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U.S. DISTRICT COURT
TUCSON, ARIZONA
CLERK OF COURT
ST. _____

J. Wm. Brammer, Jr.
Richard M. Yetwin
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Attorneys for Defendants other than Defendant Lohr

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROY and JOSIE FISHER, et al,)

Plaintiffs,)

UNITED STATES OF AMERICA,)

Plaintiff-Intervenor,)

vs.)

ANITA LOHR, et al,)

Defendants.)

and)

SIDNEY L. SUTTON, et al,)

Intervenors-Defendants.)

MARIA MENDOZA, et al,)

Plaintiffs,)

UNITED STATES OF AMERICA,)

Plaintiff-Intervenor,)

vs.)

TUCSON SCHOOL DISTRICT
NO. 1, et al,)

Defendants.)

NO. CIV-74-90-TUC-WCF

NO. CIV-74-204-TUC-WCF

STIPULATION OF SETTLEMENT

On June 15, 1978, Plaintiffs Fisher, et al., and Plaintiffs
Mendoza, et al., filed motions to Alter or Amend Findings of

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1 Fact and Conclusions of Law entered by the Court on June 5,
2 1978, in these consolidated school desegregation cases.
3 Plaintiff-Intervenor United States supported the motions which
4 were filed by Plaintiffs. Those motions were argued before
5 the Court on June 28, 1978, and are presently pending.

6 Subsequent to the hearing on Plaintiffs' motions, counsel
7 for all parties have conferred and agreed to the terms of a
8 final settlement of this case, as contained in this stipulation,
9 that will make it unnecessary for the Court to decide the pending
10 motions and that will finally resolve this litigation. As
11 evidenced by the signatures of their counsel below, the parties
12 hereby stipulate and agree as follows:

13 1. The parties file herewith a joint motion requesting
14 the Court to enter the attached Settlement Order, which has
15 been approved by all parties, and Stipulation of Dismissal
16 with prejudice of Counts 2, 3, 4, 5, 6 and 7 of the Amended
17 Complaint of the Plaintiffs Mendoza, et al., which has been
18 signed by all parties who have appeared in this action.

19 2. Commencing with the 1978-79 school year and there-
20 after during the term of this agreement, the Defendants will
21 operate Brichta, Tully, and Manzo elementary schools in
22 accordance with Option II of the plans submitted to the Court
23 on July 17, 1978, and will operate Roosevelt, University Heights,
24 Cragin, and Jefferson Park elementary schools in accordance
25 with Option III of the plans submitted to the Court on
26 July 17, 1978, as originally recommended by the District staff,
27 unless alterations are made or approved as provided herein in
28 paragraphs 20, 21 or 23.

29 3. Commencing with the 1978-79 school year and thereafter
30 during the term of this agreement, the Defendants will operate
31 their junior high schools in accordance with Option V of the
32 plans submitted to the Court on July 17, 1978, provided that

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1 the closure of Mansfield and Safford Junior High Schools and the
2 construction of a new school to replace them is undertaken as
3 soon as practicable, unless alterations are made or approved
4 as provided herein in paragraphs 20, 21 or 23. In the event
5 construction of the new junior high school is not completed
6 within a reasonable period of time, the Board will implement
7 alternative measures to desegregate Safford Junior High School.

8 4. Commencing with the 1979-80 school year and there-
9 after during the term of this agreement, the Defendants shall
10 alter the student assignment patterns for Borton and Holladay
11 Elementary Schools under a plan of student assignment which
12 will be developed in the manner described in paragraph 8
13 below, so as to reduce the minority enrollment of these schools
14 below approximately 50 percent minority.

15 5. Commencing immediately, the Defendants shall
16 implement a process for parent participation to examine the
17 future student assignment patterns for Davis, Drachman, and
18 Carrillo Elementary Schools. The public process shall con-
19 sider whether these schools should be closed, consolidated,
20 or continued and make recommendations to Defendants on the
21 educational specifications for either the continuation of the
22 schools or the construction of a new elementary school(s) in
23 the inner city, if such is to be the case.

24 6. Commencing with the 1979-80 school year and there-
25 after during the term of this agreement, the Defendants shall
26 alter the student assignment patterns for Utterback Junior
27 High School under a plan of student assignment which will be
28 developed in the manner described in paragraph 8 below, so as
29 to reduce the minority enrollment at that school below
30 approximately 50 percent.

31

32

7. Commencing with the 1979-80 school year and thereafter during the term of this agreement, the Defendants will ensure that the junior high school into which the graduates of Pueblo Gardens and Cavett Elementary Schools matriculate shall not exceed approximately 50 percent minority student enrollment, under a plan to be developed in the manner described in paragraph 8 below.

8. The student assignment plans required by paragraphs 4, 5, 6 and 7 above shall be developed under the following procedure and schedule:

(a) The Defendants will immediately implement a process or processes for public participation, which will include representatives of those to be affected, in the development of alterations of student assignments for the schools indicated;

(b) The plans for student assignment, if any, developed through the above public process or processes shall be reviewed by the Defendants and shall be provided to counsel for Plaintiffs and Plaintiff-Intervenor for a reasonable period of review of not less than ten (10) days and the parties to this stipulation shall determine by November 30, 1978, whether the plans so developed are acceptable to them;

(c) If the Defendants, the Plaintiffs or the Plaintiff-Intervenor find the plans developed through the above public process unsatisfactory, the Defendants shall independently examine the issues and produce a plan for alteration of student assignments as provided in paragraphs 4, 5, 6 and 7 above, for presentation to the Court and to Plaintiffs and Plaintiff-Intervenor on or before December 31, 1978;

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1 (d) The parties shall confer and on or about the
2 31st of January, 1979, shall inform the Court whether they
3 have been able to agree on the plan, or a modification of the
4 plan, presented pursuant to subparagraph 8(c) above;

5 (e) If the parties have agreed, the student assign-
6 ment adjustments shall be incorporated into a Stipulation of
7 Settlement No. 2 which will be jointly submitted to the
8 Court for its approval in the form of an order containing the
9 same terms as paragraph 1 of the Settlement Order filed herewith;

10 (f) If the parties cannot agree, the issues will
11 be submitted to the Court for resolution consistent with the
12 terms of this stipulation.

13 9. The Defendants shall restructure the assignment
14 of faculty at Pueblo Gardens and Cavett Elementary Schools
15 so that a disproportionate number of Black teachers, taking
16 the District as a whole, is not on the faculty of either
17 school. Implementation of such reassignments shall be
18 completed no later than the commencement of the fall semester
19 of the 1979-80 school year.

20 10. In addition to the reassignment of Black teachers
21 outlined in paragraph 9 above, the Defendants shall examine
22 the assignment of all Black teachers during the 1978-79
23 school year. Necessary reassignments shall be implemented
24 so that a disproportionate number of Black teachers, taking
25 the District as a whole, is not on the faculty of any given
26 school commencing with the fall semester of the 1979-80
27 school year.

28 11. The Defendants shall adopt an additional statement
29 of Non-Discrimination in Employment and establish uniform
30 procedures with respect to the hiring, placement, and
31 promotion of District employees, in the form of the statement
32 which is attached hereto as Exhibit "A".

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1 12. The Defendants will develop and implement in-service
2 training programs which will be required of all District
3 employees involved in implementing this agreement and the
4 student assignment plans adopted pursuant to paragraphs 2
5 through 7 above.

6 13. The Defendants shall implement good faith efforts,
7 with specific input and recommendations from Black parents,
8 to ensure that no student is discriminated against in the
9 implementation of the District's uniform suspension and
10 expulsion policy.

11 14. The Defendants shall conduct a careful, good faith
12 examination of the testing instruments used by the Defendants
13 to ensure that no student is discriminated against in this
14 aspect of the District's educational program. The Defendants'
15 efforts shall include the utilization of qualified personnel
16 to assess tests and responses that are unique to Black
17 students. In addition, qualified parents, or their qualified
18 representatives, and Black educators shall assist the
19 Defendants as they complete the design and implementation
20 of the "Programmatic Recommendations to assist in the
21 Quality Education of Black Students in Tucson," a document
22 previously submitted by Plaintiffs Fisher.

23 15. The Defendants shall not admit a student to a
24 bilingual instructional program without specific parental
25 permission. No student shall be admitted to such a program
26 without an explanation of the nature of the program and the
27 available options, including programs of standard English
28 as a second dialect (e.g., B.A.S.E.), to the student's
29 parent(s). As a part of the Defendants' efforts to
30 evaluate the bilingual instructional programs, there shall
31 be included external evaluation of those programs to determine
32

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1 whether there have been adverse effects on non-program
2 students, with the objective of correcting any such effects.

3 16. Commencing with the fall semester of the 1978-79
4 school year, the Defendants shall offer a one-year pilot
5 instructional program utilizing the "Spalding Method," pro-
6 vided that at least 25 students shall signify interest in
7 such a program in writing, by August 14, 1978, including an
8 acknowledgment that they have been advised of the Defendants'
9 view of the "Spalding Method." Enrollment in the pilot program
10 shall be limited to 30 students.

11 (a) The pilot program shall be at _____
12 School. Children enrolled in that program who otherwise
13 would qualify for transportation on a daily basis and who
14 desire it shall be provided transportation by Defendants.

15 (b) Commencing immediately, the Defendants will
16 implement a process to select a teacher to instruct the pilot
17 instructional program. At a very minimum, the person
18 selected to instruct this program should have (1) experience
19 in teaching the "Spalding Method;" (2) experience in having
20 taught that method to Mexican-American children; and (3)
21 demonstrated past success in teaching Mexican-American
22 children through the "Spalding Method."

23 17. On April 15, 1979, October 15, 1979, April 15, 1980,
24 and for each April 15 thereafter during the term of this
25 stipulation, the Defendants shall file with the Court and
26 serve on each party a report showing the racial and ethnic
27 student enrollment of all schools involved in the above plans
28 to that date; the faculty and staff of each school together
29 with any reassignments of faculty and staff and any reasons
30 therefor; and a report showing all programmatic changes
31 pursuant to this stipulation and the effectiveness of such
32 changes. In addition, during the term of this stipulation,

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1 counsel for Plaintiffs and Plaintiff-Intervenor shall have
2 reasonable access to Defendants' records for these purposes.

3 18. An independent citizens' committee will be
4 established by the Defendants to review and report to the
5 School Board the progress of the Defendants' compliance with
6 the terms of this stipulation. This "citizens'" committee
7 will include one member selected by the Plaintiffs Fisher,
8 et al., and one member selected by the Plaintiffs Mendoza,
9 et al. In addition, the Board shall select citizens of
10 diverse ethnic and racial backgrounds, including but not
11 limited to Mexican-Americans, Blacks, Anglos, Orientals
12 and Native Americans.

13 19. Defendants will not engage in any acts or policies
14 which deprive any student of equal protection of the law
15 whether by intentional segregation or discrimination based
16 on a student's race or ethnic group.

17 20. Defendants will not undertake the construction
18 of new schools or of permanent additions at existing schools
19 without specific authorization of the Court. Nothing in this
20 stipulation shall preclude the construction of new schools
21 in the future if the construction of such schools is deemed
22 to be in the best interest of the community and not incon-
23 sistent with on-going efforts to reduce segregation, nor
24 shall anything herein preclude revision of student trans-
25 portation patterns for the purpose of having the effect of
26 reducing or eliminating the transportation of students called
27 for in this stipulation, consistent with on-going efforts
28 to reduce segregation.

29 21. Hereafter, and until further order of the Court,
30 all acts and/or policies of the District which substantially
31 affect the racial or ethnic balance in any school in the
32 District and/or which are discriminatory because based on

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1 race or ethnicity of any students in the District schools,
2 shall be subject to Court review in these cases.

3 22. After five full school years of operation under
4 the terms of this agreement and the student assignment plans
5 adopted pursuant to this stipulation, the Defendants may on
6 or after July 1, 1983, move the Court to dissolve the
7 Settlement Order and dismiss these actions, with prejudice,
8 unless the Plaintiffs or the Plaintiff-Intervenor, within
9 at least thirty (30) days after service of such motion,
10 object to the dissolution of the Settlement Order and the
11 dismissal of these actions on the grounds that the Defendants
12 have failed to comply with the terms of this agreement, or
13 other applicable orders entered by the Court herein. If
14 such an objection is filed, the Court shall set a hearing
15 as soon thereafter as possible to determine the appropriate
16 disposition of this action.

17 23. Once this Stipulation of Settlement becomes
18 effective, the rights and obligations of the parties shall
19 be determined solely by its terms and the terms of any
20 subsequent stipulations or orders entered herein pursuant
21 to it. Assuming that the expectations for student enrollments
22 set out in the plans approved by the Court pursuant to this
23 Stipulation are substantially met through the 1979-80 school
24 year, the plan will be deemed to have been implemented
25 insofar as student assignments are concerned in accordance
26 with this Stipulation. Plaintiffs, Plaintiff-Intervenor and
27 Defendants shall retain all rights and remedies provided by
28 law or equity and the federal rules of procedure in seeking
29 enforcement or relief from this and any subsequent stipulations
30 and orders, including the right to seek review of any order
31 enforcing or refusing to enforce such stipulations. Further,
32 in seeking enforcement of or relief in any federal court

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1 from the terms of this stipulation, no party may rely upon
2 prior findings and conclusions in this case to interpret the
3 terms of this stipulation or to determine the rights and
4 obligations of the parties thereunder.

5 24. This stipulation shall become effective upon the
6 Court's entry of the Settlement Order filed herewith and
7 the Court's approval of the Stipulation of Dismissal,
8 concerning Counts 2, 3, 4, 5, 6 and 7 of the Amended Complaint
9 filed on behalf of Plaintiffs Mendoza, et al. If the Court
10 fails to enter the Settlement Order and Order approving the
11 Stipulation of Dismissal, this stipulation becomes void
12 ab initio.

13 25. Any order entered in conjunction with paragraph 22
14 above, shall be considered as fully and finally terminating
15 these cases, and resolving any and all disputes between the
16 parties, including all class members, in the above captioned
17 causes.

18 26. Defendants shall pay to counsel for all Plaintiffs
19 as and for all their attorneys' fees and costs, both past
20 and future, except to the extent of any attorneys' fees and
21 costs incurred by Plaintiffs in the future as a result of
22 Defendants' failure to comply with the terms and conditions
23 agreed to herein, the aggregate sum of Five Hundred Thousand
24 Dollars (\$500,000.00), to be payable in two (2) installments,
25 and to be divided among Plaintiffs' counsel as they may see
26 fit. The two installment payments are to be made as follows
27 and are conditioned upon counsel for Defendants being first
28 provided by counsel for Plaintiffs with specific documentation
29 in the form of time and expense records and vouchers which,
30 in the reasonable opinion of Defendants' counsel, support
31 such payment:
32

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1 (a) The first installment shall be Two Hundred
2 Fifty Thousand Dollars (\$250,000.00), payable as soon as
3 is reasonably possible after the Court's approval and entry
4 of both the Settlement Order filed herewith and an Order
5 approving the Stipulation of Dismissal;

6 (b) The second installment shall be Two Hundred
7 Fifty Thousand Dollars (\$250,000.00), payable as soon as
8 is reasonably possible after the entry of the Court's Order
9 which is contemplated by paragraph 8(e) or 8(f) above, further
10 providing that this second installment shall not be paid
11 prior to July 10, 1979.

12 27. Anita Lohr may be dismissed as a Defendant in
13 these actions.

14 Stipulated and agreed to this 8th day of August, 1978.

15 Rubin Salter, Jr.
16 Rubin Salter, Jr.
17 Attorney for Plaintiffs Fisher, et al.

18 Stipulated and agreed to this 8th day of August, 1978.

19 William J. Maledon
20 William J. Maledon
21 Attorney for Plaintiffs Fisher, et al.

22 Stipulated and agreed to this 8 day of August, 1978.

23 Michael O. Zavala
24 Michael O. Zavala
25 Attorney for Plaintiffs Mendoza, et al.

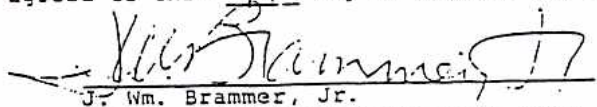
26 Stipulated and agreed to this 8 day of August, 1978.

27 Morris J. Baller
28 Morris J. Baller
29 Attorney for Plaintiffs Mendoza, et al.

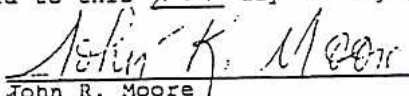
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1 Stipulated and agreed to this 11 day of August, 1978.

2 
3 J. Wm. Brammer, Jr.
4 Attorney for Defendants other than
5 Defendant Lohr

6 Stipulated and agreed to this 8th day of August, 1978.

7 
8 John R. Moore
9 Thomas M. Keeling
10 Louie M. Stewart
11 Attorneys for Plaintiff-Intervenor
12 United States of America
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