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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,

Maria Mendoza, et al.,
Plaintiffs,
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.,
Defendants.

CV 74-90 TUC DCB
(lead case)

ORDER

CV 74-204 TUC DCB
(consolidated case)

1 On January 6, 2012, the Court appointed Dr. Willis Hawley to serve as a Special
2 Master in this case, pursuant to Federal Rule of Civil Procedure, Rule 53. The Special
3 Master is charged with overseeing the development and implementation of a Unitary Status
4 Plan (USP) for the Tucson Unified School District (District). In the interim between now
5 and when the USP is in place, the Post-Unitary Status Plan (PUSP), adopted by the District
6 School Board on July 30, 2009, and approved by the Court on December 22, 2009, remains
7 in place. It is undisputed that the viability and sufficiency of the PUSP has been called into
8 question by the Ninth Circuit Court of Appeal's Mandate issued on August 10, 2011,
9 reversing and remanding this case for further proceedings. Additionally, it is undisputed that
10 some provisions in the PUSP were not implemented or only partially implemented by the
11 District, and that on January 10, 2012, the District Governing Board adopted a Resolution
12 to discontinue classes offered by the Mexican American Studies Department (MASD). This
13 Resolution discontinued courses that had been approved as part of the PUSP.

14 The Governing Board passed the Resolution in response to a Notice of Violation
15 issued by the Arizona Superintendent of Education John Huppenthal, finding the District in
16 violation of A.R.S. § 15-112, which prohibits courses or classes promoting the overthrow of
17 the government, resentment toward a race or class of people, designed primarily for pupils
18 of a particular ethnic group, and advocating ethnic solidarity. Pursuant to the action taken
19 by the State of Arizona, the District stood to lose 4.9 million dollars in state funding if it
20 continued to teach these courses.

21 Subsequent to the Governing Board's action to discontinue the courses, the Mendoza
22 Plaintiffs filed a Response to the District's suspension of the MASD courses and requested
23 that the Special Master and this Court take action to enforce the PUSP and reinstate the
24 courses. On February 23, 2012, the Special Master sent a memorandum to this Court in
25 response to Mendoza Plaintiffs' request for an enforcement order. The Special Master agrees
26 discontinuing these courses does violate the PUSP. He reports that he is currently moving
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1 forward in an expeditious pace to develop the Initial (draft) USP, which will include
2 comprehensive strategies for meeting the academic and social-developmental needs of
3 Mexican American students. The Special Master warns against sidetracking the efforts
4 necessary to prepare the Initial USP, which is due within six months (June 2012), by shifting
5 the focus to a debate regarding the merits of specific provisions in the PUSP. The Court
6 agrees.

7 In response to the Special Master's memorandum, the Mendoza Plaintiffs filed a
8 Notice of their intent to object to it, pursuant to subsection V(3) of the Order Appointing
9 Special Master. Plaintiff has 30 days to file an objection. (Doc. 1350: Order filed 1/6/2012
10 at 6, V(4)). The Court does not intend to delay the Special Master's work regarding
11 development of the USP to debate the merits of enforcing this provision of the PUSP, and
12 rules on the Plaintiff Mendoza's request, without the benefit of further briefing. Plaintiffs
13 Mendoza may file the objection as a Motion to Reconsider.

14 In the January 6, Order appointing the Special Master, the Court directed that "until
15 such time as the USP has been approved by the Court, the Special Master shall consider and
16 report on the following: (1) any act or policy of the District that any Plaintiff contends will
17 deprive any student of equal protection of the law whether by intentional segregation or
18 discrimination based on a student's race or ethnic group; and (2) any act and/or policy of the
19 District which substantially affects the racial or ethnic balance in any school in the District
20 and/or which is discriminatory because based on race or ethnicity of any students in the
21 District." (Doc. 1350: Order filed 1/6/2012 at 3.) The Court finds that discontinuance of the
22 MASD courses during the remainder of the USP's life expectancy will not violate the Equal
23 Protection Clause of the Constitution by intentionally segregating or discriminating against
24 student's based on race or ethnic group. Nor can it be asserted that the racial or ethnic
25 balance in any school will be affected. The Court finds that the question of whether MASD
26 courses should be reinstated may be adequately addressed within the context of the

1 development of the USP in the same way that all the provisions in the PUSP are being
2 considered for inclusion in the USP.

3 Additionally, on January 23, 2012, the District filed a Notice to the Court that
4 included its Report on the Status of Implementation of the PUSP. The Court finds there is
5 some confusion regarding this directive made in the Court's January 6, Order, which was
6 expressly for the District to "provide the Special Master and all Parties with a report on the
7 status of implementation of the PUSP, with specific reference to each affirmative obligation
8 thereunder," within 15 days of the Special Master's appointment to assist in his efforts to
9 formulate a USP within 6 months. (Doc. 1350: Order filed 1/6/2012 at 4.) The Court notes
10 that the directive was for the status report to be filed with the Special Master, not the Court.
11 Correspondingly, the Parties' responses should also have been filed with the Special Master,
12 not the Court. It is not the Court's intention that the parties file in duplicate the documents
13 they provide to the Special Master. It is the Court's intention that all issues involving the
14 development of the USP be presented first to the Special Master for his consideration and
15 report and recommendation to the Court.

16 To clarify for the parties the context for the Court's requirement that the District
17 provide the Special Master with a Report on the Status of Implementation of the PUSP, the
18 Court believed it would serve as a supplement to the parties' memoranda stating their
19 positions regarding the adequacy of the PUSP, which this Court forwarded to the Special
20 Master on January 6, 2012, to assist the Special Master in evaluating the strengths and
21 weaknesses of the PUSP for the purpose of determining which, if any, PUSP provisions
22 should carry over to the USP. Additionally, the Court sought to address the Plaintiffs'
23 complaint that the District had not been forthcoming regarding the status of its efforts to
24 implement the various provisions contained in the PUSP, which the Court believed may be
25 information needed by the Special Master.

1 The Court notes that all the documents (Docs. 1352-1354, 1357-1358) filed in the
2 case have also been provided to the Special Master. The Court directs him to consider the
3 parties' positions expressed in these documents in the development of the USP.

4 **Accordingly,**

5 **IT IS ORDERED** that the Motion for Special Master to Take Action (Doc. 1354)
6 is DENIED to the extent it requests this Court to order the District to reinstate MASD
7 courses.


8 **IT IS FURTHER ORDERED** that the Mendoza Plaintiffs may file a Motion for
9 Reconsideration with this Court. Otherwise, there shall be no further briefing to this Court
10 at this time in respect to the MASD courses. Plaintiffs are free to reurge the issue once more
11 during the Court's review of the USP.

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the
13 memorandum sent by the Special Master on February 23, 2012, into the record.

14 **IT IS FURTHER ORDERED** that in respect to the development of the USP, the
15 Special Master shall consider the positions of the parties as presented in documents 1352-
16 1354 and 1357-1358.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court, Erik Paltrow, Customer
18 Services Supervisor, shall contact the Special Master, Willis D. Hawley, to explain
19 procedures for the Special Master to use to electronically file documents in the case, receive
20 notice, and access the record.

21 DATED this 29th day of February, 2012.

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25 David C. Bury
26 United States District Judge
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