

FISHER
PLAINTIFFS'
COMMENTS ON
GRADE
RECONFIGURATION
PROPOSALS

August 10, 2015
October 19, 2015

Brown, Samuel

From: Rubin Salter, Jr. <rsjr3@aol.com>
Sent: Monday, October 19, 2015 4:57 PM
To: Tolleson, Julie; Taylor, Martha; Brammer@rllaz.com; Desegregation; Nodine, Bryant; Patterson, Charlotte; jrodriguez@MALDEF.org; Brown, Samuel; james.eichner@usdoj.gov; lthompson@proskauer.com; shaheena.simons@usdoj.gov; TUSD@rllaz.com; zoe.savitsky@usdoj.gov; wdh@umd.edu
Subject: Re: Grade Reconfiguration Proposals
Attachments: 15.08.10.fisher.preliminary.objection.sac.pdf

Dear Sam:

Please find attached the Fisher Plaintiffs' 08/10/15 objection to the grade reconfigurations proposed by the TUSD Student Assignment Committee (SAC) (originally addressed to Martha Taylor).

Because nothing in the District's subsequent revision of the SAC's goals or its desegregation impact analyses has alleviated the fundamental concerns raised in the Fisher Plaintiffs' 08/10/15 objection, please consider that objection renewed by copy of this email.

I understand that you had asked to receive new plaintiff feedback by the 16th, but I hope you will be able to share the attached, previously circulated five-page objection - in its entirety - with the TUSD Governing Board (GB) before it meets on the 20th to ensure that the GB members understand why the Fisher Plaintiffs find the proposed grade reconfigurations objectionable.

Sincerely,

Rubin Salter, Jr.

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-----Original Message-----

From: Juan Rodriguez <jrodriguez@MALDEF.org>
To: Brown, Samuel <Samuel.Brown@tusd1.org>; James Eichner <james.eichner@usdoj.gov>; Lois Thompson <lthompson@proskauer.com>; Rubin Salter Jr. <rsjr3@aol.com>; Shaheena Simons (shaheena.simons@usdoj.gov) <shaheena.simons@usdoj.gov>; TUSD <TUSD@rllaz.com>; Zoe Savitsky <zoe.savitsky@usdoj.gov>; Willis D. Hawley <wdh@umd.edu>

Monday August 10, 2015

Attention: Martha Taylor

Dear Martha:

The Fisher Plaintiffs have completed a preliminary review of the material uploaded to the District's Student Assignment Committee (SAC) folder. Based on that review, the Fisher Plaintiffs, by copy of this email, join the Mendoza Plaintiffs and the Department of Justice (DOJ) in their objection to the current goals and guidelines set for the SAC (see Thompson 08/05/15 and Eichner 08/07/15 emails).

The SAC clearly fails to assign due priority to the District's desegregation obligations under the Unitary Status Plan (USP) and clearly fails to involve the type and degree of input from the plaintiffs and the Special Master (SM) contemplated under the USP and the Court's 05/12/15 order interpreting the applicable provisions of the USP. Additionally, the composition of the SAC is clearly unrepresentative of the full spectrum of stakeholders impacted by the proposed changes.

The overwhelming majority of SAC members appear to be Tucson Unified School District (TUSD) employees and/or the parents of students attending the schools proposing the grade reconfigurations. While employees and parents initiating or endorsing the proposals certainly deserve a seat at the table, their participation should be balanced by a full range of stakeholder participation. The Committee's membership bias raises the concern that the Committee may reach foregone conclusions behind the trappings of stakeholder participation afforded by the professional management of the DLR Group.

The District's desegregation impact analyses (DIAs) claim that the proposed changes will "have virtually no impact on" the racial and ethnic profile of the impacted schools (see inter alia the Borman K-8 DIA uploaded to the DLR site). The District explains that the enrollment projections made in its DIAs "are estimates based on current patterns of choice" (idem). As the Fisher Plaintiffs noted in their 04/23/15 objection to the proposed grade reconfigurations at Fruchthendler and Sabino, the projected continuation of current school choice patterns (chiefly patterns of White Flight) is unwarranted.

Patterns of White Flight do not exist in a policy vacuum. The District has the means to implement policies that can influence future school choice patterns in ways that can make integration a reality. And the District has the legal duty, under the USP and controlling Ninth Circuit authority, to do just that, a duty that the District unfortunately seems unwilling to uphold.

The District is legally empowered and obliged to consider and take affirmative steps to counteract - not cater to - the phenomenon of White Flight, both without and within the District. The “grassroots” initiatives of identifiably White schools, like Fruchthendler and Borman, to recapture predominantly White enrollment (under the cover of ostensibly neutral grade reconfigurations) violate both the letter and the spirit of the student assignment provisions of the USP and the equal protections safeguarded by the Supreme Court’s landmark Civil Rights decisions in *Brown* and its progeny.

The District’s proposed reconfiguration of Borman K-5 as a K-8 school suffers from the same shortcomings as the District's past efforts to reopen Lowell Smith ES as a MS. Like Borman ES, the Lowell Smith campus is located on the Davis-Monthan (DM) Air Force Base. The District first petitioned the Court to reopen the (then) recently closed Lowell Smith ES as a MS on 03/07/07 (see document number 1189 filed 03/07/07). On 03/15/07 and 04/09/07, the Fisher and the Mendoza Plaintiffs filed their respective responses in opposition to the proposed reopening as violative of the District's desegregation obligations (see document numbers 1190 filed 03/15/07 and 1195 filed 04/09/07). On 05/10/07, the Court agreed with the Plaintiffs' arguments and denied the District's petition, explaining that:

The Court finds that reopening Smith Elementary School as a middle school has an adverse affect on ongoing desegregation obligations because it is inconsistent with on-going efforts to reduce segregation in TUSD's schools [...]. Reopening Smith School as a middle school removes a segment of the existing community assigned to Naylor Middle School, thereby, decreasing its base of concerned parents. Attendance by DM students at other TUSD schools and charter schools has had precisely this result. To the extent that TUSD is attempting to bring charter students back into its fold, this may benefit the Naylor Middle School. Conversely, it is not in the best interest of the community for TUSD to authorize non-minority DM students to attend other TUSD schools instead of Naylor Middle School [...]. In light of the evidence that Naylor Middle School, with a predominately minority student body, is seriously failing to educate its student body, it is highly

suspect for TUSD to carve out a separate non-minority educational system for a group of these students that are predominately non-minority. Fisher Mendoza [is] a desegregation case, which at its core is based on the principle that separate schools will not provide equal education (at pages 4-5 of document number 1209 filed 05/10/07 emphasis added).

Undeterred, the District returned the following year to notify the Court that it was still "exploring ways to re-open Smith" (at page 3 of document number 1264 filed 04/10/08). The District explained that it hoped to reopen Smith to recapture an estimated 500 students lost under State open-enrollment laws facilitating the flight of (predominantly White) Davis-Monthan-area students to neighboring districts and charter schools (idem at 4). On 04/16/08, the Mendoza Plaintiffs filed a response opposing the second attempt to reopen Smith as still very much in violation of the District's desegregation obligations (see document number 1267 filed 04/16/08).

Yet again, the District seeks to win back DM-area enrollment lost to neighboring districts and charter schools, this time by reconfiguring Borman K-5 into what would very likely become an identifiably White K-8 school. The plaintiffs and the Court have already considered, and rejected, the District's constitutionally unsound approach to recapturing enrollment lost to White Flight. On 04/14/15, the District filed a notice and request for the Court's approval (NARA) of the reconfiguration of grade levels at Fruchthendler ES and Sabino HS (see document number 1789 filed 04/14/15). In that NARA, the District explained that:

A high percentage of middle school aged students living in the area surrounding Fruchthendler Elementary School ("Fruchthendler") and Sabino High School ("Sabino") do not attend TUSD schools for grades 6 through 8. Some area students attend the nearest TUSD middle school, Magee, but many students who leave TUSD after fifth grade for middle school outside the district do not return at all. As a result, TUSD loses funding, and the decline of its Anglo student population is exacerbated (thereby frustrating efforts to recruit Anglo students to other TUSD schools for integration purposes) (idem at 2).

On 04/23/15, the Fisher and Mendoza Plaintiffs filed memoranda opposing the proposed reconfiguration (see documents number 1791 and 1794 filed 04/23/15). On 05/12/15, the Court issued an order denying the District's request, explaining that:

The record reflects that the student assignments proposed by TUSD were not considered in the context of the four integration strategies required by the USP: attendance boundaries, pairing and clustering of schools; magnet schools and programs; and open enrollment. (USP § II.1.) Because the proposed student assignments involve the creation of an honors program, the USP, section V, requires the District to also consider Plaintiffs' concerns regarding equal access. There is nothing about a NARA proposal to change student assignments to exempt it from the USP requirement that the District, the parties, and the Special Master comprehensively consider the proposal, pursuant to applicable USP criteria, in an effort to increase the integration of TUSD schools. USP § II.D.2. Plans and strategies are now in place, pursuant to the USP, for addressing student assignments, but this NARA fails to reflect how the Fruchthendler-Sabino Honors Pipeline plan fits into these plans and strategies, and if not, why (at page 5 of document number 1799 filed 05/12/15 emphasis added).

The Fisher Plaintiffs remain extremely concerned by the District's continued efforts to reconfigure grade levels at Fruchthendler ES and Sabino HS. Their concerns are motivated in equal parts by the District's decision to insulate the work of the SAC from the input of the plaintiffs and the SM and the District's erroneous assumption that it has no obligation to recognize and counteract the harmful effects of White flight in its student assignment plans. The Supreme Court has long held that "a student assignment plan is not acceptable merely because it appears to be neutral, for such a plan may fail to counteract the continuing effects of past school segregation" (Swann v Board of Education, 402 U.S. 1 1971). In Swann, the Court found that "racially neutral assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites" (idem).

Under federal law, a school district operating under a federal desegregation order carries an affirmative obligation to account for the legacy of discriminatory practices when fashioning its student assignment policies and plans. The seeming “neutrality” of the District’s proposed student assignment “honors pipeline” from Fruchthendler to Sabino is absurd when the pipeline is designed to provide privileged programming to the historically privileged class of predominantly high SES White students residing in the Sabino attendance area. It is extremely unsettling that the District again proposes to alleviate White flight from the District by endorsing White flight within the District. The Fisher Plaintiffs are extremely disappointed that the District, rather than exploring ways to increase the diversity at schools like Magee and Roberts/Naylor, again propose intradistrict White flight as way to recapture enrollment currently lost to interdistrict White flight.

Sincerely,

Rubin Salter, Jr.