

2013 WL 12114024

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United States District Court, D. Arizona.

Roy and Josie FISHER, et al., Plaintiffs,
v.
UNITED STATES of America, Plaintiff-Intervenor,
v.
Anita Lohr, et al., Defendants,
and
Sidney L. Sutton, et al., Defendants-Intervenor,
Maria Mendoza, et al., Plaintiffs,
United States of America, Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.,
Defendants.

CV 74-90 TUC DCB, CV 74-204 TUC DCB

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Signed 11/20/2013

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Attorneys and Law Firms

Kristian Harrison Salter, Rubin Salter, Jr., Law Office of Rubin Salter Jr., Tucson, AZ, Juan Rodriguez, Matthew David Stricker, Cynthia Valenzuela Dixon, Thomas A. Saenz, MALDEF, Jennifer L. Roche, Lois D. Thompson, Proskauer Rose LLP, Los Angeles, CA, for Plaintiffs.

Michael John Rusing, Oscar Steven Lizardi, Patricia V. Waterkotte, J. William Brammer, Jr., Rusing Lopez & Lizardi PLLC, Todd A. Jaeger, Julie Cooper Tolleson, Samuel Emiliano Brown, Tucson Unified School District, Tucson, AZ, P. Bruce Converse, Paul Kipp Charlton, Steptoe & Johnson LLP, Phoenix, AZ, for Defendants.

ORDER

David C. Bury, United States District Judge

*1 The Court denies the Government's Motion for Referral to Magistrate Judge for Compliance Monitoring.

On August 10, 2011, the Ninth Circuit Court of Appeals issued its Mandate, remanding this case for further proceedings until this Court is satisfied that the School District has met its burden by *demonstrating*—not merely promising—its “good-faith compliance ... with the [Stipulation of Settlement] over a reasonable period of time.” *Fisher v. Tucson Unified School District*, 652 F.3d 1131, 1143 (9th Cir. 2011). “[This Court] must also be convinced that the District eliminated ‘the vestiges of past discrimination ... to the extent practicable’ with regard to all the *Green* factors.” *Id.* (citations omitted).

Subsequent to the remand, this Court opened the door for any party to propose partial withdrawal of judicial oversight as to any *Green* factor. (Order (Doc. 1320) at 5). No such proposal was forthcoming. Instead, all parties agreed that the Post Unitary Status Plan, approved by the Court on December 18, 2009, was an inadequate plan for attaining unitary status. *Id.* at 2-3. The Court was persuaded by Plaintiff Fisher's suggestion that an expert be appointed to guide the development and implementation of a desegregation plan by which the District would be assured to attain unitary status within a specified time frame. The Court decided to appoint a Special Master, pursuant to Fed. R. Civ. P. 53. *Id.* at 3.

The parties, including the United States Department of Justice, were afforded an opportunity to propose candidates and make objections, and the Court extended the deadline for the parties to attempt to agree on a candidate for appointment and on the roles and responsibilities of the Special Master. The Court appointed Dr. Willis Hawley on January 6, 2012, over the sole objection by Plaintiffs Mendoza. (Order (Doc. 1350)).

For the most part, the role and responsibilities of the Special Master were agreed to by the parties. Initially, the Special Master was charged with drafting the Unitary Status Plan (USP), within six months of his appointment, which after full briefing by the parties would then be adopted by the Court as proposed or modified and/or rejected at the Court's discretion. *Id.* at 4-7. Once adopted, the Special Master was charged with ongoing oversight of the USP, *id.* at 7, and for making annual reports to the Court regarding the District's progress in implementing the USP, *id.* at 8. The parties were afforded an opportunity to object to any such report filed by the

Special Master. *Id.* at 10.

The Special Master was encouraged to work collaboratively with the District, including matters of implementation and compliance and to prescribe formats for the District to use in providing information and data to the Special Master. The Special Master was given free rein to gather data necessary to fulfil his oversight and reporting responsibilities to the Court. The Special Master was precluded from engaging in actual implementation activities. *Id.* at 15-16.

*2 Shortly after his appointment, the parties agreed to work in collaboration with the Special Master to prepare the USP, which they agreed would address relevant *Green* and ancillary factors. On November 9, 2012, the parties filed the USP, which was stipulated to in all parts except for specifically designated areas of disagreement. On February 20, 2013, after briefing from the parties and public comment, this Court resolved the areas of dispute, (Order (Doc. 1436), and adopted the otherwise stipulated USP, (Order (Doc. 1449); USP (Doc. 1450).

During this time frame, the parties, the Special Master and this Court also considered challenges from the State of Arizona regarding ethnic study courses offered by the District's Mexican American Studies Department (MASD), school closures, boundary changes, and appointment of the Implementation Committee. All of these matters were presented to the Court for review and approval, with the Special Master filing a recommendation with the Court and full briefing by the parties.

The history recited above is reflected in the record. The Court has considered the suggestion by the Department of Justice and the District that a better record might be made if the case were assigned to a Magistrate Judge to hold monthly "compliance" conference calls and quarterly "status" conferences. The Court has considered the Plaintiffs and Special Master's objections, and for all the reasons stated by them, the Court denies the motion for referral to a magistrate judge. Most importantly, the Court finds that the procedures suggested by the Department of Justice would result in a broad expansion in judicial oversight, which this Court seeks to avoid except and unless some decision by the District will jeopardize the successful implementation of the USP. It would most certainly increase the confrontational nature of this case and impede what has been a difficult, but collaborative process to move the District towards attaining unitary status. Finally, the Court intentionally appointed a Special

Master with academic expertise and experience with school desegregation to guide the District and advise the Court. *See* (Fisher's Memo Re: Appointment of Special Master (Doc. 1343) at 9 (describing Mr. Hawley's qualifications, including work in the area of desegregation and serving as expert witness on questions of academic achievement, teacher evaluation and equity). The Magistrate Judge's expertise in assisting parties with settlement efforts remains available to the parties, and they or the Special Master may contact the Court for any such referral at any time they desire such assistance with any issue.

The Court finds that a referral to a magistrate judge and the review process suggested by the Department of Justice will not develop a record that will assist this Court with its final determination of whether or not unitary status has been attained. When the time comes, this Court will consider the degree and/or extent to which the USP has been implemented and whether or not the District on an ongoing basis has made its best efforts in regard to implementing the USP. The Court has taken care to ensure that the record is clear in regard to what has transpired in respect to the development and adoption of the USP.

The Court finds that the Special Master's recommended alternative proposal addresses the need to make a record in respect to developing Implementation Plans for the Plans of Action and other USP provisions that are being or will be monitored by the Special Master and the Implementation Committee. As noted by the Special Master in his Response, the process for reporting on the progress of the Implementation Plans may need to change as he moves towards monitoring implementation and reviewing the initial outcomes identified in the USP. (Special Master Response, October 28, 2013, at 5.) Ultimately, the Special Master must facilitate and monitor a smooth transition of his review and monitoring responsibilities to the District for its post-unitary operation. In other words, there may be future changes in processes for changed circumstances. Like this Order, any future Order to modify monitoring or reporting processes will recognize that the parties have entered into many agreements which represent delicate compromises, including agreements regarding their opportunities to review aspects of the USP and be heard by the Court regarding objections.

*3 The Court adopts the alternative proposal from the Special Master, with some modifications to accommodate the interests of the Court. The Court adopts the proposed

deadlines for the adoption of the Plans of Action, which include the development of the Implementation Plans prepared for each Plan of Action, as presented in Attachment 1. *See* Special Master Revised Timelines Memo, November 1, 2013; USP I(D)(1) and (6)). The Special Master suggests that for the record he will identify any Plans of Action already completed by filing status reports. Additionally, the Special Master will identify the other USP provisions/plans which the parties agree will be monitored by the Special Master or the Implementation Committee and provide a deadline for preparation of the corresponding Implementation Plan. The Special Master shall file a comprehensive addendum containing this information, with all the deadlines, past and future, for the development of Implementation Plans required under the USP and by agreement of the parties.¹

The parties have agreed that Plaintiffs will review and comment on certain USP provisions by reviewing and commenting on the provision's Implementation Plan. The Special Master and Implementation Committee will monitor the Implementation Plans.

Some USP provisions involve plans or programs requiring Board approval; a provision, plan or program adopted by the Board is called a Plan of Action. A Plan of Action includes its Implementation Plan. As to Plans of Action, the parties agree that Plaintiffs' objections shall be made in the first instance to the District and the Special Master, within 30 days after the District's release of the draft Plan of Action to the Plaintiffs for such review and comment. After receiving the Plaintiffs' comments, the Special Master has 30 days to work collaboratively with the parties to resolve any disputes.² The Plaintiffs may seek judicial review by requesting a Report and Recommendation (R&R) from the Special Master to the Court of any objection(s) not voluntarily resolved by the parties. USP § I(D)(1).

The Special Master having reviewed these reporting requirements, pursuant to USP § I(D)(6), recommends revisions which the Court finds are appropriate. The Special Master shall not report disagreements by R&R to the Court until the Board has formally acted to approve a Plan of Action. The Court adds that the parties shall specify the record to accompany the R&R only as it relates to "item(s) in issue."

The Special Master also suggests that he provide status reports regarding on-going oversight of the USP. The Court finds the Annual Report to this Court suffices because the Special Master or any party may bring any

matter to the attention of the Court, if necessary, at any time during the year. The Court defers to the Special Master's discretion to keep the parties updated during the year so that they may provide timely input to him regarding the effectiveness of the Implementation Plans, which he believes will facilitate collaboration and will assist him in preparing the Annual Report to the Court.

The Court finds that these modifications respect prior agreements between the parties made in the USP (Doc. 145) and reflected in the Court's Order appointing the Special Master (Doc. 1350). The Court believes that these processes will ensure that the Court's record is more transparent and easier to review.

Accordingly,

IT IS ORDERED that the Motion for Referral to a Magistrate Judge for Compliance Monitoring (Doc. 1491) is **DENIED**.

***4 IT IS FURTHER ORDERED** that the Request to Respond to Special Master's Proposals (Doc. 1495) is **DENIED**.

IT IS FURTHER ORDERED approving and adopting the deadlines for the Plans of Action as reflected in Attachment 1, which shall be included in a comprehensive Addendum: Monitoring USP Implementation Plans.

IT IS FURTHER ORDERED that within 30 days of the filing date of this Order, the Special Master shall provide the Court with the Addendum: Monitoring USP Implementation Plans.

IT IS FURTHER ORDERED that the Addendum: Monitoring USP Implementation Plans shall identify the deadlines for all Plans of Action, including those finalized before the adoption of this process, and for the deadlines for the other USP plans or provisions which are being monitored by the Special Master or the Implementation Committee which do not require Plans of Action, but require development of Implementation Plans, and shall identify each entry by specific citation to its relevant governing section(s) in the USP.

IT IS FURTHER ORDERED that subsequent to filing the Addendum, the Special Master shall file a Status Report for each previously approved Plan of Action, which shall include the final Plan of Action approved by the Board.

IT IS FURTHER ORDERED that, pursuant to USP § I(D)(6), the Court clarifies the process for judicial review as follows: 1) The request for judicial review by R&R shall be made after the Governing Board has adopted and/or approved a Plan of Action or it has otherwise been finalized by the school district. 2) Any party objecting to any aspect of a Plan of Action may request a R&R by the Special Master to the Court; the request must explain the objection(s) and identify the record relevant to support the objection(s). 3) All parties may provide the same in rebuttal to the objections within a time designated by the Special Master. 4) The Special Master's R&R shall explain the disagreement between the parties and his recommendation for resolution.

IT IS FURTHER ORDERED that pursuant to the USP § I(D)(1), which calls for expedited briefing, the Special Master's R&R shall be accompanied by "the Action Plan documents," which shall include "with respect to the item(s) in issue" the following: 1) the final Plan of Action; 2) all party requests for the Special Master to issue a R&R with respect to the final Plan of Action, and 3) the record of the parties' comments "with respect to the item(s) in issue," which shall include references to relevant portions of: the initial Plan of Action proposed by the District; written comments relating to the initial Plan of Action made by the parties and the Special Master during the 30 day comment period, any subsequent non-final versions to the initial Plan of Action, and written comments by the parties and the Special Master relating to such subsequent non-final versions(s). The matter will be considered fully briefed upon the submission of the R&R; THERE SHALL BE NO FURTHER BRIEFING UNLESS REQUESTED BY THE COURT.

IT IS FURTHER ORDERED that if, within the 30 day period for comments to the Special Master, no party calls for a R&R on a Plan of Action, the Special Master shall file a Status Report for the Plan of Action, which shall include the final Plan of Action approved by the Board.

***5 IT IS FURTHER ORDERED** that the Annual Reports by the Special Master to this Court are appropriate for keeping the Court updated regarding the status for the "other" plans or provisions being monitored.

IT IS FURTHER ORDERED that any Status Report related to an Order of the Court shall be filed by the deadline specified in the Order and shall include a reference to the Order's document number in the caption.

IT IS FURTHER ORDERED the Special Master shall provide periodic Status Reports to the parties regarding on-going oversight of the Implementation Plans.

IT IS FURTHER ORDERED that any Status Report, shall include: 1) critical milestones, past and future; 2) progress being made in meeting milestones; 3) obstacles to successful implementation, if any; 4) completion, if an end-date to the activities involved has been reached, and 5) any evidence about the effects of the efforts being made on student outcomes or changes in District policies and practices, as relevant.

IT IS FURTHER ORDERED that any R&R, Status Reports, and Annual Reports, required pursuant to these approved processes shall be posted on the District Web site. This Order and the Addendum: Monitoring USP Implementation Plans shall also be posted on the District's web site.

IT IS FURTHER ORDERED that the September 20, 2013, memorandum provided by the Special Master shall be treated as the R&R: Fisher Objection to Action Plan, VII(B)(2), District's Guidelines for Student Rights and Responsibilities (GSRR). The Court considers the Fisher Plaintiffs objection to the GSRR Plan of Action fully briefed; the Court will rule on the GSRR Plan of Action in a separate Order issued simultaneously with this Order. The Special Master shall file a Status Report for the GSRR, which shall include the final Plan of Action approved by the Board.

IT IS FURTHER ORDERED that the Court will file into the record any document to be filed by the Special Master.

IT IS FURTHER ORDERED that any filing with this Court, except for a R&R from the Special Master, requiring a decision by the Court should specify in its caption that it includes a "Motion for Action."

IT IS FURTHER ORDERED that the Clerk of the Court shall include in the docket entry for this Order the following: Motion for Referral to Magistrate Judge (Doc. 1491) DENIED; Request to Respond (Doc. 1495) DENIED; ATTACHED Special Master 11/1/13 Revised Timelines, Special Master 10/28/2013 Response to DOJ Motion to Refer to Magistrate Judge; Court APPROVES USP deadlines and monitoring processes; Court ORDERS Special Master to file Addendum: Monitoring USP Implementation Plans WITHIN 30 DAYS OF THE

FILING DATE OF THIS ORDER.

DATED this 20th day of November, 2013.

October 28, 2013

To: Honorable David C. Bury

From: Willis Hawley

Re: Response to October 15, 2013 Motion by the United States Department of Justice

Overview

On October 15, 2013 the Department of Justice (DOJ) filed a motion with the Court putatively aimed at enhancing the record of actions taken and not taken by the District in its efforts to implement the Unitary Status Plan (USP) for the Tucson Unified School District (TUSD). On October 17, TUSD formally joined in the DOJ motion.

There are two general consequences of the DOJ motion, joined in by TUSD: (1) to establish a process for systematically and accurately recording actions by the District and the Plaintiffs related to the implementation of the USP and (2) to change and diminish the influence on and monitoring of the USP by the Plaintiffs and the Special Master. I will deal with each of these consequences separately.

The Need for a Clear Record

*6 There is a need for a complete and accurate record of the District's actions taken and not taken to implement the provisions of the USP. The procedure proposed by the DOJ is, however, very cumbersome, likely to be ineffective and costly.

The processes proposed by the DOJ add significant activities to the work load of the parties and the Special Master while simultaneously diminishing their substantive responsibilities. One way to keep people from doing important and good work is to have them do

unnecessary work.

The reporting process for establishing a legal record in this case should be built on the already extensive procedures for commenting, reporting and monitoring of the USP. The proposed process below does just that. Few actions other than those already provided for in the USP will be needed to implement the reporting process I propose here.

Process to Memorialize the Record Relating to TUSD's Implementation of the USP

This reporting process shall include four types of actions (See Appendix A for definitions):

- a. Initial "Action Plans" for each of the provisions of the USP;
- b. "Implementation Plans;"
- c. Appointment of personnel to specific positions identified by the USP;
- d. Court Orders made subsequent to the initial approval of the USP.

(1) With respect to plans, policies, procedures and other significant changes ("Action Plans") subject to USP, Sec. I, D,1:

- a. If, after the Governing Board has adopted and/or approved an Action Plan or it has otherwise been finalized by the school district, any party objects to any aspect of that Action Plan and requests a report and recommendation to the Court, the Special Master shall file such report and recommendation in the court docket, appending to it all of the following: (i) the final Action Plan to which the report and recommendation is addressed; (ii) all party requests for the Special Master to issue a report and recommendation with respect to the final Action Plan; (iii) the initial Action Plan proposed by the District; (iv) the written comments relating to the initial Action Plan made by the parties and the Special Master during the 30 day comment period, (v) any subsequent non final revisions to the initial Action Plan; and (vi) all written comments by the parties and the Special Master relating to such subsequent

non final revision(s). (Items (i) through (vi) shall be referred to collectively as “the Action Plan Documents”).)

b. If, after the District has finalized an Action Plan, no party requests a report and recommendation to the Court, the Special Master shall file a copy of all Action Plan Documents identified in Section I (a) of this document.

c. With respect to Action Plans that were finalized before the development of the process herein, such as the USP Distribution and Training Plan and the Guidelines for Student Rights and Responsibilities, and any Action Plans that may be finalized before the within process is put in place, the Special Master shall file all Action Plans Documents for each such Action Plan in the court docket.

d. If any party believes that an Action Plan Document was omitted from the Special Master’s filing, it shall bring that omission to the Special Master’s attention within 10 business days of the Special Master’s filing and, if the Special Master agrees, he will supplement the filing.

*7 (2) With respect to all other provisions of the USP, including Implementation Plans and required appointments, and all Court orders issued pursuant to the Court’s on-going oversight of TUSD:

a. Within 15 business days of the adoption by the Court of the process proposed herein, the Special Master shall deliver to the parties a report on the status of implementation of the USP and compliance with relevant Court orders (“Initial Status Report”). The Initial Status Report shall follow to the extent feasible the format of the project management reports being developed by TUSD to track its implementation of the USP.

b. Within 15 business days of receipt of the Initial Status Report, the parties may provide their written comments on that report.

c. Within five business days of receipt of party comments, the Special Master shall file the Initial Status Report together with all party comments in the court docket.

d. Within 20 business days of receipt of the Initial Status Report, the Special Master shall consult

with the parties to obtain their comments and suggestions concerning the format for future implementation status reports. However, the final decision concerning format shall rest with the Special Master.

e. Commencing in January 2014, and for each quarter thereafter so long as the USP remains in force, the Special Master shall deliver to the parties a report on the status of implementation of the USP and compliance with relevant Court orders (“the Quarterly Status Report”), focused on the preceding three months. (Therefore, for example, the January 2014 Quarterly Status Report will cover the period from October 1, 2013 through December 31, 2013.)

f. Within 21 business days of receipt of a Quarterly Status Report, the parties may provide their written comments on that report.

g. Within five business days of receipt of party comments, the Special Master shall file the Quarterly Status Report on the court docket, together with all party comments (in pdf format and without modification, abbreviation, or reformatting).

(3) Except as set forth above, all provisions of the USP shall remain in full force and effect.

There would be no need for Court action on any matters reported to it in the context of this reporting process except those involving formal objections to a particular Action Plan by the Plaintiffs or the Special Master pursuant to Section I.D.1 of the USP and all actions taken under NARA provisions of the USP. The proposed process uses actions already undertaken by the parties and will not frustrate the Court’s understandable interest in judicial efficiency.

A summary version of the progress being made on each of the four types of reports, prepared by the Special Master, would be posted on the District’s USP website and updated as subsequent reports to the Court are filed.

The Character of the Monitoring and Reporting Processes Over Time

The system proposed above for reporting to the Court on progress being made in implementing the USP should be understood as part of a process of gradually moving from monitoring processes and initial outcomes to focusing on evidence of the effects of District action on the outcomes identified in the USP. This, of course, will affect the nature of the reporting process. But at least for the foreseeable future, the process proposed above will be appropriate.

*8 This gradual evolution of the monitoring and reporting process is important to the internalization and institutionalization by the District of the goals and practices embodied in the provisions of the USP. That is essential if the good work accomplished while the USP is in force is to be sustained once unitary status is achieved.

The Intent of the Motion to Limit the Roles of Plaintiffs and the Special Master

This motion by DOJ in which the District joins is one of a continuing set of readily documentable efforts by the District and, to a lesser extent, the DOJ, to limit the role of the Plaintiffs and the Special Master to make meaningful contributions to the implementation of the USP. The District's support of the DOJ motion focuses on the need for a more complete record of actions while implying that it will continue to work collaboratively with the Plaintiffs as though this motion would have no effect on the roles of the Plaintiffs and the Special Master. The District clearly understands that the proposed motion would reduce the extent of the influence the Plaintiffs and the Special Master can have on the implementation of the USP.

There is a trail of paper showing that the District continually seeks to restrict the role of the Plaintiffs and the Special Master. But two actions that came before the Court make the point.

Appointment of the Implementation Committee

In July, 2013, the Court approved the appointment of an Implementation Committee as provided for in Section X of the USP thereby creating a capacity to undertake continuing and comprehensive monitoring of the District's actions taken to implement the USP. This action

by the Court, it should be noted, was not supported by the District or the DOJ who, instead, urged the creation of a compliance monitor who would be based in California.

The Court's Action Related to Budget Expenditures

In the June 7, 2013 Order, the Court reaffirmed a substantial role for the Plaintiffs and the Special Master in the review and oversight of District actions related to the likely efficacy of programs it proposes to satisfy the requirements of the USP. The District had opposed such review and oversight asserting the prerogatives of the District to act with minimal oversight. In its Order, the Court rejected the District's effort to evade meaningful oversight.

The DOJ motion, supported by TUSD within 48 hours, shifts substantial responsibility for monitoring the USP to the District. Rather like putting the fox in charge of the chicken coop.

The Court has urged that the District be vested with responsibility for managing the implementation of the USP. I agree that the monitoring should be based, as much as possible, on the District's own project management efforts. But that is not the same as ceding responsibility for oversight. The DOJ motion would have the District initiate quarterly status reports using the July 2013 District report as a model. That report includes inaccuracies, is extremely cumbersome, and without close monitoring the extent of its accuracy or inaccuracy would not be known. Moreover, the capacity of the District to deliver on this responsibility is called into question by the fact that the October 1 status report required of the District by the USP has not yet been delivered. Further, eight months after the Court's approval of the USP, the District has not yet provided plans for implementing all of the thirteen project domains that it has defined and the project plans that are available to the Special Master and the Implementation Committee ("IC") vary a great deal in their specificity and overall adequacy.

*9 In a meeting with the District, the Special Master agreed to use the District's own weekly and monthly progress reports as bases for monitoring with the understanding that the District's reports would be verified as this appeared necessary. However, many of the weekly and the monthly reports submitted thus far do not provide evidence of progress and are uneven in their coverage.

The DOJ motion would place substantial responsibility for resolving differences in the hands of the Magistrate Judge. However, many issues can be resolved by turning to educational research and this has been the case so far. Court intervention therefore has not been required to date except on only two matters and one of these focused substantially on efforts by the District to narrow the responsibilities of the Plaintiffs and the Special Master.

The DOJ motion proposes to substantially change the role of the Implementation Committee, placing the Committee in limbo. The motion allows the District to seek their counsel (when they are supposed to be monitoring, not advising) and restricts access of the Special Master to consultation with the IC on a “monthly basis.” This, of course, would severely reduce the role of the Special Master and the IC in monitoring compliance.

Finally, the DOJ motion would supersede all reporting, compliance and monitoring not just of the provisions of the USP but all other Court orders in this case.

Appendix A—Definitions

Plans of Action

Plans of Action are of two types: (1) those that require review and comment by Plaintiffs and the Special Master and (2) those that are developed in the context of the monitoring process. Section I.D.1 of the USP provides for comments and review of a broad range of actions taken by the District in response to the USP. While there is some uncertainty about which actions *require* review and comment, the parties have agreed that certain provisions of the USP will require comment and review and the others will be overseen through the monitoring process with the understanding that (1) Plaintiffs can comment on any report of action resulting from the monitoring process and (2) the Plaintiffs can propose that this list be amended (see Attachment 1).

Implementation Plans

Despite the limitations of the District’s current processes for reporting on progress being made to implement the

USP, it seems sensible to use an improved version of that reporting (i.e., project management) system as much as possible so as to minimize duplication of effort and foster common understanding of the progress being made.

Once an Action Plan has been approved, that action will have an Implementation Plan (IP). Other provisions that the Parties have agreed upon can be monitored by the Special Master and the IC will also have an IP. The Special Master will submit a list of all provisions of the USP that now have or will have an IP to the parties to ensure that there is a common understanding of the topics to be included in the monitoring and reporting process.

Reports on each item in the IP will include: (1) critical milestones, (2) progress being made in meeting the milestones, (3) obstacles to successful implementation, if any, (4) completion, if an end-date to the activities involved has been reached, and (5) any evidence about the effects of the efforts being made on student outcomes or changes in District policies and practices, as relevant. Note that many provisions of the USP are related to the cycle of activities that make up the business of the District and take place during specific periods of the school year so that the volume of reports will vary across reporting periods. And over time, the frequency and character of monitoring will change so as to reduce the level of reporting.

Reports on Appointments

***10** The USP requires the District to make some specific appointments and in some cases lists the qualifications. For those appointments that identify qualifications, reports on whether the appointees meet the qualifications will be provided. This seems necessary only with respect to initial appointments. These reports are different from those that will be made about the processes related to recruitment and selection of personnel covered in Section IV of the USP. Relevant provisions from Section IV will be addressed in the reports on Implementation Plans.

Reports on Court Orders

Since the approval by the Court of the USP, several Orders have been issued (e.g., school closures and budget related matters) that require District action. These actions

by the District will be listed and their status will be described in the same way as reports on the Implementation Plans described above.

The revised timelines for completion of the actions by the District on the plans below are:

Attachment 1

1. Recruitment plan	12.1
2. RIF plan	12.2
3. First year teacher pilot plan	10.23
4. Underperforming/Struggling teacher plan	12.16
5. Aspiring leaders plan	10.30
6. Magnet plan 2013-15	10.23
7. FCI	11.1
8. UHS admissions plan	10.23
9. USP budget criteria	11.4
10. Student support criteria	11.1
11. Transfer to and from district schools	12.1
12. MASS reading improvement plan	8.28 (done)*

13. Boundary review process	11.1**
14. Admission process/Oversubscribed schools	12.15
15. Extra-curricular equitable access plan	12.15
16. Marketing and outreach plan	11.15
17. Provisions of the Family Center plan related to family information about school enrollment options	11.1
18. Technology condition index	1.31.14
19. Drop out and retention plan	2.15.14
20. Family engagement plan (includes Family Center plan)	2.15.14
21. ALE access and recruitment plan	1.29.14
22. Teacher evaluation procedures	12.1
23. Principal evaluation procedures	12.1
24. Criteria for overhead costs	11.15
25. Budget process	11.15

26. Comprehensive magnet plan

6.1.14

27. Comprehensive boundary plan

6.1.14

*Unless the plaintiffs object, the revision of the MASS reading program will be handled through the monitoring process with a report to the Plaintiffs by the Special Master prior to implementation. When the District's budget proposals are submitted, the Plaintiffs will have the opportunity to review and comment on the MASS program, as well as all other programs supported by the budget.

**This is to approve the process, not the boundaries.

November 1, 2013

To: The Honorable David C. Bury

From: Willis Hawley, Special Master

Re: Revised Timelines

When the USP was developed, timelines were set for developing plans for implementing numerous provisions of the USP. Many of these timelines were unrealistic. This reality is recognized by a provision of the USP allowing the parties to revise these timelines. I have been asked by the Court to facilitate the settings of revised timelines for implementing the provisions of the USP. After consultation with the parties, including the District, I now submit firm timelines for 27 provisions of the USP for which the District shall be held accountable. These timelines will also be available to the community so that progress in implementing the USP can be tracked.

There are, of course, other provisions of the USP yet to be addressed and these will be monitored by the Implementation Committee under my supervision with regular reports on progress being made to the parties and the Court. If in the future, a timeline cannot be met, the District must formally request agreement by the Plaintiffs and the Special Master to the change.

*11 The District has been working to maximize the engagement of the Plaintiffs and the Special Master and

the processes for input may exceed the required steps provided for in the USP. However, in order to establish end dates for the District's action to establish policies and procedure for implementing specific provisions of the USP identified below, four conditions for each review item are needed:

(1) The parties agree on a date for final action by the District. One working day later the District distributes the content of the final action to the Plaintiffs and the Special Master.

(2) Dates for formal comments and review by Plaintiffs and the Special Master to be set at least 30 days prior to the date for final District action unless the District proposes a period for further consultation (this would not change the timeline for final action being proposed here). This puts the detailed timelines in the hands of the District, except for the provision above, and adheres to the wording of the USP. It is in the interest of effective collaboration and the avoidance of objections to final action that the District provide time for discussion prior to submitting the proposal for final approval to the Board or the Superintendent. This will likely vary depending on the complexity of the issue.

(3) The District sets a date by which it identifies its plan for acting to develop the proposal required by the USP. On this date, it provides information to the Plaintiffs and the Special Master that is identified in the memo on common processes (e.g., information and general methods to be used in developing proposals) and the Plaintiffs and the Special Master have 10 days to provide feedback. This date is driven by the provisions above.

(4) Because of the possibility of objection and Court action, the date for Board or District leadership approval should be at least 30 days prior to the date at which the plan involved should be implemented

It follows that the Parties need only agree on the specific dates for reports of final action by the District. The other

provisions are set by the USP and by an agreement about common processes (yet to be finally approved). The provision of the USP related to objections apply unless that provision is amended.

The revised timelines for completion of the actions by the District on the plans below are:

1. Recruitment plan	12.2
2. RIF plan	12.2
3. First year teacher pilot plan	10.23
4. Underperforming/Struggling teacher plan	12.16
5. Aspiring leaders plan	10.30
6. Magnet plan 2013-15	10.23
7. FCI	11.1
8. UHS admissions plan	10.23
9. USP budget criteria	11.20
10. Student support criteria	11.20
11. Transfer to and from district schools	12.1
12. MASS reading improvement plan	8.28 (done)*
13. Boundary review process	11.1**

14. Admission process/Oversubscribed schools	12.18
15. Extra-curricular equitable access plan	12.18
16. Marketing and outreach plan	11.15
17. Provisions of the Family Center plan related to family information about school enrollment options	11.15
18. Technology condition index	1.31.14
19. Drop out and retention plan	2.15.14
20. Family engagement plan (includes Family Center plan)	2.15.14
21. ALE access and recruitment plan	1.29.14
22. Teacher evaluation procedures	12.1
23. Principal evaluation procedures	12.1
24. Criteria for overhead costs	11.15
25. Budget process	11.15
26. Comprehensive magnet plan	6.1.14

27. Comprehensive boundary plan

6.1.14

***12** *Unless the plaintiffs object, the revision of the MASS reading program will be handled through the monitoring process with a report to the Plaintiffs by the Special Master prior to implementation. When the District's budget proposals are submitted, the Plaintiffs will have the opportunity to review and comment on the MASS program, as well as all other programs supported by the budget.

**This is to approve the process, not the boundaries.

All Citations

Not Reported in Fed. Supp., 2013 WL 12114024

Footnotes

¹ Hereafter, any document provided to this Court pertaining to an identified Plan of Action or other plan or provision identified in the addendum shall be identified as specified in the addendum.

² Arguably there is some confusion so the Court takes this opportunity to clarify that revisions by the District during the 30-days allowed for collaboration to resolve objections does not re-trigger the 30-day comment period, but Plaintiffs are not precluded from making follow-up comments. (Special Master R&R: Fisher Objections to GSRR, Attachment E: District's Comments at 128.)