

2014 WL 12585767

Only the Westlaw citation is currently available.
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

Signed 01/07/2014

Attorneys and Law Firms

Kristian Harrison Salter, Rubin Salter, Jr., Law Office of Rubin Salter Jr., Tucson, AZ, Juan Rodriguez, Matthew David Strieker, Cynthia Valenzuela Dixon, Thomas A. Saenz, MALDEF, Jennifer L. Roche, Lois D. Thompson, Proskauer Rose LLP, Los Angeles, CA, James Eichner, Zoe M. Savitsky, US Dept. of Justice, Washington, DC, for Plaintiffs/Plaintiff-Intervenor.

Edmund D. Kahn, Law Offices of Edmund D. Kahn, Julie Cooper Tolleson, Samuel Emiliano Brown, Tucson Unified School District, Michael John Rusing, Oscar Steven Lizardi, Patricia V. Waterkotte, J. William Brammer, Jr., Rusing Lopez & Lizardi PLLC, Todd A. Jaeger, Tucson Unified School District Number 1, Tucson, AZ, P. Bruce Converse, Paul Kipp Charlton, Steptoe & Johnson LLP, Phoenix, AZ, for Defendants/Defendants-Intervenor.

David C. Bury, United States District Judge

*1 The District seeks reconsideration of the Court's Order, filed on December 20, 2013, granting in part and denying in part the District's Motion for Reconsideration of an Order filed December 2, 2013, wherein the Court reconsidered the expedited briefing provisions for R&Rs submitted for the Plans of Action being developed and implemented under the Unitary Status Plan (USP). In the Court's Order granting in part and denying in part the District's last motion for reconsideration, the Court failed to recite the standard of review for a motion for reconsideration.

At the outset, now, the Court notes for the District's benefit that motions to reconsider are appropriate only in rare circumstances:

The motion to reconsider would be appropriate where, for example, the court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the court. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983); *see also, Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *School Dist. No. 1J, Multnomah County, Oregon v. AcandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

A motion to reconsider an order denying or granting a motion to reconsider would be appropriate in only the

ORDER

most rarest and extreme of circumstances. The District asserts the Court committed manifest error because it: 1) cannot modify provisions for review set out in the Order appointing the Special Master; 2) cannot *sua sponte* interpret a contract (the USP) where the parties have not yet briefed their positions regarding its terms, *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1986), *Miller v. Fairchild Indus.*, 797 F.2d 727, 733 (9th Cir. 1986), *Vertex Distributing Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 892 (9th Cir. 1982); 3) cannot deny TUSD's objections to an R&R without determining *de novo* whether the District is in compliance with the USP and the Constitution, *United States v. South Bend Community School Corp.*, 511 F. Supp. 1352 (N.D. Ind. 1981), *United States v. Choctaw County School District*, 941 F. Supp. 2d 708, 715 (Miss 2013), and 4) cannot strike the shortened objection, pursuant to local rule page limits provided for in LRCiv 7.2(e)(1) by counting the 8-pages contained in a separate statement of facts.¹ The District complains the Court did all of these things when it ruled on the District's last two motions for reconsideration. (Order (Doc. 1529).)

*2 The Court finds no new facts or circumstances surrounding the District's assertions concerning these matters. The Court considered all of the arguments and case law relied on by the District in its Motion for Reconsideration points one and three, including arguments going to the merits of the CAIMI made in the Shortened Objection, which was stricken for being in excess of the page limit. (Order (Doc. 1529) at 2, 8), *see*

also (Motion for Reconsideration, Exhibit A (Doc. 1521); District's Objection (1518) STRICKEN); District's Objection (1523) (STRICKEN). The Court finds no merit to the argument that it committed manifest error in application of the local rule for page limits. The Court finds the District's application of general contract law in its second assertion of manifest error regarding interpretation of consent decrees, while good law, is not applicable to the question of whether the UHS Admission Process Revisions should or should not contain an experimental Intrinsic Motivation Inventory test: the CAIMI. The Court finds no manifest error of law or fact in its Order issued December 20, 2013

Accordingly,

IT IS ORDERED that the Motion for Reconsideration of the Court's Order issued December 20, 2013, granting in part and denying in part the District's Motion for Reconsideration of Order filed December 2, 2013 (Doc. 1533) is DENIED.

DATED this 7th day of January, 2014.

All Citations

Not Reported in Fed. Supp., 2014 WL 12585767

Footnotes

¹ TUSD also filed a Motion for Reconsideration of the Order (Doc. 1520), issued December 16, 2013, which struck TUSD's first Objection and Response to Special Master's R&R Re: UHS Admissions Revision Process because it was 8-pages in excess of the 17-page limit. (District's Motion for Reconsideration (Doc. 1524).) The Court's Order of December 20, 2013, denied this Motion for Reconsideration. (Order (Doc. 1529) at 9.)