

2016 WL 3135834

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United States District Court, D. Arizona.

Roy and Josie FISHER, et al., Plaintiffs  
and  
United States of America, Plaintiff-Intervenor,  
v.  
TUCSON UNIFIED SCHOOL DISTRICT, et al.,  
Defendants,  
and  
Sidney L. Sutton, et al., Defendants-Intervenor,  
Maria Mendoza, et al., Plaintiffs,  
and  
United States of America, Plaintiff-Intervenor,  
v.  
Tucson Unified School District, et al. Defendants.

Nos. CV-74-00090-TUC-DCB,  
CV-74-0204-TUC-DCB

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Signed 06/06/2016

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#### ORDER

David C. Bury, United States District Judge

\*1 In its Order regarding TUSD's Notice and Request for Approval (NARA) to open new middle schools and, correspondingly, move students from one school to another, this Court called for a report on efforts taken, and which could be taken, at Roberts-Naylor K-8 school to make it a more attractive sixth through eighth grade option for students attending Borman K-5 school, which is located on the Davis Monthan Air Force Base (DMAFB). TUSD has filed the Roberts-Naylor report, and the Special Master has filed a Report and Recommendation (R&R). He recommends that this Court now approve the addition of grades six through eight at the Borman K-5 school. There is no objection to this recommendation from the Mendoza Plaintiffs or the United States Department of Justice, but the Fisher Plaintiffs continue to object to this reconfiguration.

The Fisher Plaintiffs reiterate the Court's past expressions of concern regarding Roberts-Naylor, which has an approximately 90% minority student body and is a C school, with the majority of the minority students being Black. In comparison, Borman Elementary School serves a predominately Anglo student body and is an A school. TUSD proposed adding the sixth through eighth grades at Borman to retain these students rather than see them move to the on-base charter school, Sonoran Science Academy, or move out of the district to parochial or charter schools, or the A-rated Vail School District. The Court asked two questions: 1) whether any measures have been or could be taken at Roberts-Naylor to transform it into a viable K-8 program capable of competing with the middle schools now attracting the Borman students, and 2) explain why it is, or is not, feasible to implement any such identified measures at Roberts-Naylor. Upon further review of TUSD's Roberts-Naylor report and the Special Master's R&R, the Court finds that Roberts-Naylor is not a viable option to adding grades six through eight at Borman because the Borman school is on-base and students attending Borman want to remain on-base.

First, it is important to note that 70 percent of the Borman Elementary Students will transition to the on-base charter school, Sonoran Science Academy. This leaves

approximated 17 students in play. School year 2015-2016 reflects that of the 17 students that will not attend Sonoran Science Academy, one enrolled in Roberts-Naylor and two enrolled in Alice-Vail, a TUSD school in equally-close proximity to the base as Roberts-Naylor, and Alice-Vail is a B school, with a self-contained GATE program. (SM Supp R&R (Doc. 1937) at n.1 (reflecting the transitions made in SY2015-16)). The proposed improvements at Roberts-Naylor would make it the equal to Alice-Vail, but for the racial concentrations at the two schools. Alice-Vail has an Anglo student population of 32%, Hispanic students are 49.2% and Black students are 11.2%. (TUSD 2014-2015 Annual Report, Entry Grade Enrollment by School for Last Three Years.) As explained by the Special Master, there is a tipping point where students of one race will not choose schools that have few or no students racially akin to themselves. He suggests the tipping point has been breached at Roberts-Naylor where Anglo students are only one out of nine. (SM R&R (Doc. 1937) at 5.)<sup>1</sup>

**\*2** There is no reason to believe that if Alice-Vail cannot attract more than two Borman students, a new and improved Roberts-Naylor school would succeed where Alice-Vail has failed. Additionally to make Roberts-Naylor academically competitive with Alice-Vail and the Sonoran Science Academy, it would require substantial improvements in the quality of teaching which could not be accomplished without significant financial incentives and would undermine teacher morale there and in other schools in the District. *Id.* at 4.

Second, it is important to note that the addition of grades six through eight at Borman will be financed by Arizona's per-pupil funding allocation which follows these students. Because 70% of the Borman students will move to the Sonoran Science Academy without the Borman addition, the per-pupil dollars associated with them will follow them to the Sonoran Science Academy and, therefore, are

not available to make improvements at Roberts-Naylor. If, however, the grades are added at Borman, these students will be retained there and, corresponding, the per-pupil funding allocation for them will flow to Borman to finance the addition of grades six through eight.

The Court finds that military families have a unique desire to have their children attend on-base schools, which is related to safety concerns and on-base support resources. (April 27, 2016 letter: Col. Rodger G. Schuld, USAF.) This reality is reflected in the current choices being made by the majority of parents to send their children to the charter on-base school instead of Alice-Vail. The Court is confident that improving Roberts-Naylor to the same standing as Alice-Vail would not result in drawing Borman students off-base. Adding middle-school grades at Borman will impact the Sonoran Science Academy, including stripping away that charter-school's per-pupil allocations for the benefit of improving a TUSD school, Borman. Simply put, further study reflects that because Roberts-Naylor is not on-base it is not a viable alternative.

**Accordingly,**

**IT IS ORDERED** that the Court adopts the Special Master's recommendation (Docs. 1933, 1936, 1937) and approves the addition of grades six through eight at Borman Elementary School.

Dated this 6th day of June, 2016.

#### **All Citations**

Not Reported in Fed. Supp., 2016 WL 3135834

#### **Footnotes**

<sup>1</sup> See also TUSD Roberts-Naylor report explaining that 20% of the student population are refugees from around the world, including the Congo Republic, Iraq, Syria, Bhutan, etc., and 34% of the student population is English Language Learners (ELL) with languages beyond English and Spanish, including Arabic, Somali, and Nepalese. Of course this diversity comes with attendant academic challenges, but it also has the unique potential to offer insights into an array of international cultures similar to advantages cleaned in student foreign exchange programs— here, instead of abroad. Hence, Roberts-Naylor might someday see academic weakness become strengths.

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