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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S RESPONSE REGARDING OBJECTIONS TO**
2 **SPECIAL MASTER’S REPORT AND RECOMMENDATION ON THE**
3 **DISTRICT’S SUPPLEMENTAL PETITION FOR UNITARY STATUS**

4 Overview

5 The Special Master hereby asked the Court to authorize his response to some of the
6 objections made to his Report and Recommendation relating to the District’s petition for unitary
7 status. In this response, the Special Master will focus attention on the objections of the Fisher and
8 Mendoza plaintiffs because the concerns expressed by the District and the Department of Justice
9 are not so substantial as to affect the Court’s decision about Unitary Status.

10 Many of the objections to the Special Master’s Report and Recommendation essentially
11 argue that the District has not been as successful as one would hope in implementing efforts to
12 satisfy the requirements of the USP. But this seems insufficient to deny Unitary Status. There is
13 always more one could do. The rule the Court should apply is whether the District has made a
14 good faith effort to satisfy the provisions of the USP and whether there are strategies that the
15 District did not employ that have a high possibility of success. When the plaintiffs (or the Special
16 Master) criticize efforts by the District, they would seem to have the responsibility of identifying
17 alternative strategies that the District could feasibly implement. But the plaintiffs suggest few
18 such alternatives. Where they do, the Special Master will address these proposals.

21 The Special Master’s responses are of three types:

- 22 1. Misunderstandings or misstatements of the Special Master’s recommendations and
23 assertions by the plaintiffs there are untrue.
- 24 2. Issues raised by the plaintiffs that are not dealt with adequately or at all by the
25 Special Master’s Report and Recommendation.
- 26 3. Plaintiff’s assertions that have little chance to be effective.
- 27
- 28

1 This request to the Court will include examples of each of these types of responses to be
2 made by the Special Master, but this is not an inclusive list.

3 Misunderstandings, Misstatements and Inaccurate Assertions

4 The Special Master and the District have promoted and endorsed practices that benefit all
5 children but do not give priority to strategies that particularly benefit African American and
6 Latino students.
7

8 The Special Master's analysis of achievement gaps, if used to assess the worthiness of
9 magnet schools, should be limited to those students who receive free and reduced meals. His
10 analysis is meant to put in perspective the effectiveness of schools serving low income students so
11 that these schools will be fairly treated; show that this measure cannot be used in some schools;
12 and could result in the elimination of magnet status for a number of schools.

13 The Special Master suggests that students from Africa should not be part of the USP.
14 Rather, he argues that they have very different personal and cultural experiences than black
15 students born in America.
16

17 Issues Not Dealt with, or Requiring Further Elaboration, by the Special Master

18 The fact that the District does not explicitly fund mitigating strategies for beginning
19 teachers.
20

21 The potential effect of reassigning the District's best teachers to schools serving the
22 lowest achieving students.

23 The fact that there remains a discipline gap, which is acknowledged by all parties and the
24 Special Master, does not mean that the District has not significantly reduced the
25 disproportionality in discipline, substantially decreased the number of hours that student
26 discipline results in classroom attendance or that the Department of Justice has not identified
27 systematic discrimination against African American or Latino students in application of the
28

1 student code of conduct.

2 That the District does not have in place inadequate procedure for assessing the accuracy of
3 site administrator's evaluations of teacher competence, especially with respect to culturally
4 responsive pedagogy.

5 The different challenges in measuring teacher, as compared to administrator, diversity at
6 the school level.

7 The review of the best practices file related to discipline undertaken by the Special Master
8 and a member of the implementation committee.

9 The relative absence of evidence of discrimination or systemic racism.

10 The reasons for and consequences of changing the definition of integration.

11 Plaintiffs' Assertions that are Relatively Inconsequential

12 The Fisher plaintiffs assert that because the Special Master uses a statistician to assure the
13 quality of quantitative analyses, though the Fisher plaintiffs sought and used in their own
14 arguments the expertise of an outside statistician,

15 That specially trained mentors of teachers of CRC courses whose responsibilities include
16 maintaining fidelity to the curriculum may be better judges of curriculum rigor than two students
17 and a counselor.

18 That one or two staff members of the student support departments will have a more
19 substantial impact on student learning than would these staff members have if they tried to teach
20 thousands of students with whom they would be meeting a few hours each course. In other
21 words, the idea that persons in the student support departments should provide direct services to
22 students is unrealistic on its face. It also tests credulity that individual staff members of the
23 student support departments could significantly improve teacher performance when they
24 themselves need not have credentials superior to those professionals with whom they would be
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1 working.

2 That GATE programs are not taught by GATE qualified teachers and are not legitimate
3 advanced learning experiences.

4 That Grow Your Own programs for administrators are limited to the Leadership Prep
5 Academy.

6 That the Special Master has recommended identical staffing for the two student services
7 departments.

8
9 Schedule

10 The Special Master shall submit his responses no later than July 6, 2020.

11 Respectfully submitted,

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13 _____
14 /s/ Willis D. Hawley
Special Master

15 Dated: June 22, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2020, I electronically submitted the foregoing 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.

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master