

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2525 EAST BROADWAY BLVD. • SUITE 200 • TUCSON, ARIZONA 85716-5300
(520) 322-5000 • (520) 322-5585 (Fax)

M E M O R A N D U M

TO: Special Master Willis Hawley

FROM: Lisa Anne Smith

DATE: November 15, 2013

RE: UHS Admissions: TUSD's Response to draft Report and Recommendation

This memorandum responds to the objections lodged by the Mendoza and Fisher Plaintiffs to the UHS Admissions Plan adopted by TUSD's Governing Board, and to the draft Report and Recommendation of the Special Master that has been circulated to the Parties. This memorandum references the revised version of the UHS Admissions Plan (Exhibit 1) and the new Appendix L (Exhibit 2). The revisions are minimal and are intended as clarifications only. Neither the revision nor the new Appendix L require further Board approval. Therefore, these changes will be made to the current Admissions Plan.

I. Mendoza Objections:

- A. **Objection:** Failure to comply with the USP's provision mandating revised procedures to be piloted for transfer students for school year 2013-14.

Response: The admissions process for transfer students begins in February, when applicants are informed of the admissions criteria. Applications are open in April and the process is concluded by May. Because the USP was not approved until February 2013, and the District had yet to hire an ALE Director or to establish structures for USP implementation, it was not in the best interests of students or staff to rush through the development of revised procedures to pilot in the spring of 2013. As evidenced by the fact that the revised procedures have now taken several months to develop and objections still remain, it does not seem likely that the District, Parties, and Special Master could have effectively developed revised procedures in time to pilot those procedures during the spring of 2013.

- B. **Objection:** The Revision is incomplete with regard to the CAIMI test because it states the District will use the CAIMI "or other relevant measures" without defining how the measure will be selected nor does it explicitly state the weight to be given to the CAIMI. The Mendoza Plaintiffs support a tool to assess motivation.

Response: The District originally intended to rely upon the CAIMI, but the Plaintiffs expressed some concerns about whether or not the CAIMI was the best test. The District agreed with the suggestions of the parties and determined it

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

November 15, 2013

Page 2

would pilot the CAIMI and then, based on an evaluation of whether the CAIMI increases the acceptance rate of the target populations, determine whether to use that test or a different test in the spring for transfer admissions and/or next year. This fact is reflected in Appendix L. This is not a plan for a single semester or a single year, so it is appropriate to leave open the possibility of using a different test in the future. Regarding the weight to be given the CAIMI, the Plan states that it will be used as an additive; i.e., after points from GPA and CogAT scores are totaled, additional points may be awarded based on CAIMI results. The maximum number of points that may be added is 5. This fact is confirmed in Appendix L.

- C. **Objection:** The USP requires that the test be administered to all 7th grade students, but that is not reflected in the Admissions Plan.

Response: The District will administer the admission test to all 7th grade students in the spring of each school year. This is a separate requirement of the USP (it is not in the USP provision describing the revised admissions process) and the District does not believe its commitment to follow through with this obligation needs to be set forth in the Admissions Plan. However, it is now reflected in Appendix L.

- D. **Objection:** In the Review section, the Revision should expressly note that the District will analyze how well GPA and CogAT scores predict success at UHS, with the results broken down by race, ethnicity and ELL status, to determine if the weights should be adjusted.

Response: The District has noted that there is no direct correlation between CogAT scores or middle school grades and UHS grades, although the combination of both correlates to success rates on the PSAT, SAT, ACT, AIMS and AP tests. The District has previously provided an analysis of how adjusting the weights of the CogAT and GPA influences admissions by ethnicity and its analysis determined that adjusting the weights did not impact admissions by ethnicity. The District has committed to creating a committee to analyze the correlation between all assessments used (including CogAT and GPA) with admissions by race, ethnicity and ELL status, and to use the data to inform the next admissions cycle. See Appendix L.

- E. **Objection:** The District should not give additional weight for honors or pre-AP classes.

Response: In response to this concern, the District will determine a process for transcript analysis based on the Year 1 Sophomore Pilot. See Appendix L.

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

November 15, 2013

Page 3

- F. **Objection:** The District should be required to confirm that recruitment efforts are in place.

Response: The Admissions Plan specifically notes that recruitment and retention are not part of the Admissions Plan. It is not inconsistent to note that, while not part of this Plan, they are a significant component in increasing and maintaining diversity. The specifics of recruitment and retention will be set forth in the ALE Access and Recruitment Plan, referenced in USP section 5(A)(2), which is due January 29, 2014, according to the Special Masters November 1, 2013, timelines memo.

- G. **Objection:** With respect to recruitment and retention, the District should explain whether it intends to use a pre-selection committee and a school advocacy tool and, if not, why not.

Response: The UHS Recruitment, Retention and Admissions sub-committee determined that the use of a pre-selection committee or a school advocacy tool would not be included at this time because these measures have had only limited success elsewhere. Furthermore, this issue will be considered in connection with the Access and Recruitment Plan. This does not appear to be an objection to the Admissions Plan but, in any event, this response provides the information requested by the Mendoza Plaintiffs.

- H. **Objection:** The Mendoza Plaintiffs lodge a “separate objection” to the use of a particular comparison in the District’s PowerPoint presentation regarding the UHS Admissions Plan.

Response: This does not appear to be an objection to the Admissions Plan. When presenting the PowerPoint, the District explained the limited purpose of the comparison to which the Mendoza’s object.

II. Fisher Objections:

- A. **Objection:** It is difficult to comment on efficacy of a resiliency measure (such as CAIMI) but the Fisher Plaintiffs do not find its use “inherently objectionable.” The District would be better served by educating a broader spectrum of students by assuring that admitted students receive support to succeed at UHS.

Response: The District has committed to reviewing the impact of the CAIMI and evaluating other relevant measures if it does not meet the intended results of positively impacting admissions of Latino and African American students. See Appendix L. With regard to assuring that admitted students receive support, this is not part of an *admissions* plan. Furthermore, Appendix B to the UHS Admissions plan does demonstrate that African American students admitted to

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

November 15, 2013

Page 4

UHS have a 90% graduation rate while Anglo students have an 85% graduation rate. The facts do not support the idea that admitted African American students need additional support to succeed at UHS.

B. **Objection:** Fisher Plaintiffs question the use of the CogAT.

Response: Section V of the Admissions Plan explains the use of the CogAT. Its strength is that it is not an intelligence test or an achievement test, but a well known and norm-referenced test of reasoning abilities. Without a basis for saying that the CogAT should not be used or providing a different type of assessment that should be used in its place, it is difficult for the District to respond to an objection which simply “questions” the use of the CogAT. Significantly, the District has committed to continuing to analyze the impact of the various measures used, including the CogAT, on enrollment. See Appendix L.

C. **Objection:** “Whatever admissions criteria used, we should be able to determine ... how much they will increase the percentage of AA and MA students admitted to UHS.”

Response: The District has shown, in Appendix J, how use of the CAIMI will positively impact admission of African-American and Latino students based on the retroactive analysis requested by the Fisher Plaintiffs. Furthermore, the District has committed to continuing to analyze this data in the regular review and revision process.

D. **Objection:** “Just admitting AA students won’t ensure they will graduate. Additional academic support will be necessary. What will it be?”

Response: See response to II(A), above. An admission plan is about admission. It is not about academic support. That is addressed elsewhere.

E. **Objection:** Fisher Plaintiffs join in several of the Mendoza objections.

Response: See above.

III. Summary of Plaintiff Objections and District’s Response

Without agreeing that the Plaintiff’s objections, individually or collectively, indicate that the District has failed to comply with the USP or its desegregation obligations more generally, the District believes that the clarifications in the revised UHS Admissions Plan, Appendix L and this memorandum address every concern raised by the Plaintiffs that are properly considered objections to the UHS Admissions Plan, rather than comments on other issues, such as the as-yet-to-be developed Access and Recruitment Plan or the provision of support for admitted students.

November 15, 2013

Page 5

IV. Special Master Proposal

- A. **Overview:** The Special Master states that the due date for the UHS Admissions plan was April 1, 2013, and states further that the District did not follow the USP's requirement that the parties work together.

Response: The Parties and Special Master agreed to change the date from April 1, 2013 to October 1, 2013. Most recently, the Special Master identified the due date as October 23, 2103 (see November 1, 2013 memo re: timelines). Once work began on the UHS Admissions Plan, the District sought and received significant input from the Parties and Special Master which was considered and which informed the final product.

- B. **The District's Proposal:** In this section, the Special Master describes the process and raises several criticisms of the both the process and the Admissions Plan. Each will be summarized and addressed.

Objection: The Special Master again notes that "The District did not mobilize to work on UHS admissions until after the USP was approved."

Response: The Parties agreed to change the due date for this item to October 2013. Subsequently, the District's new ALE Director and new UHS principal came on board in the summer of 2013 and the District believes the input of these individuals was critical to the development of a revised UHS Admissions Plan.

Objection: The Special Master criticizes the District's initial plan as insufficient and criticizes the District for failing to follow the USP process for collaborating.

Response: The District sent an initial plan to start the discussion and then used input from the Plaintiffs and Special Master (as well as other sources) to make revisions and arrive at a final product. This is exactly what the USP envisions. Furthermore, the District engaged in significant collaboration with the parties. There were extensive interactions among the Parties (District drafting of an initial plan; party comments, discussion and revisions; a District initiated conference call to discuss the proposed Plan and major concerns with it; numerous emails between the Plaintiffs and the District and the Special Master and the District; and revisions taking into consideration all of this input).

Objection: The Special Master criticizes the District for using the CAIMI.

Response: Both parties note that, in theory, they do not object to the use of a test like CAIMI. Both raise issues about what specific test should be used, but this is addressed in the plan to evaluate the impact of using the CAIMI on admissions in the future and to reconsider the specific test if the data does not support

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

November 15, 2013

Page 6

continuing to use it. See Appendix L. This specific test was selected based on a recommendation by an expert in the field, as noted in the Admissions Plan. The District has analyzed the positive impact the CAIMI would have on admissions of African American and Latino students and, although the Special Master says (without further clarification) that the analysis is “seriously flawed and overstates the likely effect,” the District undertook the analysis at the request of the Parties and Special Master and the District believes it provides a good faith basis for relying on the CAIMI in the initial year of the new Admissions Plan, followed by the analysis described above and in Appendix L.

Objection: The Special Master criticizes the District for not further examining weights for the GPA and CogAT scores.

Response: See Response to I(D). Furthermore, the District’s analysis shows that weighting GPA more than CogAT scores (2/3 to 1/3) is beneficial to admission of African American and Latino students. The evidence does not suggest weighting GPA even more will increase the enrollment of the target groups. Finally, given the wide disparity of middle school experiences (including TUSD and non-TUSD schools as well as different programs within TUSD (including magnet and GATE programs), GPA is not the most consistent or objective measure and the District does not want to give it additional weight for that reason. This is the reason for adding the motivation/resiliency test (CAIMI) rather than changing the weights of the current measures.

Objection: The Special Master appears to criticize the District for not using essays, non-cognitive measures, and teacher recommendations.

Response: The District explained its concerns with using essays and other non-objective measures in Section VI of the Admissions Plan (“Early consensus from the working group determined that additional admissions criteria should be objective and well-defined. The initial feeling was that the use of interviews, personal essays and/or staff recommendations could inject subjectivity into the process and could reduce the transparency and consistency of admissions.”)

Furthermore, the Admissions Plan includes the use of essay questions for the sophomore pilot plan and also states they will be used in the admissions process for freshman and sophomores for the 2015-2016 school year. Note that students applying to be freshman next year have already applied and taken the admissions test.

C. Special Master’s Recommendation to the Court

The Special Master recommends that the Court direct the District to take one of two actions:

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

November 15, 2013

Page 7

1. **First Proposal:** Postpone the admissions process for two months and (1) develop measures including essays and non-cognitive factors and assign weights to those measures; (2) provide a justification for the weighting of CogAT and GPA or change weights; and (3) examine alternative measures of motivation.

Response: This first part of this recommendation is not responsive to the objections raised by the Plaintiffs, neither of which objected because of the lack of essays or non-cognitive factors nor proposed inclusion of either measure. The second two parts of this recommendation have been largely addressed. The District has explained that changing the weighting of the CogAT and GPA does not impact admissions by ethnicity, based on the analysis of three years of application data. This analysis did not indicate that a different weighting would be preferable. Nevertheless, the District has already committed to continuously reviewing the correlation between various admission measures and success at UHS, by race/ethnicity/ELL status. The District has already committed to examining alternative measures of motivation, although one concern by the Mendoza Plaintiff is that the motivation test is not firmly specified and that concern has been addressed by specifying the use of the CAIMI.

In addition, postponing admission decisions for next school year will negatively impact the current 1,200 applicants for UHS as well as the process of budgeting, staffing and other decision making for next year at UHS as well as at other schools that applicants might attend if they are not accepted by UHS. Delaying admission to UHS might cause students to enroll at other schools (including charter high schools or out of district).

Finally, the District would not be able to complete tasks (1) and (3) and then administer these additional assessments within the next two months, especially with a two week winter break in that time period. Delaying admissions even further would further exacerbate the problems associated with delay set forth above including a seriously negative impact on the students who have applied for admission and who would not know whether they had been accepted until very late in the school year.

The CAIMI was selected from among other possible measures because there are studies of its validity and reliability, it is widely cited in the literature, and it is a legitimate assessment with published test books, answer documents, and scoring profiles suitable for use with large numbers of applicants. The District made the best selection available for this year and will review its choice and whether another relevant measure should be selected in the future to replace the CAIMI. However, it is premature to criticize the choice of this test when there is a reasonable

November 15, 2013

Page 8

basis for selecting it and the District is committed to analyzing the results it produces.

2. ***Second Proposal:*** Engage in a two step admissions process with traditional admissions criteria for the first screening and student essays and non-cognitive measures used in round two. Also, analyze weights for CogAT and GPA.

Response: This proposal raises the same concerns about delaying completion of the admissions process as the First Proposal. Round Two could not be completed in two months, even if it could be fully developed in that time, which it could not realistically be.

The District has already included in the Admissions Plan the intention to use student essays for sophomores and next year for freshman. That plan gives the District time to adequately prepare the essay questions and pilot them effectively.

3. ***Third Recommendation:*** Do not use the results of the CAIMI in the absence of proof that it will enhance diversity and can be shown to predict student performance. (It appears that the Special Master recommends this regardless of whether the first or second proposal above is adopted).

Response: The District has explained its selection of CAIMI for this year, the fact that it expects use of CAIMI to increase diversity of the students accepted to UHS (particularly Latino students), its intention to analyze the results of the CAIMI and its commitment to use that analysis to inform the admissions process going forward.

D. **Other Issues Related to Plaintiffs' Objections**

1. ***Request of Fishers for inclusion of support in the UHS Admissions Policy:*** The Special Master agrees with the District that support for accepted students is not part of the Admissions Plan. The District has expressed its commitment to addressing recruitment and retention and acknowledged that it is obligated to do so.
2. ***Fisher Plaintiffs Join Mendoza in Objection to Actions Since Addressed by the District.*** The Special Master notes that the District has addressed concerns about testing 7th graders, not using weighted GPAs, eliminating inconsistencies, and specifying the weight for the CAIMI. These are addressed in Exhibits 1 and 2.

November 15, 2013

Page 9

IV. Conclusion

The District does not believe that either proposal set forth in the Special Master's Recommendation should be adopted by the Court in whole or in part. Every objection raised by the Parties has been addressed by the District either by noting that it will be the subject of another plan, by providing a response to the question raised, or by making the clarifications to the Admissions Plan set forth in Exhibits 1 and 2. Neither the Parties nor the Special Master had described any aspect of the final UHS Admissions Plan that fails to comply with the USP, that violates the District's desegregation obligations, or that is not a permissible decision to address the concerns raised by the parties.

The UHS Admissions Plan is the result of significant expert consultation and input from the parties, District administrators, and the community. The District has done its best to ensure that "multiple measures for admission are used," with some new measures being used and analyzed this year and additional measures being used and analyzed next year. The goal of all changes has been to ensure that all students have an equitable opportunity to enroll at UHS, and the review and revision process built into the Plan will require the District to continue to analyze results and make proper adjustments. These are the requirements of the USP and they have been met by the District's UHS Admissions Plan.