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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Roy and Josie Fisher, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.	4:74-cv-0090-DCB (Lead Case)
Maria Mendoza, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.	4:74-cv-0204 TUC DCB (Consolidated Case)

DISTRICT RESPONSE
TO MENDOZA PLAINTIFFS' OBJECTION (ECF 2507)
TO THE DISTRICT'S
SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE
(ECF 2501)

The District responds to the Mendoza Plaintiffs' objections (ECF 2405) to the District's notice of compliance (ECF 2501) with the Court's amended order entered on June 22, 2020 (ECF 2486).

I. MAGNET ACADEMIC CRITERIA.

The Court directed the District to identify academic criteria to apply to magnet schools that receive a state letter grade of "C," to determine which schools are "MagnetMerit B" schools, and to apply them to all magnet schools receiving a state letter grade of "C" for the 2018-19 school year, and to Booth-Fickett pursuant to the Court's permission in the order entered June 22, 2020 (ECF 2585). The Mendoza Plaintiffs concede that the District followed the Court's directives. They lodge no objection to the substantive criteria selected by the District, nor do they challenge the application of those criteria to the magnet schools in question.

Instead, they ask the Court to direct the District to "rephrase its rationale" for using the free and reduced lunch status as a factor in the criteria: they wish to control the District's speech by insisting that the District say only that poverty is "correlated" with gaps in achievement gap, instead of, as the District wrote, that there is an achievement gap that is "caused largely by socio-economic status." The Court should reject this attempt to overreach, for two reasons. First, this is not something the machinery of federal court oversight should engage in: there simply is no constitutional requirement, nor can there be, that the District adopt or state the Mendoza Plaintiffs particular position on a matter of educational research. Second, there is in fact substantial evidence in the educational community that poverty is a cause and not merely a correlate of lowered academic achievement. *See, e.g.,* Hanushek, Peterson, Talpey and Woessmann, *Long-Run Trends in the U.S. SES-Achievement Gap*, NBER Working Paper No. w26764, Feb.

18, 2020 (available through www.ssrn.com). Respected voices in the educational community believe that poverty causes an achievement gap. The Court should reject the Mendoza Plaintiffs' demand.

The Mendoza Plaintiffs also request that the Court condition approval of the academic criteria upon the District's "express commitment" "to continue to set as a goal for its magnet (and all schools) the closing of the achievement gap for all of its African American and Latino students in relation to its white students."

First, the District has of course committed to just that goal, without need for any court order or condition. The Governing Board Policy ACC provides as follows:

> The District is committed to improving the academic achievement and educational opportunities of all students, regardless of race, ethnicity or socioeconomic status, and **to reduce any disparities in access, participation and performance in academic achievement and educational opportunities**, including, but not limited to, advanced learning opportunities and dual language programs, across all communities served by the District.

(Emphasis added.)[1] Nothing more is needed.

But more fundamentally, it has been (a) well recognized in educational research, (b) acknowledged by the Special Master, and (c) expressly found by Judge Frey, that the achievement gap is a national phenomenon, experienced alike by schools with and without *de jure* segregation in the past. It is also clear that the gap has persisted for decades across the country, despite all major educational initiatives.[2] Accordingly, the achievement gap today is not something that was caused by the District's segregation, which ended nearly 70 years ago. Federal courts may not condition termination of supervision on elimination of a social ill that is not the consequence of the District's own

[1] The complete version of the Governing Board policy, adopted by the Governing Board on May 12, 2020, appears as Exhibit A hereto, and covers all of the areas addressed in USP.

[2] Hanushek, et al., *supra*, p. 1.

segregative conduct. *See Missouri v. Jenkins*, 515 U.S. 70, (1995) (insistence upon academic goals unrelated to the effects of legal segregation unwarrantably postpones the day when the [school district] will be able to operate on its own).

Thus, the Court should reject the Mendoza Plaintiffs' request that it "condition" approval of the magnet academic criteria on the adoption of any goal with respect to elimination of the achievement gap. The District has already formally adopted as a policy of the District a commitment to reduce any disparities in academic achievement. Nothing more may constitutionally be required going forward.

II. MAGNET INTEGRATION CRITERIA.

The Court's amended order directed the District to select a definition of integration from among those set out in the orders, to apply to all magnet schools using 40th day data from the 2019-20 school year, to determine whether a magnet may maintain its magnet status. [ECF 2486.] The Mendoza Plaintiffs concede that the District followed the Court's directive, but they nevertheless reiterate prior objections to the Court's directive. The Mendoza Plaintiffs present no new arguments, and no new evidence as to why the Court's directive was wrong. Indeed, there simply is no research or other evidence of which the District is aware (and certainly none in the record) that suggests that academic performance is better, or the benefits of diversity greater, with one particular definition of integration rather than another. Further, there is no constitutional requirement for one over another. Accordingly, the Court should overrule this objection.

. . .

DATED this 19th day of August, 2020.

Respectfully submitted,

/s/ P. Bruce Converse

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2020, I electronically transmitted the attached foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ P. Bruce Converse