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**UNITED STATES DISTRICT COURT  
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.,

Defendants-Intervenors,

No. CIV 74-090 TUC DCB

**ORDER APPOINTING SPECIAL  
MASTER**

MARIA MENDOZA, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

No. CIV 74-204 TUC DCB

1 vs.

2 TUCSON UNIFIED SCHOOL DISTRICT NO. ONE  
3 et al.,

4 Defendants.

5 Pursuant to this Court’s Order of September 14, 2011 (the “September 14 Order”) and  
6 subsequent filings of the Plaintiff-Intervenor United States, Fisher Plaintiffs, Mendoza  
7 Plaintiffs and the Tucson Unified School District (collectively, the “Parties”); and  
8

9 Dr. Willis Hawley having filed an affidavit pursuant to Rule 53(b)(3), Fed.R.Civ.P.  
10 indicating that there are no grounds for Dr. Hawley’s disqualification under 28 U.S.C. §455;

11 It is hereby ORDERED that Dr. Willis Hawley is appointed as a special master  
12 pursuant to Rule 53, Fed.R.Civ.P, effective upon the filing of this Order. This appointment  
13 shall be effective until such time as this Court terminates the appointment; this Court holds  
14 that the Tucson Unified School District (the “District” or “TUSD”) has attained unitary status  
15 and terminates judicial oversight of the District; or the appointment is otherwise terminated  
16 pursuant to the terms of this Order.  
17

18 In performing his duties, the Special Master shall proceed with all reasonable  
19 diligence.

20 It is ORDERED that the Special Master shall prepare the following reports and  
21 oversee the implementation of a Unitary Status Plan (“USP”) as follows:

22 The Special Master shall (1) oversee the “Post Unitary Status Plan” (“PUSP”)  
23 currently in force until such time as the USP is formulated; (2) formulate the USP based on  
24

1 new and existing findings of fact in consultation with the Parties and in consultation with the  
2 Court to bring the District into unitary status; (3) oversee implementation of the USP; (4)  
3 make recommendations to the Court as to whether the District has complied in good faith  
4 with the USP and attained unitary status; and (5) formulate a new post unitary status plan to  
5 guide the District in maintaining constitutional compliance after the release of court  
6 supervision.  
7

8 In addition, until such time as the USP has been approved by the Court, the Special  
9 Master shall consider and report on the following: (1) any act or policy of the District that any  
10 Plaintiff contends will deprive any student of equal protection of the law whether by  
11 intentional segregation or discrimination based on a student's race or ethnic group; and (2)  
12 any act and/or policy of the District which substantially affects the racial or ethnic balance in  
13 any school in the District and/or which is discriminatory because based on race or ethnicity of  
14 any students in the District schools.  
15

16 Moreover, the District must provide the Special Master with notice and a request for  
17 approval of any of the following: attendance boundary changes; changes to student  
18 assignment patterns; construction projects that will result in a change in student capacity of a  
19 school or significantly impact the nature of the facility; building or acquiring new schools;  
20 proposals to close schools; and the purchase and sale of District real property. Plaintiffs will  
21 be provided with a copy of any such notice and request for approval.  
22

23 Subject to any other briefing schedule that the Special Master may set in light of the  
24 particular circumstances, any Plaintiff may file an objection to such notice and request,  
25  
26

1 described above, within twenty (20) days of receipt of the notice; the District shall then have  
2 twenty (20) days from receipt of the objection(s) to respond. After receipt of the District's  
3 response, the Special Master shall make a report to the Court setting forth proposed findings  
4 of fact and conclusions of law with respect to said notice. This report shall be submitted to  
5 the Court as soon as reasonably practicable under the circumstances, but in no event more  
6 than 30 days after the matter is fully briefed. The Court shall thereafter schedule additional  
7 briefing or enter an order, as appropriate.  
8

9 **I. Unitary Status Plan.**

10 The Special Master is to formulate a USP within 6 months after his appointment and  
11 the USP shall be included in an Initial Report to the Court, as discussed more fully below.  
12

13 To assist the Special Master in his efforts, the District shall, within fifteen (15) days of  
14 the appointment of the Special Master, provide the Special Master and all Parties with a  
15 report on the status of implementation of the PUSP, with specific reference to each  
16 affirmative obligation thereunder. Within thirty (30) days of the filing of the District's report,  
17 the Plaintiff-Intervenor United States, Fisher Plaintiffs and/or Mendoza Plaintiffs  
18 (collectively, the "Plaintiffs") may file a response. In the event one of the Plaintiffs  
19 determines that additional information or data is required from the District to frame a  
20 complete response, that Plaintiff shall identify such additional information or data in its  
21 response and request, in writing, the additional information. In the event the District declines  
22 to produce such additional information or data within fifteen (15) days, the Special Master  
23 shall determine whether such additional information is required and order that it be produced  
24

1 within a reasonable time frame depending on the nature and scope of the information at issue.  
2 All parties shall have thirty (30) days after the disclosure of such additional information or  
3 data to make a supplemental filing. Unless the Special Master so directs, there will be no  
4 further responses or replies to the report on the status of implementation of the PUSP.  
5

6 In formulating the USP, the Special Master is to consider the parties' briefs regarding  
7 (1) the adequacy of the PUSP, including their identification of the areas in the PUSP which  
8 should be incorporated, omitted, supplemented, and/or improved in the USP; (2) any *Green*  
9 factors with respect to which the Parties believe partial withdrawal of judicial oversight is  
10 appropriate; and (3) the parties' submissions on the status of implementation of the PUSP. In  
11 addition, the Special Master may solicit input from members of the community, including but  
12 not limited to school district employees, individuals who have served on the PUSP  
13 Committee or Independent Citizen's Committee, Plaintiffs' representatives, students,  
14 teachers, parents and other interested parties.  
15

16 The USP shall include, at a minimum, the following:

17 1. Specific substantive programs and provisions to be implemented by  
18 TUSD to address all outstanding *Green* factors and all other ancillary factors as  
19 recognized in the 1978 Stipulation of Settlement and any subsequent court orders and  
20 an implementation time schedule including benchmark dates and provisions for review  
21 and revision of programs and provisions if appropriate;  
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23 2. Measurable standards of compliance, goals, timelines, interim  
24 benchmarks of progress, and structures for accountability and transparency;  
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3. A financial plan that provides for financial integrity and public accountability through specific provisions for transparency which identify all funding sources, federal, state and local, and the amounts flowing to the USP's specific components;

4. Recommendations for budgetary oversight and reporting formats including a review schedule to ensure parents and students can see these dollars at work and identify USP limitations that result from budgetary restraints;

5. A schedule for reports to be prepared and filed by the District on the status of implementation that is tied to benchmark dates in the USP;

6. A timeline for the filing of any objections to the District's reports together with a schedule for the filing of responses to those objections and for the Special Master to prepare findings and conclusions with respect to the objections. Regardless of whether a Plaintiff asserts an objection to any portion of a report, the parties expressly agree that the Special Master shall have the right and authority to question or comment upon any aspect of a District report and to request additional information from the District;

7. A proposed timeline leading to unitary status after three full school years from adoption of the USP, subject to annual extensions by the Court for reason of unattained compliance by the District with the USP.

////

1 **II. Initial Report.**

2 The Special Master shall file a report (the “Initial Report”) six (6) months after the date  
3 of his appointment, which shall, at a minimum, include the following:  
4

5 1. Findings of fact and a report on the status of implementation of the  
6 District’s obligations under the PUSP;

7 2. The proposed USP as set forth in Section I, above, which the Court may  
8 adopt as proposed, modify or reject at the Court’s discretion. In the event that the  
9 Court rejects the USP, the Special Master shall prepare a new USP for submission to  
10 the Court by a deadline established by the Court in the order rejecting the USP; and  
11

12 3. A recommendation, supported by specific findings of law and fact or  
13 stipulation of the parties, as to whether partial withdrawal of judicial oversight is  
14 warranted for any *Green* factor.

15 **III. Ongoing oversight**

16 1. The Special Master shall utilize the information in any District reports,  
17 together with baseline data collected during the Initial Report phase and such other  
18 information as the Special Master deems necessary or appropriate from any source, to  
19 prepare annual reports as set forth below.  
20

21 2. After the filing of the Initial Report, the Special Master shall submit a  
22 report to the Court on the one-year anniversary of this appointment and at least  
23 annually thereafter setting forth in detail the District’s efforts to implement the USP  
24

1 and evaluating the District's compliance with its provisions (the "Status Report").

2 These reports shall include, at a minimum:

3 a. A general statement of progress toward drafting and/or implementing  
4 the USP and problems encountered in these processes;

5 b. An analysis of the quality of the District's efforts in implementing the  
6 USP;

7 c. Evaluation of the effectiveness of programs and provisions  
8 established in the USP and recommendations for further review or revisions to  
9 these programs and provisions;

10 d. Findings of fact as to the District's compliance with the USP's  
11 provisions;

12 e. Findings of fact as to whether the District is on schedule for  
13 completion of the USP within the time frames established therein. If the  
14 Special Master finds that there have been delays in implementation, the Status  
15 Reports shall explain the reason or cause for the delay and identify the  
16 responsible party, if any; and

17 f. Recommendations for actions to be taken by the Court, if any,  
18 including but not limited to recommendations for Court action necessary to  
19 enforce compliance with the USP.

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1 **IV. Final Report to Court**

2 The Special Master shall submit, in accordance with the time lines established in the  
3 USP, a final report to the court (the “Final Unitary Status Report”) prior to the unitary status  
4 deadline set forth in the USP. This Final Unitary Status Report shall include, at a minimum:  
5

6 1. Findings of fact as to whether the District has fully implemented the  
7 programs and activities required by the USP.

8 2. Findings of fact as to whether the District has eliminated the vestiges of  
9 the dual system.

10 3. Recommendation to the Court as to whether unitary status should be  
11 granted and judicial oversight terminated.

12 4. A proposed post unitary plan, developed in consultation with the Parties,  
13 to ensure the future good faith operation of the District in accordance with  
14 constitutional principles. The Parties shall have the opportunity to file objections to  
15 this proposed plan, respond to any such objections, and any disputes shall ultimately  
16 be adjudicated by the Court prior to the grant of unitary status.  
17

18 **V. Scope of Special Master’s Authority**

19 The Special Master shall have the authority to make findings of fact, which shall be  
20 included in the Initial Report, Annual Reports, Final Unitary Status Report and in such other  
21 cases as the Special Master deems appropriate.  
22



1                   d.       Thereafter, the Court will take such action as the Court deems  
2 appropriate based upon the findings and recommendations and the Objections,  
3 Responses, Replies, and any public comments thereto. Notwithstanding anything  
4 to the contrary in this Order, the Court may reject or modify any finding or  
5 recommendation of the Special Master, regardless of whether any Party filed an  
6 objection.  
7

8                   5.       The Special Master shall make available to the public for comment the  
9 initial Unitary Status Plan filed within 6 months of his appointment and the final  
10 Unitary Status Plan filed with the Final Unitary Status Report on the same day that  
11 the Special Master files the plans with the Court. The public will have forty-five  
12 (45) days from the date the plans were filed with the Court to provide comments to  
13 the Special Master. The District shall ensure at least one public forum is held  
14 during this special comment period, with notice to be given to the public in a time  
15 and manner as agreed to by the Parties or as directed by the Special Master. Public  
16 comments may be submitted via any medium generally accepted by the Court,  
17 including, but not limited to, oral, written, and electronic. The Special Master will  
18 make copies of all public comments available to the Parties. The Special Master  
19 shall have the right to comment on and/or revise the proposed plan in response to  
20 public comment and the Parties shall have the right to comment on such public  
21 comment pursuant to the schedule set forth above in Section V, Paragraph 4.  
22

23                   /////  
24

1 **VI. Compensation**

2 The Special Master shall be compensated by the District, pursuant to this Court's  
3 Order dated September 14, 2011.  
4

5 1. The Special Master shall be compensated at the rate of \$ 250.00 per  
6 hour, not to exceed \$ 2000.00 for any day. It is anticipated that days spent traveling or  
7 working "on-site" (in Tucson) will be compensated at the daily rate.

8 2. The Special Master shall be reimbursed for reasonable expenses incurred  
9 in connection with his duties, including but not limited to reasonable travel expenses,  
10 copying expenses, long distance telephone and facsimile charges and other such  
11 ordinary expenses as may be incurred in connection with his duties.  
12

13 3. The Special Master shall submit monthly invoices detailing time spent  
14 and reimbursable expenses incurred during the previous month (the "Application for  
15 Payment"). The Applications for Payment shall be submitted to the District Finance  
16 Department and shall be paid within thirty (30) days of submission. Copies of the  
17 Applications for Payment shall be sent to the Parties.  
18

19 a. The Parties shall have an opportunity to object to any Application  
20 for Payment within ten (10) days of filing, or any such objection shall be  
21 deemed waived. The Special Master shall thereafter have (10) days to respond  
22 to any such objections, and the Court shall thereafter rule on the Application.  
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1                   b.     Once the Court has ruled, the District shall pay the amount  
2                   approved by the Court within thirty (30) days.

3  
4                   4.     Any disputes concerning compensation of the Special Master shall be  
5                   submitted to this Court for resolution.

6 **VII. Additional Staff and Clerical Support; Retention of Experts**

7                   The Special Master's hourly and daily rate, as set forth above, shall include any  
8                   ordinary staff and clerical support. If there is a need for extraordinary staff support or expert  
9                   assistance, the Special Master shall advise the parties.

10  
11                   1.     If the Special Master identifies the need for extraordinary staff support or  
12                   expert assistance, the Special Master shall notify the Parties in writing of the names of  
13                   the individuals to be retained and appointed, the purpose for their retention and  
14                   appointment, the scope of services for which they are to be retained and appointed and  
15                   the cost of retaining each one.

16                   2.     In the event the Parties agree to the individuals to be retained under this  
17                   section, they shall enter into a stipulation stating such and file it with the Court for  
18                   entry of an appropriate order making the appointment.

19  
20                   3.     The Parties agree that the Special Master shall consult with Dr. Leonard  
21                   Stevens and Dr. Gary Orfield on issues related to student assignment, including but not  
22                   limited to the implementation of the pilot student assignment plan pursuant to the  
23                   PUSP and the development of any student assignment plan that may be proposed in the  
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1           USP or the Final Unitary Status Plan. The Special Master may also consult with Dr.  
2           Leonard Stevens and with Dr. Gary Orfield on any other issues the Special Master  
3           deems appropriate.  
4

5           4. In the event the Parties do not agree (i) that additional assistance is  
6           required, (ii) on the individuals to be retained and appointed, (iii) on the purpose or  
7           scope of service of such assistance, (iv) that a particular individual requested by the  
8           Special Master is qualified or otherwise suited for the position, or (v) to the cost of  
9           retaining or appointing the individuals, that Party shall notify the Special Master in  
10          writing of its opposition within 10 days of the Special Master's written notification.  
11

12          5. The Special Master may file a request with the Court within 10 days of  
13          receiving any Party's opposition for an order approving such additional support and for  
14          additional compensation as necessary. The request shall be specific as to the  
15          assistance required, the individual to be retained and appointed and his scope of  
16          services, including any reasons that a particular individual expert requested by the  
17          Special Master is qualified or otherwise suited for the position, and the amount of  
18          compensation sought for such assistance.  
19

20          6. The Parties shall have ten (10) days to object to the request and the Special  
21          Master and any party supporting the additional services and/or the appointment shall  
22          have five (5) days thereafter to respond to such objections. Any objection must state  
23          with specificity the reason for the objection, including any reasons that a Party believes  
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1 that a particular individual requested by the Special Master is not qualified or  
2 otherwise suited for the position. There shall be no replies.

3  
4 7. The Court may thereafter enter an order either approving or denying the  
5 request filed by the Special Master and approving or denying the level of  
6 compensation sought by the Special Master for such assistance.

7 The Special Master is encouraged to work collaboratively with the District and its  
8 Superintendent in the interest of furthering effective formulation and implementation of the  
9 USP. The Special Master may make recommendations to the District, through the  
10 Superintendent, on matters of implementation and compliance with the USP, so long as the  
11 Special Master does not engage in actual implementation activities. The Special Master may  
12 prescribe formats for the District to use in providing information and data to the Special  
13 Master, and to the extent practical and possible, utilize District resources for the gathering and  
14 collection of data. This shall in no way be intended to limit the Special Master's authority to  
15 seek independent assistance in the review and analysis of such data or to order the District to  
16 provide additional data as needed.

17  
18 **VIII. Access and Communications**

19 1. The Special Master may engage in ex parte communications with the  
20 Parties, counsel or the Court, and may have ex parte communications with Party  
21 representatives or employees outside the presence of counsel.

22  
23 2. The Special Master shall have unfettered access to District staff, the  
24 Governing Board members, schools, and District data and information. The District

1 will respond promptly to the Special Master's requests for information. The Special  
2 Master may communicate directly with District personnel (i.e. without counsel  
3 present). The District may designate a "point person" to assist the Special Master and  
4 to coordinate communications with other District employees.  
5

6 3. Any communications with school staff (teachers, office staff, support  
7 staff, etc.) during employees' contract hours shall be coordinated through the site  
8 principal. This is not intended in any way to limit such communications, and the  
9 principal need not be present during any meetings with site staff. This is intended only  
10 to ensure that the orderly functioning of the school is not unduly disrupted.  
11

12 4. Any party requesting data or information from the District shall direct  
13 those requests through the Special Master, and the Special Master shall make any  
14 information gathered in response to such requests available to all parties.

### 15 **VIII. Termination of Special Master**

16 If not sooner terminated pursuant to this Article VIII, the Special Master's  
17 appointment shall end when this Court grants unitary status and terminates court oversight.

18 The Special Master's appointment may end sooner in the event of one of the following:  
19

20 1. The Special Master may resign at any time upon sixty (60) days' notice.

21 a. The Special Master shall give notice of such resignation to the  
22 Court and all parties specifying the effective date of the resignation.  
23  
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1           b.     The Special Master shall cooperate fully as necessary and as  
2           directed by the Court prior to the effective date of said resignation.  
3

4           c.     If there are any incomplete work products as of the effective date  
5           of the resignation, the Special Master may submit an Application for  
6           Payment for any time expended, and the parties shall have the opportunity to  
7           object to said Application for Payment as set forth in Section VI above.  
8

9           2.     Any of the parties may move for dismissal of the Special Master at any  
10          time. The motion for dismissal must include a statement of the alleged cause for said  
11          removal and the party's proposal for a new special master or other proceedings in lieu  
12          of a new special master appointment.

13          3.     The parties and the Special Master shall have twenty (20) days to  
14          respond to the motion to dismiss the Special Master;

15          4.     The moving party shall have ten (10) days to reply; and

16          5.     The Court shall thereafter enter its ruling.  
17

18 **IX.   Amendment of this Order**

19           This Order may be amended at any time upon notice to the parties with an opportunity  
20           to be heard.

21           /////  
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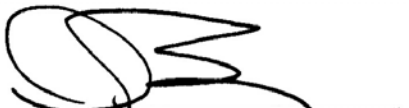
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1 **XI. Special Master's Testimony**

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3 Only this Court can require the Special Master to testify, orally or in writing, in any  
4 proceeding relating to this matter.

5 Dated this 5th day of January, 2012.

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David C. Bury  
United States District Judge