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12

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
AND OBJECTION TO TUSD'S NOTICE
AND REQUEST FOR APPROVAL: RE-
OPENING OF WAKEFIELD MIDDLE
SCHOOL [DOC. 2373]**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.
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10 On November 19, 2019, TUSD filed its Notice and Request for Approval: Re-

11 opening of Wakefield Middle School (Doc. 2373) (“NARA”). Mendoza Plaintiffs object

12 to the District’s proposal to reopen Wakefield because data presented in the desegregation

13 impact analysis (Doc. 2373-1) (“DIA”), as well as statements by the Superintendent as

14 reported in the press, strongly suggest the proposed new Wakefield would be racially

15 concentrated. (Indeed, McCorkle, an open enrollment school marketed by the District as

16 an “academy of excellence” that focuses on college preparation (www.tusd1.org/mccorkle)

17 that, like Wakefield, is located in the southern portion of the District, is 89% Latino.)

18 Moreover, given that TUSD intends Wakefield to serve as an ALE gateway to high

19 schools with advanced programs, Wakefield is likely to draw high academic achievers

20 away from nearby underperforming schools now attempting to increase achievement.

21 Mendoza Plaintiffs believe the District’s resources and time are much better spent focusing

22 on improving integration and academic achievement in the racially concentrated

23 underperforming schools near Wakefield, rather than pursuing a proposal that may well

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1 hinder any such efforts and send a message to these schools that the District is “giving up”
2 on them and shifting attention away from them.

3 Further, the Wakefield proposal and costs associated with its reopening (\$2-\$2.5
4 million and annual operating costs) makes little sense given that it seemingly would
5 replicate conditions existing at the time that school was closed in 2013: an approximate
6 70% capacity at the school while significant overcapacity exists at nearby schools and
7 when the District is experiencing declining enrollment (and declining funds related to
8 enrollment) albeit at a slower rate than in recent years. Indeed, the data submitted in the
9 DIA (not surprisingly given the enrollment decline since 2013) establishes that
10 overcapacity has increased in surrounding schools since Wakefield was closed in 2013.

13 Mendoza Plaintiffs oppose the District’s proposal to reopen Wakefield Middle
14 School. In an excess of caution, Mendoza Plaintiffs respectfully request that if this Court
15 is inclined to grant the District’s NARA, that TUSD be ordered to take the following steps
16 in connection with the new Wakefield: (1) ensure student teachers at Wakefield who lack
17 teaching certificates are not charged with providing primary instruction as TUSD RFI
18 responses now suggest will be the case by the second semester of the academic year, (2)
19 recruit no master teachers from any racially concentrated or underperforming school so as
20 to avoid depriving those schools of their strongest teachers, (3) condition approval on a
21 TUSD commitment to develop targeted recruitment strategies to specifically interest white
22 students who attend the new Wakefield to subsequently attend Cholla and Pueblo High
23 Schools, and strategies to interest more Latino and African American students to attend
24 UHS so that all three of those high schools will move closer to being integrated and (4)
25 develop explicit action plans for underperforming schools that lose ten or more students to
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1 the new Wakefield to be sure that there is no diminution in programming to support
2 academic achievement at those schools because of declining enrollment in those schools.

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4 **ARGUMENT**

5
6 *Notwithstanding Data That Strongly Suggest Wakefield is Likely to be Racially*
7 *Concentrated, TUSD Projects That Wakefield Would be Close to Integrated by*
8 *Relying on Data From Dodge Middle School– a School Located in an Area far*
9 *From Wakefield (Where a Greater Number of White Students Reside) and That*
has Been an Integrated “A” or “B” School Since the Inception of the USP.

10 As this Court knows, Mendoza Plaintiffs are proponents of increasing both the
11 number of integrated schools and the number of students attending integrated schools in
12 TUSD. However, they fully believe that the District errs in projecting that Wakefield
13 would be close to integration (71% Hispanic, 13% Anglo, 7 % African American, 4%
14 Native American, and 4% Asian/Pacific Islander and Multiracial) based on its reliance on
15 enrollment data from Dodge Middle School in determining the demographics of students
16 who would attend Wakefield by “Zones”.¹ (See NARA at 3:13-15; DIA 2-3.) Indeed,
17 available data from schools much closer to Wakefield than Dodge (including McCorkle)
18 demonstrate Wakefield is highly likely to be a racially concentrated school. And,
19 statements by the Superintendent recently reported in the press confirm this conclusion.
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22 As detailed further below, Mendoza Plaintiffs believe that the District’s resources
23 and efforts are better spent focusing on existing struggling and racially concentrated
24 schools, rather than pushing forward its Wakefield proposal.
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27 ¹ TUSD indicates that its projections for Wakefield are based on a combination of
28 enrollment data of two open-enrollment schools: Dodge Magnet Middle School and Mary
Bell McCorkle Academy. (DIA at 3.)

1 Middle schools far closer to the proposed Wakefield Middle School than the
2 integrated Dodge Middle School are racially concentrated. For example Hollinger, Rose,
3 and Utterback are all racially concentrated with Latino student populations of 91%, 94%,
4 and 77%, respectively. (DIA at 6, 9.) While Mendoza Plaintiffs recognize that these
5 schools are not no boundary schools as Wakefield is proposed to be (and that therefore,
6 they do not serve as an apples to apples comparison), they suggest that the areas closest to
7 Wakefield from which the school can be expected to draw a disproportionately large
8 number of students is likely to be heavily Latino.

9
10 More significantly, McCorkle (an open enrollment school which, together with
11 Dodge, TUSD relied on to make its Wakefield projections) is located approximately three
12 miles² from Wakefield and is racially concentrated with an 89% Latino student enrollment.
13 (DIA at 8.) TUSD has not provided adequate or convincing explanation for why it
14 believes Wakefield would not be as racially concentrated as McCorkle. Indeed, Mendoza
15 Plaintiffs submit that McCorkle enrollment data provides more meaningful insight as to
16 what Wakefield enrollment would look like than Dodge Middle School, a school that is
17 over ten miles away from Wakefield in the northeast side of the District in which a greater
18 white student population resides than the Wakefield area. Further Dodge has long had the
19 reputation of being a successful school, and has been both integrated and an “A” or B”
20 school since the inception of the USP while a new Wakefield would, at best, have no
21 reputation. (See Doc. 1803, attachment B12, at 1, 4; Doc. 1960-2 at ECF 59, 8; Doc.
22 2058-3 at ECF 227; Doc. 2126-1 at ECF 61; Doc. 2299-1 at ECF 105; 2019-20 Dodge
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27 ² Mendoza Plaintiffs used Google Maps to calculate the approximate distance between
28 Wakefield and McCorkle, and Wakefield and Dodge.

1 Magnet Plan, attached as Exhibit A.) Again, the McCorkle experience is, Mendoza
2 Plaintiffs' believe, instructive. McCorkle was opened in 2011. Its full name is the Mary
3 Belle McCorkle Academy of Excellence PreK-8. Thus, like the proposed new Wakefield
4 it proclaimed at the outset its intent to be "high-achieving" school. Indeed, its website
5 states that it is TUSD's newest state-of-the art school, that it offers "academically rigorous
6 learning opportunities through a project based learning approach", that it is the first New
7 Tech Network School in Tucson and that it prepares students for full participation in a
8 demanding college-prep high school (presumably UHS). (www.tusd1.org/mccorkle.)
9 Notwithstanding all that it has to offer, it has not succeeded in attracting an integrated
10 student body. (According to the DIA, it is 89% Latino, 4% Anglo, 2% African American,
11 and 7% Native American/Asian-Pacific Islander/Multiracial; DIA at 8.)

14 Thus, Mendoza Plaintiffs believe that by relying on Dodge in developing
15 projections for Wakefield, the District overestimates both the interest white students would
16 have in attending Wakefield, and the distance students would be willing to travel to attend
17 it. Indeed, recent statements by the Superintendent reported in the press suggest that the
18 projections in the DIA may be over optimistic. The site tucson.com after having quoted the
19 DIA reported:
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22 Despite the district's projections, [Superintendent] Trujillo doesn't think
23 that many students will go to Wakefield when they live near schools as far
24 away as Utterback, about three miles to the east.³ He thinks most of the
25 students will be neighborhood kids, coming from the nearby schools that
are overcrowded.⁴ "It's not viable for the families to make the trek in from

26 ³ Note that the DIA projects that more than 55% of the new Wakefield enrollment will be
drawn from parts of TUSD that are more than three miles from the school site. (DIA at 5.)

27 ⁴ Mendoza Plaintiffs are unclear about the basis on which the Superintendent asserts that
28 the schools near the Wakefield site are overcrowded. The DIA shows capacity at both
Hollinger and Rose (DIA at 6) even before any assumptions about students moving to

1 the Valencia neighborhood and the Pistor neighborhood all the way into
2 central-south Tucson”, he said. “So, I’m not sure that’s a viable argument
3 that we’re going to see students from that far out coming into south
4 Tucson.”

(tucson.com article, attached as Exhibit B.)

5 Relying in part on Dodge enrollment data and notwithstanding the Superintendent’s
6 assessment, for the purposes of its NARA TUSD projects that 61% of the white students
7 who it says would attend Wakefield to bring it close to integration (31 students) would be
8 traveling from zone 3 (between 5-10 miles away) or zone 4 (over 10 miles away), but this
9 projection is premised on the assumption that 25% of Wakefield’s total population would
10 come from these zones. (DIA at 5.) However, McCorkle’s enrollment data suggests that
11 only 13%, not 25%, of students would come from zones 3 and 4. (*Id.* at 12.) Thus, it is
12 plain that the District’s projected white student enrollment at Wakefield is over-inflated
13 and that fewer white students from these zones would actually attend Wakefield to move it
14 toward integration. (Mendoza Plaintiffs understand that TUSD projected that 25% of
15 Wakefield enrollment would be from zones 3 and 4 based on Dodge’s student enrollment
16 from those zones. But, for the reasons stated above, Mendoza Plaintiffs do not believe the
17 District should so rely on that data.)

18 Mendoza Plaintiffs appreciate the District’s statements that it would undertake
19 efforts to ensure Wakefield moves towards being integrated or close to integrated under
20 the USP definition, including through recruitment efforts and express bussing. However,
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Wakefield are applied and does not anticipate any outflow from Drachman presumably
because it has a magnet program (Montessori) that families are committed to and would
not have their children leave to attend another school and because attendance at the school
already is controlled through the lottery.

1 particularly in light of the above, they do not believe the District has provided sufficient
2 explanation to understand what it would do to ensure recruitment efforts would be
3 successful at Wakefield when such efforts at neighboring racially concentrated schools
4 have not successfully integrated them and the Superintendent's own doubts, or how it
5 would make express bussing work at Wakefield when a similar strategy was unsuccessful
6 with respect to the Magee Drachman express bus. (See 9/10/19 Order (Doc. 2272) at
7 15:25-16:2.)
8

9 Mendoza Plaintiffs believe that the District's attention and resources are far better
10 spent focusing on existing underperforming racially concentrated schools like Utterback
11 (and other similarly situated schools near Wakefield). Indeed, given the struggles of
12 racially concentrated underperforming schools and the slow progress they have made,
13 Mendoza Plaintiffs submit that the Wakefield proposal sends the wrong message to these
14 schools about the District's commitment to them.
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18 ***The Wakefield Proposal is Likely to Frustrate Nearby Racially Concentrated***
19 ***Underperforming Schools' Efforts to Improve Academic Achievement.***

20 Beyond the fact that the Wakefield proposal may draw away from racially
21 concentrated schools students who would otherwise help bring those schools toward
22 integration⁵, the Wakefield proposal would seemingly draw high performing students away
23 from nearby underperforming schools. Indeed, as the District appears to recognize,
24 students attending no boundary schools and their parents (who must learn about and apply
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26 _____
27 ⁵ Mendoza Plaintiffs note that the DIA assumes that only Latino students will move from
28 the racially concentrated Hollinger and Rose schools and only one Anglo but 22 Latino
students would move from McCorkle but do not know on what basis these assumptions
were made other than applying some sort of formula to the raw numbers.

1 to the school) exhibit “higher levels... [of] engagement” and a “recogni[tion that] their
2 enrollment is a privilege...” (NARA at 6:12-15.)

3 Given the positive impact of engagement on academic achievement, such engaged
4 families would likely correlate to students who exhibit stronger academic performance
5 than students whose families are not so engaged. Thus, the Wakefield proposal runs the
6 risk of drawing high performers away from nearby underperforming schools such as
7 Utterback, a D school. Further, many of these schools, including Utterback and Hollinger
8 have experienced declining enrollment over the years and Mendoza Plaintiffs believe the
9 Wakefield proposal would potentially exacerbate such enrollment loss.⁶ Mendoza
10 Plaintiffs are further concerned with the District’s Wakefield proposal to the extent the
11 “lab school” component would involve recruitment of master teachers who are to model
12 instruction for “student teachers” from underperforming or racially concentrated schools.⁷
13 For these reasons, Mendoza Plaintiffs believe that the District’s resources are better
14 focused on efforts and initiatives directed at improving academic achievement at
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20 ⁶ When the District closed Wakefield, the 2013-14 Master Plan projected that after the
21 closing, Hollinger, which would receive many of the students from the closed Wakefield,
22 would have an enrollment of 760. Per the DIA, as of October 2018, it had an enrollment
23 of 564. Pistor, one of the closer schools to Wakefield, had an enrollment of 1033 when the
Appendix to the USP was prepared (2011-12 school year). In October 2018, its enrollment
was 784. Utterback had an enrollment of 682 in 2011-23; in 2018, its enrollment was 362.
(DIA at 6, 9.)

24 ⁷ Mendoza Plaintiffs understand from a telephonic conference and RFI responses that
25 details about the “lab school” component of the Wakefield proposal, including the number
26 of master teachers who would be placed at Wakefield and where they would come from,
27 are among the aspects of the plan the District has not yet worked out. (*See e.g.*, TUSD
28 11/21/19 RFI responses, attached as Exhibit C, response to RFI #2607.) While Mendoza
Plaintiffs support the development of new Grow Your Own Programs, they do not
understand why the District does not propose such a program at an existing TUSD school,
particularly one whose existing teachers could benefit from the presence of a cohort of
master teachers at the site.

1 underperforming schools rather than moving forward a proposal that may well result in a
2 setback to these schools' existing efforts.

3
4 ***The Wakefield Proposal Makes Little Sense in Light of the Fact That it***
5 ***Seemingly Would Replicate the Very Conditions That Resulted in That School's***
6 ***Closure in 2013***

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8 In 2013, this Court approved the District's request to close Wakefield Middle
9 School (as well as a number of other schools) (*see* 2/15/13 Order (Doc. 1447)) based on
10 the District's assertions that because of declining enrollment and related decreases in
11 budget funds available, it required such school closures as cost-saving measures. (*See,*
12 *e.g.*, TUSD Notice and Request for Approval of School Closures (Doc. 1419) at 2-3.) The
13 District further specifically based Wakefield's closure on what it said was overcapacity at
14 other schools that could absorb Wakefield students, and that the closure would result in an
15 annual savings of over \$700,000. (*See, e.g.*, Doc. 1419-2 at 55.)

16
17 Contradictorily, TUSD now proposes the reopening of Wakefield at a total cost of
18 between \$2-\$2.5 million (DIA at 2) (apart from annual operating costs) and at a time that
19 the District continuously and consistently has experienced losses in total enrollment.
20 TUSD's enrollment went from 48,956 students in 2013-14 (the year Wakefield was
21 closed) (Doc. 1686-8 at Appendix II-23, page 2) to 43,875 in 2019-20 (*see* 40th day
22 enrollment for 2019-20, attached as Exhibit D.)⁸

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26 ⁸ Between 2013-14 and 2019-20, TUSD's enrollment continuously dropped as
27 follows: over 48,000 students in 2015-16 (Doc. 1958-1 at ii), 47,000 in 2016-17 (Doc.
28 2057-1 at xxvii), 45,700 in 2017-18 (Doc. 2124-1 at iii), 44,300 in 2018-19 (Doc. 2298-1
at iii), and now 43,875 in 2019-20 (Exhibit D.)

1 Moreover, TUSD expects an enrollment at Wakefield and has an overcapacity at
2 other schools that seemingly mirror conditions at the time of Wakefield's closure. Under
3 the proposal Wakefield would enroll 420 students (*see* NARA at 2:20 ("140 students per
4 grade")), a number just below the 427 students at Wakefield at the time of its closure (Doc.
5 1419-1 at 55). Further, there now exists overcapacity in excess of 4,800 seats at the
6 schools from which Wakefield is expected to absorb students. (*See* DIA at 6-10.) For
7 these reasons, Mendoza Plaintiffs believe the District's Wakefield proposal is misguided
8 and would potentially increase the risk that TUSD may in the future have to close schools
9 to save costs.
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13 ***In the Event This Court is Inclined to Grant the Wakefield NARA, Mendoza***
14 ***Plaintiffs Request Measures to Decrease the Negative Impact of the Proposal on***
15 ***Underperforming Schools and Integration***

16 For the reasons stated above, Mendoza Plaintiffs do not believe this Court should
17 grant the District's request for approval of the Wakefield proposal. However, in an excess
18 of caution, they request that in the event this Court is inclined to grant the District's
19 request that the Court also order measures to ensure that the District does not implement
20 the proposal in a manner that undermines efforts to improve the academic achievement of
21 underperforming schools or increase integration.
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23
24 First, as discussed above, the District has not worked out the number of master
25 teachers that would be assigned at Wakefield or from which schools those teachers would
26 be recruited. If this Court approves the District's NARA, Mendoza Plaintiffs respectfully
27 request that TUSD be ordered not to recruit master teachers from racially concentrated or
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1 underperforming schools as exemplary teachers now assigned at those schools should
2 remain there.

3 Second, Mendoza Plaintiffs are concerned with what appears to be a District
4 assertion that student teachers awaiting teaching certificates would be charged with
5 providing instruction during the second semester of their assignment at Wakefield.
6

7 (Exhibit C, Response to RFI # 2607.) Mendoza Plaintiffs respectfully request that, in the
8 event this Court approves the Wakefield proposal, it order that no student teacher lacking
9 certification be charged with providing primary instruction until they obtain such
10 certification.
11

12 Third, the DIA states that TUSD intends that Wakefield serve as an ALE pipeline to
13 UHS, Cholla, and Pueblo, but does not address how its proposal would fit in with respect
14 to efforts to integrate those schools. (DIA at 1.) Mendoza Plaintiffs request that, to the
15 extent this Court is inclined to approve the Wakefield proposal, it condition approval on a
16 TUSD commitment to develop targeted recruitment strategies to interest white students
17 who attend Wakefield to subsequently attend Cholla and Pueblo, and strategies to interest
18 more Latino and African American students who attend Wakefield to attend UHS.
19

20 Fourth, because drop in enrollment could lead to a reduction in programming at a
21 school, Mendoza Plaintiffs also request that the District be required to develop explicit
22 action plans for underperforming schools that lose ten or more students to the new
23 Wakefield to be sure that there is no diminution in programming to support academic
24 achievement at those schools because of declining enrollment in those schools.
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CONCLUSION

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For the reasons set forth above, Mendoza Plaintiffs respectfully request that this Court deny the District’s Notice and Request for Approval: Re-Opening of Wakefield Middle School. Further, to the extent this Court is inclined to approve the proposal, Mendoza Plaintiffs respectfully request that TUSD be ordered to commit to the measures outlined above.

Dated: December 9, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE AND OBJECTION TO TUSD'S NOTICE AND REQUEST FOR APPROVAL: RE-OPENING OF WAKEFIELD MIDDLE SCHOOL [DOC. 2373]** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: December 9, 2019