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United States District Court, D. Arizona.

Roy and Josie FISHER, et al., Plaintiffs
and
United States of America, Plaintiff-Intervenor,
v.
TUCSON UNIFIED SCHOOL DISTRICT, et al.,
Defendants,
and
Sidney L. Sutton, et al., Defendants-Intervenors,
Maria Mendoza, et al., Plaintiffs,
and
United States of America, Plaintiff-Intervenor,
v.
Tucson Unified School District, et al. Defendants.

No. CV-74-00090-TUC-DCB (Lead Case)

No. CV-74-0204-TUC-DCB (Consolidated Case)

Signed 06/22/2020

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AMENDED ORDER

David C. Bury, United States District Judge

3-Year PIP, CMP, Transportation and ORR Addendums

3-Year Plus Integration Plan (3-Year PIP)¹

***1** The Order, issued September 6, 2018, related to the District's attainment of unitary status for the Unitary Status Plan (USP) § II.E, Magnet Schools and Programs, called for the District to prepare a 3-Year Plus Integration Plan (3-Year PIP). The District has completed this task, pursuant to the directives of the Court, with the exception of needed clarification from this Court and, related, revisions and addendums for a 3-Year PIP Magnet Project Priorities Plan (MPPP) and Non-Magnet Priority Improvement Action Plans (Action Plans).

After recapping the difficult journey taken by the District to improve its magnet school program, difficult in large part due to removing magnet status from schools for programs created prior to the USP, the Court noted that the District has relied on the Special Master to recommend and this Court to determine which existing magnet programs should remain and which should be terminated. Post-unitary status, this difficult task shifts to the District. To ensure the District is prepared for this undertaking, the Court asked the Special Master to share the criteria he was using to make these hard decisions.

The Court asked the District to prepare a 3-Year PIP, setting out its procedures, strategies, and plans going forward for magnet programs and other integration options for non-magnet schools. The Court asked the District to prepare the 3-Year PIP that, in the interest of transparency, does the following: 1) sets out criteria for how magnet schools are evaluated, including criteria for terminating an existing program; 2) identifies potential future magnet schools and programs, and creates a 3-year plan for expanding the District's CMP; 3) identifies non-magnet schools where integration can be improved and develop plans for such improvements; 4) identify needed transportation services to successfully implement the 3-Year PIP, and 5) ensure sufficient funding for program implementation, especially transportation costs. (Order (Doc. 2123) at 19-34.)

The District filed the 3-Year PIP on August 30, 2019 (Doc. 2270), which in large part satisfies the requirements included in the September 6, 2018, Order. To the extent the 3-Year PIP falls short, the Court accepts responsibility for creating some confusion between its directive that student achievement be assessed for purposes of magnet status by the state's accountability scores for schools, i.e., AZMerit Grades, and directing the Special Master to assist the District in developing assessment criteria, including student achievement, for terminating magnet status. The Special Master has used alternative academic data in addition to the AZMerit grades, such as growth of the bottom 25% of the students at a school and/or evidence that a school is narrowing the racial achievement gap. The Court also invited discussion between the Special Master and the Parties as to the relevancy of the USP integration definition going forward, post-unitary status. Both of the Court's directives led to confusion, which the Court addresses now so that the District can take the final step of actually identifying the specific integration efforts which it will undertake over the next 3 years in a 3-Year PIP Magnet Project Priorities Plan (MPPP).

*2 The 3-Year PIP stopped short of identifying any actual magnet projects planned by the District in the next three years to grow the CMP. Instead, the 3-Year PIP calls for the District to begin planning in year one, with the launch of a new magnet program in year three, assuming of course that the District determines there is a need for a new magnet school or program in year one. There is, however, no reason given why the District delayed identifying, specifically, new magnet projects, if any for the next three years, and this was in fact the goal of the Court's directive that the District prepare a 3-Year PIP.

The District has, however, laid the necessary groundwork and can finish its work by filing the two addendums as recommended by the Special Master.

The 3-Year PIP identifies three types of magnet programs, which the District finds to be the most viable ((Doc. 2270-1) at 6-9) for TUSD and identifies the top nine² potential new magnet schools, *id.* at 9. It has also assessed the non-magnet schools and determined each school's viability for becoming integrated. The 3-Year PIP, Study to Identify Potential Magnet Schools and Themes, identified a need for a Middle School Fine and Performing Arts program, (Doc. *Id.* at 8-10), and Health Sciences and Advanced Technology as potentially successful magnet themes. The 3-Year PIP, CMP, calls for assessing viability of a new magnet school when there are gaps in a pipeline and/or when new and proven successful magnet themes come to light. Both conditions exist, but the District stopped short of making the requisite assessments. *See* 3-Year PIP, CMP § D (providing criteria for assessing need for a new magnet school, which may result in the District developing a proposal for a new magnet school). When the District balked, it stopped short of completing the 3-Year PIP sought by this Court, which must be a planning document reflecting the actual intentions of the District for future expansion, if any, of the existing CMP. The 3-Year PIP is a plan to plan future expansion of the CMP.

The Court adopts the Special Master's recommendation that the District identify, through application of the procedures set out in the 3-Year PIP as clarified below, one or two of the three magnet program options for one or two of the nine candidate magnet schools. The Special Master explains that the District lacks resources to develop magnet plans for all nine schools and needs to generate a prioritized list of the actual projects it believes are viable to implement over the next 3 years, plus. (R&R Re: Executive Summary (Doc. 2468) at 4) (explaining need to prioritize new magnet schools)). The Court agrees, the District shall prepare and file the 3-Year PIP MPPP based on actual budgetary needs and constraints, including transportation.

The 3-Year PIP MPPP shall reflect prioritized³ new magnet schools, if any, the District believes are sufficiently viable to actually grow the CMP over the next three years. In effect, the District should have already completed the provisions set out in § D.3 of the 3-Year PIP for year one, Spring-Summer. ((Doc. 2270-2) at 16.) If the District does not intend to add any new magnet programs over the next three years, it should say so,

explain why, and be subject to review and comment from the parties and the Special Master. If this is the case, the District should identify when it anticipates its priority project(s) beginning, hence, the meaning of the “Plus” in the 3-Year PIP. In this way, the 3-Year PIP MPPP addresses the ambiguity created by the 3-Year PIP, § D, plan to plan new magnet programs.

*3 For non-magnet schools, the District has provided generic plans for improving approximately 69 schools. The Special Master agrees with the Mendoza Plaintiffs that these improvement plans lack the specificity necessary to be meaningful action plans. The Special Master explains that in fact the District is well positioned to create meaningful action plans. It has invested in training all its principals and professional staff in professional learning communities (PLC), which is a methodology for implementing continuous improvement that begins in a school with its administration identifying how well its students are learning. The goal of PLC is to create buy-in at the school level for improvement. The Court adopts the Special Master’s recommendation that the District revise its improvement plans to reflect the work that has been done at the school level. In other words, the District should revise the improvement plans to be non-generic, school specific, meaningful action plans based on the PLC work that has been and continues to be done in the schools. The Court agrees.

The District shall adopt this same PLC foundation for magnet school improvement plans, the Targeted Integration Plans, developed pursuant to the 3-Year PIP, CMP, §§ B(4)(d) and B(5)(d), which should address in part the Mendoza Plaintiffs’ criticism of the current magnet improvement process being conducted pursuant to MSPs. The Court does not reach the Mendoza Plaintiff’s concerns that the MSPs are being undercut by arbitrary budget constraints. The Court ordered discovery in favor of the Mendoza Plaintiffs and afforded them an opportunity to reurge the challenge by requesting a Report and Recommendation (R&R) to resolve the sufficiency of the MSPs, but no further challenge was made subsequent to the discovery. (Orders (Docs. 2272, 2383)).

In addition to prioritizing new magnet schools, the District shall prioritize by year its planned improvements over the next three years, plus, for non-magnet schools. The District generated improvement plans for 69 non-magnet schools, including the nine schools identified as potential magnet candidates. The District shall develop prioritized action plans for integration of these schools, excepting the schools included in the 3-Year PIP MPPP,

for the schools identified as having a “High” probability of being integrated: Bloom ES, Davidson ES, Howell ES, Kellond ES, Lineweaver ES, Wheeler ES, Maxwell K-8, Robinson K-8, and Doolen MS. The District shall also prioritize the integration of UHS, and any other non-magnet school where the District believes focused efforts are imperative over the next three years. For these priority improvement projects, the District shall prepare and file Non-Magnet Priority Improvement Action Plans (Action Plans), which shall designate the school as a year one, two, three, or plus priority.

Simultaneously, the District shall develop Non-Magnet Priority Student Achievement Improvement Action Plans (Student Achievement Action Plans) for the approximately 19 schools that have AZMerit grades below a C, with first year priority efforts being undertaken for the approximately 9 schools that are Racially Concentrated and the remainder begun no later than year two. *See* (Fisher Response (Doc. 2276) at 11 (identifying “Blenman, Cavett, Dietz, Robert-Naylor and Catalina Highschool as having large numbers of African American students, but no plans to improve academic achievement at these schools)).

*4 It is important that there be transparent criteria and procedures for creating new magnet schools, and clarity is especially important when assessing existing magnet programs for the purpose of terminating magnet status. It is especially difficult to terminate magnet status because of its attendant benefits to a school, including extra funding which translates into program supports not afforded other schools. Parents and students attending a magnet school have much to lose from its termination, and there is, routinely, a public outcry against termination.⁴ As difficult as it may be, the consequences of retaining non-magnetic schools in the CMP is worse. It wastes school resources, creates schools that fail to meet the academic needs of students, and destroys the District’s ability to use magnet schools to integrate the District. The Court finds that it is in the interests of all parties, especially the student class plaintiffs, to have clear and transparent termination procedures that follow automatically when a magnet school fails to offer enhanced learning experiences. Even with clear criteria, processes, procedures, and guidelines, real impediments exist to maintaining a viable magnet program because of the serious ramifications described above which must be addressed by the School Board when it considers removing magnet status.

Integration and Student Achievement: Essential Criteria for Magnet Schools

Under the USP, the District uses the CMP as one of two⁵ primary means for promoting integration in a district where options are limited because of state law mandates for open enrollment across school districts and tuition-free charter schools, and because of racially concentrated neighborhoods and the natural proclivity of families to enroll children in schools close to home. *See* (Executive Summary (Doc. 2384-1) at 9 (detailing limitations)). Operationally, “[m]agnet schools and programs should be so attractive that they are ‘magnetic’ to students outside of the neighborhood while still offering enhanced learning for neighborhood students.” *Id.* at 13. Accordingly, this Court has held that magnet schools must be integrated and rated for academic performance by the state as A and B schools.

An integrated school is defined by the USP as: “when no racial or ethnic group exceeds 70% of total enrollment; and when no single racial or ethnic group varies from the district average for the school’s grade level (Elementary, Middle, K-8, High) by more than +/- 15 percentage points.” (3-Year PIP (Doc. 2270-2) at 6); (USP (Doc. 1713) at 8). The Court will use this definition when assessing the District’s CMP operations under the USP to determine unitary status, but the District may use a more commonly accepted definition of Integration going forward, including its development of the 3-Year PIP MPPP and Action Plans. Previously, this Court has approved such a definition, “Highly Diverse,” meaning schools which have at least two racial or ethnic groups of students that are 25% or more of the student population, and no one racial or ethnic group comprises more than 70% of the school’s population.” (Executive Summary (Doc. 1384 -1) at 10.) The Special Master recommends: “No more than 70% of students of one race and, instead of +/- 15 he suggests +/- 20 or 25.” (R&R Re: Unitary Status (Doc. 2468) at 12.) Either definition for an integrated school, subsequent to unitary status, is acceptable—but there must be a clear definition in order to evaluate the successes or failures of the magnet schools. To the extent the District suggests there need not be a set definition for Integration, this is rejected by the Court because there must be a standard for integration in the context of evaluating the success or failure of individual magnet schools, specifically, and the CMP, generally.⁶

Student achievement, the second criteria for assessing success or failure of a magnet program, measures the ability of a magnet school to offer enhanced learning that magnetizes it. The Court makes the following clarifications so that the District may revise the 3-Year PIP, CMP, accordingly.⁷

***5** The Court will not reconsider its previous findings that a magnet school must be an A or B school as graded by the state, AZMerit scores. The Court relies on the state AZMerit scores for two reasons 1) they reflect the academic performance of a school and 2) the scores are readily apparent and easily understood by students and parents. It is not enough that a school offers an enhanced learning experience, if no one knows. The AZMerit grades are the only readily apparent measurement of school performance that exists at this time.

The Court understands that there are other measures for student achievement, such as those included in the 3-Year PIP, CMP, § B(2): L25 Growth; Gaps, Compared to District Cohorts; Gaps, Compared to White Students; Narrowing or Eliminating Gaps, and Improving Performance. ((Doc. 2270-2) at 6.) Likewise, the District makes a detailed presentation of its proposed Academic Achievement Measures for Magnet Schools (Doc. 2422), which includes a point system by criteria, including such things as ELA and Math proficiency ratings, improved achievement gap in ELA and Math scores, and academic growth for minimally proficient students at a school. The Special Master proposes that achievement gap measures take into consideration economic variables, i.e., the value-added approach. (R&R Re: Unitary Status (Doc. 2468) at 8), *see also* (R&R Re: Roskrige (Doc. 2274) at 3 n.1.) The Special Master notes that the District has agreed to follow his proposals for alternatively measuring student achievement. *Id.* The Court approves using alternative measures of academic excellence for magnet schools that are AZMerit grade C schools.⁸

There shall be no AZDMerit D or F magnet schools, and a school with an AZMerit grade A or B is *per se* a magnet in respect to student achievement. The District shall, with the assistance of the Special Master,⁹ adopt an alternative grading system to measure student achievement at magnet schools having an AZMerit grade of C to identify schools that are offering enhanced learning for magnet purposes, i.e., a TUSD Magnet Merit (MagnetMerit) grade. Magnet schools with an AZMerit grade C that attain a TUSD MagnetMerit grade B shall qualify for magnet status. Of equal importance, the TUSD MagnetMerit grade must be easily understood by the community to be a credible

measure of excellence to ensure that a TUSD MagnetMerit grade B is “magnetic” to students inside and outside of an AZMerit C school’s neighborhood.

With the clarification regarding the future definition for Integration and clarification as to how and when alternative academic measures may factor into magnet school assessments, the Court reviews the 3-Year PIP, CMP, August 2019, processes and schedules for improving magnet programs, § B, and for eliminating magnet programs, § C.

The CMP sets out a detailed plan for offering differing levels of monitoring and support for its magnet schools depending on the determined level of need being, as follows: standard, additional, or intense. The Court finds that any magnet school, that is an AZMerit grade C that does not have a TUSD MagnetMerit grade of B shall receive Level 3, i.e., intense, support and monitoring. An AZMerit grade C school that attains a TUSD MagnetMerit grade B may be a Level 1 or 2.

***6** If a magnet school has an AZMerit grade C, but not a TUSD MagnetMerit grade B, this shall trigger the Magnet Department to develop a targeted academic improvement plan (TAIP) by the second semester of year one to be incorporated into the MSP and implemented by year two. (CMP § B.5(d) (Doc. 2270-2) at 13.) At the beginning of year two, the Magnet Department shall develop a Transition Plan to be implemented in year three, if Level 1 or 2 was not attained by the end of year two. There is no reason to delay creating the TAIP for two years or to delay implementation of the Transition Plan until year five as proposed in the 3-Year PIP, CMP. The schedule recommended by the Special Master and adopted by the Court allows an AZMerit C school one full year in year two to attain a TUSD MagnetMerit grade B. The Court approves a one-year delay of the third-year transition period to year four, if the magnet school has made substantial progress by moving halfway towards attaining a TUSD MagnetMerit grade B by the end of year two/beginning of year three.

In short, only where there is substantial progress made in year two, a school may have one more year (year three) to retain magnet status, with implementation of the Transition Plan beginning in year four, if necessary. Substantial progress means moving halfway towards meeting the requisite criteria for becoming an Integrated school and/or attaining a TUSD MagnetMerit grade B or AZMerit grade A or B. The Court finds that with the targeted improvement plan approach, set out in the 3-Year

PIP, CMP §§ B(4)(d) and (5)(d), there shall be no other reason for extending the time to implement a Transition Plan. Accordingly, the District’s strategies and processes for improving magnet schools in the 3-Year PIP, CMP, shall be revised to reflect the directives contained in this Order.

The Court approves the District’s 3-Year PIP, CMP strategies and processes for improving integration, with the clarification that magnet schools needing Level C support and monitoring shall include any Racially Concentrated school or school that is not Integrated. Level C status shall trigger the Magnet Department’s development of a targeted integration improvement plan (TIIP), pursuant to the 3-Year PIP, CMP § B.4(d), and a Transition Plan. The TIIP shall be implemented by the second semester of year one and the Transition Plan developed in the second semester of year one. If the school does not reach Level A or B by the 40th day of year two, the Transition Plan shall be implemented. The Court approves a one-year delay of the second-year transition period to year three, if the magnet school has made substantial progress by moving halfway towards becoming Integrated.

The District shall revise the 3-Year PIP, CMP, § B, Supporting Existing Magnet Programs, and § C, Eliminating Magnet Programs, accordingly.

With the future definition for Integration and TUSD MagnetMerit grade B for AZMerit grade C magnet schools, the Court finds that there is no need for the proposed mitigation measures. Mitigation is more appropriately considered by the School Board, with the recommendation for termination to be made in accordance with the CMP provisions approved herein by this Court, simultaneously with the implementation of a Transition Plan.

The Court believes that these processes and strategies are most problematic for existing magnet schools because going forward the District can factor student achievement and integration concerns into its prioritization of potential candidates for new magnet programs. The Court applies the 3-Year PIP processes, strategies, and guidelines for eliminating magnet programs, as revised according to this Order, to the existing 13 magnet schools: Elementary Schools (ES) Bonillas, Borton, Carrillo, Davis, Holladay, and Tully; K-8 Booth-Fickett, Drachman, and Roskrug; Middle Schools (MS) Dodge and Mansfield, and High Schools (HS) Palo Verde and Tucson High.

Booth-Fickett has a 2018-19 AZMerit grade of F. In 2017-18, its AZMerit grade was D, and in 2016-17 it was a C school. Because there shall be no AZDMerit D or F magnet schools.

*7 There are six magnet schools with AZMerit grades of C: Bonillas ES, Borton ES, Tully ES, Drachman K-8, Roskruege K-8, and Palo Verde HS.

The District shall grade these schools,¹⁰ pursuant to the alternative academic achievement criteria, being developed pursuant to this Order, to determine whether these schools have a TUSD MagnetMerit grade B. If they do not, the District shall notify the Court that, pursuant to the 3-Year PIP, CMP, these existing magnet schools are subject to termination. Where any such notice is given, a TAIP and Transition Plan shall be developed, with the TAIP implemented SY 2020-21, and the Transition Plan implemented in year three, SY 2022-23, unless by the end of SY 2021-22, the school has attained a TUSD MagnetMerit grade B or AZMerit grades A or B. Roskruege and Palo Verde were D schools, and Drackman was an F school, in prior years. While they have not had the benefit of a TAIP, they have been operating for the past six years under the USP with full magnet school funding through multiple Magnet School Plans (MSPs) improvement cycles aimed at improving academic achievement. Magnet status for Roskruege K-8 is especially problematic because it is Racially Concentrated. If these schools have not or do not attain a MagnetMerit grade B by the end of SY 2021-22, the Court finds that these schools shall not be afforded any extension of the transition period beyond year three and magnet status shall be terminated and the Transition Plan implemented at the beginning of SY 2022-23.

There are no other Racially Concentrated magnet schools, besides Roskruege K-8. There are, however, two schools that were Integrated in SY 2016-17, Holladay ES and Booth-Fickett K-8 (Order (Doc. 2123) at 22), that are no longer Integrated, but they are also not Racially Concentrated. (Notice (Doc. 2470)); *but see* (2018-19 DAR (Doc. 2299-3) at 24-25) (filed 10/1/2019, reflecting Holladay as Integrated and Booth Fickett as neither Racially Concentrated nor Integrated). For the purpose of determining whether magnet status should be terminated pursuant to the 3-Year PIP, CMP, § D, the District shall apply the future definition for Integration, which is being established pursuant to this Order, because it would not make sense to define Integration differently for establishing a new magnet versus removing one. If the Integration standard is not met, the District shall so notify

the Court, and develop a TIIP and Transition Plan, with the TIIP to be implemented first semester, SY 2020-21 and the Transition Plan developed the second semester of SY 2020-21. Unless the school has made substantial progress by moving halfway towards becoming integrated by the 40th day of SY 2021-22, the Transition Plan shall be implemented for SY 2021-22. If substantial progress has not been made by the beginning of SY 2021-22 towards Integration, the Court finds that the transition period shall not be extended to SY 2022-23.

The Transportation Plan

The concerns expressed by the Mendoza Plaintiffs regarding the Transportation Plan submitted by the District are legitimate in the context of the 3-Year PIP MPPP and Action Plans.

*8 The Mendoza Plaintiffs challenge the sufficiency of the District's Transportation Plan, but the Court finds that the District complied with its directive for the 3-Year PIP to be informed by program costs, including estimated transportation costs. The 3-Year PIP used "transportation as a criterion for selecting future magnet candidates and non-magnet schools with high potential for becoming integrated in the future." (Doc. 2270-4) at 2.) In the same way that the District did the hard work necessary to build a strong PLC foundation at its schools for continuous academic improvements, the District's Comprehensive Integration Plan (CIP) lays the necessary foundation for the District to estimate the transportation cost for newly proposed magnet schools or new integration efforts at a non-magnet school.

The Court finds that the Transportation Plan in the 3-Year PIP is sufficient for its purpose, but not for developing the MPPP or the Actions Plans. The project prioritizations in the MPPP and Action Plans require the type of transportation and budget information discussed by the Court in its September 9, 2018 Order ((Doc. 2123) at 32), mirrored in the Mendoza Plaintiffs' Response ((Doc. 2275) at 10-15.) The Court granted unitary status, generally, in its 2018 Order for USP § III, Transportation, but retained jurisdiction to address transportation "relevant to the questions of unitary status remaining." (Order (Doc. 2123) at 38.) The question of unitary status remains for USP, § II.E, Magnet Schools and Programs.¹¹

In short, the District needs to conduct the transportation

assessments in sufficient detail to identify actual transportation services needed for a priority candidate magnet school or non-magnet school, such as: yellow buses, public transportation, contracted services, express shuttle busses, activity busses, incentive transportation from racially concentrated neighborhoods or incentive zones.¹² Will the District need new bus routes and where will those routes run? Can transportation costs be minimized, and integration impacts maximized, and if so how and what will the minimized costs be? Based on such relevant information and data review, the District shall develop a budget estimate for short-term (3-Year) planning purposes, which can be compared to the existing transportation budget for the candidate school. The Transportation Department shall prepare the transportation section of the Action Plan and similarly inform the Magnet Development Committee (MDC). The budget projections used for planning shall be sufficient for the candidate prioritized projects as to jeopardize implementation from being “‘constrained by budgetary issues relating to transportation.” (Mendoza Plaintiffs’ Response (Doc. 2275) at 17 (citing Order (Doc. (2123) at 97.)) Budgetary constraints shall have been factored in during the 3-Year planning process so that the priority projects included in the 3-Year PIP MPPP and Action Plans are realistically viable projects for expanding the CMP and improving integration in non-magnet schools. In other words, barring something unexpected, the Court, the parties, the schools, and the community can count on the 3-Year PIP.

*9 To the extent the Mendoza Plaintiffs complain that the District has not shown express shuttle bus services promote integration, they may be heard to object to any such express bus service included in a 3-Year PIP MPPP or Action Plan. In 2018, when the Court granted unitary status for the District for USP § III, Transportation, it approved the District’s use of ridership data based on logical inferences of use rather than an actual accounting, (Order (Doc. 2123) at 36), “ ‘except for the express bus pilot projects.’ ” (Mendoza Response (Doc. 16) at 16 (quoting Order (Doc. 2123) at 37). There, in response to objections from the Mendoza Plaintiffs, which are again repeated here, the Court ordered that the District was required to track actual express bus ridership. The District is and has been responsible to “ ‘monitor express shuttle ridership to assess their effectiveness in improving integration’ ” is a responsibility already held by the District. (Mendoza Response (Doc. 2275) at 15 (quoting Transportation Plan (Doc. 2270-4) at 3). It also means that data exists, available to the Mendoza Plaintiffs, to support any assertion that an express bus operating at a

specific school is not promoting integration. In addition, the District shall include anticipated ridership for any express bus shuttle it proposes as a transportation component for any magnet school included in the 3-Year PIP MPPP and/or Action Plan. Upon a request from the Mendoza Plaintiffs, the District shall provide ridership data relevant to assessing the merits of any express shuttle bus proposal in the MPPP or Action Plans. The Court will allow the Mendoza Plaintiffs to reurge the express shuttle bus challenge, made with specificity, in response to the candidate magnet schools identified in the 3-Year PIP MPPP and/or any Action Plan.

Out-Reach and Recruitment (ORR) for Magnet and ALE Programs

The Court’s Order issued September 6, 2018, directed the District to file one Outreach and Recruitment plan for both Magnet and ALE programs. The District filed it as an addendum to the 3-Year PIP. The Court addresses the Outreach and Recruitment materials only in the context of the Magnet schools and will address outreach and recruitment issues for Advanced Learning Experiences (ALE) when it reviews the ALE Policy Manual.

The Mendoza Plaintiffs criticize the marketing strategies for omitting references to the District’s “Knowledge Changes Everything,” which is a District-wide campaign promoting the value of diversity. The Mendoza Plaintiffs point out that this messaging is especially important in east side areas where the District is targeting recruitment of White students to attend west-side Magnet Schools, especially the Roskrige TWDL magnet and the Cholla High School¹³ IB program. As the Court understands the District’s plans to expand CMP, which includes the addition of east-side incentive zones and express shuttle busses to facilitate east to west student movement, the Mendoza Plaintiffs’ suggestions are good ones especially if existing magnet marketing materials do not include reference to “Knowledge Changes Everything” and IB marketing is not aimed at east-side neighborhoods.

The Mendoza Plaintiffs also point out that the outreach and recruitment efforts in the individual magnet school plans do not include the peer-to-peer type of recruitment that this Court suggested in its September 9, 2018 Order. And now, this Court adds that it is not enough to recruit students, but it is advisable to retain these students, therefore, the peer-to-peer programs might morph into

magnet buddy programs for students who do decide to take the plunge and move schools. Furthermore, the Court notes that the individual school outreach and recruitment plans rely heavily on school site activities, which are going to be quite difficult for at least this coming year, therefore, the District should consider expanding the use of personalized on-line engagement strategies to off-set the impact of COVID-19.

Following what may or may not be good advice does not, however, necessarily defeat unitary status. The fact remains that the magnet schools are moving decisively towards integration and the existing CMP is offering a more integrative experience than ever before. The Court has reviewed the outreach and recruitment plans for each of the magnet schools and finds them to be sufficiently robust and fluid to adapt to changing circumstances as necessary and are fully supported by the District. The Court approves the District's overall marketing and outreach plan for its magnet schools. To the extent a magnet school fails to become integrated, its individual specific outreach and recruitment plan may be found to be insufficient. In the event the District notices termination of magnet status as directed above, for Roskrige K-8, Booth-Fickett K-8, and Holladay, the Mendoza Plaintiffs may reurge this challenge in response to the TIIP.

Conclusion

***10** The Court renders these directives after considering all the briefs filed by the parties, now and in the past, and the interests of the student class plaintiffs. The Court finds that with the amendment of the 3-Year PIP, CMP, pursuant to this Order, including the addendums for a 3-Year PIP Magnet Project Priorities Plan (MPPP) and Non-Magnet Priority Improvement Action Plans (Action Plans), the District shall have completed and complied with the directives of this Court Order (Doc. 2123), issued September 6, 2018, related to the District's attainment of unitary status for the Unitary Status Plan (USP) § II.E, Magnet Schools and Programs.

Accordingly,

IT IS ORDERED that, that pursuant to the Report and Recommendation (Docs. 2379 and 2378), the District shall have until September 1, 2020 to file the addendums for the 3-Year PIP Magnet Project Priorities Plan (MPPP) and Non-Magnet Priority Improvement Action Plans (Action Plans). The MPPP should include relevant planning documents, containing information like that found in the Action Plans for the Non-Magnet schools to enable the Court, the Special Master, and the parties to assess the merits of these priority projects. Any objection shall be filed within 14 days of the filing date of the MPPP.

IT IS FURTHER ORDERED that the Motion to Strike (Doc. 2430) is DENIED AS MOOT; the Special Master shall take the Mendoza Plaintiffs' concerns into consideration when developing the alternative achievement measures for the TUSD MagnetMerit grade B.

IT IS FURTHER ORDERED that the District shall have 21 days to file the notices required above for the existing magnet schools, including Booth-Fickett ES, with the TIIPs, TAIPs, and Transition Plans filed by September 1, 2020.

IT IS FURTHER ORDERED that, as directed herein, for any existing magnet school that fails to become an Integrated school or to attain a TUSD MagnetMerit grade B or AZMerit grades A or B, by the end of SY 21-22, magnet status shall be terminated without further order of this Court and the Transition Plan shall be implemented at the beginning of SY 22-23. NO FURTHER EXTENSIONS OF TIME SHALL BE GRANTED.

All Citations

Slip Copy, 2020 WL 4496790

Footnotes

¹ Amended at original page 12, Ins. 8, 12 and page 18, In. 11.

- ² The District says there are five elementary schools, but there are six elementary schools (Cragin, Davidson, Howell, Steele, Tolson and Whitmore). ((Doc 2270-1) at 10.)
- ³ In other words, the one or two priority magnet project list recommended by the Special Master.
- ⁴ While the Court focuses on the need to terminate magnet status, it fully understands the importance of magnet status to a school, parents, and students. The fiscal benefits that flow from the status enable a school to spend more money educating its students. Equally important, parents and students have made educational decisions based on the magnet status of a school. Students have commenced an academic program at a school that spans multiple years and grades. They have developed their friends and social connections at the school. When magnet status is terminated, students and parents must reassess their choices mid-program, and there are negative educational and social ramifications that caution against changing schools. Terminating magnet status should not be done lightly, but it must be done unless the District wants to return to a pre-USP magnet program when only two of approximately 19 magnet schools were integrated. Hard choices must be made to strictly adhere to magnet criteria, if the District intends to maintain an effective CMP.
- ⁵ Secondly, the District relies on student assignment strategies like attendance boundaries, open enrollments, enrollment preferences and lotteries, etc.
- ⁶ Additionally, as noted by the Special Master, a confusing integration definition, like the USP definition, can cause parents to pass up opportunities for their children to have an integrated education because some highly diverse schools are not defined as integrated. (R&R Re: Unitary Status (Doc. 2468) at 11.)
- ⁷ The District should also revise the text of the document to reflect the correct paragraph identification as set out in the Table of Contents, which is Eliminating Magnet Programs § C, not D, and Creating New Magnet Programs § D, not E. In this Order, the Court cites to the sections as properly labeled in the Table of Contents so that this Order will correctly correspond to the 3-Year PIP, CMP, subsequent to its revision.
- ⁸ The Court's approval of a value-added approach for assessing student achievement-gap improvement for determining magnet status is not determinative of challenges, if any, made to the application of this approach in other contexts for assessing unitary status.
- ⁹ The Special Master shall take into consideration the objections raised by the Mendoza Plaintiffs to the proposed academic achievement measures for magnet schools made in the Motion to Strike (Doc. 2430).

¹⁰ Including Booth-Fickett ES.

¹¹ The question of unitary status also remains for USP § V.A, Advanced Learning Experiences (ALEs). ((Doc. 2275) at 15-19.) The Mendoza Plaintiffs’ Response includes objections to the Transportation Plan that are relevant to ALEs. ((Doc. 2275) at 15-19.) The Court will consider them in the context of the Notice of Compliance, ALE Policy Manual (Doc. 2267).

¹² The Court approves the District’s plan to expand eligibility for incentive transportation to students who reside in “incentive zones” based upon the same eligibility criteria currently applied to students residing in racially concentrated neighborhoods.

¹³ Cholla High School’s IB program is not a magnet program but it has magnetic potential because it is a stellar academic program attractive to all students inside and outside its neighborhood. Therefore, the IB program, if properly marketed, can improve integration at Cholla High School, which is Racially Concentrated school.