below, the
14 District reports that it has commenced an effort to comply with this new recommendation,
15 and will report further on those efforts as appropriate.

16 The District objects for several reasons. First, the Special Master asserts that the
17 District did not collaborate in this area with the Special Master as he had requested. The
18 District has attached a listing, with supporting attachments, showing ample evidence of the
19 District’s near constant collaboration with the Special Master in the design of the study
20 specified in the Special Master’s completion plan, the analysis of the responses, the
21 modification of the study to include bullying questions, and more. [Exhibit A.]

22 Second, the plan does contain a rationale for choosing schools where support is
23 needed: the District will continue to analyze the results of the survey questions regarding
24 inclusiveness and bullying each year, and deploy additional professional learning and
25 support resources on a dynamic basis to the schools which show relative need, through
26 comparison of inclusiveness and bullying scores with other schools. That is precisely the
27 analysis and feedback that was required.

1 Third, the District respectfully submits that the professional learning described in the
2 plan is research based, and uses curricula and methods in common use by school districts.

3 Finally, and most fundamentally, the District objects because the Special Master's
4 recommendation was made (a) without any finding or evidence that the inclusiveness and
5 cultures of civility in the District is somehow more problematic than for the average district
6 in this state or in the nation, (b) without any finding or evidence that professional learning
7 in inclusiveness or civility is in some way administered differentially by the District in a
8 manner such as to disadvantage teachers of students in the plaintiff classes, (c) despite the
9 complete absence of any causal connection to the improper conduct found by Judge Frey,
10 and the absence of any remaining vestige of that conduct found by Judge Frey in 1978 (ECF
11 345). Simply put, the Special Master has made his recommendation solely on the basis that
12 he thinks the District can do a better job in administering and assessing professional
13 learning in inclusiveness and civility by adopting his recommendation. That may be true,
14 but that is not the standard for continuing federal court supervision of elected local officials
15 of school districts.¹

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

22 Here, the District's commitment to the underlying prohibition against *de jure*
23 discrimination cannot fairly be said to be in doubt. The District has for years had formal
24 policies prohibiting such discrimination. The vestiges of the conduct found by Judge Frey

25
26 ¹ The District does not mean to suggest by this objection that that the Special Master's
27 recommendation is not sound, or that the District should not adopt it. The District merely
28 objects that adoption of the recommendation may not properly be required as a condition
for termination of court supervision in this case.

² *Green v. County School Board*, 391 U.S. 430 (1968).

1 are long gone, by this Court’s own rulings. For the last five years, the District has striven
2 mightily to comply with the thousands of individual requirements of the USP and its
3 required action plans and orders. This satisfies the *Green* purpose for requiring extended
4 compliance, and thus exhausts the limits of the federal courts’ constitutional authority to
5 direct the operations of this locally-governed state-authorized school district, which are
6 accorded special priority in American jurisprudence.³ In short, whether in the Special
7 Master’s judgment (or in the Court’s judgment) there may be better or more effective ways
8 to accomplish the District’s educational goals is at this point in 2019 simply beyond the
9 proper limit of the Court’s constitutional authority to direct the operations of the local
10 elected officials of the District. The District is committed to the underlying prohibition
11 against *de jure* discrimination; it has provided professional learning in the areas of
12 inclusiveness and civility for some time, there is no evidence that the District’s staff is
13 particularly or differentially inept in fostering inclusiveness or a culture of civility, and the
14 District has committed to a plan to continue providing this professional learning. That is
15 more than *Green* either requires or permits, and that is all the Court’s order requires. The
16 District respectfully urges the Court to reject the recommendation of the Special Master,
17 and declare the District unitary regarding its operations under § V.F.⁴

18
19
20
21
22
23
24
³ “As we have long observed, ‘local autonomy of school districts is a vital national
25 tradition.’ *Dayton Bd. of Education v. Brinkman*, 433 U. S. 406, 410 (1977) (*Dayton I*).
26 Returning schools to the control of local authorities at the earliest practicable date is
27 essential to restore their true accountability in our governmental system” *Freeman v. Pitts*,
503 U.S. 467, 490 (1992).

28
⁴ The District further incorporates by reference its objections to continued federal court
supervision set out in ECF 2099, 2075 and attachments, and 2005.

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

RESPECTFULLY SUBMITTED on March 15, 2019.

STEPTOE & JOHNSON LLP

/s/ P. Bruce Converse
P. Bruce Converse
Timothy W. Overton

**TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT**

Robert S. Ross
Samuel E. Brown

Attorneys for Tucson Unified School District No. 1

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 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 _____