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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

<p>Roy and Josie Fisher, et al., Plaintiffs,</p> <p>v.</p> <p>Tucson Unified School District No. 1, et al., Defendants.</p>	<p>4:74-cv-00090-DCB (Lead Case)</p>
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<p>Maria Mendoza, et al. Plaintiffs,</p> <p>v.</p> <p>Tucson Unified School District No. 1, et al., Defendants.</p>	<p>CV 74-204 TUC DCB (Consolidated Case)</p>
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25 **TUSD RESPONSE TO THE SPECIAL MASTER’S REPORT AND**
26 **RECOMMENDATION WITH RESPECT TO THE THREE YEAR PLUS PIP AND**
27 **MAGNET PLANS [ECF 2378]**
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1 The Tucson Unified School District, No. 1 (“TUSD” or the “District”) hereby submits
 2 this Response to the Special Master’s Report and Recommendation (R&R) [ECF 2378]
 3 related to the District’s 3-Year Plus Integration Plan and Outreach and Recruitment
 4 Addendum [ECF 2270]. In his R&R, the Special Master recommended that the District work
 5 with him to modify its plans for building on the success it has had in the last two years in
 6 promoting integration (a) by redefining integration, and (b) by developing new academic
 7 criteria to be used to evaluate magnet schools.¹

8 **A. Definition of Integration**

9 In his R&R, the Special Master assumed that the primary goal of the plan is to increase
 10 the number of schools that are “integrated” using the USP definition. Because he believes
 11 that the USP definition of “integration” is flawed, he suggested changing the USP definition
 12 of “integrated.” [R&R, ECF 2378 at 2:16-20.] The District created plans for all non-magnet
 13 schools – even those that are nowhere close to the USP definition of integration – to continue
 14 its efforts to promote integration and to increase the integration of TUSD schools, even where
 15 such increases would not result in an increase in the number of integrated schools using the
 16 USP definition. Thus the real goal of the plan is to promote and increase integration as a
 17 whole, without regard to any particular definition.

18 There is no “end point” to the District’s effort, as implied by a particular definition;
 19 the District is committed to a continuing effort to promote integration and diversity, not
 20 merely as a remedy for any past discrimination but because of its inherent value in preparing
 21 students for success. In that regard, the value of integration and diversity is not merely
 22 improved academic performance, or meeting some number of integrated schools. Indeed, as
 23 integration approaches practical limits given residential demographics and other external
 24 factors, the District believes that continued efforts to promote integration and diversity are

25 ¹ The Special Master states that previous discussions of academic criteria incorrectly imply “that
 26 the Special Master and the District have agreed on the academic criteria for magnet schools.”
 27 [R&R, ECF 2378 at 4:2-6]. However, the CMP academic criteria that are the subject of these
 28 discussions were “taken directly from the *Court-adopted guidelines* from December [2018], as
 recommended by the Special Master in November [2018].” [ECF 2326 at 2-3].

1 important to preserve progress already made, and to create opportunities for students to learn
2 from other students with different experiences and backgrounds.

3 No particular definition, or any particular result using a definition, is a requirement or
4 condition for unitary status. Accordingly, the District does not believe that the issue of the
5 definition of integration in the USP should slow or delay consideration of unitary status.

6 This Court's September 2018 Order is clear that progress towards integration is more
7 important than a specific defined percentage:

8 *...that does not mean that racial percentages other than +/- 15% are not relevant at*
9 *schools which are neither Integrated nor Racially Concentrated. In other words, it*
10 *is relevant whether schools are more or less trending towards integration or racial*
11 *concentration. It is relevant whether schools are +/- 15%, +/- 20%, or +/- 25%, with*
12 *every percentage decrease in racial concentration and percentage increase towards*
13 *integration being a good thing.*

14 [ECF 2123 at 16, fn. 5.] In his 2016-17 SMAR, the Special Master recognized that the current
15 USP definition of integration “understate[d] the number of students in TUSD who have an
16 opportunity to go to school where very [sic] have substantial opportunity to learn with and
17 from students of races different from their own.” [ECF 2111 at 8:11-15.] The Court has
18 recognized that the “District classifies schools as ‘highly diverse’ if no group is over 70%
19 and two groups, each, make up 25% or more of the student body.” [Unitary Order I, ECF
20 2123 at 16, fn. 5.]. A school that enrolls a critical mass of at least two racial or ethnic groups
21 will serve to provide its students with opportunities to learn with and from people different
22 from themselves, as such school *guarantees that at least one in four students is from a*
23 *different race or ethnicity.* Indeed, the vast majority of school districts engaged in Court-
24 ordered desegregation efforts over the past sixty-five years have sought to achieve
25 “integration” through the creation of a critical mass of at least two student groups at a single
26 school (Anglo and African American students).

27 Nonetheless, in response to the Special Master's request as expressed in his most
28 recent R&R, the District has made various suggestions and engaged in a dialog with the
Special Master, subject to the overall position expressed above. However, the District is now

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1 concerned that this issue will provoke further objections, and delay the process. Accordingly,
2 to move the process along, if some change in the definition is needed, the District proposes
3 the following broad definition of school integration (again, subject to its position and
4 previously stated objections):

5 *An integrated school is one that provides students with opportunities to learn with*
6 *and from people with different backgrounds and experiences than their own.*

7 The District proposes three criteria for measuring progress improving integration, all of which
8 may be used or considered in parallel:

- 9
- 10 1) the current USP definition that measures schools against school-level percentages,
11 with a 70% cap;
 - 12 2) a more conventional definition² that measures schools with a critical mass of *at least*
13 two racial or ethnic student groups (25% or greater); and
 - 14 3) a more conventional definition that measures schools whose student populations for
15 all racial and ethnic groups is within 20% of the District average.

16 Given the Special Master’s request to use a more conventional definition of integration, the
17 District proposes that the most reliable and accurate method for measuring improvements in
18 integration is to apply the current measure and two additional, more conventional measures
19 that contribute to an understanding of whether schools are trending towards integration. The
20 additional measures directly address the primary flaw identified by the Special Master, “by
21 the definition of integration in the USP, a school with 39% white students, 39% Latino
22 students, 10% African American students, and 12% other races would not be integrated.”
23 [ECF 2378 at 3:11-13.] Again, the goal is not to celebrate an “end point,” but to direct limited
24 resources and efforts to those schools with a greater identified need to increase opportunities
25 for students to learn with and from students different from themselves.

26 _____
27 ² The Court has recognized the Special Master’s suggestion “that a more conventional definition of
28 integration would result in finding that more than half of the District’s students have the benefit of
an integrated education.” [ECF 2123 at 16, fn.5.]

1 **B. Proposed Academic Achievement Measures for Magnet Schools**

2 After considerable dialog with the Special Master, the District proposes a series of
 3 measures to determine whether a magnet school has met the academic achievement
 4 criterion to remain in magnet status. The District proposes using a system of points for
 5 meeting each measure, in which six points are possible each year, and a total of 12 points
 6 possible over a two-year cycle. A school must earn at least 9 points within a two-year cycle
 7 to maintain magnet status. The following three sub-sections would replace sub-section
 8 B.2., of the Comprehensive Magnet Plan.³

9 **School Achievement Profile** [2 points possible]

10 1. *Letter Grade.* Did the magnet school earn a letter grade of A or B from the State
 11 school grading system? If not, is the magnet school a C or D rated school that made
 12 progress (increase of three points or more) towards the next-highest letter
 13 grade? Schools making progress must achieve at least a B letter grade within two
 14 years. **2 points.**

15 or

16 2. *ELA Proficiency Rate:* Did students achieve an ELA proficiency rate (as determined
 17 by the State) that exceeds the ELA proficiency rate for district students at the same
 18 school level (e.g. ES, K8, MS, HS)? **1 point.**

19 3. *MATH Proficiency Rate:* Did students achieve a math proficiency rate (as
 20 determined by the State) that exceeds the math proficiency rate for district students
 21 at the same school level (e.g. ES, K8, MS, HS)? **1 point.**

22 **Achievement Gaps** [2 points possible]

23 Achievement gaps are defined as the difference between the proficiency rate on
 24 mandated state tests of two subgroups of students (African American and white students,
 25
 26

27 ³ “B. SUPPORTING EXISTING MAGNET PROGRAMS (Processes and Schedules to Improve
 28 Magnet Programs), 2. Student Achievement” [CMP, ECF 2270-2 at 6].

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1 and Hispanic and white students, by free & reduced lunch where there are ten or more
2 students of each race/ethnicity). ***Each measure below is worth one half point.***

- 3 4. *ELA Achievement Gap: African American Students:* Is there an achievement gap in
4 ELA between African American and white students? If not, the magnet school has
5 met this measure. If so, did the magnet school narrow this achievement gap by at
6 least 3% for either group within one year and/or eliminate the gap within two years?
- 7 5. *ELA Achievement Gap: Latino Students:* Is there an achievement gap in ELA
8 between Latino and white students? If not, the magnet school has met this
9 measure. If so, did the magnet school narrow this achievement gap by at least 3%
10 for either group within one year and/or eliminate the gap within two years?
- 11 6. *Math Achievement Gap: African American Students:* Is there an achievement gap in
12 Math between African American and white students? If not, the magnet school has
13 met this measure. If so, did the magnet school narrow this achievement gap by at
14 least 3% for either group within one year and/or eliminate the gap within two years?
- 15 7. *Math Achievement Gap: Latino Students:* Is there an achievement gap in Math
16 between Latino and white students? If not, the magnet school has met this
17 measure. If so, did the magnet school narrow this achievement gap by at least 3%
18 for either group within one year and/or eliminate the gap within two years?

19 The District may consider improvement of African American and/or Latino students overall
20 within the two-year cycle as a mitigating factor.

21 **Academic Growth** [2 points possible]

22 Academic growth measures the growth of each school’s Minimally Proficient⁴ (MP)
23 students as defined by the State. ***Each measure is worth one point.***

24
25 _____
26 ⁴ Students may fall into one of four categories based on state assessments: minimally proficient,
27 partially proficient, proficient, and highly proficient. Minimally proficient is the lowest category
28 and is defined by the Arizona Dep’t of Education and the State Board of Education, who determine
the cut-scores for each category.

1 8. *ELA Growth Rate: Minimally Proficient Students:* Did the percentage of minimally
2 proficient students earning one or more years’ growth in ELA meet or exceed the
3 percentage for district students at the same school level (e.g. ES, K8, MS, HS)?

4 9. *Math Growth Rate: Minimally Proficient Students:* Did the percentage of minimally
5 proficient students earning one or more years’ growth in Math meet or exceed the
6 percentage for district students at the same school level (e.g. ES, K8, MS, HS)?

7 **Conclusion**

8 The District has worked with the Special Master as requested, and will comply with any
9 order the Court issues, subject to and without waiving its general objections stated in prior
10 pleadings. The District respectfully requests that the Court acknowledge that the District is
11 in unitary status with respect to the Student Assignment area of the USP.

12 Respectfully submitted on January 31, 2020.

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Certificate of Service

ORIGINAL of the foregoing filed via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

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