

1 The Court grants the Request for Approval of School Closures, subject to the
2 recommendations of the Special Master.

3 On January 2, 2013, the District filed a Notice and Request for Approval of School
4 Closures. The District seeks to close eleven schools, as follows: four middle schools
5 (Hohokam, Carson, Maxwell, and Wakefield); five elementary schools (Schumaker, Corbett,
6 Lyons, Brichta, and Menlo Park); one K-8 school (Ft Lowell-Townsend), and one high
7 school (Howenstine). The purpose of these closures is to address a budget deficit; they are
8 not called for by the recently adopted Unitary Status Plan (USP). The USP requires that
9 these closures do not have an adverse impact on the ongoing desegregation obligations being
10 undertaken pursuant to it, and the USP and the Constitution require that closing schools to
11 address budgetary problems does not disproportionately burden minority students.

12 It is undisputed that Tucson Unified School District (TUSD) anticipates a 17 to 18
13 million dollar deficit in fiscal year 2013-2014, which begins July 1, 2013. Closing these
14 eleven schools will result in a savings of approximately \$4 million dollars. The District
15 proposes closing six schools rated D and four rated C.¹ As for the D schools being closed,
16

17 ¹In 2012, the State of Arizona changed its rating system for schools. Previously
18 schools were rated excellent to failing based on the number of students in the school passing
19 the AIMS test. Now, the ratings also capture how much students academically grow each
20 year and the schools are graded A-F. An “A” school demonstrates an excellent level of
21 performance: earning points equal to a school that has 90 percent of students passing AIMS
22 and achieving greater academic growth with its student population than most schools. A “B”
23 school demonstrates an above average level of performance: earning points equal to a school
24 that has 70 percent of students passing AIMS and achieving typical or greater academic
25 growth with its student population than most schools. A “C” school demonstrates an average
26 level of performance: earning points equal to a school that has 50 percent of students passing
27 AIMS and achieving typical academic growth with its student population compared to most
28 schools. A “D” school demonstrates an average level of performance: earning points fewer
than a school that has 50 percent of students passing AIMS and does not achieve typical or
greater academic growth with its student population than most schools. A.R.S. § 15-241 (H).
Improvement plans must be developed and implemented for schools receiving D or F grades.
15-241 (K-HH).

1 Hohokam, Carson, Ft Lowell/Townsend, Lyons, Menlo Park, Maxwell, and Howenstine, the
2 receiving schools Valencia and Maxwell K-8, and Safford K-8 are also D² schools, but
3 Secrist, Whitmore, and Erickson are C schools and Tolson is rated B. Howenstine is a
4 magnet high school serving a large specialized needs student population, with no designated
5 receiving school because these students will be assigned to their home high schools or
6 Project More. As for the C schools that are being closed, Schumaker, Corbett, Wakefield,
7 and Brichta, the receiving schools, Bloom, Hudlow,³ and Van Buskirk, are also C schools
8 and Henry, Wheeler, Kellond, Hollinger K-8, and Tolson are rated B.

9 It is undisputed that TUSD is losing students every year and currently has 13,000
10 empty seats. As noted by both the Fisher and Mendoza Plaintiffs, most of the schools the
11 District proposes to close are “operating significantly under capacity and are expected to
12 remain under capacity well into the future.” (Notice/Request for Approval of School Closures
13 (Notice) (Doc. 1419) at 6); (Fisher Objections (Doc. 1424) at 11). “Those that are not
14 significantly under capacity are smaller schools, . . .” (Notice at 6.)

15 The Fisher Plaintiffs argue that operating under capacity might “just as reasonably
16 be cited as grounds for reassigning students to [a school], rather than away from it, . . .”
17 (Fisher Objection at 11.) The District did not, however, base the decision solely on this one
18 criteria. The District also considered renovation costs at receiving schools, enhancement of
19 learning opportunities, equitable allocation of resources, options for disposition of closed
20 sites, distribution of programs and grade configurations throughout the district, impact on
21

22
23 ²The receiving schools having the same grade reflect point differences ranging from
24 +5 to +10, which are not insubstantial because a 10-point gain in a given school year
represents a half year gain in average achievement. (Recommendation at 9.)

25 ³The Mendoza Plaintiffs point out that Hudlow, a “C” receiving elementary school,
26 has been designated a Focus School, which requires it to operate under a Title I-improvement
27 plan aimed at ensuring educationally disadvantaged students attending Hudlow achieve high
academic success.

1 possible loss of students to the District, travel times for students, and effects on integration.
2 (Special Master Recommendation (Recommendation) at 3.) As for the District's decision
3 to close smaller schools, according to the Special Master, "[s]tudies find that, in general,
4 small schools have higher per pupil costs without commensurate higher achievement." *Id.*
5 So, with the exception of boutique schools with distinctive programs, small schools often
6 limit student learning options and undermine teacher teaming and other benefits that flow
7 from larger professional learning communities. Small schools add to the number of
8 administrators in a district and require more highly effective school-level leaders," such as
9 principals. *Id.* at 3-4.

10 The Special Master recommends this Court approve the proposed school closures.
11 He explains that not closing these schools will result in the District having to find
12 approximately \$4 million dollars in savings from staff and program cuts. Even with the
13 school closures, the District must look to staff and program cuts to reduce the remainder of
14 the deficit, which is over \$10 million dollars.

15 The Court notes that neither the Plaintiffs Fisher nor Plaintiffs Mendoza suggest
16 alternative school closures. Both argue that the District's School Master Plan (SMP) could
17 not have been guided by the USP because the District's preparation of the SMP was
18 simultaneous to the preparation of the USP. Therefore, the SMP as a matter of fact could not
19 have been informed by the USP.⁴ Both Plaintiffs complain that the impact analysis
20 conducted by the District was inadequate and did not consider every *Green* factor. Both
21 Plaintiffs ask this Court to deny or defer ruling on school closures until revised impact
22 statements are done, pursuant to USP provisions which detail such impact statements. The
23 Court finds, however, that the District faces a serious budget crisis for fiscal year 2013-2014,
24 which must be addressed now. With no better alternatives suggested by the Plaintiffs or the

25
26 ⁴The Court notes that the USP was, however, in large part drafted by stipulation, and
27 the District knew the stipulated provisions.

1 Special Master, the Court finds the District has taken a balanced approach to address the
2 budget deficit by proposing to close eleven schools for a savings of approximately \$4 million
3 dollars, with the remainder of the deficit to be addressed by other means such as revenue
4 and/or staff and program cuts.

5 The District asserts that the Court's role, here, is limited by the nature of the original
6 integration efforts under the 1978 Settlement Agreement. However, as noted by the Plaintiff-
7 Intervenor, the Department of Justice, closing these schools will affect among other things:
8 attendance boundaries, student assignment patterns, the number and location of administrator
9 and certificated staff positions, and the resources available for students across the district,
10 including resources necessary to address the student achievement goals under the USP. "In
11 short, the closures will have implications for the District's legal obligations under each of the
12 *Green* factors." (Department of Justice (DOJ) Objection (Doc. 1425) at 2 (citing *Green v.*
13 *Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430 (1968)). Accordingly, this Court considers
14 whether the proposed closures are designed in accordance with the goals of the USP and
15 whether the school closures, addressing the district-wide budget deficit, place a
16 disproportionate burden on African American and Mexican American students. *Id.* at 3-4
17 (citing *Fisher v. Lohr* 821 F. Supp. 1342, 1345 (Ariz. 1993) (citing *Harris v. Crenshaw*
18 *Cnty. Bd. of Educ.*, 968 F.2d 1090, 1097-98 (11th Cir. 1992)).

19 Informed by the Plaintiffs' objections, the Special Master considered the effect of
20 the District's specific proposals on contemporary and future desegregation, including the
21 short run impact on integration and student's access to better schools and, most importantly,
22 whether these closures will negatively affect future options for achieving greater integration.
23 The Court finds his recommendations to be sound and his concerns warranted.

24 The Special Master reviewed the District's proposed closures, considering whether
25 alternatives exist to accomplish greater integration now or in the future and whether there
26 were better schools available as receiving schools. He looked at the distances between each
27

1 closing school and the proposed receiving schools; looked at all possible receiving schools
2 for each closing school that were within the radius to the most distant school to which
3 students had been assigned and added a mile or two; then he looked at the achievement
4 scores based on state measures, the percentage of free and reduced lunch students, school
5 standing with respect to Annual Yearly Progress (AYP),⁵ the integration status and
6 percentages of students in each racial and ethnic group, and the degree of utilization.

7 The Special Master reported a few cases where a better choice either for integration
8 or for a better rated school was arguable, but in each instance the alternative school was
9 either lower performing, “racially concentrated,”⁶ and/or was at or very near capacity. There
10 was no clear better option. The Special Master found the District made reasonable choices,
11 which this Court notes does not mean they were easy choices.

12 The closures, undisputably, move students further away from home and diminish the
13 role of the neighborhood school in TUSD. But this is in keeping with the USP, which calls
14 for more integration, pursuant to a student assignment plan based on school choice driven
15 by magnet program incentives. While every student is assigned a school based on their
16 residence, they may attend any school in the District as long as there is available space at the
17 school. If attendance at the school of their choice improves its integration status, the District
18

19 ⁵Title I schools are required to make and report Annual Yearly Progress.

20 ⁶The USP defines “racially concentrated” as a school in which any racial or ethnic
21 group exceeds 70% of the total enrollment; “integrated” as a school in which no racial or
22 ethnic group varies from the district average for that grade level by more than +/- 15
23 percentage points, and in which no single racial or ethnic group exceeds 70% of the total
24 enrollment. Of the schools at issue, “integrated” schools include: Howenstine Magnet High
25 School; Ft Lowell/Townsend K-8, and elementary schools Lyons, Corbett, and Wheeler. The
26 SMP closes Howenstine, Ft. Lowell/Townsend K-8, Lyons, and Corbett. Wheeler
27 elementary school is a receiving school. Racially concentrated schools include: middle
28 schools Valencia, Maxwell, and Wakefield; Maxwell K-8, Safford K-8, Hollinger K-8, and
elementary schools Brichta, Menlo Park, Tolson, and Van Buskirk. The SMP closes
Maxwell, Wakefield, Brichta, and Menlo Park. The others are receiving schools.

1 will provide free transportation for the student to attend the school. The magnet plan to be
2 developed under the USP should create academic incentives for students to attend schools
3 strategically located outside their demographically concentrated neighborhoods to maximize
4 integration.

5 Plaintiffs complain that the school closures should do more than not exacerbate the
6 current ethnic imbalances among schools, but offer no alternative suggestion except to delay
7 the decision until it can be made in the context of implementing the USP provisions for
8 improving integration. The Court finds it is impossible to ignore the fiscal realities faced by
9 TUSD today, while the magnet plan is developed and implemented over the coming year.
10 The Court does intend to take a hard look at the fiscal side of the USP, however, to ensure
11 real budget constraints exist which cannot be addressed by some alternative to cutting
12 programs and staff, especially staff cuts that directly impact classrooms.

13 Plaintiffs argue that the move away from middle schools may negatively impact
14 future options for achieving greater integration in TUSD because middle schools generally
15 draw from wider boundaries. While true generally, the Special Master reports that in TUSD
16 the proportion of white students is lower in middle than in elementary or high schools. The
17 District's proposed school closures eliminate four middle schools, with students from three
18 of the closed middle schools moving to K-8 programs. The students from Hohokam Middle
19 School will relocate to Valencia Middle School. To the extent the Plaintiffs are concerned
20 about retaining neighborhood schools, the K-8 move may retain neighborhood schools to
21 some extent. ⁷ The District will be left with eight middle schools and eight K-8 schools.

22
23 ⁷The Court has read and considered the heart-felt letters from the community
24 regarding the positive attributes of the schools proposed by the District for closure.

25 The Court called for additional investigation by the Special Master into the proposed
26 closing of Wakefield middle school. He agrees that some facility improvements at Wakefield
27 will be lost, but overall the receiving schools will be able to provide academic services equal
28 to those currently available at Wakefield. Hollinger elementary is a B school, which the
District commits to growing to a K-8 program, correspondingly, to meet student progression,

1 Based on the Recommendation provided by the Special Master, the Court finds that
2 the proposed school closures result in students attending slightly better schools, however,
3 moving from one school to another “invariably negatively” impacts student achievement and
4 affects all the students, those entering the new school and their classmates.
5 (Recommendation at 10.) In this way, any advantages in academics from the school closures
6 related to the movement of students to better rated schools will be offset by the fact of the
7 move. The Court finds that the proposed closures will not exacerbate ethnic imbalances in
8 TUSD nor impede future integration efforts planned under the USP, but the Court’s findings
9 suffer from being rushed by fiscal necessity and made without the benefit of the assessment
10 tools now available pursuant to the USP.

11 For example, the District has not identified “the specific staffing and programmatic
12 changes that will occur at each school’ despite the importance of the continuity of staffing
13 and programs at the receiving schools on District integration efforts.” (Mendoza Objection
14 at 7 (quoting Notice at 7)). “Programs and staffing related to ELLs, GATE, and exceptional
15 _____

16 and it has a dual language program. Wakefield only has an English Language Development
17 program. Utterback is a middle school arts magnet school, with facilities for music and art
18 that do not exist at Wakefield. Programs at Wakefield that are not facility dependent and
19 should readily transfer with the student body. The main reason, however, for closing
20 Wakefield is student attrition; the neighborhood simply cannot support both Hollinger and
21 Wakefield. Between the two, the District has reasonably chosen to close Wakefield. For
22 clarification, Hollinger is a B (126 points) school; Utterback is a D (89 points) school, and
23 Wakefield is a C (105 points) school. The cut off between a D and C school is 99 and 100.

24 The Court is aware that communities take pride in their neighborhood schools. The
25 letters from parents and students at Menlo Park reflect this. The District explains that it will
26 merge the small elementary schools of Brichta and Menlo Park together on the Maxwell
27 campus, which will provide advantages of combined resources and services to support
28 students.

 The Court is committed to offsetting the negative impact of closing Menlo Park and
all the other schools to the greatest extent possible. The Special Master is charged here and
through the USP to oversee these closures to ensure the District moves to improve Utterback
magnet school and that services available at closed schools, such as Menlo Park, transfer to
receiving schools.

1 education, among other programs, are critical to the integration efforts outlined in the USP.”

2 *Id.* The District’s SMP does not commit to the continuance of these programs and staffing
3 levels at receiving schools. *Id.* The Plaintiffs complain that the District has not undertaken
4 any analysis of the impact of school closures made in 2010 as to how it affected student
5 achievement, which they could now turn to for guidance. *Id.* All of these criticisms are true.

6 The Special Master explains that to some extent the District is faced with a certain
7 degree of difficulty until it knows precisely which schools will be closed. *Id.* at 6.

8 For example, many parents may choose to send their children to a school
9 other than the one the district specifies as a receiving school. In many
10 cases, the District would provide transportation because the result will be
11 to move the receiving school closer to being integrated. And, since many
12 student assignment zones will be larger and ‘neighborhood’ schools
13 eliminated for many families, the incentives to go to open enrollment or a
14 charter school will be greater than they have been. To the extent that such
15 options are selected by families, this could affect the character of the
16 student populations at all affected schools and it is likely that families
17 exercising such choice will be families whose students are higher achieving
18 than the students in families not exercising choice. All of this means that
19 it is difficult to predict what the demographic characteristics of the
20 District’s schools will be after, much less before, school closings are
21 implemented. This, in turn, makes it difficult to know what the mix of
22 services and faculty should be in the receiving schools.

23 *Id.* 1-2. More importantly– “considerable uncertainty will remain until families make their
24 choices about where to send their children.” *Id.* at 6. “And the decisions they make will be
25 influenced by what they believe their children will experience in their new schools.” *Id.* The
26 Court notes that the fluidity of the student assignment provisions adopted in the USP will
27 result in this dilemma to a lesser extent every year.

28 In regard to the proposed school closures, the Special Master proposes a solution.
He believes that the Plaintiffs’ concerns can be addressed in the context of the boundary
decisions now being made by the District. The District anticipates making its boundary
decisions by mid-February, 2013, with the review and objection period to commence,
thereafter, for Court approval in April, 2013. The Special Master proposes schools can be
more closely assessed as their boundaries are drawn in regard to “certain provisions [to] be

1 made for all schools relating to facilities and certain programs that address the needs of
2 students across the schools proposed for closure.” (Recommendation at 10.)

3 The Special Master recommends that certain support services be provided to all
4 students affected by the school closures, wherever they end up. Additionally, he
5 recommends tracking the impact of these school closures on students so the District is better
6 positioned to assess the impact of any future school closures.

7 Specifically, the Special Master provides a list of eight recommendations he asks the
8 Court to adopt in the event it approves the proposed school closures. The recommendations
9 require the District to assure that students moving from a closed school receive, at a
10 minimum, the same or comparable levels of services that they received in their former
11 school, especially for ELL, Special Education, GATE and AVID students, and for Title I,
12 Fine Arts, and Equity Department (Student Services and Drop-Out Prevention) services. The
13 District should allocate extra financial resources for support services for incoming and
14 current students enrolled in D or C- receiving schools to mitigate the negative effects of the
15 transition. Receiving schools should receive preferred consideration for resources to support
16 extracurricular activities. Receiving schools should not turn to portable classrooms to
17 accommodate the influx of students from closed schools. Finally, the District should
18 undertake a study of the effects of the school closures. The Court adopts these
19 recommendations and expects the boundary proposals to include them.

20 The Special Master makes a separate recommendation related to Howenstine Magnet
21 High School, which has over half its student body comprised of students with specialized
22 needs and/or enrolled in Individualized Education Plans (IEPs). Both the Special Master and
23 the Department of Justice believe the Court must ensure these students are smoothly
24 transitioned to new schools. The Special Master is especially concerned that these students
25 and their families are individually counseled regarding enrollment options. The Court agrees
26 and also agrees with the Special Master’s other recommendations related to these students,
27

1 such as ensuring they are relocated to least restrictive learning environments, and those who
2 wish to attend a high school other than their “home” high school be given preference in
3 student selection. Howenstine High School offers a unique small school environment; it only
4 accommodates 250 students, with the estimated student body for 2013-14 being less than 100
5 students. While this explains why it operates at a substantial financial loss each year and cuts
6 sharply in favor of closing it, Howenstine Magnet High School meets the specialized needs
7 of some students who require a smaller school environment and/or must be taught in self-
8 contained classrooms. The District should attempt to provide smaller school environments
9 if possible for such students, or address these needs in other ways. The Special Master
10 explains that Howenstine High School would be a relatively easy closure decision except for
11 its students with specialized educational needs. The Court agrees that Howenstine High
12 School may be closed, pursuant to the recommended safeguards suggested by the Special
13 Master.

14 Finally, the Court offers its own recommendation to the parties that they work
15 together to achieve a more efficient and effective review process. Many of the objections
16 from the Fisher and Mendoza Plaintiffs were that the District did not provide adequate
17 information or meaningful data to facilitate the Plaintiffs’ review of the proposed school
18 closures. The Plaintiffs had to ask for additional data or had to wade through voluminous
19 material to find relevant information, and in the end, the Plaintiffs did not make substantive
20 objections or recommendations because they believed the data was inadequate for making
21 school closure decisions. To eliminate such objections and wasted time, the Court directs
22 the Plaintiffs to work with the Special Master to prepare data requests which they believe
23 will be adequate for them to efficiently and effectively review the boundary changes. The
24 Special Master and Plaintiffs shall continue this practice for any other future proposals by
25 the District, which require this Court’s approval. Given the USP provides specific data
26 collection directives, in the future it should not be unduly burdensome for the Special Master,

1 with the assistance of the Plaintiffs, to provide this type of up-front guidance to facilitate
2 review of District proposals that require Court approval and to eliminate future objections
3 regarding the adequacy of data and information provided by the District for reviewing such
4 proposals.

5 The Court is also concerned that the community, especially the families having to
6 exercise school-choice, may be overwhelmed by the volume of information necessary to
7 choose a school. In presenting the boundary and school choice information to the community
8 the District shall ensure that it is presented in a simple and comprehensive manner. In other
9 words, the District should identify information that is relevant to school choice, such as
10 location; school-rating grade, including points; availability of special programs such as ELL,
11 GATE, etc.; facility space, including use of portables; and other relevant criteria. This
12 information should be presented in a manner which facilitates school comparisons. The
13 District should note that comparisons dependant on color-coding should carry through to
14 copies provided to the community or they are of little help to the end user.

15 Because school choice will hinge on space and availability of transportation, which
16 turns on the ethnicity of the school and the student, the District should work with the Special
17 Master to add a school-choice calculator to the District's website. This will allow a quick
18 preliminary computerized assessment of whether a school is a viable option for an individual
19 student.

20 Overall, the Court is concerned that as the parties move forward they should work
21 in collaborative rather than confrontational postures to the maximum extent possible to
22 achieve the goals in the USP, which will all require difficult and hard choices.

23 **Accordingly,**

24 **IT IS ORDERED** that the Court approves the Proposed School Closures (Doc.
25 1419).

