

TUCSON UNIFIED SCHOOL DISTRICT

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

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|---|----------------------------------|
| Roy and Josie Fisher, et al., Plaintiffs, | 4:74-cv-00090-DCB (Lead Case) |
| v. | |
| Tucson Unified School District No. 1, et al., Defendants. | |

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| Maria Mendoza, et al. Plaintiffs, | CV 74-204 TUC DCB (Consolidated Case) |
| v. | |
| Tucson Unified School District No. 1, et al., Defendants. | |

**TUCSON UNIFIED SCHOOL DISTRICT COMBINED REPLY TO THE
MENDOZA PLAINTIFF OBJECTION [ECF 2390] TO THE RE-OPENING OF
WAKEFIELD MIDDLE SCHOOL AND TO THE FISHER PLAINTIFF
OBJECTION TO THE SPECIAL MASTER’S R&R [ECF 2400]**

Procedural Status

On November 19, 2019, the District filed a Notice and Request for Approval for re-opening Wakefield Middle School. [ECF 2373.] The Mendoza Plaintiffs objected on December 9, 2019 (ECF 2390), within the 20-day period provided for objections; the Fisher Plaintiffs did not object within that time period. Before the 20-day period for the District's response had run (and before the District filed a response), the Special Master filed a Report and Recommendation on December 18, 2019, recommending approval. [ECF 2394.] At that point, under the process set out in the Court's prior orders, the Court is either to decide the matter or schedule additional briefing. [ECF 1350, p. 4.]

Two days later, without any additional briefing scheduled by the Court, the Fisher Plaintiffs for the first time filed an objection to the re-opening of Wakefield Middle School. [ECF 2400.] Because of these departures from the scheduling order, the District has not yet had the opportunity to respond either to the Mendoza Plaintiffs or to the Fisher Plaintiffs. Accordingly, this document responds to both.

Response

Based on the Notice and Request for Approval (NARA) and accompanying Desegregation Impact Analysis (DIA), the District presented evidence through projections that Wakefield can become an integrated, small-sized, no-boundary, majority-minority middle school in the heart of Tucson's south side, serving as a preparatory pipeline for meaningful access for African American and Latino students to thrive in high school ALE opportunities like UHS, Cholla IB, and Pueblo's College Prep Academy. The Special Master and Department of Justice support the proposal. One would expect plaintiff support for a District effort to create an integrated school in a racially concentrated area, but they do not.

In 2014, Mendoza Plaintiffs objected to a proposal to create a middle school magnet at Mansfeld middle school for the same reasons they now object to re-opening Wakefield.¹

¹ Mendoza plaintiffs argued: TUSD should focus on improving other schools (*see* ECF 1724 at 2:14-22); there is not enough detail about plans to integrate (*see* *Id.* at 3:25-27); and parents will not be motivated to send their students to Mansfeld (*see* *Id.* at 4:8-10).

1 Then, as now, the District had only its projections that it could integrate Mansfeld, and a
2 commitment to making a good faith effort to create an integrated school.

3 Fortunately for the students in TUSD, the Court permitted the District to make the
4 effort. In 2014, Mansfeld was racially concentrated with a 78% Latino student enrollment.
5 Now, in 2020, Mansfeld is an integrated middle school with almost 1,000 diverse students.

6 **1. Wakefield is designed to be an integrated school in a racially concentrated area.**

7 While the District's DIA and NARA are based on its best judgment, informed by
8 projections, analysis, and evidence of prior success, plaintiffs' objections are based on
9 conjecture and opinion. Fisher Plaintiffs argue Wakefield will likely open as a racially
10 concentrated school because it is in an area populated by minorities. Mendoza Plaintiffs
11 argue it will be racially concentrated because it is located in the southern portion of the
12 District. But the six integrated schools listed below are also located in areas that are heavily
13 populated by minorities. Three of the District's current integrated schools are located in the
14 southern part of the District (Drachman, Borton, and Holladay). The District has *already*
15 successfully created integrated schools in racially concentrated areas:

- 16 • Carrillo ES (84% to 65% Latino; 7% to 20% Anglo; 5% to 8% Af. American)
- 17 • Davis ES (83% to 59% Latino; 11% to 28% Anglo; 2% to 7% Af. American)
- 18 • Tully ES (74% to 61% Latino; 6% to 15% Anglo)
- 19 • Drachman K-8 (74% to 63% Latino; 8% to 20% Anglo);
- 20 • *Mansfeld MS (78% to 69% Latino; 10% to 15% Anglo; 7% to 8% Af. American)*
- 21 • Tucson HS (75% to 66% Latino; 12% to 16% Anglo; 6% to 9% Af. American)

22 Mendoza plaintiff attempts to draw parallels between McCorkle K-8 and Wakefield
23 are misleading. McCorkle is a large-sized K-8 with more than 1,000 students in nine grade
24 levels; Wakefield is designed to be a small-sized middle school with 400 students or less in
25 three grade levels. Wakefield is easily accessible from both the I-10 and I-19 freeways;
26 McCorkle is not easily accessible to both freeways and is three miles further south and west
27 from Wakefield. ***Most important***, however, is the fact that McCorkle is a neighborhood
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1 school that automatically enrolls a high percentage of Latino students from the neighborhood;
2 Wakefield is designed as a no-boundary school that will utilize a lottery to promote
3 integration.

4 Plaintiffs argue that the District should never attempt to create an(other) integrated
5 school on the south side or in any other area that is heavily populated by minority families.
6 At their core, plaintiffs' arguments are antithetical to the type of good faith desegregation
7 efforts envisioned in *Brown* and *Swann*.²

8 **2. A small, no-boundary school will have minimal (if any) impacts to any other**
9 **school.**

10 Both Plaintiff groups argue that Wakefield will negatively impact Utterback and
11 surrounding schools by offering high-achieving students an option. The small-size of the
12 school and the fact that it is a no-boundary school drawing from all over the city, as projected
13 in the DIA, means that students can apply but may not be guaranteed a seat. Moreover, high
14 achieving students already have many other choices: charter schools, other school districts,
15 and private and parochial schools – not to mention aggressive recruitment to District magnet
16 schools like Dodge and Mansfeld middle schools. The addition of Wakefield to these existing
17 options is not likely to make a difference to a material number of students at any other school.
18 There is no evidence that a significant number of high-achieving students at Utterback (or
19 any other school) would leave their school for Wakefield even though they have not yet left
20 their neighborhood school for the multitude of other available options that currently exist.
21 This argument is mere speculation, based only on unsupported opinion.

22 Further, this argument contradicts plaintiffs' other argument that the District should
23 focus its attention on the surrounding schools. If the District were, for instance, to propose
24 changes at Utterback to improve achievement and make it more attractive, that would then
25 arguably attract high-achieving students away from nearby schools as well. Similarly, the

26 _____
27 ² *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (Brown II); *Swann v. Charlotte-Mecklenburg Bd. of*
28 *Educ.*, 402 U.S. 1, 25 (1971).

1 success of every TUSD magnet school (and the entire Plus-Integration Plan for non-magnet
2 schools) is based on each schools’ ability to attract students away from their neighborhood
3 school to improve integration. Plaintiffs cannot reasonably argue the District must work
4 harder to integrate by attracting students away from their neighborhood schools to integrate
5 the receiving school and argue that the District must not be permitted to create attractive
6 receiving schools that could attract students away from their neighborhood school due to
7 speculative harm to the sending neighborhood school.

8 Likewise, plaintiffs’ arguments about the proposal sending the “wrong message” to
9 other schools is not based on fact, but conjecture. There is no evidence that any staff member,
10 leader, parent, or student at any other school feels the Wakefield proposal is sending a
11 message that the District has “given up” on their school. Even if such evidence existed, which
12 it does not, this approach would mean the District should not expand AVID, open new ALE
13 opportunities, expand dual-language, or improve any one school for fear that someone at
14 another school would feel the expansion meant the District had “given up” on their school.

15 The District has held community forums, including parents and other community
16 stakeholders, and has received an overwhelming positive response in support of the proposal.
17 No stakeholder has yet to share an opinion with the District that he or she feels the District is
18 “giving up” on their current school by considering the re-opening of Wakefield.

19 **Conclusion**

20 Plaintiffs say Wakefield will not be integrated. They said the same about Mansfeld,
21 Tucson High, Davis, Carrillo, Tully, and Drachman. All are now integrated schools.
22 Plaintiffs argue Wakefield will cause harm to nearby schools, but name no other school than
23 Utterback and fail to provide any evidence or analysis supporting the objection. Plaintiffs
24 object that the District has not developed enough details. In the past, plaintiffs objected to
25 District proposals *because* the District had developed *too many details* before obtaining Court
26 approval and had created a *fait accompli*. Plaintiffs assert the District should be focused on
27 other things, other than attempting to open a small-size, integrated middle school in
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1 conjunction with the University of Arizona on the south side of Tucson to serve mostly
2 African American and Latino students. Finally, in light of the plaintiffs’ stated support for
3 grow-your-own programs, it is hard to understand their objection to a proposal for a lab
4 school to grow and develop TUSD teachers.

5 In any other desegregation case, one would expect the plaintiffs to support the re-
6 opening of a small-sized, high-performing, integrated lab school in a heavily minority-
7 populated area. Here, these same attributes are cited by the plaintiffs as reasons **not** to provide
8 such an option to families who live in the southern portion of the District.

9 If approved, Wakefield would begin classes for sixth graders only in SY 2020-21, and
10 add 6th and 7th grade in SY 2021-22. TUSD will have two years to further develop the model
11 – in conjunction with the university – before it matures to a fully-enrolled middle school. The
12 District has provided a DIA, has collaborated with the Special Master and Plaintiffs in
13 designing the proposal, and now respectfully requests the Court adopt the Special Master’s
14 recommendation, as soon as possible, so that it may begin the work of preparing Wakefield
15 to open in SY2020-21.

16 For these reasons, as described above and in the NARA and DIA, the District
17 respectfully requests approval.

18 Respectfully submitted on January 6, 2020.

19 **TUCSON UNIFIED SCHOOL DISTRICT**
20 **LEGAL DEPARTMENT**

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Certificate of Service

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2 **ORIGINAL** of the foregoing filed via the CM/ECF Electronic Notification System and
3 transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of
4 appearance in the District Court Case.
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7 s/ Samuel E. Brown
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