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11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,
25
26
27
28

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’
OBJECTION TO TUSD REQUEST
FOR APPROVAL OF SCHOOL
CLOSURES**

(Assigned to: Hon. David C. Bury)

For Consideration by the Special Master

Case No. CV 74-204 TUC DCB

1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et al.,
7 Defendants.

8
9 Introduction

10 TUSD seeks to eliminate a \$17 million budget gap with a plan to close eleven
11 schools that will result in savings of \$4-5 million dollars. However, TUSD fails to explain
12 how it intends to meet the remaining shortfall of \$12-13 million dollars. The District
13 rushes to close schools causing disruption to thousands of students¹ without a plan for
14 closing the entire deficit and without adequately considering the impact of the closures on
15 its constitutionally imposed mandate to increase integration in the District.

16 The District has failed to use the Master Plan and school closure “process” to
17 meaningfully advance integration by utilizing the strategies provided in the joint Unitary
18 Status Plan² including magnet schools, shaping of attendance boundaries, feeder patterns,
19 clustering, open enrollment and the location of certain educational programs such as dual
20 language programs. The “process” the District utilized for deciding which schools to close
21 was flawed as it neglected to consider these critical factors. The District should not be
22 allowed to proceed with its school closure plan until it effectively utilizes the strategies
23 incorporated in the USP for achieving integration.

24
25 _____
26 ¹ According to the District, “approximately 14, 768 students will be directly affected by
27 school closures.” TUSD Notice and Request for Approval of School Closures, Docket No.
28 1419, filed 1/2/13 (“Notice and Request for Approval”), Exhibit I at 2.

² Joint Proposed Unitary Status Plan Noting Areas of Party Disagreement (“Proposed
USP”), Docket No. 1411, filed 12/10/12.

1 TUSD’s “Process” for Identifying Schools for Closure was Flawed

2 The District failed to consider the impact of the school closures on desegregation as
3 part of an overall plan to enhance integration and educational equity in the District. On
4 November 20, “the Board initiated the closure process for eight schools” and at the same
5 meeting it received “preliminary information on ethnic and racial enrollment of the
6 remaining schools if all of the proposed school closures were approved.” (Notice and
7 Request for Approval at 4, 5.) An assessment of how closures could maximize integration
8 should have been part of the discussion around school closures from the onset of the
9 District’s planning and certainly this should have been a critical factor to consider during
10 the focus group meetings which took place beginning in August 2012.

11 The District could have considered strategies such as pairing and clustering schools
12 that were racially concentrated with schools that had significant numbers of different racial
13 or ethnic groups in order to provide the racial balance that is required in an integration plan
14 from the start of the “process” to consider school closures. The District could have also
15 considered sending students from racially concentrated schools to receiving schools that
16 would promote integration. The District failed to look at an overall integration plan and to
17 act affirmatively to create opportunities to maximize integration in the District.

18 The District’s consideration of additional school closures at its November 27
19 meeting did not include any analysis of the impact of the school closures on the integration
20 plan. Exhibit H to the Notice and Request for Approval, which includes the information
21 the governing board received on additional school closures does not include any reference
22 to integration goals or the demographics of the schools proposed for closure or the
23 demographics of the receiving schools. The District only conducted “a preliminary impact
24 analysis of school closures on student assignment” at the conclusion of the process to
25 approve the school closures at the Board’s December 20 meeting when the Board voted on
26 final approval to close eleven schools. (Notice and Request for Approval at 5.)

27 As the Mendoza Plaintiffs stated in a previous submission to the Special Master
28 opposing the District’s request for approval of construction projects, “the District cannot

1 take any action that affects boundary changes, changes to student assignment patterns,
2 changes in student capacity of a school, or that significantly impacts the nature of a facility
3 without expressly considering the effect on its obligation to reduce racial and ethnic
4 isolation in its schools and achieve desegregation to the maximum extent practicable, and
5 acting to maximize opportunities for integration.” (Objection to TUSD Request for
6 Approval of Construction Items and Sale of District Real Property (“Mendoza
7 Construction Objection”), Docket No. 1382-1, filed 8/16/12, at 1.)

8 The District proposes to close schools even while it ignores criteria for student
9 assignment intended to promote integration included in the joint proposed USP submitted
10 to the Court by the parties on December 10, 2012. The joint proposed USP states that the
11 District “shall use four strategies for assigning students to schools, to be developed by the
12 District in consultation with the Plaintiffs and the Special Master: attendance boundaries;
13 pairing and clustering of schools; magnet schools and programs; and open enrollment.”
14 (Proposed USP at 12.)

15 TUSD plans to change student attendance boundaries with no true
16 acknowledgement of the process set forth in the proposed USP to adjust boundaries to
17 achieve integration. TUSD provides the following schedule for changing attendance
18 boundaries on its website even while it represents that “[a]ttendance boundaries will be re-
19 drawn with input from the Plaintiffs and subject to approval of the Court” (Notice and
20 Request for Approval at 8:9-10) : week of January 7 - principals and site councils meet
21 and suggest community participants to be involved in the process; January 14-17 -
22 regional boundary committees meet; January 22-30 - regional public meetings will be held
23 in affected neighborhoods to facilitate the boundaries and transition process; January 31 to
24 February 5 - a second round of meetings will be held to solicit recommendations on the
25 process and making improvements to receiving schools; February 12 - the governing board
26 will consider boundaries. Significantly, the District states that “the federal court decision
27 should come 60-90 days after the governing board approves the boundaries.” (TUSD
28 School Master Plan at <http://www.tusd1.org/contents/distinfo/masterplan/process.asp>.)

1 TUSD blatantly skirts the process the parties and Special Master have so carefully
2 developed to utilize strategies for student assignment that will promote integration.

3 The District omits any consideration of magnet schools and programs as part of the
4 school closure criteria despite their having been a “cornerstone of the District’s integration
5 plan” for decades.³ (2011 Comprehensive Magnet Program Review at 1.⁴) Whether a
6 school proposed for closure is a magnet school or contains a magnet program was
7 completely omitted from the criteria for consideration of school closures. (TUSD School
8 Consolidation Criteria at
9 <http://www.tusd1.org/contents/distinfo/masterplan/consolidation.asp>.) The focus groups
10 that recommended school consolidation did not consider magnet programs or schools as
11 part of their criteria in evaluating schools to close. (*Id.*) Neither Phase I criteria used to
12 identify schools to consider for consolidation nor Phase II criteria used to develop the
13 consolidation solutions included magnet schools as one of the factors to consider. (*Id.*)
14 Similarly, the District fails to consider pairing and clustering in its analysis of school
15 closures.

16 TUSD also failed to consider the needs of English Language Learners (ELLs) as
17 part of its criterion in determining which schools to close. ELLs are an important
18 subgroup of the class of Latino plaintiffs in this case. The Court has recognized the low
19 achievement rates by ELLs and the Mendoza Plaintiffs have urged the District to
20

21 ³ The District has approved the following school consolidation criteria: Part One: 1) high
22 cost savings; 2) low academic performance; 3) lack of success in attracting families; 4)
23 weak prospects for turnaround in enrollment and academic performance; 5) easy
24 transitions for families to high performing nearby schools; 6) good prospects for retaining
25 students; 7) preservation of unique programs and activities; 8) likelihood of reducing, or at
26 least not exacerbating, ethnic imbalances within schools; 9) high likely value of the site in
27 an alternative use; 10) considerable distance from the sites of recently closed schools.
28 (School Consolidation Criteria at
<http://www.tusd1.org/contents/distinfo/masterplan/consolidation.asp>.) The criteria for
Parts Two and Three also do not include magnet schools or programs.

⁴ Mendoza Plaintiffs have not attached the Comprehensive Magnet Program Review to this
filing to avoid burdening the parties, Special Master, and the Court with documents they
already have. Mendoza Plaintiffs will of course provide copies of that document and its
addendum of School Summary Information upon request.

1 aggressively address the educational needs of ELLs. The District must commit to sending
2 certified bilingual endorsed teachers and paraprofessionals and ELL support services such
3 as tutoring and library resources to the receiving schools where ELLs are placed as it has
4 committed to do for exceptional education students. Should the school closures go
5 forward over Mendoza Plaintiffs' objections, funding for additional support for these
6 particularly vulnerable class members to transition to receiving schools should be provided
7 given the findings of the Rand Institute that achievement and attendance can slip following
8 a reassignment after a school closure.⁵

9 The District points out that counsel and representatives for the parties were invited
10 to and participated in a focus group "organized specifically for them." (Notice and
11 Request for Approval at 4:3-4.) Counsel were in Tucson for two days on October 17 and
12 18, 2012 for purposes of drafting and gaining consensus on the USP and agreed to the
13 District's offer "to share with you what has come from the public participation and focus
14 group process so far, how things will be proceeding from here, and get your feedback."
15 (Notice and Request for Approval, Exhibit F.) Mendoza Counsel expressly requested that
16 their participation in the focus group discussion not be used to endorse the District's
17 "process" to address the budget deficit. Their attendance was intended to obtain
18 information and learn more about the school closure "process". Mendoza Plaintiffs'
19 participation in the meeting on the focus groups on October 18 is not an endorsement of
20 the District's "process" for concluding that schools must be closed and should not be used
21 by the District as such.

22 The Proposed Programmatic Changes Have Not Been Adequately Analyzed for Their
23 Impact on Students

24 The District claims that most students "impacted by the closures will be moved to
25 higher-performing schools" and that in "17 of 19 transfers, students move from a lower

26 ⁵ John Engberg, Brian Gill, Gema Zamarro, Ron Zimmer, *Closing Schools in a Shrinking*
27 *District: Do Student Outcomes Depend on Which Schools are Closed?*, Journal of Urban
28 Economics, vol. 71, no. 2, 189-203 (2012), available at
[http://www/rand.org/pubs/external_publications/EP20120009.html](http://www.rand.org/pubs/external_publications/EP20120009.html).

1 performing school to a higher performing school.” (Notice and Request for Approval at
2 6:23 -7:1; Notice and Request for Approval, Exhibit I at 1.) This argument is
3 disingenuous. The District fails to point out that in seven of those transfers, students are
4 going to schools with the same grade: 4 are transfers from a D school to another D school
5 and 3 are transfers from a C school to another C school.⁶ Schools receiving grades of C
6 and D are hardly high performing. Schools receiving a grade of C are considered to have
7 an average level of performance and schools receiving a grade of D are considered to have
8 a below average level of performance.⁷

9 The District claims that students transferring from Hohokam to Valencia will be
10 going to a higher performing school because, while both schools received a D grade,
11 Valencia has a D grade with 93 points and Hohokam has a D grade with 83 points. What
12 the District fails to admit is that in 2012-2013 Valencia was identified as a School
13 Improvement school requiring parental notification that the school was identified as such
14 and that the school is working with the District and the Arizona Department of Education
15 on a Continuous Improvement Plan. (TUSD Parent Notification Letters for Schools in
16 School Improvement at http://www.tusd1.org/contents/events_ayp.html.) Similarly, the
17 District claims that students transferring from Corbett to Hudlow will be going to a higher
18 performing school because, while both schools received a C grade, Hudlow is considered
19 higher performing because its grade is based on a score of 118 compared to Corbett’s score
20 of 111. The District notably fails to mention that Hudlow is identified as a Focus school
21 requiring parental notification that the school has a “Focus Label” and that it requires an
22 improvement plan. (*Id.*) The District also claims that students transferring from Maxwell
23 6-8 to Safford K8 and from Maxwell to Valencia will be transferring to higher performing

24 _____
25 ⁶ Hohokam (D) to Valencia (D); Schumaker (C) to Bloom (C); Corbett (C) to Hudlow (C);
26 Wakefield (C) to Van Buskirk (C); Maxwell 6-8 (D) to Maxwell K-8 (D); Maxwell 6-8
(D) to Safford K8 (D); Maxwell (D) to Valencia (D). Notice and Request for Approval,
Exhibit I at 1.

27 ⁷ Arizona Department of Education, 2012 A-F Letter Grades Guide, available at
28 <http://www.azed.gov/research-evaluation/files/2012/08/2012-a-f-letter-grades-guide-for-parents.pdf>.

1 schools because the scores increase respectively, from a D with a score of 88 to a D with a
2 score of 98, and a D with a score of 88 to a D with a score of 93.⁸ However, both Maxwell
3 and Safford are identified as School Improvement schools requiring specialized attention
4 to improve their academic achievement.

5 TUSD's characterization that transferring students from the aforementioned schools
6 will be attending higher performing ones masks the true challenge these students will face.
7 These students' education will be disrupted as they transition away from their friends,
8 teachers and networks of support to schools that are not performing up to par. These
9 students should be transferring to schools with grades of A and B to counteract the
10 potential negative impact of losing their support networks from the closing schools.

11 TUSD has not undertaken any analyses of the impact the 2010 school closures had
12 on students affected by the closures. At a meeting with District counsel, the District
13 admitted that it has not undertaken any analysis that would provide guidance on how to
14 make improvements for student transitions when schools are closed. It should not be
15 permitted to perpetuate that omission going forward.

16 TUSD cannot identify "the specific staffing and programmatic changes that will
17 occur at each school" despite the importance of the continuity of staffing and programs at
18 the receiving schools on District integration efforts. (Notice and Request for Approval at
19 7:11-12.) Programs and staffing related to ELLs, GATE, and exceptional education,
20 among other programs, are critical to the integration efforts outlined in the USP. The
21 District's failure to commit to the continuance of these programs and staffing levels at
22 receiving schools further demonstrates its failure to consider its obligations to
23 desegregation under the USP. The District should not be allowed to move its plan forward
24 to close schools until it adheres to all of the provisions of the USP intended to promote
25 integration and achievement for all of the District's students.

26
27
28 ⁸ Notice and Request for Approval, Exhibit I at 1.

1 The District Has Failed to Use Its Master Plan and School Closure “Process” as an
2 Opportunity to Promote Integration And Should be Barred From Proceeding With Any
3 School Closures Until It Does So

4 As noted above, number 8 on the list of ten criteria used to assess potential school
5 closings and consolidations is the “likelihood of reducing or at least not exacerbating
6 ethnic imbalances within schools.” (TUSD School Master Plan at
7 <http://www.tusd1.org/contents/distinfo/masterplan/consolidation.asp>.) That criterion is
8 striking for its absence of ambition in addressing the District’s obligation to further
9 integrate its schools and for its tacit admission that the District has failed to use the Master
10 Plan and school closure “process” as an opportunity to actively promote integration of its
11 schools. Indeed, that tacit admission is confirmed by the District’s submission – which
12 looks at each proposed school closing as a “stand alone” event, mechanistically applies the
13 definitions of integration and racially concentrated in the proposed USP, and, for its
14 desegregation impact analysis, merely tallies whether as a consequence of the proposed
15 school closures, schools will be moving toward or away from those definitions.

16 Nowhere is there a suggestion that the District took a step back and considered how
17 it could meaningfully advance the integration of its schools by developing a true “master
18 plan” that would assess the potential for using the strategies expressly articulated in the
19 USP (including magnet schools, open enrollment, the shaping of attendance boundaries
20 and/or elimination of such boundaries for certain schools, feeder patterns, clustering,
21 location of specific programs like dual language classes and AVID, and targeted marketing
22 and recruitment) in conjunction with its claimed need to close some schools to develop an
23 approach that would not simply avoid “exacerbating ethnic imbalances within schools” but
24 actually *promote* meaningful integration of the schools.

25 This failure is of particular concern to the Mendoza Plaintiffs because this is not the
26 first time the issue has been raised. As the Special Master and the Court will remember,
27 the Mendoza Plaintiffs expressed a similar concern when the District sought approval for
28 certain construction projects. (See Mendoza Construction Objection at 2:21-24, 3:19-4:1

1 and Order filed 10/5/12, Docket No. 1399 at 3:1-10.) The last time around,
2 notwithstanding the absence of an overall plan and approach, which both lamented, the
3 Special Master recommended and the Court permitted the District to go forward with its
4 plans because it claimed to be under a deadline concerning the availability of bond money
5 and because the Special Master and the Court ultimately were convinced that the
6 construction projects would increase the quality of the learning environments in each of
7 the affected schools and would not have a detrimental impact on the District's ability to
8 fulfill its obligations under the USP. (See Order filed 10/15/12 at 6:3-14.)

9 Once again, the District claims that time is of the essence. But what it does not
10 explain is its failure to have made the sort of analysis and planned for the scope of action
11 contemplated by the USP to provide what the Mendoza Plaintiffs contend should have
12 been an essential context for considering any possible school closures. Instead, it offers
13 the excuse that “[m]any of the strategies outlined in the USP for student assignment will
14 not be implemented in time to impact student assignment for the 2013-14 school year.”
15 (Notice and Request for Approval at 8:20-21.) However, that misses the point.

16 Nothing has stopped the District from *planning* for full implementation of the USP
17 or from planning school closures and consolidations consistent with the requirements of
18 the USP. Indeed, it was directed to do so. In its Order filed 7/13/12, this Court ruled as
19 follows:

20 IT IS FURTHER ORDERED that nothing in this Order
21 [extending the time to finalize the USP] shall be interpreted to
22 cause any delay by the District in the implementation of
23 provisions which all Parties agree will be components of or
24 required for the implementation of any USP and work by the
25 District should continue to move forward in such regard.

26 (Order filed 7/13/12, Docket No. 1377, at 4:17-20.)
27
28

1 The District's decision to close Fort Lowell/Townsend⁹ and to move students from
2 that school to Whitmore, Doolen, and Magee provides a telling example of why the
3 District must be required to defer any school closings until it has engaged in the planning
4 mandated by the USP. Fort Lowell/Townsend is located in the northeast quadrant of the
5 school district where many schools have enrollments of white students that significantly
6 exceed the District's overall white student enrollment. (See Proposed USP, Appendix C,
7 for Doolen, Magee, Bloom, Collier, Fruchthendler, Whitmore, and Wright.) Also located
8 in that area is Dodge Magnet Middle School which is one of the five magnet schools in the
9 District that meets the USP definition for an integrated school.

10 According to the District, to accomplish the consolidation it is proposing, it will
11 need to embark on \$1.7 million in construction to add classrooms to Whitmore so that it
12 can serve exceptional education students who will be moved to that school. (Notice and
13 Request for Approval, Exhibit A at 27.) Mendoza Plaintiffs suggest that before such sums
14 are spent, the District would do well to consider other approaches that could result in less
15 disruption to a group of exceptional education students while further promoting integration
16 in the District.

17 Mendoza Plaintiffs do not have all the information and data that should inform the
18 development of alternative approaches but suggest that these could include expanding
19 Dodge Magnet Middle School, which attained an "A" rating for academic performance in
20 2012 (see: <http://tusdstats.tusd.k12.az.us/paweb/aggd/schoolinfo/search.aspx>), and
21 strengthening magnet programs elsewhere in the District in ways that, coupled with the
22 marketing, outreach and transportation contemplated by the USP, would lead to more

23 ⁹ The proposed closure of Fort Lowell/Townsend is in any event of particular concern
24 because that school was created as a result of the closures the District implemented in 2010
25 during the period that it was not under court supervision and 68 of the 98 students who
26 were affected by school closures in 2010 and could potentially be affected by school
27 closures again attend that school. (See Notice and Request for Approval at Exhibit J.) The
28 District has done an analysis that purports to reduce that number (see Notice and Request
for Approval at 14:21-15:1) but, Mendoza Plaintiffs suggest, it cannot be sufficient for a
school district responsible to all of its students to state, as does TUSD in its submission
here: "While it is unfortunate that 53 students may be impacted for a second time, the
benefits to the other 50,000+ students in the District must be considered." (Id. at 15:1 -3.)

1 parents of white students seeking to enroll their children in schools outside the northeast
2 corner of the District.

3 Mendoza Plaintiffs also are very troubled by the extent to which the District, under
4 court order to increase the number of integrated schools in the District, is willing to accept
5 continued racial concentration as it closes and consolidates schools. This is true with
6 respect to the proposed closings of Hohokam, Wakefield, Brichta, Menlo Park, and
7 Maxwell (that is, five of the proposed 11 closings, affecting, according to the District,
8 almost 5500 students, or more than 10% of the District's total enrollment (see Notice and
9 Request for Approval, Exhibit I at pages 4, 18, 21, and 26)).

10 In the case of the Hohokam proposed closing, the District intends to move 294
11 students, 65% of whom are Latino (and 21% of whom are Native American), into a school
12 that currently is almost 86% Latino (and 3.9% Native American) and proclaims that this is
13 a positive move, asserting that 674 students in that receiving school (Valencia) will be
14 attending a "more integrated" school because its Latino enrollment after the consolidation
15 will be "only" 79% -- that is, still racially concentrated under the USP definition and with
16 294 students (or about 30% of its student body) in what the District acknowledges will be a
17 less, not a more, integrated school. (See Notice and Request for Approval, Exhibit I at 4.)
18 Significantly, it says nothing about what it proposes to do about the continuing racial
19 concentration at Valencia or how it intends to mitigate the fact that it is combining two
20 schools that received a "D" rating for academic performance in 2012¹⁰.

21 With respect to the consolidation of Wakefield into Hollinger or Van Buskirk, the
22 District acknowledges that 1207 students will experience little or no change with respect to
23 their opportunity to escape attending heavily racially concentrated schools. Wakefield has

24 ¹⁰ It also is troubling that the District has the temerity to suggest that this and similar
25 moves represent moves to "higher performing" schools when the numeric grade associated
26 with that overall "D" rating happens to be higher at the receiving school than at the school
27 to be closed. (See Notice and Request for Approval, Exhibit I at 1.) This cannot possibly
28 be what the Rand Institute meant when it concluded that the adverse affects on
achievement and attendance resulting from school closures can be mitigated by moves to
higher performing schools. (See http://www.rand.org/pubs/external_publications/EP20120009.html.)

1 a Latino enrollment that represents over 93% of the school's total enrollment. If closed,
2 those students will be moved to schools that currently have enrollments that are 92%
3 (Hollinger) and 90% (Van Buskirk) Latino. (See Notice and Request for Approval,
4 Exhibit 1 at 18.) Again, the District is absolutely silent about what it intends to do to
5 remedy the racial isolation of the affected students.

6 The issues with respect to the closing of Brichta and Menlo Park again relate to the
7 District's acceptance of consolidations which perpetuate racial concentration in its schools
8 and which it makes no effort to address. In the case of the proposed Brichta and Menlo
9 Park closings, students will be consolidated in schools that are 83% ("new" Maxwell) or
10 84% (Tolson) Latino. (See Notice and Request for Approval, Exhibit I at 21.)

11 This also is the issue with respect to the proposed closing of Maxwell. When it is
12 closed, its students will be moved to schools that then will be 79.5% (Mansfield), 70.1%
13 (Robins), 79.5% (Safford), and 85.6% (Valencia) Latino.¹¹

14 Such closings and consolidations should not be permitted in the absence of an
15 overall District plan, as contemplated by the USP, to reduce the racial concentration of the
16 District's schools.

17 The Request to Close Howenstine Magnet High School Must Be Denied for Reasons
18 Beyond Those Generally Applicable to All the Requested School Closings Taken as a
19 Group

20 The District virtually ignores Howenstine Magnet High School in its presentation
21 on school closures. It is completely omitted from Exhibit I which the District describes as
22 "a preliminary Desegregation Impact Analysis setting forth the programmatic impacts as
23 well as impacts on student assignment, anticipated allocation of desegregation and Title I
24 funds among schools impacted by closures, and including all other information that is

25
26 ¹¹ Once again, as with the students now attending Hohokam, the plan is to move a number
27 of students (those to be assigned to Safford and Valencia) from one "D" school into
28 another. (See Notice and Request for Approval, Exhibit I at 1.) This is of course a
particular concern with respect to the moves to Valencia since it also is to be called upon
to receive all of the students who currently attend Hohokam.

1 available at this time.” (Notice and Request for Approval at 7:16-20.) The single
2 reference to Howenstine Magnet High School in Exhibit B, which, according to the
3 District, contains the “[i]nformation on the racial and ethnic enrollments at schools
4 impacted by the closures, as presented to the Governing Board on December 20, 2012” (*Id.*
5 at 2:20-22), is in reality a non-reference. It consists of the following acknowledgement of
6 omission: “Howenstine is not calculated here as students from Howenstine would be
7 distributed throughout the District.” (Notice and Request for Approval, Exhibit B at 4.)

8 Through that silence and knowing omission, the District avoids having to confront
9 the fact that in closing Howenstine Magnet High School, it is closing a school that is
10 currently *integrated* under the definition in the USP and one of only five magnet schools
11 (out of a total of 16) that currently meet that definition. (See Appendix C to the Proposed
12 USP.)

13 Through that silence and knowing omission, the District also avoids having to
14 address the fact that it has made a decision to *close* a magnet school notwithstanding that
15 (1) the USP expressly embraces magnet schools and programs as an essential tool to
16 achieve integration in the District and (2) the Magnet School Study and Plan required by
17 the USP, which is intended in part to address the future of magnet program services in the
18 District, has yet to be concluded.¹²

19 The USP directs the District to take the findings of a 2011 Magnet School Study
20 into account in developing the new Plan. (*See* Proposed USP at Section II, E, 3 at 9.) It
21 therefore is instructive to reference that 2011 study. In its general review, the 2011 study
22 states:

23 Beginning with the 2011 school year, Howenstine is a
24 turnaround school with a new principal who had been at the
25 school for only a short time when the review team visited. The
Howenstine magnet is Service Learning. The school offers

26 ¹² In fact, in meetings with counsel, District representatives indicated that so far as they
27 knew, no one responsible for the District’s magnet programs had been involved in any
28 discussions about the future of the magnet program now based at Howenstine or how the
students who had opted to participate in that program would be accommodated going
forward.

1 opportunities for students from across the district who do not
 2 want to attend a large, comprehensive high school, but want to
 3 attend a smaller high school with a unique magnet program and
 4 personalized support. The staff has concerns about a lingering
 5 community perception that it is a school for special education
 6 students. Howenstine needs support to market its program
 7 across the TUSD community.

8 (Magnet Review at 37.)¹³

9 Rather than address the issues identified in the Magnet Review in an effort to
 10 maximize the performance and enrollment of an integrated magnet school with a
 11 committed and trained principal and staff, the District voted to close the school even as the
 12 presentation it was given acknowledged “the annual savings is low compared to other

13 ¹³ The School Summary Information supplement to the 2011 Magnet Review adds the
 14 following to the statement above concerning program overview: “The service learning
 15 emphasis is defined as students completing projects and activities to provide services in the
 16 community based on community needs. The emphasis is schoolwide, and all students are
 17 required to complete a service learning project each year....One of the longstanding and
 18 highly acclaimed programs is the Construction Class which annually builds a house in
 19 conjunction with Habit[at] for Humanity....All Howenstine teachers use the national
 20 service learning curriculum....In addition to the service learning curriculum, Howenstine
 21 has a significant number of special education students who are fully included in the service
 22 learning program. The school started as a special education center that was converted to a
 23 high school some years ago. In the 2009-10 school year, Howenstine was composed of
 24 more than 50% special education students.”

25 It makes the following comments/observations: “Howenstine staff are very dedicated to
 26 the service learning model. After its third year of Program Improvement, the school
 27 became a transformational school in 2011-12. The school has a new principal who is very
 28 committed to the service learning magnet, the atypical small school environment, and
 raising achievement. The recent loss of federal Learn and Serve funding has reduced the
 professional development budget for the school. Parents choose the school because it is an
 alternative to a large high school with more personalized student support.”

29 Finally, under issues, the supplement states: “ The staff believe there is a lingering
 30 community perception that Howenstine is only for special education students. Staff feel
 31 this prevents the school from attracting more students. Staff are concerned that there
 32 appears to be a perception that the school will be closing after three years because of its
 33 transformational status. According to staff, if there were a more attractive bus schedule for
 34 the program, more students would have enrolled for the current school year. [Significantly,
 35 in the body of the review, the authors felt constrained to write the following:
 36 “Transportation was not designed to be part of the magnet review process; however, it
 37 often came up during interviews. Transportation issues for some schools this year was
 38 often likened to ‘ a nightmare’.” (Magnet Review at 17.)] There is no position assigned to
 recruit or market the school’s magnet program. Attention to marketing the school and
 getting accurate information into the community is greatly needed to attract additional
 students.”

(Magnet Review, School Summary Information at 40-41.)

1 options....” (Notice and Request for Approval, Exhibit A, Closure of Howenstine Magnet
2 High School at 105.) In fact, data provided to the Plaintiffs indicates that the first year
3 savings from closing Howenstine Magnet High School will be \$190,000 and that the
4 annual savings thereafter will be \$220,000. (Spreadsheet attached as Exhibit 1.) This is the
5 lowest annual saving of the 11 schools on the list.

6 Because Howenstine Magnet High School is omitted from Exhibit I, it is clear that
7 as of the time the Governing Board voted to close that school, no consideration had been
8 given to the needs (and concomitant costs of relocating in an educationally appropriate and
9 humane fashion) the many special education students currently attending the school, much
10 less whether forcing so many special education students to move was worth a “saving” of
11 \$220,000 per year. And plainly no thought was given to the future of a magnet program
12 that, unlike so many others in the District, had succeeded in attracting a diverse, indeed, an
13 integrated, student body.

14 In light of the foregoing, Mendoza Plaintiffs respectfully suggest that the District’s
15 request for permission to close Howenstine Magnet High School must be denied.

16 The Governing Board Direction to Convert Racially Concentrated Manzo Elementary to a
17 Charter School Should be Reviewed

18 The District reports that although the Governing Board did not vote to close Manzo
19 Elementary School, it did “instruct[] District staff to move forward with the conversion of
20 Manzo Elementary School to a District charter school,” and states that “[n]o further details
21 are available at this time.” (Notice and Request for Approval at 14:3-7.) Notably absent
22 from that statement is any acknowledgement, much less any commitment, to address the
23 sorts of issues that were presented when the District sought Special Master and Court
24 authorization to reopen Richey Elementary School as a charter school, having previously
25 closed it for financial reasons. Yet, virtually all of those issues apply to the proposed
26 Manzo conversion as well.

27 As of the time it was closed, Richey had a substantial minority student enrollment
28 (51.6% Hispanic; 32.9% Native American; and 3.7% African-American). (Mendoza

1 Construction Objection at 10:4-7.) According to Appendix C to the proposed USP, Manzo
2 Elementary School is racially concentrated, with a Latino student enrollment of over 85%.
3 Mendoza Plaintiffs argued with respect to Richey and now contend with respect to Manzo
4 that no conversion to charter school status can be considered, much less approved, until
5 and unless the District satisfies the Special Master and the Court that conversion to charter
6 status will not impede or undermine the District's obligation to further the integration of
7 *all* TUSD schools or deprive students in any charter schools it may operate of the ability to
8 participate fully in the programs and initiatives being developed in the context of the USP
9 to provide additional educational opportunities to the District's minority students.

10 Notably, in response to the Mendoza Plaintiffs' objections and the Special Master's
11 report, when this Court denied the District's application relating to the proposed Richey
12 charter school, it wrote:

13 The Court agrees with the Special Master that the District
14 should consider public policy issues, such as teacher
15 qualifications for charter schools, the designated service area,
16 specific educational programs offered, the extent to which
17 district policies affecting all other schools will apply to the
18 charter school, the financial implications for the District, and
19 the effects of the charter school on the desegregation of the
20 TUSD.

21 (Order filed 10/5/12, Docket No. 1399, at 6:23-7:1.) It is regrettable that the Governing
22 Board did not expressly direct staff to consider the foregoing public policy issues as it
23 proceeded to go forward with plans to propose a conversion of Manzo Elementary School
24 to a District charter school.

25 To avoid needless litigation on this threshold issue in the future, Mendoza Plaintiffs
26 respectfully request that the District be directed to engage in the same process and
27 consideration of public policy issues with respect to a prospective Manzo conversion that it
28 has been directed to follow with respect to the Richey school.

29 Conclusion

30 For the reasons set forth above, the District's request for approval to close schools
31 should be denied. The District should be directed to prepare a comprehensive plan to

CERTIFICATE OF SERVICE

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I hereby certify that on January 22, 2013, I electronically submitted the foregoing Mendoza Plaintiffs' Objection to TUSD Request for Approval of School Closures to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Heather K. Gaines
hgaines@dmyl.com
- Nancy Woll
Nancy.woll@tusd1.org
- Rubin Salter, Jr.
rsjr@aol.com
- Christopher Awad
Christopher.awad@usdoj.gov
- Zoe Savitsky
Zoe.savitsky@usdoj.gov
- Anurima Bhargava
Anurima.bhargava@usdoj.gov

I further certify that on January 22, 2013, I sent an e-mail copy of the foregoing Mendoza Plaintiffs' Objection to TUSD Request for Approval of School Closures to the following who is not a CM/ECF registrant:

Special Master
Dr. Willis D. Hawley
wdh@umd.edu

Dated: January 22, 2013



IMELDA APARICIO