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

ROY and JOSIE FISHER, et al.,)
Plaintiffs,)

UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)

vs.)

ANITA LOHR, et al.,)
Defendants,)

and)

SIDNEY L. SUTTON, et al.,)
Defendants-Intervenors.)

No. 4:74-CV-90 (DCB)
(lead case)

MARIA MENDOZA, et al.,)
Plaintiffs,)

UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)

vs.)

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

**PLAINTIFF-INTERVENOR’S
REPLY IN PARTIAL OPPOSITION
TO SPECIAL MASTER’S REPORT
AND RECOMMENDATION
REGARDING TEACHER DIVERSITY
PLAN AND GROW YOUR OWN
PROGRAM**

No. 74-CV-204 (TUC) (DCB)
(consolidated case)

On December 13, 2019, the Special Master filed a Report and Recommendation Regarding the Teacher Diversity Plan and Grow Your Own Program (the “R&R”). ECF No. 2392. The R&R

1 evaluates Defendant Tucson Unified School District No. 1's ("TUSD" or the "District") October
2 10, 2019, Second Supplemental Notice and Report of Compliance ("Report of Compliance")
3 regarding its diversity plan for teachers and administrators. EFC No. 2329. Pursuant to the Court's
4 September 10, 2019, Order, Plaintiffs had until October 24, 2019, to file objections to the Report
5 of Compliance. ECF No. 2273 at 20. Plaintiff-Intervenor the United States of America ("the
6 United States") did not object to the District's Report of Compliance and therefore had no reason
7 to file a response to it.

8 However, the Special Master's December 13th R&R contains a recommendation to the
9 Court that was not contemplated in the District's Report of Compliance, and, therefore, could not
10 previously have been objected to by Plaintiffs. Specifically, the Special Master recommends that:

11 The District shall diversify its administrative teams in schools with
12 more than one administrator for the 2020-2021 school year using
13 these guidelines: schools with two or three school site administrators
14 *would be expected to have at least one administrator of color* and
15 that person should be Latino or African American while schools
16 with four or more site administrators *should have at least two*
17 *administrators of color* at least two of whom should be Latino or
18 African American.

19 ECF No. 2392 at 6 (emphasis added). The United States has concerns about the legal and factual
20 supportability of this portion of the Special Master's R&R.¹

21 On its face, the Special Master's recommendation that TUSD administrative teams in
22 schools with more than one administrator be composed of "at least" one or two administrators of
23 color constitutes a rigid racial numerical requirement. However, the Unitary Status Plan ("USP")
24 does not provide for the use of such a requirement to remedy the vestiges of the District's prior
dual system. *See generally* ECF No. 1450. Given that there has been no showing that TUSD's

¹ Under the September 10th Order, only the District is permitted to file a reply to the R&R by December 20, 2019. *See* ECF 2273. Therefore, the United States has filed a motion for leave to bring its concerns to the Court's attention.

1 good-faith compliance with the existing USP requirements cannot remedy any lingering vestiges
2 of discrimination in TUSD’s assignment of administrators to its schools, the United States believes
3 there is no factual or legal basis for the additional remedy recommended by the Special Master in
4 his R&R.² Nor has there been any finding that the District continues to discriminate in the
5 assignment of administrators to its schools. *See Milliken v. Bradley*, 418 U.S. 717, 744 (1974)
6 (“The controlling principle consistently expounded in our holdings is that the scope of the remedy
7 is determined by the nature and extent of the constitutional violation.”); *Lee v. Russell Cnty. Bd.*
8 *of Educ.*, 563 F.2d 1159, 1163 (5th Cir. 1977) (“The law in this circuit is quite clear: after faculty
9 desegregation has been effectuated by remedial orders based on racial ratios the school board
10 cannot continue to make personnel decisions on the basis of such racial ratios.”); *Singleton v.*
11 *Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969) (once the *Singleton* ratios
12 are met through initial staff reassignment, “[s]taff members who work directly with children, and
13 professional staff who work on the administrative level will be hired, assigned, promoted, paid,
14 demoted, dismissed, and otherwise treated without regard to race, color, or national origin”).

15 The United States therefore opposes the provision of the Special Master’s R&R
16 recommending that TUSD administrative teams in schools with more than one administrator be
17 composed of “at least” one or two administrators of color. The United States does not otherwise
18 oppose the Special Master’s R&R.

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23 _____
24 ² In the event that the Special Master concludes that the District has not complied in good faith with Section IV of the
USP, the obvious remedy would be to recommend that TUSD not be declared unitary with regard to this provision,
but not that the Court impose a more extreme remedy.

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Dated: December 19, 2019

Respectfully submitted,

ERIC S. DREIBAND
Assistant Attorney General
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/s/ Peter W. Beauchamp
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